

P.M. BAKSHI



PUBLIC INTEREST LITIGATION

Containing

Public Interest Lawyering
Legal Aid & Para Legal Services

Sixth Edition

STUDY in LAW



Whytes & Co.



P.M, Bakshi

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Legal Aid & Para Legal Services

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Public Interest Lawyering
Legal Aid & Para Legal Services

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One of the most robust and dynamic judicial system in the present democratic world is that of India. We have seen various dynamic and modern approaches taken by the Indian Judicial system. There was a time when Indian courts had to look up to the British decisions to act as the corner stone for our judgements, but with time our independent and intellectual judiciary has filled this vacuum by pronouncing verdicts being celebrated and quoted around the world. Public Interest Litigation is a mechanism devised by the Supreme Court of India in the early 1980s to increase access to justice. Under this mechanism any individual or organisation is allowed to file a PIL in the High Court or the Supreme Court on behalf of those whose rights are being violated.

In December 1979 a petition was filed regarding condition of prisoners detained in Bihar jail, whose suits were pending in the court. The special thing about this petition was that it was not filed by any single prisoner, rather it was filed by various prisoners of the Bihar jail. The case was filed in the Supreme Court before the bench headed by Justice P.N.Bhagwati. This petition was filed by the name of the prisoner, Hussainara Khatoon, hence the petition came to be known as **Hussainara Khatoon v. State of Bihar**. In this case, the Supreme Court upheld that the prisoners should get benefit of free legal aid and fast hearing. Because of this case 40,000 prisoners, whose suits were pending in the court, were released from the jail. Thereafter many similar cases were registered in the Supreme Court. It was in the case of **SP Gupta v. Union of India** that the Supreme Court of India defined the term "public interest litigation" in the Indian Context.

Filing a PIL is not as cumbersome as a usual legal case; there have been instances when letters and telegrams addressed to the court have been taken up as PILs and heard for e.g. in **Citizens for Democracy through its President v. State of Assam and Others**,^{1 2 2} the court entertained a letter to a judge of the court alleging human rights violations of Terrorist and Disruptive Activities (Prevention) Act detainees; it was treated as a petition under Article 32 of the Constitution of India, similarly, in **Miss Veena Sethi v. State of Bihar** the court treated a letter addressed to a judge of the court by the Legal Aid Committee in Hazari bagh, Bihar as a writ petition.

I humbly request the readers to glance through '**Key to STUDY in law**' at the beginning of the book which would give a fair idea of the category one would wish to study. The book has been divided in three parts, viz, Part I - Public Interest Lawyering, Part II - Legal Aid & Lok Adalat, Part III - Para Legal Services. Further the parts are categorized and divided into chapters with indepth research and analysis of relevant case law.

In order to master this branch of law, students are advised to understand the background of PIL under chapter one and Locus Standi in chapter two, based on these, further case-law has developed.

1. 1995 (3) SCC 743: AIR 1996 SC 2193.
2. AIR 1983 SC 339 : 1982(2) SCC 583 : 1982 SCC (Cri) 511.

It is our earnest hope that this book will address the needs of Students, Academicians, Researchers, Educational Institutions, non-practising Legal Officers and all those concerned with this subject of law.

Subject index has been laboriously prepared so as not to leave any possible heading under which a problem may be researched. The table of cases appended in the beginning of the book shall further enhance utility of this book.

However, confident one may feel of having accomplished a task, there is yet some way ahead to reach that ever-receding horizon of excellence. Therefore, I welcome all your suggestions, brickbats of criticism, and the bouquet of appreciation; so that the valuable insights so offered could be absorbed in the subsequent editions.

Deepak Gogia

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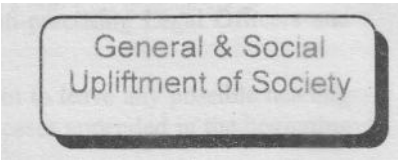
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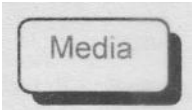
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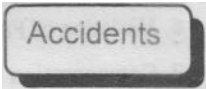
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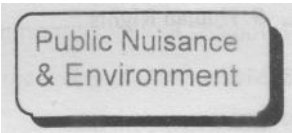
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Part I

Chapter 1

Introduction

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1. General.—Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligation on the part of the Government. Here it is not so and in the sphere of economic policy or reform the Court was not the appropriate forum. Every matter of public interest or curiosity cannot be the subject of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions of non-compliance by the State with its constitutional or statutory duties.¹

The Council for Public Interest Law set up by the Ford Foundation in USA defined the “public interest litigation” in its report of *Public Interest Law, USA, 1976* as follows:

“Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.”²

No Court can issue a mandate to a legislature to enact a particular law. *State of Uttar Pradesh v. Anil Kumar Sharma (SC)*, 2015(5) JT 451 : 2015(6) Scale 590 : 2015(6) SCC 716 : 2015(3) SCC(Cri) 368 : 2016 CriLJ 213.

2. Public Interest litigation—What is?—Guidelines as provided are given below:

1. Bonded Labour matters
2. Neglected children.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from Jails complaining of harassment, for premature-release and seeking release after having completed 14 years in Jail, death in Jail, released on personal bond, speedy trial as a right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.
6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or police from persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes.

1. *BALCO Employees Union (Regd.) v. Union of India*, AIR 2002 SC 350 at 352. See *Janta Dal v. H.S. Chowdhury*, AIR 1993 SC 892 para 51 quoted in *Dr. Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board*, AIR 2001 Del 223 at 224 : 2000 (55) DRJ 321: 2000(87) Del LT 170.
2. See: *(Dr) B. Singh v. Union of India*. 2004(3) SCC 363: 2004 AIR SCW 1494, referred in AIR 2007 SC 758 at 760.

8. Petitions pertaining to environmental pollution, disturbances of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
9. Petitions from riot-victims.
10. Family pension.

Matters which are not to be entertained as PIL are indicated as below:

1. Landlord tenant matters.
2. Service matter and those pertaining to Pension and Gratuity.
3. Complaints against Central/State Government Deptts. and Local Bodies except those relating to item No.s 1 to 10 above.
4. Admission to medical and other educational institutions.
5. Petitions for early hearing of cases pending in High Courts and Subordinate Courts.

In case where it is found that the matter is covered under the guidelines it is then placed before the Courts and not otherwise. It is also provided that initially one Judge may be assigned to entertain such letter petitions after they are found to be covered by the guidelines and the number may be increased to two or three depending upon the work load. The whole tenor of the guidelines and circular leaves no doubt that the procedure as evolved would govern the letters/petitions that is to say the petitions which are in the nature of letters. The purpose is also obvious that in case there is a spate of letters/petitions, it will only be appropriate that first a scrutiny is made by the Cell before these are placed before the Court, but the same would not be applicable where a petition is filed in the Court complying with the Rules for filing petitions under Article 226 of the Constitution.³

3. Public Interest Litigation—Its origin and meaning.—The expression ‘litigation’ means a legal action including all proceedings therein, initiated in a Court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the 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. There is host of decisions explaining the expression ‘PIL’ in its wider connotation in the present day context in modem society, a few of which we will refer to in the appropriate part of this judgment.⁴

It would be quite appropriate in the case on hand to analyze both the basic features and the evolution and profound transformation of the developing and growing PIL in modem society. Suffice it to say that the challenges facing this ameliorable litigations are examined in the light of their social, economic, political and ideological causes; and that the solutions to be adopted by the legal system to meet those challenges are explored, since there is still an ocean of unmet needs. These challenges are :

3. *Pranatosh Roy v. State of Assam*, AIR 2000 Gau 33 at 34 : (2001) 1 Gau LR 242 (Brijesh Kumar and P.G. Agarwal, JJ.).
4. *See Janata Dal v. H.S. Chowdhury*, AIR 1993 SC 892 para 51 quoted in *Dr. Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board*, AIR 2001 Del 223 at 225 : 2000 (55) DRJ 321: 2000(87) Del LT 170.

- (1) the expanded role of Courts in the modern 'social' State and the new demands for judicial responsibility;
- (2) the rise and growth of varied systems of judicial review and the legitimacy of such development;
- (3) the emergency of the notion of 'access to justice' as a judicial answer to egalitarian ideals and demands for effectiveness, and the development of PIL, and
- (4) the role of Courts in promoting the legal system in the arena of PIL. The relentless efforts taken by Courts in meeting all those challenges, in fact, strive for a optimality in which the interest of the least advantaged is given an overriding priority. During the last three decades, judicial activism has opened up new dimension for the judicial process and has given a new hope to the justice-starved millions. On the question of legitimacy of the PIL and the significant importance of its various aspects in the context of the present day felt needs, stimulated by the emergence of a variety of new social movements and societal exigencies, this Court has laid down a long line of decisions, outlining the evolution of PIL, its vital issues and problems relating to the focus, choice of relief methods, the means and the administrative strategy for litigation and the demand for distributive justice for resolving the complicity of social problems and creating genuine initiatives so that this new activism may be more meaningful social justice. Thus the concept of PIL which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records, especially in the arena of constitutional and legal treatment for the unrepresented and under-represented'.

The period of 1960 in United States of America was the important period of social embroilment during which not only manifold changes to many institution took place; but also significant reforms of which public interest litigation was one were proposed and tried. The concept of PIL though had its origin in U.S.A., over the march of years it has passed through various changes and modifications in their common law based systems. It is not necessary to examine all those modifications and changes in the structure of the public law of that country and the manner in which the legal services have been redistributed in American society except saying that the strict requirement of legal interest has been diluted and attenuated in the country of its origin. Similarly, the common law based systems in other parts of the commonwealth countries have also undergone various changes. Legal aid programmes in Australia and Canada have been restructured to serve divergent aspects of the public interest. Some of the countries have gone to the extent of broadening its scope even beyond litigation and including many varieties of negotiations and even non-litigating approaches. Thus the definition of PIL emerged from historical context in which the commonality of the various forms of legal representation involving the basic and fundamental rights of a significant segment of the public demanding vindication of its rights has been recognised in various parts of the world.

Under the caption 'Social Action Litigation' The Indian Experience thus:

'The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose it is necessary to make procedural innovations in order

to meet the challenges posed by this new role of an active and committed judiciary. The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups.....During the last four or five years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of India.”⁵

Indian law has historically been strongly identified—both in theory and practice—with a tradition which has been concerned with the rights and duties of individuals. Yet in recent years it has been recognized that this tradition is inadequate to cope with a wide range of problems arising out of inequality of means, opportunities and entitlements in society. This conflict has generated increasing discussion of PIL, and also the development of a whole new corpus of law for effective and purposeful implementation of PIL and institutions explicitly concerned with the manner and techniques by which the public interest is, and can be, safeguarded by the legal system.

The seed of the concept of PIL were initially sown in India by Krishna Iyer, J. in 1976 (without assigning the terminology) in *Mumbai Kamgar Sabha v. Abdulbhai*,⁶ he while disposing an industrial dispute in regard to the payment of bonus, has observed (Para 7 of AIR):

“Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not foulted, latitude is a grace of processual justice. Test litigations, 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 by-pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. Even Article 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, view, backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of *locus standi* in our socioeconomic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher 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 adjective law.”⁷

In *Fertilizer Corporation Kamgar Union v. Union of India*,⁸ the terminology “Public Interest Litigation” was used. In that decision, Krishna Iyer, J. delivering his opinion for

5. Vide ‘Role of the Judiciary in Plural Societies’ published in 1987.

6. AIR 1976 SC 1455 : (1976)3 SCC 832.

7. Janata Dal v. H.S. Chowdhury, AIR 1993 SC 892 at 906, 907, 908 : 1993 Cri LJ 600 : 1993 SCC (Cri) 36 : (1992) 3 Crimes 199 : (1992) 4 SCC 305 (Del) (S. Ratnavel Pandian and K. Jayachandra Reddy, JJ.).

8. (1981) 2 SCR 52 : AIR 1981 SC 344.

Bhagwati, J. (as the learned Chief Justice then was) and himself used the expression 'epistolary' jurisdiction. However, this rule on gaining momentum day by day, burgeoned more and more expanding its branches in the cosmos of PIL and took its root firmly in the Indian Judiciary and fully blossomed with fragrant smell in *S.P. Gupta v. Union of India*.⁹

The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of *Public of Interest Law*, USA, 1976 quoted in AIR 2001 Del 223 at 225, as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an affective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting *bona fide* and for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold. *Dr. Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board*, AIR 2001 Del 223 at 225 : 2000(55) DRJ 321: 2000(87) Del IT 170.

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 class of the community has pecuniary interest or some interest by which their legal rights or liabilities were affected.

The true public interest litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court for either of the following purposes :

- I. Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or statutory provisions incorporating the directive principles of State Policy for amelioration of their condition:
- II. Preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest.

Personal grievances would not be enforced in the garb of public interest litigation.¹⁰

In *Black's Law Dictionary* (Sixth Edition), "public interest" is defined as follows:

"Public interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government..."

See: *Delhi Municipal Workers Union (Regd.) v. Delhi Municipal Corporation*, AIR 2001 Del 68 at 71; 2008(88) Del LT 281.

The incident having taken place as far back as in the year 2003 and the petitioner having sustained minor injuries in the scuffle which took place, this Court is of the view that registration of the First Information Report in the instant case after more than four years of the incident would be an exercise in futility and perhaps for this reason the prayer for registration was not pressed by the learned counsel for the petitioner. High Court would, however, be failing in its duty if it does not observe that some comprehensive guidelines are necessary to be issued for the better functioning of the police so that the general public does not lose faith in the police department and the law and order machinery of the State. This is a welfare State governed by democratic principles in which fundamental rights such as freedom of expression are allowed full play. This, however, does not mean that whenever placards are held out by innocent and peace loving citizens to air their grievance or to seek espousal of their cause, the placards must be trampled upon and the hands which hold them broken. Rallies and processions too are the order of the day. Such kind of rallies and processions are more often than not held after adequate notice, thereby enabling the higher rung of police officials to man the route to be adopted by the rally or procession with adequate security personnel. One cannot, however, help but notice that such security personnel posted at strategic places to prevent untoward incidents are more often than not little better than bystanders a little better because they are armed and for no other reason. It is lost sight of by such personnel that their job is to prevent even a small scuffle from taking place rather than to step into avoid rioting alone.

The newspaper cutting placed on record, is ample proof of the fact that the police personnel posted at such spots consider it their duty to man the spot, but beyond this, their role is not at all proactive. There is little realization of the fact that a small scuffle has the potentiality of sparking a serious situation, if not checked and averted, and as a matter of fact, there are news reports galore where rallies and processions have led to major rioting in riot prone areas and even in those areas which are not so riot prone. It is here that the role of the police officials and other security agencies assumes significance. This is not to say that the police should unnecessarily lathi-charge or tear-gas a peaceful rally or procession. But, at the same time, it must be impressed upon them that their deployment is for the singular purpose of ensuring peace in the area, so that neither those who carry torch of the rally nor the innocent wayfarer is the sufferer. Then again, booking a culprit in case he commits a cognizable offence is one thing but the police must be made to realize that even in cases where a non-cognizable offence is committed, it is not exactly helpless.

Accordingly, High Court in exercise of its powers under Art. 226 of the Constitution of India directs the Commissioner of Police and all other law enforcing

10. D.K Parihar v. Union of India, AIR 2005 Raj 171 at 173; 2005(1) Raj LR 818; 2004 (4) (u) WLC 724.

agencies including the Director, CISF and the Director, CRPF to issue comprehensive guidelines to personnel working under them to ensure that no untoward incident takes place in the course of the frequent rallies and processions within the National Capital Territory of Delhi and its adjoining areas and at any rate such incidents are minimised to the maximum. It is further directed that the law enforcing agencies while mapping out the route of such rallies and processions shall depute security personnel by their names and designations at a particular spot and for any incident which takes place within the radius of that particular spot, the named security officials shall be held to be wholly responsible. The security personnel shall also afford all newspaper reporters and media persons covering the event full protection.

Photographs taken by such media persons may be used to identify the culprits and to take action against them in accordance with law not only for the commission of cognizable offences but also for non-cognizable offences so that minor incidents capable of igniting major law and order problems are dealt with appropriately. Those equipped with lathis, dandas, batons, short staff or any other instruments, which may be used as weapons of offence which are likely to cause grievous injury or death if used at a sensitive and vulnerable part of the body, be not allowed to participate in the rally or procession till disarmed. Such lathis and other weapons of offence be seized by the police forthwith to maintain peace and social order. Full effect be also given to the provisions of Section 42 of the Code of Criminal Procedure to arrest a miscreant for the commission of a non-cognizable offence in case of his refusal to give his name and residence.

When the true name and residence of such person/persons have been ascertained, he/they shall be released on executing bond(s), with or without sureties, to appear before the Magistrate, if so required (sub-section 2 of Section 42). Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction. Callous and indifferent attitude and dereliction of duty by the personnel posted at the spot be dealt with by the higher authorities in a stringent manner and the promotional avenues of such personnel be blocked till such time as they prove themselves equal to the task entrusted to them.

Training courses be imparted to the personnel to make them cognizant with their duties and responsibilities and to equip them with the mode and manner in which they are expected to deal with miscreants and goons, who may be inextricably mixed up with peace loving citizens demonstrating for a cause or airing a grievance. Mandatory advanced courses and training be imparted to identified personnel to equip them with the know how of handling specially volatile situations, likely to disrupt the peace and harmony of the State itself. Such other comprehensive guidelines be promulgated by the Commissioner of Police, the Director of CISF and the Director of CRPF and other law enforcing agencies as may be thought fit and proper for the effective management of strikes, hartals, riots, rallies, processions demonstrations and the like. The said comprehensive guidelines be circulated to all personnel without exception.¹¹

No doubt it is an unique case. In exercise of its jurisdiction under Article 32 of the Constitution of India and having regard to Article 49 and clause (g) of Article 51A of the Constitution of India, this Court while entertaining the public interest litigation at the instance of the writ petitioner had been taking all steps which have been thought

11. Vimal Bhai v. Union of India, 2008 Cri LJ -1953 (Delhi).

necessary and proper in the matter. The question which, however, has arisen for our consideration is, should we undertake such an exercise. No doubt, a First Information Report has been lodged at the instance of this Court. Yet again this Court thought it fit to issue requisite directions in its order directing the Special Judge to apply its mind on the materials collected during investigation by CBI and pass appropriate orders thereupon. This Court has been exercising its jurisdiction in public interest. It has been exercising its jurisdiction to issue a writ of continuous mandamus in the light of the decision of Apexes Court.^{12 13}

Judiciary may step in where it finds the actions on the part of the Legislature or the Executive are illegal or unconstitutional but the same by itself would not mean that public interest litigation, in a case of this nature, should be converted into an adversarial litigation. The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with its judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a Superior Court in the hierarchy of judiciary, can issue any direction which otherwise take away the discretionary jurisdiction of any Court of Law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If it errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in. We should not entertain the application of the learned Amicus Curiae on such presupposition. A judicial order passed by a Magistrate may be right or wrong, but having regard to the hierarchy of the Courts, the matter which would fall for consideration before the Higher Court should not be a subject-matter of a decision of this bench. In an unlikely event of the interested parties in not questioning such orders before the higher forum, an independent public interest litigation may be filed. Instances are not unknown where this Court has entertained public interest litigation in cases involving similar question under Article 32 of the Constitution of India. See *Rajiv Ranjan Singh Lalan VIII v. Union of India*, (2006) 6 SCC 613: 2006 AIR SCW 4287.

It will not be out of place to mention that in *Vineet Narain* 2007 AIR SCW 1025, Para 39, this Court categorically stated that unless a proper investigation is made followed by a proper prosecution under the general law applicable to such investigation, the rule of law will lose its significance. This Court in its order upon noticing *Vineet Narain*,¹³ and *Union of India v. Prakash P. Hinduja and Another*,¹⁴ held :

“26. Analysis of the above judgments shows that there is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the Police Department, the superintendence over which vests in the State Government. The executive is charged with a duty to keep vigilance over the law

12. *Vineet Narain and Others v. Union of India*, 1998 (1) SCC 226] : 1998 AIR SCW 645.

13. 1998 AIR SCW 645.

14. 2003 AIR SCW 3258, 2003 (6) SCC 195.

and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 Cr PC and his duty comes to an end. Therefore, there are well-defined and well-demarcated functions in the field of crime detection and their subsequent adjudication by the Court. Lastly, the term investigation under Section 173(2) of the Criminal Procedure Code includes opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(3) the question of interpretation of legal evidence does not arise. In any event, that function is that of the Courts."

The parameters within which Apex Court should function in such matters are, therefore, well-defined.

It is one thing to say that Apex Court will not refrain from exercising its jurisdiction from issuing any direction for protection of cultural heritage and the ecology and environment; but then in discharge of the said duty, this Court should not take upon itself the task of determining the guilt or otherwise of an individual involved in the criminal proceeding. It should not embark upon an enquiry in regard to the allegations of criminal misconduct so as to form an opinion one way or the other so as to *prima facie* determine guilt of a person or otherwise. Any direction which could be issued, has already been issued in 2007 AIR SCW 1025, Para 47, stating:

"We, accordingly, direct CBI to place the evidence/material collected by the investigating team along with the report if the SP as required under Section 173(2) CrPC before the Court/Special Judge concerned who will decide the matter in accordance with law. It is necessary to add that, in this case, we were concerned with ensuring proper and hones performance of duty by CBI and our above observations and reasons are confined only to that aspect of the case and they should not be understood as our opinion on the merits of accusation being investigated. We do not wish to express any opinion on the recommendations of the SP. It is made clear that none of the other opinions/recommendations including that of the Attorney General for India, CVC shall be forwarded to the Court/Special Judge concerned.

While entertaining a public interest litigation in a given case, this Court may exercise a jurisdiction to set aside the decision of a constitutional authority, but Apex Court is not concerned with such a situation. If no sanction of the Governor was required or if he has committed an error in passing the said order, the appropriate Court, would be entitled to deal therewith, but not this Bench".¹⁵

In the present case, the Apex Court has specifically dealt with the question whether the offence under Section 123, IPC of which the accused was not charged, is a minor offence falling under the charges framed, and held that the fact that there was no charge against the accused under this particular Section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. It was held that the accused Shaukat is not in any way handicapped by the

15. M.C. Mehta v. Union of India, 2008 Cri LJ 360 (SC): AIR 2008 SC 180.

absence of charge under Section 123, IPC. The case which he had to meet under Section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. It was held that viewed from any angle, the evidence on record justifies his conviction under Section 123, IPC.

Section 222 of the Code of Criminal Procedure, 1973 authorizes and gives jurisdiction to the Court to convict an accused of the charge which has not been framed, if he is found guilty of a minor offence. The Court need not frame a separate charge before the conviction is rendered on a minor offence. In *Shamnsaheb M. Multtani v. State of Karnataka*,¹⁶ this court has held in paras 15 and 16 as under:

“15. Section 222(1) of the Code deals with a case “when a person is charged with an offence consisting of several particulars”. The section permits the court to convict the accused “of the minor offence, though he was not charged with it”. Sub-section (2) deals with a similar, but slightly different situation.

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“16 What is meant by “a minor offence” for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-a-vis the other offence.”

In another case of *Suman Sood @ Kamal Jeet Kaur v. State of Rajasthan*,¹⁷ a 2-Judge Bench of this Court was of the view that:

“...Now, it is well settled that if the accused is charged for a higher offence and on the evidence led by the prosecution, the Court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence. Thus, if A is charged with an offence of committing murder of B, and the court finds that A has not committed murder as defined in Section 300, IPC but is convinced that A has committed an offence of capable homicide not amounting to murder (as defined in Section 299, IPC), there is no bar on the Court in convicting A for the said offence and no grievance can be made by A against such conviction.”

To prove an offence under Section 121, IPC, the prosecution is required to prove that the accused is guilty of waging war against the Government of India or attempts to wage such war, or abets the waging so such war, whereas for proving the offence under Section 123, IPC against the accused the prosecution is required to prove that there was a concealment by an act or by illegal omission of existence of a design to wage war against the Government of India and he intended by such concealment to facilitate, or he knew that such concealment will facilitate, the waging of war. In the present case, the accused was charged under Section 121, IPC for waging war against the Government of India or

16. 2001(2) SCC 577: 2001 AIR SCW 532.

17. 2007 (5) SCC 634: 2007 AIR SCW 5013.

attempting to wage such war or abetting the waging of such war. The concealment of such fact by an act or illegal omission with an intention to facilitate, or knowing that such concealment will facilitate, waging of war, even in the absence of proof of his involvement in waging of war against the Government of India, will constitute an offence and an accused can always be convicted for the concealment of such fact under Section 123, IPC. The prosecution having been successful in proving the necessary ingredients of Section 123, IPC, it would constitute a minor offence of a major offence and, therefore, the petitioner was convicted under Section 123, IPC which is a minor offence of the offences he faces trial.

Section 39, Cr PC puts a burden on every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under Sections 121 to 126 IPC, to forthwith inform to the nearest Magistrate or police officer of such commission or intention. The exception being if there is a reasonable excuse for not informing that fact to the nearest Magistrate or police officer of such commission or intention, the burden of proof lies upon the person so aware of the commission or intention to commit, or that he has in fact given such information to the nearest Magistrate or police officer. On such proof, the accused would be exonerated of the duty cast upon him under Section 39, Cr PC. The submission of the learned senior counsel is that because the charge was not framed under Section 123, IPC, the petitioner lost an opportunity of raising a defence and prove that there was a reasonable excuse for not informing the commission or intended commission of the offence under Section 123, IPC, to the nearest Magistrate or police officer or that he had really in fact informed the commission or intention to commit an offence under Section 123, IPC to the nearest Magistrate or police officer. We are not impressed by the submission of the learned senior counsel for the petitioner. This defence was available to the petitioner even under Sections 121, 121A and 122 of which he had been expressly charged with. Thus, it cannot be said that because a specific charge under Section 123, IPC was not framed, he had lost an opportunity of raising the defence available to him and thus has been directly and prejudicially affected.¹⁸

4. Public interest—Meaning of.—The words ‘Public Interest’ means act beneficial to general public. It means action necessarily taken for public purpose. Requirements of public interest vary from case to case.¹⁹

It is necessary to take note of the meaning of expression ‘public interest litigation’. In *Stroud’s Judicial Dictionary, Volume 4 (IV Edition)*, ‘Public Interest’ is defined thus:

“Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

In *Janata Dal case*, 1993 AIR SCW 248 Apex Court considered the scope of public interest litigation. In Para 52 of the said judgment, after considering what is public interest, has laid down as follows:

“The expression ‘litigation’ means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy.

18. Shoukat Hussain v. State, 2008 Cri LJ 3016 (SC).

19. Babu Ram Verma v. State of UP., 1971 All LJ 653 : 1971 (2) Lab 235 : 1971 Lab 1C 1162 (All).

Therefore, lexically the expression “PIL” means the 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 has pecuniary interest or some interest by which their legal rights or liabilities are affected.”

In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

“Be that as it may, it is needless to emphasis that 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 or public action in relation to any specific remedy sought for has to primarily ascertained at the threshold”.

In para 96 of the said judgment, it has further been pointed out as follows:

“While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of sever warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or way farer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration”.

In subsequent paras of the said judgment, it was observed as follows:

“It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold”.

It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our 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; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which person sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters-government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue of unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the

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

The Council for Public Interest Law set up by the Ford Foundation in USA defined the “public interest litigation” in its report of Public Interest Law, USA, 1976 as follows: “Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.” The Court has to be satisfied about (a) the credentials of the applicant; (b) the *prima facie* correctness or nature of information given by him; (c) the information being not vague and indefinites. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of other; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions, In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddling interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to project. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. See *State of Maharashtra v. Prabhu*,²⁰ and *Andhra Pradesh State Financial Corporation v. M/s Gar Re-Rolling Mills and Anr*,^{20 21}. No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitioners. See *Dr.B.K. Subbarao*

20. 1994 (2) SCC 48.

21. 1994 AIR SCW 1953 AIR 1994 SC 215.

v. *Mr. K. Parasaran*, 1996 AIR SCW 3356; 1996 (7) JT 265. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives. Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statement made and information given in the petition. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction the petitions filed with oblique motive do not have the approval of the Courts. In *S.P. Gupta v. Union of India*,²² it was emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: SCC p. 219, para (24):

“But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.”

In *State of H. P. v. A Parent of a Student of Medical College, Simla and Ors*,^{22 22 23 24 24} has been said that public interest litigation is a weapon which has to be used with great care and circumspection. These aspects have been highlighted in *Ashok Kumar Pandey v. State of West Bengal*,²⁴ and *Dr. B. Singh v. Union of India & Ors.*,^{25 26} and *Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.*,²⁶. It is true that in certain cases even though the Court comes to the conclusion that the writ petition was not in a public interest, yet if it finds that there is scope for dealing with the matter further in greater public interest, it can be done. This can be done by keeping the writ petitioner out of picture and appointing an amicus curiae. This can only be done in exceptional cases and not in a routine manner.

It is true as contented by learned counsel for the appellant that the High Court's conclusions were drawn after going through the file. It is apparent from records that the High Court did not ask the parties to clarify any doubt it entertained as regards certain crucial aspects. These aspects assume considerable importance because they have formed the foundation of the High Court's conclusions about irregularity/illegality in allotment. Needless to say the parties shall be permitted to place material in support of their respective stand, in addition to those which are already on record and the High Court

22. 1981 Supp. SCC 87, AIR 1982 SC 149 Para 23.

23. 1985 (3):SCC 169: AIR 1985 SC 910.

24. 2004 (3) SCC 349: 2003 AIR SCW 6105.

25. 2004 (3) SCC 363: 2004 AIR SCW 1494.

26. 2005 (1) SCC 590: 2005 AIR SCW 46.

shall thereafter take a decision in the matter within four months. Further affidavits shall be filed with all relevant details/ documents by the parties. We make it clear that we have not expressed any opinion on the merits of the case. *M/s Holicow Pictures Pvt. Ltd v. Prem Chandra Mishra*,²⁷. It transpires that as a contingent of media personnel were present on the occasion, a press conference was organized. During the press conference, one of the pressmen is said to have posed a question to the petitioner as to why the National Anthem was not sung vocally, when the President of India arrived at the venue and when he departed from the venue, though the instrumental version of the National Anthem was played. The petitioner is said to have replied that a large majority of those present at the function were foreigners, in order to avoid embarrassment to them, it was decided that the National Anthem would not be sung vocally, even though a choir appointed for the purpose was present. It transpires that the statement of the petitioner the above effect, sparked off angry debates in the media and elsewhere.

5. Judicial Administration and Our Rights.—The Supreme Court held that if an honest person who has no means to pay the debt in absence of *mala fide*, is arrested in civil prison then his arrest and detention violates Article 11 of the International Covenant on Civil and Political Rights and Article 21 of Indian Constitution. The protection of Article 21 is available even to convicts in jails.²⁷²⁸

6. Public interest litigation—Origin and development—Charted out—Preservation of purity and sanctity—Directions for, issued.—The order to preserve the purity and sanctity of P.I.L. the Court issued following directions :

(1) The Courts must encourage genuine and *bona fide* PIL and effectively discourage and curb the PIL filed for extraneous considerations—

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. The High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of Supreme Court immediately thereafter.

(3) The Courts should *prima facie* verify the credentials of the petitioner before entertaining a PIL.

(4) The Court should be *prima facie* satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

27. AIR2008 SC 913

28. Jolly George Varghese v. Bank of Cochin, AIR 1980 SC 470.

(8) The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.²⁹³⁰³¹³⁰³¹

7. Strict Rule of Locus Standi—It was vehemently contended that this could not be regarded as a public interest litigation and secondly, the petitioners had no *locus standi* to file the present petitions. Environment, more than anything else, is and should be a concern for all. It is one thing which is available free to all the inhabitants of an area and it is essential that this environment is maintained for the purposes of ensuring a healthy life. This issue, in fact, is no longer *res integra*. The Supreme Court, in *Subhash Kumar v. State of Bihar*,³⁰ observed that:

“.....Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.....”

With regard to *locus standi*, the answer is squarely given by the judgment of the Supreme Court in the case of *Janata Dal v. H.L. Chowdhury*.³¹ Dealing with the question of *locus standi*, *vis-a-vis* public interest litigation, it was observed by the Court, at page 909, as follows:

“..... In contrast, the strict rule of *locus standi* applicable to private litigation is relaxed and a broad rule is evolved which gives the right of *locus standi* to any member of the public acting *bona fide* and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance to the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individual or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting *bona fide* and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularis of Roman Law whereby any citizen could bring such an action in respect of public delict.....”

At page 919, the Supreme Court took note of the contention of the counsel, which was as follows : —

“..... Mr. Jethmalani expostulating the objectives of PIL urged with vehemence and persistence that H.S. Chowdhary does not have any *locus standi* to initiate this litigation and as such his petition is liable to be rejected even at the threshold. According to him the true public interest litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court either for (1) Enforcement of fundamental rights of those

29. State of Uttaranchal v. Balwant Singh Chaufal, AIR 2010 SC 2550.

30. (1991) 1 SCC 598, at. 604 : 1991 AIR SCW 121 at 127.

31. AIR 1993 SC 892.

two genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions in incorporating the directive principles of State policy for annulling executive acts and omissions violative of constitution or law resulting in substantial injury to public interest.....”

The said contention was approved by the Supreme Court at page 920 in Paragraph 117 in the following words :

“.....After deeply and carefully considering the submissions made by the learned Solicitor General, Mr. A.D. Giri and Mr. Jethmalani, Senior Counsel.....”

It would, therefore, follow that a public interest litigation at the behest of an organisation or a group of individuals, who have no personal gain or private motive or any other oblique consideration except to see that public injury does not take place and to prevent or annul executive acts and omissions which are violative of the Constitution or the law, would be maintainable. In the present case, this is precisely so. The two petitioners are voluntary organisations deeply concerned and involved in the maintenance of a clean environment. The only point which has been raised by them is that has been a violation of the law inasmuch as the impugned Notification which has been issued by the Government is in conflict with Section 26-A (3) of the Wildlife (Protection) Act, 1972 and is, therefore, *ultra vires*. None of the petitioners has any personal gain or any other oblique motive in filing the present petitions and we are satisfied that they have the *locus standi* to file the present petition.

As observed by Justice Bhagwati in his Article “*Social Action Litigation The Indian Experience*” quoted with approach in para 56 of the *Janata Dal’s* case³²:

“The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose it is necessary to make procedural innovations in order to meet the challenges posed by this new role of an active and committed judiciary. The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups.”

The manner in which the Supreme Court has dealt with the problem of ascertaining true facts has been analysed and explained, at length, by Prof. Upendra Baxi in his article on *Social Action Litigation* in the Supreme Court of India³³. By using the expression Social Action Litigation, SAL instead of PIL he has opined as follows:

“Problems of proof are most severe in cases of state repression, and there seems emergent a common pattern or augmentation by state counsel which make these problems more acute. First, State counsel deny on affidavit any or all allegations of torture or terror. Secondly, they contest if no longer the standing, the *bona fides* or the degree of reliable information of the social activists who come to the Court. Often wildest ulterior motives are attributed to them. Thirdly, they decry the sources on which the SAL Petitioners rely : mostly media and social science

32. AIR 1993 SC 892 quoted in AIR 1996 Cal 181 at 219.

33. Printed in the Review No. 29, Dec. 1982, International Commission of Jurists.

investigating reportage. Fourthly, they raise all kinds of claims under the law of evidence and procedure to prevent the disclosure of documents relevant to the determination of violation of fundamental rights. Fifthly, even when disclosed there is always the possibility of impugning their evidentiary value. This is made possible by the device of multiple investigations; the state sets up many panels, one after another, and often consents in addition to an investigation by the Central Bureau of Investigation. When despite all this, the state is likely to lose the proceedings in favour of the SAL petitioners, it proceeds to give concessions and undertakings, thereby avoiding a decision on the merits.”

And the Court, too, interested more in the inhibition of future illegalities is ready to develop a jurisprudence of the SAL exconcessionis.

The Court, rightly refuses to view the SAL Proceedings as adversarial in nature; it likes to foster such collaboration between the SAL litigant and the state as would result in sound institutional arrangements avoiding recurrent injustice; and thus avoiding in the long term SAL-type confrontation between the public spirited citizen and the state. This technique offers a neat way out of the burdens of proof on questions of fact; therein probably lies its appeal to the judges.

At the same time, the Court is experimenting with several different strategies to overcome the problems of disputed facts, without having to take evidence itself. First, Justice Bhagwati has initiated the idea of sociolegal commissions of enquiry. The Court asks social activists, teachers and researchers to visit particular locations for fact finding and to submit a quick, but complete, report which may also contain suggestions and proposals. So far as device of commissions has been invoked at least thrice. The commissions are, under the Courts orders, to be financed by the state. Second, the Court has in a number of cases of torture or ill-treatment called upon medical specialists to submit comprehensive reports and suitable therapy at state cost. Third, the Court has used on one or two occasions the services of its own officials or those of the High Court. In some cases, it has asked the District Judge not merely to ascertain facts but also to monitor the implementation of the various directions given by the Court.

“These modes of fact finding are somewhat novel and will raise, as the many SAL matters proceed to completion, rather difficult issues of evidence and procedure. But the Court is experimenting with new methods to go beyond the notoriously electric affidavit evidence.”^{34 35 35}

Probably being aware that there may be a tendency that public interest litigation may become “Publicity Interest Litigation”. *Bhagwati, J.* in *S. P Gupta’s case*,³⁵ hastened to add as follows:

“But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it is be in the form of a letter addressed to the Court or even in the form of regular writ petition filed in Court.”

34. P.V. Kapoor v. Union of India, 1992 Cri LJ 128 at 137, 138 (Del).

35. AIR 1982 SC 149.

In *Fertilizer Corporation Kamgar Union v. Union of India*,³⁶ it was held by the Supreme Court at page 355 as follows:

“Public interest litigation is part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.^{36 37 38}

In *Jasbhai Desai v. Roshan Kumar*³⁸, Sarkaria, J., observed that, busy bodies and meddlesome interlopers interfere even in things which do not concern them. They mosque as crusaders for justice and pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spooking the wheels of administration and that the High Court should do well to reject the applications of such busybodies at the threshold.^{39 40 41}

In *Janata Dal v. H.S. Chowdhury*,⁴⁰ (Samaresh Banerjee, J.), where the Supreme Court tried to define the public interest litigation by holding thus:

‘Therefore, lexically the expression ‘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.”

In *Sheela Barse v. Union of India*,⁴¹ (Samaresh Banerjee, J.), the Supreme Court held thus (Para 6):

“In a public interest litigation, unlike traditional dispute-resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bipolar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare state. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation and the rights, constitutional or statutory, or sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert and quite often not even aware of those rights. The technique of public interests litigation serves to provide an effective

36. AIR 1981 SC 344.

37. P.V. Kapoor v. Union of India, 1992 Cri LJ 128 at 134 (Del).

38. AIR 1976 SC 578.

39. See *Lalithamma v. State*, AIR Kant 112 at 119 : (1996) 1 Kant LJ 1.

40. AIR 1993 SC 892 : (1992)4 SCC 305, quoted in *State v. Union of India*, AIR 1996 Cal 181 at 196: (1996) 1 Com LJ 258.

41. AIR 1988 SC 2211, quoted in *State v. Union of India*, AIR 1996 Cal 181 at 195: (1996) 1 Corn LJ 258.

remedy to enforce these group rights and interests. In order that these public causes are brought before the Courts the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the *locus standi* thresholds so as to enable public minded citizens of social action groups to act as conduits between these classes of persons inherence (sic) and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a *Bominus Litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court.”

In *Sheela Barse v. Union of India*,⁴² (Samaresh Banerjee, J.). The Supreme Court was of the view that in public interest litigation both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, *ad hoc*, according as the exigencies of the emerging situations; the relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the Court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and this is important also supervising the implementation thereof.

In *Bandhua Mukti Morcha v. Union of India*,⁴³ (Shyamal Kumar Sen, J.) it is quite obvious, therefore, that in a public interest litigation the petitioner ‘and the State are not supposed to be pitted against each other, there is no question of one party claiming or asking for relief against the other and the Court deciding between them. Public interest litigation is a cooperative litigation in which the petitioner, the State or public authority and the Court are to cooperate with one another in ensuring that the constitutional obligation towards those who cannot resort to the Courts to protect their constitutional or legal rights is fulfilled. In such a situation the concept of cause of action evolved in the background of private law and adversary procedure is out of place: The only question that can arise is whether the prayers in the petition, if granted, will ensure such constitutional or legal rights.’^{44 45}

8. Scope and nature of Public Interest—Litigation.—The scope and nature of the public interest litigation was elaborately explained, by the Supreme Court in the case of *P.U.D.R. v. UOI*.⁴⁵ Bhagwati, J. (as he then was) was most deeply involved in the evolution of the public interest litigation. In his judgment at page 1476 in PUDR’s case (*supra*), the nature and scope of public interest litigation was elaborated by him as follows :

“We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the

42. AIR 1988 SC 2211 quoted in *State v. Union of India*, AIR 1996 Cal 181 at 196 (1996) 1 Com LJ 258.

43. AIR 1984 SC 802, quoted in AIR 1996 Cal 89 at 101 (1996) 100 Cal WN 357 (1996) 1 Cal LJ 184.

44. See *Peoples Union for Civil Liberties v. Union of India*, AIR 1996 Cal 89 at 101 : (1996) 100 Cal WN 357: (1996) 1 Cal LJ 184.

45. AIR 1982 SC 1473.

low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position, should not go unnoticed and unredressed.”

Again at page 1477 (of AIR), it was observed that:

“Public Interest Litigation, as we conceive it is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.”⁴⁶

Public interest litigation is a new jurisdiction innovated by the Apex Court of the country through judicial activism for protecting and vindicating the rights and interest of the under-privileged and the weaker segments of the society who are oppressed, socially, economically or otherwise and are unable to approach the Court themselves and for the purpose of ensuring social and economic justice for such a class. The same therefore, cannot be decided on the touchstone on the old orthodox traditional concept of writ jurisdiction and the jurisdiction of the Civil Court and the company Court.

In a fit and proper case if the Court finds the various ingredients of public interest litigation are present and the underprivileged and socially and economically oppressed segments of the society, themselves unable to approach the Court, are suffering legal wrong and injury and socially and economically being exploited and need to be rescued by the Court through a public interest litigation, the Court will not be constrained to fold its hands in despair and plead its inability to help such underprivileged and oppressed class, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative even if the condition for the same are not fulfilled.⁴⁷

Judiciary may step in where it finds the actions on the part of the Legislature or the executive were illegal or unconstitutional but the same by itself would not mean that public interest litigation, should be converted into an adversarial litigation. The jurisdiction of the Court to issue a writ of continuous mandamus was only to see that proper investigation was carried out in Taj Heritage Corridor Project. Once the Court

46. P.V. Kapoor v. Union of India, 1992 Cri LJ 128 at p. 133, 134 (Del).

47. State v. Union of India, AIR 1996 Cal 181 at 219 : (1996) 1 Com LJ 258.

satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order, which would interfere with its judicial functions. Constitutional scheme of this country envisages disputes resolution mechanism by an independent and impartial tribunal. No authority, save and except superior Court in the hierarchy of judiciary, can issue any direction which otherwise take away the discretionary jurisdiction of any Court of law. Once a final report has been filed in terms of Section 173 of Criminal Procedure Code, it was the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. Application was filed in the P.I.L. requesting the Court to decide upon legality of refusal of sanction by Governor to prosecute the Chief Minister and Minister for Environment. The court refused to go into the question on a presupposition that order would not be challenged.

A project known as Taj Heritage Corridor Project was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities. The said activities on the part of the Government of Uttar Pradesh was brought to the notice of the Court. An exception there to was taken. A detailed inquiry was directed to be made by the Central Bureau of Investigation (CBI). Upon consideration of the report submitted before it by CBI, the Court in its order dated 18.9.2003 directed it to register a First Information Report and make further investigation in accordance with law. CBI investigated into the matter, including the roles played by Ms. Mayawati, the then Chief Minister, and Mr. Naseemuddin Siddiqui, the then Minister for Environment, Government of Uttar Pradesh. Investigations were also carried out against some officers.

CBI was later on asked to furnish a self-contained note as regards its findings against the erring officers and holders of public posts. A detailed report was submitted by it. A question arose as to what directions, if any, should be issued by the Court having regard to the conflict in opinions expressed by different authorities of CBI in regard to Ms. Mayawati and Mr. Naseemuddin Siddiqui.

The said question was considered by this Court in its judgment and order dated 27.11.2006 in *M.C. Mehta (Taj Corridor Scam) v. Union of India and others*, (2007) 1 SCC 110.

In exercise of its jurisdiction under Article 32 of the Constitution of India and having regard to Article 49 and clause (g) of Article 51A of the Constitution of India, the Court while entertaining the public interest litigation at the instance of the writ petitioner had been taking all steps which have been thought necessary and proper in the matter. The question which, however, has arisen for consideration, was should undertake such an exercise. No doubt, a First Information Report has been lodged at the instance of the Court. Yet again the Court thought it fit to issue requisite directions in its order dated 27.11.2006 directing the learned Special Judge to apply its mind on the material collected during investigation by CBI and pass appropriate orders thereupon. The Court has been exercising its jurisdiction in public interest. It has been exercising its jurisdiction to issue a writ of continuous mandamus in the light of the decision of the Court in *Vineet Narain and Others v. Union of India*, (1998) 1 SCC 226.

Judiciary may step in where it finds the actions on the part of the Legislature or the Executive were illegal or unconstitutional but the same by itself would not mean that public interest litigation, in a case of this nature, should be converted into an adversarial litigation. The jurisdiction of the court to issue a writ of continuous mandamus was only

to see that proper investigation was carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with its judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise take away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it was the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If it errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on the Court to step in. A judicial order passed by a Magistrate may be right or wrong, but having regard to the hierarchy of the courts, the matter which would fall for consideration before the higher court should not be a subject-matter of a decision of this bench. In an unlikely event of the interested parties in not questioning such orders before the higher forum, an independent public interest litigation may be filed. Instances were not unknown where the Court has entertained public interest litigation in cases involving similar question under Article 32 of the Constitution of India. See *Rajiv Ranjan Singh Lalan VIII v. Union of India*, (2006) 6 SCC 613.

The executive was charged with a duty to keep vigilance over the law and order situation. It was obliged to prevent crime. If an offence was committed allegedly. It was the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it was its duty to collect evidence for the purposes of proving the offence. Once that was completed, the investigating officer submits report to the court requesting the Court to take cognizance of the offence under Section 190 Criminal Procedure Code and his duty comes to an end. Therefore, there were well-defined and well-demarcated functions in the field of crime detection and their subsequent adjudication by the court. Lastly, the term investigation under Section 173(2) of the Criminal Procedure Code includes opinion of the Officer in charge of the police station as to whether there was sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion was not legal evidence. At the stage of Section 173 (2) the question of interpretation of legal evidence does not arise. In any event, that function was that of the courts.⁴⁸

In *Sachidan, and Pandey v. State of West Bengal*,⁴⁹ (Khalid J.), with whom Sabyasachi Mukharji, J., as his Lordship then was agreed in a later judgment in the case of *Ramsharan Autyanuprasi v. Union of India*,⁵⁰ made the following significant observations :—

“Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion.... Public interest litigation has now come to stay. But once is led to think that it poses a threat to Courts and public alike. Such cases

48. *M.C. Mehta v. Union of India & Ors.*, AIR 2008 SC 180.

49. AIR 1987 SC 1109 quoted in AIR 1996 Kant 112 at 118: (1996) Kant LJ 1).

50. AIR 1989 SC 549.

are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.....I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigations.”

It is quite obvious that in a public interest litigation the petitioner and the State are not supposed to be pitted against each other, there is no question of one party claiming or asking for relief against the other and the Court deciding between them. Public interest litigation is a cooperative litigation in which the petitioner, the State or public authority and the Court are to cooperate with one another in ensuring that the constitutional obligation towards those who cannot resort to Courts to protect their constitutional or legal rights is fulfilled. In such a situation the concept of cause of action evolved in the background of private law and adversary procedure is out of place. The only question that can arise is whether the prayers in the petition, if granted, will ensure such constitutional or legal rights.^{51 52 53 54}

Public interest litigation is not in the nature of adversary litigation. The purpose of PIL is to promote the public interest which mandates that violation of legal or constitutional rights of a large number of persons, poor, down-trodden, ignorant, socially or economically disadvantaged should not go unredressed. The Court can take cognizance in PIL when there are complaints which shock the judicial conscience. PIL is *pro bono publico* and should not smack of any ulterior motive and no person has a right to achieve any ulterior purpose through such litigations.

In *S.P. Gupta v. Union of India*,⁵² the Hon'ble Apex Court has warned by saying that the Court must be careful that the members of the public who approach the court are acting *bona fide* and not in personal garb of private profit or political motivation or other oblique considerations. 'The Court must not allow its process to be abused'. Similar view has been taken in *Kazi Landup Dorji v. Central Bureau of Investigation*.⁵³

In *Veena Sethi v. State of Bihar*,⁵⁴ the Apex Court has observed that the role of law requires to be played for the poor and ignorant who constitute a large bulk of humanity in this country and the Court must uphold the basic human rights of weaker sections of the society.

In the case of *State of Himachal Pradesh v. Parent of a Student*,⁵⁵ the Hon'ble Supreme Court held as under (at page 914):

“Where the Court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligation under the Constitution or the law, so that the poor and

51. Peoples Union for Civil Liberties v. Union of India, AIR 1996 Cal 89 at 112 (1996) 100 Cal WN 357 (1996) 1 Cal LJ 184 (Shyanial Kumar Sen, J.).
52. AIR 1982 SC 149.
53. 1994 Supp (2) SCC 116 : 1994 AIR SCW 2190.
54. AIR 1983 SC 339 : 1983 Cri LJ 675.
55. AIR 1985 SC 910.

the under-privileged continued to be subjected to exploitation and injustice or are deprived of their social and economic entitlement or that social legislation enacted for their benefit is not being implemented thus depriving of their rights and benefits conferred upon them, the Courts certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economical rights.”

In *S.P. Anand v. HD. Deve Gowda*,⁵⁶ which are to the following effect of AIR 1997 SC 272 (Para 18) reproduced below:

"18. Before we part, we cannot help mentioning that on issues of Constitutional laws, litigants who can lay no claim to have expert knowledge in that help should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. This is the impression that one gets on reading the present petition. It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the *locus standi* rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight errant roaming at will in pursuit of issues proving publicity. He must remember that as a person seeking to despotize a public cause, he owes it to the public as well as to the Court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-backed information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the *locus standi* rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filing series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to consider decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions

56. AIR 1997 S.C. 272 quoted in *S.P. Anand v. Union of India*, AIR 2002 M.P. 51 at 51,52(DB). See also *State of Rajasthan v. Prakash Chand*, AIR 1998 SC 1344; 1998 Cri LJ 2012; 1998 AIR SCW 1219; *A.R. Antulay v. R.S. Nayak*, AIR 1998 SC 1531; (1998) 2 SCC 602; 1988 Cri LJ 1661; *Assistant Collector of Central Excise v. Dunlop India Ltd.*, AIR 1985 SC 530; (1985) 1 SCC 260; *Kausalya Devi Bogra v. Land Acquisition Officer*, AIR 1984 SC 892; *Ratanlal Agrawal v. State of M.P.*, 1967 Jab LJ (Note) 103.

having no bearing on the question, like the decisions on cow-slaughter cases, freedom of speech and expression, uniform civil code etc.; we need say no more except to point out that indiscriminate use of this important lever of public interest would blunt the lever itself.”

In *Sachidanand Pandey v. State of West Bengal*,⁵⁷ the Apex Court observed that the Court should not take cognizance in such matters merely because of its attractive name. The petitioner must inspire the confidence of the Court and must be above suspicion.

In *Ram Saran Ayotan Parasi v. Union of India*,^{57 58} Hon’ble Supreme Court observed that the PIL is for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice.

In *Gyani Davender Singh Sant Sepoy Sikh v. Union of India*,⁵⁹ the Hon’ble Supreme Court has held that the High Court, while entertaining a PIL must indicate how the public interest was involved in the case.

In *R.K Jain v. Union of India*,⁶⁰ the Apex Court observed that it was for the aggrieved person to assail the illegality of the offending action and no third party has a *locus standi* to canvass the legality or correctness of the action. Similarly, in *Mohammad Anis v. Union of India*,^{61 62 63} the apex Court has held that a case should not be entertained unless the petitioner points out that his legal rights have been infringed.

A Constitution Bench of the Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmad*,⁶² the Hon’ble Supreme Court has observed as under:

“If a person wants a relief in a Court independent of a statutory remedy, he must show that he is injured or subjected to or threatened with a legal wrong. The Courts can interfere only where legal rights are involved. In fact legal wrong requires judicially enforceable right and “the touchstone to justiciability is injury to a legally protected right”. A nominal or a highly speculative adverse effect on the interest of a person or right of a person is sufficient to give him the ‘standing to sue’. Again, the ‘adverse effect’ and the requisite for ‘standing to sue’ must be an illegal effect.....”

Such persons are merely busybodies of meddlesome interlopers. They masquerade as crusaders for justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. They indulge in the judicial process from improper motives. The High Court should do well to reject the application of all such busybodies at the threshold.”

In *S.P. Anand v. H.D. Devegowda*,⁶¹ Hon’ble Supreme Court has observed that- “no person has a right to waiver of the *locus standi* rule and court should permit it only when it is satisfied that the carriage of proceedings in the competent hands of a person, who is genuinely concerned in public interest and is not moved by other extraneous consid-

57. 1987 (2) SCC 295 : AIR 1987 SC 1109.

58. 1988 (4) JT 557 : AIR 1989 SC 356.

59. AIR 1995 SC 1847.

60. AIR 1993 SC 1769.

61. 1994 Supp(1) SCC 145.

62. AIR 1976 SC 578.

63. 1996 (6) SCC 734: AIR 1997 SC 272.

erations, so also the court must be careful to ensure that the process of the court is not sought to be abused.....”

Thus, in view of the above, the ratio of all these judgments is as under

- (i) There must be a public injury and public wrong caused by wrongful or ultra vires acts or omission of the State or a public authority.
- (ii) It is for the enforcement of basic human rights of weaker sections of the community who are downtrodden, ignorant, illiterates and whose fundamental rights and statutory rights have been violated. In fact, it is for compelling the executive to carry out its constitutional and legal obligations.
- (iii) It must not be frivolous litigation by persons having vested interests.

This is the solemn duty of the Court to protect the society from the so called protectors of the society and, thus, while entertaining PIL the Court should be conscious and try to ascertain the *bona fides* of the petitioner and further, find out whether he is really a public spirited person or he has approached the Court to settle his ulterior score through the legal process.⁶⁴

Apex Court in *S.P. Anand's* case,⁶⁵ it has been observed that in PIL cases, the petitioner is not entitled to withdraw his petition at his sweet will unless the Court sees reasons to permit withdrawal. The Court further observed as under at page 279 of AIR:

“In granting the permission the considerations of public interest and would ensure that it does not result in abuse of the process of law. The Court must guard against the possibilities of such litigants settling the matters out of the Court to their advantage and then seeking withdrawal of the case. There are umpteen ways in which the process of law can be abused and Court must be aware of the same before permitting withdrawal of a public interest petition.”

It is settled law that when a person approaches the Court of equity in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, he should approach the Court not only with clean hands but with clean mind, clean heart and with clean objectives.⁶⁶ The Courts must do justice by promotion of good, faith and prevent the law from crafty evasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.^{67 68}

In *Dr. B.K. Subbarao v. Mr. K. Prasaran*,[^] the Apex Court has observed as under :

“No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to

64. *Rajesh Rathi v. State of Pajasthan*, 1998 Cr LJ 1524 (Raj)

65. *S.P. Anand v. H.D. Devegowda*, AIR 1997 SC 272 : 1997 AIR SCW 18.

66. *Vide Ramjas Foundation v. Union of India*, AIR 1993 SC 852 : (1992 AIR SCW 3460); *G. Narainswami Reddy v. Government of Karnataka*, AIR 1991 SC 1726 : (1991 AIR SCW 1755) and *K.R. Srinivas v. R.M. Premchand*, 1994 (6) SCC 620.

67. *State of Maharashtra v. Prabhu*, 1994(2) SCC 481 and *Andhra State Financial Corporation v. Gar Re: Rolling Mills*, 1994 (2) SCC 647: (AIR 1994 SC 2151).

68. 1996(7) JT 265: (1996) CrLJ 3983).

justice should not be misused as a licence to file misconceived and frivolous petitions.”

In *All India Institute of Medical Sciences Employees Union (Regd.) v. Union of India*,⁶⁹ the Hon’ble Apex Court has held that if the Police does not take action on the information regarding commission of a cognizable offence, the complainant has a right before the Magistrate having jurisdiction to take cognizance of the offence. However, the complainant cannot approach the High Court by filing a petition and seeking direction to conduct the investigation by the Central Bureau of Investigation.⁷⁰

The scope of entertaining a petition styled as a public interest litigation, locus stands of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about—

- (a) The credentials of the applicant;
- (b) The prima facie correctness or nature of information given by him;
- (c) The information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests:
 - (i) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
 - (ii) Avoidance of public mischief and to avoid mischievous partitions seeking to assail, for oblique motives, justifiable executive actions.

In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.⁷¹

In *Balco Employees’ Union (Regd) v. Union of India*⁷² it was held Paras 76, 77, 78 & 79.

“Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a

69. 1996 (11) SCC 582.

70. *Rajesh Rathi v. State of Rajasthan*, 1998 Cr LJ 1524 (Raj).

71. *Neetu v. State of Punjab*, AIR 2007 SC 758 at 759; 2007 (1) Supra 70, 2007(1) LT 452, 2007(2) SCC 786, 2007(2) SCR 162.

72. 2002 (2) SCC 333, AIR 2002 SC 350, 2001: AIR SCW 5135; 2002 CLC 171 referred in AIR 2003 SC 4536 at 4545,

position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz, “litigation in the interest of the public”.

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words:

“PIL may therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under trial prisoners, prison inmates).
- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour; unorganized labour etc.).
- Where judicial law making is necessary to avoid exploitation (inter-, country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).
- Where administrative decisions related to development are harmful to the environment and jeopardize people’s right to natural resources such as air or water.”

There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.”

The scope and ambit of a public interest litigation in the matter of management of a temple, governed by the provisions of a statutory enactment came up for consideration of Apex Court in *Guruvayoor Devaswom Managing Committee v. C.K. Rajan* ' It was, inter alia, held as follows:

“When the administration of the temple is within its control and it exercises the said power in terms of a statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided

73. 2003 (7) SCC 546: 2003 AIR SCW 6039: AIR 2004 SC 561 referred in AIR 2005 SC 2918 at 2919 (Para 76).

for in one Act can arrive at the requisite finding of act for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field are inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time-frame and undoubtedly as and when an order is passed by the State in exercise of its power under the Statute, it will examine the correctness or legality thereof by way of judicial review.”

The Company intended to set up more than one unit. For the purpose of achieving the objective of economic development of the State, the State is entitled to deal with the applications of the entrepreneurs in an appropriate manner. For the said purpose a High Level Committee was constituted. The said Committee held its meeting on 10-10-1994 wherein not only the members referred to hereinbefore but also various other officers was present. Presumably, prior thereto the applications filed by the Company were scrutinized by the competent authorities. After detailed discussions, the High Level Committee resolved:

(a) to permit the unit to change the location from Malur Indi. Area to Dobespet Industrial Area;

(b) to allot a total of 500 acres of land for the three projects viz., Colour Picture Tube, Colour Televisions and Battery in Dobespet Industrial Area, Nelamangala tq., in lieu of the earlier allotment of 100 acres of land at Malur Indi. Area for the Colour TV sets project, subject to the promoters indicating the individual land requirement for Colour Picture Tube Project, Colour TV Project and the battery project duly justifying the requirement with necessary plans, block diagrams, etc.

As regard incentives, it was resolved:

“(3) INCENTIVES: The HLC resolved to offer the following incentives:

100% exemption of sales tax (KST, CST and Turnover Tax) on sale of finished goods for a period of 8 years of deferment for a period of 10 years from the date of commencement of commercial production subject to a limit of 100% of the value of the fixed assets. The present level of ST revenue from the company from TV manufacturing is to be maintained.

(ii) Exemption from payment of Purchase Tax (ST on purchase by the Co.) on capital goods/equipment worth more than Rs. 1.00 crore (Rupees one crore) in each individual case during the construction phase of the project.”

Similar considerations were made in respect of Colour Television Picture Tube Project of the Company and Manufacture of Batteries. The matter relating to allotment of land is a statutory function on the part of the Board. In terms of the provisions of the Act, consultations with the State Government is required if Regulation 13 of the Regulations in place of Regulation 7 is to be taken recourse to. Does it mean that consultation must be held in a particular manner, i.e., by exchange of correspondences and in no other? Answer to the said questions must be rendered in negative. The High Level Committee was chaired by the Minister who in terms of the Rules of Executive Business framed

under Art. 166 of the Constitution of India were entitled to represent the State. Once a consultation takes place by mutual discussions and a consensus is arrived at between different authorities performing different functions under the statutes, the purpose for which consultation was to be made would stand satisfied. Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Art. 14 of the Constitution of India. No malice of fact has been alleged in the instant case. The High Court has proceeded to pronounce its judgment *inter alia* on the ground that the price of the land should have been fixed at Rs. 8,00,000/- per acre. In support of the said decision, the High Court has relied upon a grant at the aforementioned rate. However, it was pointed out by the Board:

“It is submitted that the land allotted to respondent No. 4 was not fully developed by this petitioner except some infrastructural facilities which have been counted while calculating the price of the land. The land allotted to individual entrepreneurs is fully developed with all infrastructural facilities. There cannot be any equality between unequals. The cost of the land is arrived at by this petitioner taking into consideration the cost of acquisition, cost of partial development, service and establishment charges.”

This aspect of the matter did not receive due attention of the High Court despite its merit.

It is a well-settled principle of law that different considerations arise for the purpose of fixation of price in respect of price of land i.e. for a small area vis-a-vis a large area. The allotment price was Rs. 3,72,324/- per acre which, having regard to the policy decision of the State as also the facts and circumstances of the case cannot be said to be wholly arbitrary warranting interference by the Court. There cannot be and doubt whatsoever that normally allotment of such industrial plots could be done in terms of Regulation 7 aforementioned. But the same by itself did not preclude the authorities of the Board and the State having regard to the fact situation obtaining herein to take recourse to Regulation 13. Once the Court finds that the power exercised by the statutory authorities can be traced to a provision of statute, unless and until violation of mandatory provisions thereof are found out and/or A is held that a decision is taken for unauthorized or illegal purpose, the Court will not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof.

Malice in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse.⁷⁴

Litigation does not become public interest litigation merely because questions of law of general public importance arise in that case. Such important questions were often decided in private litigation and those help the public in general, but public interest litigation is deferent. P.I.L was where the interest which the Court pronounces upon, was itself in a representative capacity a public interest. ICICI Bank Ltd. In re, AIR 2006 All 240 at 241 (FB).

A Public Interest Litigation cannot be entertained where the stand taken was contrary to the stand taken by those who are affected by any action. In such a case the Public Interest Litigation is not to be entertained.⁷⁵

74. Chairman and M.D., B.P.L. Ltd. v. S.P. Gururaja , AIR 2003 SC 4536 at 4541,4542.

While entertaining a public interest litigation of this nature several aspects of public interest being involved, the Court should find out as to how greater public interest should be sub served and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) consideration of ecology; (b) interest of workers; (c) interest of public sector institution, other financial institutions, priority claimed due the workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (f) the interest of a sick and closed industry; and (g) schemes framed by BIFR for revival of the company.

The courts in doing so would have to take into consideration a large number of factors, some of which may be found to be competing with each other. It may not be proper to give undue importance to one at the cost of the other which may ultimately be found to be vital and give effect to the intent and purport for which the legislation was made.^{75 76}

In *Raunaq International Ltd. v. I.V.R. Constructions Ltd.*⁷⁷ the Apex Court highlighted that the public interest litigation should not be a mere cloak. The Court must be satisfied that there is some element of public interest involved in entertaining such a petition. The Court also cautioned that before entertaining a writ petition and passing an interim order overwhelming public interest should be taken into consideration therefore. It was further observed, (Para 11).

“ . . . It is important to bear in mind that by court intervention, the proposed project may be considerable delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

In *Ashok Lanka v. Rishi Dixit*,⁷⁸:

“..... it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, 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.”

This was also the view taken in^{79 80}

In *K.K. Bhalla v. State of M.P.*,⁸⁰

75. *Ramishwar Praba v. Union of India*, AIR 2006 S.C. 980 at 1103: 2006 (1) Supreme 393: 2006 (1) LT 457: 2006 (2) SCC 1: 2006 (1) SCJ 477: 2006(3) SCA LJ 756.
76. *Bombay Dyeing & Mfg. Co Ltd. v. Bombay Environmental Action Group*, AIR 2006 SC. 1489 at 1508, 1509, 2006 (3) Supreme 49: 2006 (3) JT 235: 2006 (2) SCJ 705: 2006 (5) SCC 434.
77. (1999) 1 SCC 492, (1999 AIR SCW 53 Para 11)
78. 2005, 5 SCC 598 : 2005 AIR SCW 2676, the Apex Court opined (Para 43)
79. *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*, (2003), 7 SCC 546 at para 50: (2003) AIR SCW 6039: *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi*, (1987), 1 SCC 227: AIR 1987 SC 294 and *BPL Ltd. v. S.P. Gururaja*, 2003 AIR SCW 5298: (2003) AIR 8 SCC 567.
80. 2006, 1 SCALE 238: 2006 AIR SCW 345 it was stated (Para 74)

“The Appellant has brought to the notice of the High court that a malady has been prevailing in the department of the State of Madhya Pradesh and the JDA. It may be true that the Appellant did not file any application questioning similar allotments but it is well-settled if an illegality is brought to the notice of the court, it can in certain situations exercise its power of judicial review *suo motu*.....”

This Court times without number however, has laid down the law as regard limited scope of public interest litigation: A sounded note of caution for entertaining public interest litigation in service matters See *Dr. B. Singh v. Union of India* (2004), 3 SCC 363: 2004 AIR SCW 1494, in questioning the validity or otherwise of a statute or when a statute is enacted in violation of the direction of a superior court See *Ashok Kumar Thakur v. State of Bihar & Ors.*, (1995) 5 SCC 403: 1995 AIR SCW 373. The Court has entertained a large number of public interest litigations for protection of environmental and/ or ecology. See *M.C. Mehta Group of Cases and T.N. Godavarman Thirumulpad v. Union of India and other.*, (2006) 1 SCC 1 (2005 AIR SCW 5110).

Public interest litigations, thus, have been entertained more frequently where a question of violation of the provisions of the statutes governing the environmental or ecology of the country has been brought to its notice in the matter of depletion of forest areas and / or when the executive while exercising its administrative functions or making subordinate legislations has interfered with the ecological balance with impunity. The High Court of Bombay, therefore, cannot be faulted with for entertaining the writ petition as a public interest litigation.⁸¹

The Supreme Court has widened the scope of Public Interest Litigation (PIL) under the umbrella of Article 32 of the Constitution of India because the Apex Court has laid down several propositions regarding the Public Interest Litigation.⁸²

9. Object of Public Interest Litigation.—The object of the public interest litigation is to ensure public interest and protection of legal or constitutional right of disadvantaged and oppressed groups or individuals and to render social and economic justice to them, there cannot be any reason why in a fit and proper case the Court would hesitate to entertain a public interest action against any non-governmental institution or any person invested with statutory or public duties or public obligations when their omission or commission affects the rights of disadvantaged groups or individuals who are unable to approach the Court and legal injury or legal wrong is caused to them.⁸³

The apart to accept the submissions of the respondents that reliefs should be refused on the ground of existence of purported alternative remedy, would negate and frustrate the very object and purpose of the public interest litigation where the ingredients of the same are present, which is to render social and economic justice to the underprivileged and the weak, who are unable to approach the Court on their own being socially and economically or otherwise oppressed and to make justice easily accessible to them. The fact that the bulk of the small depositors of the R.N.B. Cs. belong to the rural poor and weaker section of the society is not a matter of dispute and in fact has already been judicially recognised by the Supreme Court in the *Timex Case*,⁸⁴ as also the previous

81. *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group* AIR 2006 SC 1489 at 1509.

82. *M.C. Mehta v. Union of India*, AIR 1987 SC 1087.

83. *State v. Union of India*, AIR 1996 Cal 181 at 200: (1996) 1 Com LJ 258.

84. AIR 1992 SC 1033.

Peerless Case where it has been found that most of such depositors of R.N.B. Cs. belong to the rural areas and who are persons belonging to lower middle class, small agriculturists, small traders, pensioners etc. To ask such small depositors, when the respondents are in the brink of financial disaster as aforesaid and are not in a situation to meet its total liability and is unable to return the money of the depositors, to move the Court themselves and to obtain their remedy in a company Court or in a Civil Court, where the process of litigation is lengthy and never ending and the costs involved is prohibitive sometimes even for a man of means, is to bolt the door of justice to such an oppressed class for all time to come.⁸⁵

The petitioners have filed the present writ in the general interest of the local people of Sikkim so as to protect their rights and interest thereby suggesting that the present writ is more in the nature of public interest litigation than ordinary writ petition and that the petitioners have been motivated by the best of intentions in filing the present writ. However, best intention alone is not the only *sine qua non* of a public interest litigation. In order to bring an action in the nature of Public Interest Litigation to protect general interest. Even though the public interest litigation was a new phenomenon in the country some decades ago, it is no longer a concept for which guidelines have yet to be evolved.⁸⁶

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There is no dispute that there cannot be any change in the DMP-2001 or the ZDP without complying with the procedure laid down in S. 11-A of Delhi Development Act, 1957. Such a modification can be made only by the Central Government. Therefore, if the action of the DDA amount to change in ZDP or DMP-2001, the same having been not approved by Central Government, it could be permitted. However, it was this big if which was the hurdle to be crossed by the petitioners before they can succeed in this writ petition. In view of considered the Court, petitioners have miserably failed on the this count. The Court has serious reservations in accepting even this submission of the petitioners that draft ZDP can even be relied upon because before a plan comes into operation, mandatory provisions of Ss. 10 and 11 are to be fulfilled. Not only there has to be approval by the Central Government, it has to be published also in the manner prescribed under Section 11 of that Act. However, it was not necessary to decided this question because even if the said draft ZDP is treated to be in operation, it cannot be said that there is any violation of that plan or the DMP-2001. Para 9.1.3 of the draft plan, only mentions the norms as per the DMP-2001. Moreover, as per these norms 204 HSS are required whereas for this zone a total of 123 sites have been provided. Thus the said draft ZDP has not been able to meet the norms prescribed in MP-2001. Even when we examine the specific position relating to sub-zone H-5, as per the norms, against the required 27 HSS only 24 schools are provided in the ZDP. Moreover, from para 9.1.3. and 9.1.4, it

85. State v. Union of India, AIR 1996 Cal 181 at 200:(1996)1 Com LJ 258 (Samaresh Banerjee, J.).

86. Kunga Numa Lepcha v. State of Sikkim, AIR 2006Sikkim 1 at 7, 8.

87. Kunga Numa Lepcha v. State of Sikkim, AIR 2006Sikkim 1 at 7, 8.

cannot be discerned that the disputed land was earmarked for “Recreational Park” which has been now allotted for school. There is no such user prescribed in ZDP or the MP-2001. The Court are inclined to accept the stand of the DDA that this user was prescribed only in the lay out plan and it was this lay out plan which has been modification. The reasons which was given for modification of the lay out plan are also bona fide and rather, in the public interest. It was explained in the counter affidavit on behalf of the DDA that there are more than 169 trees in the area which was originally earmarked for HSS. Out of these 169 trees, there are 165 eucalyptus trees and remaining four trees are of other species which includes one banyan tree. It was not in public interest to keep these trees intact and for that reason to convert the use of the site which was originally meant for HSS for the purpose of “Neighbourhood Park” and allocating other site for HSS. Both portions of land are in the same area. The user has been interchanged in order to save the trees. The area meant for “Neighbourhood Park” in the same locality has not been reduced and has rather increased. In original lay out plan site was earmarked for HSS. It has only been changed to a different place in the same layout plan for genuine and germane reasons. The relocation of sites has resulted in another public benefit. Earlier the parks were located at two separate places. Now the entire park will b. at one place which means that the size of the park will be more than double. This best balances the interest of public at large. It is, therefore totally unfounded plea of the petitioners that the decision in question is a result of non application of mind. In any case we find no breach or violation of DMP-2001 or the ZDP. It cannot be disputed that if there is a change in the layout plan only, no approval or sanction of the Central Government is required. With this regard still, if any authority for this proposition is required, one may usefully refer to Division Bench judgment of this Court in the case of *Shanti Devi Gupta v. DDA* reported in.⁸⁸

The Court would like to mention before we conclude that these petitions though styled as Public Interest petitions, appear to be motivated by individual interests of some of the plot holders who had earlier a park in front of their plots but now they find that instead of a park they have to put up with a HSS opposite their houses: No public interest is involved. Rather as noted earlier, as a result of the impugned action, green area under neighbourhood park has increased, which was more in public interest.⁸⁹

Jurisdiction of the Court.—Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matter of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without under standing implication and giving handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are

88. AIR 1994 Del 299.

89. B 4 Block Residents welfare Association v. Delhi Development Authority, AIR 2001 Del. 165 at 167, 168; 2000 (87) Del LT 603.

made to suffer at the hands of the authorities.⁹⁰

In *State of Himachal Pradesh v. A parent of a Student of Medical College*,^{91 92} the Supreme Court said about the public interest litigations thus:

“This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements. It is a highly effective weapon in the armory of the law for reaching social justice to the common man.”

In *Sachidanand Pandey v. State of West Bengal* the Supreme Court observed:

“If Courts do not restrict the free flow of such cases in the name of public interest litigations, traditional litigations will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.”

In *Janta Dal v. H.S. Chowdhary*,⁹³ as thus:

“While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”

Here is a case where no information has been given to the police by any informant alleging commission of any cognizable offence by the appellant and the person associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a Judge of the Kerala High Court, which was *suo motu* taken up as a proceeding under Section 482 of the Code. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 of the Cr. P.C. The High Court can exercise power *suo motu* either under Article 226 or under Section 482 Cr.P.C, or under both. It was submitted that if for any reason petition entertained by the High Court is not maintainable under Section 482 of the Code, the same can always be treated as the one filed under Article 226 of the Constitution of India.⁹⁴ The decision in *Pepsi Foods* (supra) is an authority for the proposition that nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. This Court noted that if the Court finds that the appellant could not invoke its

90. *R & M Trust v. Koramangala Resident Vigilance Group*, AIR 2005 SC 894 at 906: 2005 (1) JT 507: 2005 (3) SCC 91: 2005 (1) Supra 405: 2005 (1) Scale 425.

91. AIR 1985 SC 910 : (1985) 3 SCC 169 quoted in AIR 1996 Ker 193 at 194.

92. (1987) 2 SCC 295 : AIR 1987 SC 1109 quoted in AIR 1996 Ker 193 at 194.

93. (1992) 4 SCC 305 quoted in AIR 1996 Ker 193 at 194.

94. *Pepsi Foods v. Special Judicial Magistrate*, 1997 AIR SCW 4084. Similarly, *suo motu* petition taken on the basis of report in newspaper pertaining to migrant labour particularly working in brick kilns, matters directed to be dealt in said High courts. *In Re: Chopping of The Palms of Two Migrants* (SC), 2015(12) Scale 569.

jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. The observations were made in the context of correcting grave errors that might be committed by the subordinate courts. The decision does not lay down any law that the High Court in exercise of its power under Section 482 of the Code or Article 227 may be resorted to constitute any special Investigating Agency to investigate into allegations made for the first time in an anonymous petition

Whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the nature of mandamus, certiorari, prohibition and co-warranto are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court but they undoubtedly operate in different fields.

10. Whether The Anonymous Petition Is To Be Treated As Public Interest Litigation.—It is well settled that public interest litigation can be entertained by the Constitutional Courts only at the instance of a *bona fide* litigant. The author of the letter in this case is anonymous, there is no way to verify his *bona fides* and in fact no effort was made by the Court to verify about the authenticity, truth or otherwise of the contents of the petition. It is not the case of the appellant that no Writ Petition under Article 226 of the Constitution of India can be entertained on the strength of a letter addressed by a *bona fide* litigant to the High Court. Apex Court in *Sunil Batra (II) v. Delhi Administration*,⁹⁵⁹⁶⁹⁷ has accepted a letter written to the Supreme Court by one Sunil Batra, a prisoner from Tihar Jail, Delhi complaining of inhuman torture in the jail. In *Dr. Upendra Baxi (I) v. State of U.P.*^f this Court entertained letter sent by the two Professors of Delhi University seeking enforcement of the constitutional right of the inmates in a Protective Home, at Agra who were living in inhuman and degrading conditions. In *Miss Veena Sethi v. State of Bihar*⁹¹ this Court treated letter addressed to a Judge of this Court by the Free Legal Aid Committee at Hazaribagh, Bihar, as a writ petition. In *Citizens for Democracy through its President v. State of Assam & ors*,⁹⁸ upon which reliance has been placed by Shri P.P. Rao, this Court entertained a letter addressed by Shri Kuldeep Nayar, an eminent journalist, in his capacity as President of “Citizens for Democracy” to one of the judges of this Court complaining of human rights violations of TADA detainees and the same was treated as a petition under Article 32 of the Constitution of the India. But in none of these cases, the Court entertained anonymous petition and converted the same into a Public Interest Litigation. Suffice it to recapitulate that Apex Court uniformly and consistently held that the individual who moves the court of judicial redress in cases of Public Interest Litigation must be acting *bone fide* with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular petition filed in Court. In *S.P. Gupta & Ors. v. President of India & Ors*,⁹⁹ Apex Court in clear and unequivocal terms observed that it would be prudent of the constitutional courts to “confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury

95. AIR 1980 SC 1579.

96. (1983)2 SCC 308.

97. (1982)2 SCC 583.

98. (1995) 3 SCC 743.

99. AIR 1982 SC 149.

is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organization which can take care of such cases.”

The law in this regard is summarized in *Janata Dal v. H.S. Chowdhary*,¹⁰¹ thus:

“It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold,”

In *Dattaraj Nathuji Thaware v. State of Maharashtra & ors*,¹⁰¹ Apex Court observed:

“The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”

In *State of West Bengal & Ors. V. Sampat Lal & Ors*,¹⁰² Apex Court administered a caution stating when communications complaining of violation of rights of the deprived and vulnerable sections of the community are sent to the court, care and caution should be adopted to ensure that the process of the court is not abused or misused. The Court should be *prima facie* satisfied that the information laid before it is of such a nature that it calls for examination and this *prima facie* satisfaction may be derived from the credentials of the informant, namely, what is the character of standing of the informant or from the nature of the information given by him, namely, whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the court or to a Judge of the court on behalf of the court.

How to verify the credentials, character or standing of the informant who does not disclose his identity? In the instant case, there is no whisper in the order passed by the High Court about any attempts made to verify the credentials, character or standing of the

100. 1993 AIR. SCW 248, Para 107: AIR 1993 SC 892.

101. 2005 AIR SCW 46, Para 9(2005) 1 SCC 590

102. AIR 1985 SC 195: (1995) 1 SCC 317

informant. Obviously, the High Court could not have verified the same since the petition received by it is an unsigned one.

In *Bandhua Mukti Morcha v. Union of India & Ors*,^{11,3} this Court visualized grave danger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. It has been observed that the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petition are received by the Court through the post. It is never beyond the bound of possibility that an unverified communication received through the post by the Court may in fact have been employed *mala fide*, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society. The Court must be ever vigilant against the abuse of its process. It cannot do that better in the matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied.

The Public Interest Litigant must disclose his identity so as to enable the court to decide that the informant is not a wayfarer or officious intervener without any interest or concern.

In such view of the matter the *suo motu* action initiated cannot be treated as the one in public interest litigation.

It is clear from the record that the learned Judge was not dealing with any public interest litigation cases as on the date of entertaining anonymous petition. It is beyond pale of any doubt and controversy that the administrative control of the High Court vests in the Chief Justice of the High Court alone and it is his prerogative to distribute business of the High Court both judicial and administrative; that the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted; and the puisne judges can only do that work as is allotted to them by the Chief Justice or under his directions; that the puisne judges cannot pick and choose any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice. See *Slate of Rajasthan v. Prakash Chand & Ors*, 1998 AIR SCW 1219: (1998) 1 SCC 1.

Apex Court in more than one case expressed its reservation about individual judges entertaining the communications and petitions addressed to them to pass orders on judicial side. In *Bandhua Mukti Morcha v. Union of India & Ors*, AIR 1984 SC 802: (1984) 3 SCC 161, the Court in clear and unequivocal terms declared that communications and petitions addressed to a particular judge are improper and violate the institutional personality of the court. They also embarrass the Judge to whom they are personally addressed. The fundamental conception of the Court must be respected, that it is a single indivisible institution, of united purpose and existing solely for the high constitutional functions for which it has been created. The conception of the Court as a loose aggregate of individual Judges, to one or more of whom judicial access may be particularly had, undermines its very existence and endangers its proper and effective functioning.”

Judge ought not to have entertained the anonymous petition, contents of which remain unverified and made it basis for setting the law in motion as against the appellant as he was not entrusted with the judicial duty of disposing of PIL matters.

Institutions own reputation is a priceless treasure. History teaches us that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility to resolve the issues which are otherwise not entrusted to it by adopting procedures which are otherwise not known.

There is heavy duty cast upon the constitutional courts to protect themselves from the onslaught unleashed by unscrupulous litigants masquerading as Public Interest Litigants. The individual judges ought not to entertain communications and letters personally addressed to them and initiate action on the judicial side based on such communication so as to avoid embarrassment that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction.

It is needless to say that none of these aspects have been taken into consideration by the High Court before setting the criminal law in motion as against the appellant. The sweeping directions issued by the Court are in the nature of ordering an inquisition against the appellant and the persons connected with it to find out as to whether they have committed any cognizable offence. Such a course is impermissible in law.

For the aforesaid reasons, directions issued by the High Court constituting the Special Investigation Team to investigate into the allegations made in anonymous petition are set aside.

However, the fact remains that the Circle Inspector of Police, Chalakuddy having registered Crime No. 381 of 2005 made investigation in exercise of statutory power coupled with duty under the orders of learned Judicial First Class Magistrate, Chalakuddy. The learned Judge having entertained the petition/complaint from the victim ordered further investigation into the crime by the Special Investigation Team headed by the third respondent. The third respondent having completed the investigation arrived at certain conclusions but unnecessarily kept the matter pending on the ground that the paternity of the first child is to be verified with the accused and some other persons who were also found closely associated with the victim during the relevant period. This is beyond ones imagination as to how and why such an inquiry is required to be made. The First Information Report, material gathered during the investigation, contents of the victims complaint and conclusions drawn by the Special Investigation Team themselves do not justify any such further enquiry.

In the circumstances of the case, we direct the third respondent to make available the material gathered during the course of investigation in Crime to the Circle Inspector of Police, Chalakuddy (Investigation Officer) within two weeks from the date of the receipt of copy of this order. Thereafter, the Investigating Officer shall submit appropriate report in accordance with the provisions of the Code within four weeks before the Magistrate who shall consider the report to be so filed judicially in accordance with law.¹⁰⁴

104. Divine Retreat Centre v. State of Kerala, 2008 Cri LJ 1891 SC: AIR 2008 SC 1614.

Divisional Manager, Aravali Golf Course & Anr. v. Chander Hass,¹⁰⁵ as referred to by my learned brother in Para 8 of his judgment.

In the case of *Union of India v. Association for Democratic Reforms and another*,^{106 107} raised the substantial question of law of public importance was whether in a nation constitutionally wedded to republican and democratic form of Government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for democratic form of the country, before casting votes, voters have right to know relevant particulars of their candidates; and whether the High Court had jurisdiction to issue directions in a Writ Petition filed under Article 226 of the Constitution of India? The High Court of Delhi entertained the writ petition and directed the Election Commission to secure to voters the following information pertaining to each of the candidates contesting election to Parliament and to the State Legislatures and the parties they represent:

1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so, the details thereof.
2. Assets possessed by a candidate, his or her spouse and dependent relations.
3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of his/her educational qualifications.
4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature.

Aggrieved by the aforesaid direction of the High Court, an appeal was filed before the Supreme Court by the Union of India. A three-Judge Bench of this Court, of which one of us was a party (Serna, J.) in *Union of India v. Association for Democratic Reforms and Another*,¹⁰¹ Paras 21 and 22 upheld the direction, repelling the arguments of the appellant, this Court held :

“The Supreme Court cannot give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. *However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till a suitable law is enacted.* ”

Further, in paragraph 46(6) of the judgment it is held:

“46(6). *On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.* ”

105. 2008 AIR SCW 406: JT 2008 3 SC 221.

106. ' 2002 (5) SCC 294: 2002 AIR SCW 2186

107. 2002 AIR SCW 2186.

Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to sub serve public interest. Therefore, each case has to be examined on its own facts.

Therefore, the blanket bar of the application in the form of PIL is obviated. Subject to aforesaid Common Cause (*A Regd. Society*) v. *Union of India*,¹⁰⁸ (H.K. Serna J).

In the present case, the petitioner, a society, has referred to the rising number of road accidents in the country which are taking place in cities, towns and on national highways causing deaths, injuries etc. The petitioner has referred to the defects in the licensing procedure, the training of drivers, and the need for suspending licences in case of negligent driving, and driving under the influence of alcohol, which cause accidents etc. He has also referred to the inadequate infrastructure relating to roads and inadequate provisions of traffic control devices including traffic signals, traffic signs, road devices and other road safety measures. It has been stated in the petition that there should be proper and continuous coordination between various authorities which are connected with roads and control of traffic, and for this purpose the only appropriate remedy is to establish Road Safety Committees. The petitioner has also emphasized the need for having readily available ambulances for shifting the injured persons in road accidents to hospitals for immediate treatment.

Three-Judge Bench of Apex Court in *M.C. Mehta v. Union of India*,¹⁰⁹ the following directions have been given:

“A. The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following:

(a) No heavy and medium transport vehicles, and light goods vehicle being four wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 KMPH. This will not apply to transport vehicles operating on inter-state permits and national goods permits. Such exempted vehicles would, however, be confined to such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads other than the aforementioned exempted roads or during the times other than the aforesaid time without a speed control device.

(b) In our view the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities aforesaid should, therefore, ensure that the transport vehicles are not permitted to overtake any other four-wheel motorized vehicle.

(c) They will also ensure that wherever it exists, buses shall be confined to the bus lane and equally no other motorized vehicle is permitted to enter upon the bus lane. We direct the Municipal Corporation of Delhi, NDMC, PWD, Delhi Government and DDA,

108. AIR 2008 SC 2116.

109. AIR 1998 SC 190; 1997 AIR SCW 4154.

(d) Union Government and the Delhi Cantt. Board to take steps to ensure that bus lanes are segregated and roads markings are provided on all such roads as may be directed by the police and transport authorities.

(e) They will ensure that buses halt only at bus stops designated for the purpose and within the marked area. In this connection also Municipal Corporation of Delhi, NDMC, PWD, Delhi Cantt. Board would take all steps to have appropriate bus stops constructed,, appropriate markings made, and 'bus-bays' built at such places as may be indicated by transport/police authorities.

(f) Any breach of the aforesaid directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle.

(g) Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorized driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorized driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

- less than ten years of experience;
- been challenged more than twice for minor traffic offence;
- been charged for any offence relating to rash and negligent driving;

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(h) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as Section 84 of the Motor Vehicles Act.

The Government is directed to notify under Section 86(4) the officers of the rank of Assistant Commissioners of Police or above so that these officers are also utilized for constitution the flying squads.

(i) We direct the police and transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorized and non-motorized vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorized traffic including certain kind of motorized traffic and identify those roads which they consider unit for use by motorized or certain kinds of motorized traffic and to issue suitable directions to exclude the undesirable from of traffic from those roads.

(j) The civil authorities including DDA the Railways, the police and transport authorities, are directed to identify and remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road/traffic signs which facilitate free flow of traffic.

B. We direct the Union of India to ensure that the contents of this Order are suitably publicized in the print as well as the electronic media not later than November 22, 1997 so that everybody is made aware of the directions contained in the Order. Such publication would be sufficient public notice to all concerned for due compliance.

The prayers made by the petitioner in this petition require the Apex Court to give directions of a legislative or executive nature which can only be given by the legislature or executive. As held by this Court in *Divisional Manager Aravali Golf Course & Anr. v. Chander Hass*,¹¹⁰ the judiciary cannot encroach into the domain of the legislature or executive. The doctrine of separation of powers has been discussed in great detail in the aforesaid decision, and we endorse the views expressed therein.

M.C. Mehta v. Union of India,^{110 111} is a decision of a three-Judge Bench of Apex Court and would ordinarily have been binding on Bench consists of two judges. However, a subsequent seven-judge Bench decision of this Court in *P. Ramachandra Rao v. State of Karnataka*,¹¹² Para 27, has taken the view that such directions cannot be given. In para 26 of the aforesaid decision of the seven-Judge Bench in *P. Ramachandra Rao's case* (supra), it was observed:

“Professor S.P. Sathe, in his work (year 2002) *Judicial Activism in India—Transgressing Borders and Enforcing Limits*, touches the topic “Directions: A new Form of Judicial Legislation.” Evaluating legitimacy of judicial activism, the learned author has cautioned against court “legislating” exactly in the way in which a legislature legislates and he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law-making in the realist sense and trench upon legislating like a legislature.

“Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. *The Court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court.*”

“*In a strict sense these are instances of judicial excessive that fly in the face of the doctrine of separation of powers.* The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. *Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ.* While law-making through interpretation and expansion of the meanings of open textured expressions such as ‘due process of law’, ‘equal protection of law,’ or ‘freedom of speech and expression’ is a legitimate judicial function, *the making of an entirely new law...through directions....is not a legitimate judicial function.*”

The aforesaid seven-judge Bench decision of Apex Court in *P. Ramachandra Rao's case*,¹¹³ has referred with approval the observations made in the book *Judicial Activism in India — Transgressing Borders Enforcing Limits.* by Prof. S.P. Sathe. In that book the

110. JT 2008 (3) SC 221: 2008 AIR SCW 406.

111. 1997 AIR SCW 4154.

112. 2002(4) SCC 578: 2002 AIR SCW 1841.

113. 2002 AIR SCW 1841

author has referred to the directions of a legislative nature given by various two-Judge and three-Judge Bench decisions of this Court in P.I.Ls. The learned author has remarked that these were not legitimate exercise of judicial power.

The position has thus been clarified by the seven-judge Bench decision of this Court in *P. Ramachandra Rao's case* (supra) which has clearly observed in (paras 22-27) that giving directions of a legislative nature is not a legitimate judicial function. A seven-judge Bench decision of this Court will clearly prevail over smaller Bench decisions.

In *P. Ramachandra Rao's case*,TM the question considered by the seven-Judge Bench was whether the bar of limitation for criminal trials fixed by smaller Benches of this Court in *Common Cause v. Union of India*,¹¹⁴; *Rajdeo Sharma (I) vs. State of Bihar*,¹¹⁵ and *Rajdeo Sharma (II) v. State of Bihar*,¹¹⁶ was valid. The seven-Judge Bench of Court was of the view that the directions given by the smaller Benches decisions mentioned above were invalid as they amounted to directions of a legislative nature which only the legislature could give.

In the aforesaid decisions of smaller Benches (which were overruled by the seven-Judge Bench decision in *P. Ramachandra Rao's case* 2002 AIR SCW 1841) the Courts were concerned with delay in disposal of criminal cases, particularly since the right to a speedy trial had been held to be part of Article 21 of the Constitution by a seven-Judge Bench decision Of Apex Court in *A/? . Antiday v. R.S. Nayak*,TM

Following *Antulay's case*, a two-Judge Bench of this Court in *Common Cause v. Union of India*,¹¹⁷ , held that if there was delay in disposal of certain kinds of criminal cases beyond a period specified by the Court the accused must be released on bail, and in certain other kinds of cases the criminal case itself should be closed. Thus by judicial verdict the Bench fixed a limitation period in certain kinds of criminal cases.

Thereafter in *Rajdeo Sharma (I) v. State of Bihar*,TM a three-Judge Bench of Apex Court directed that in certain kinds of criminal cases the trial court shall close the prosecution evidence on completion of a certain period from the date of recording the plea of the accused on the charges framed, and in certain case if the accused has been in jail for at least half the maximum period of punishment prescribed he shall be released on bail.

In *Rajdeo Sharma (II) v. State of Bihar*,^{114 115 116 117 118 119 120 121 122 123} a three-Judge Bench of Apex Court clarified certain directives¹²²

The correctness of the aforesaid three decisions of this Court was considered by the seven-Judge Constitution Bench in *P. Ramachandra Rao's case*¹²³ and the seven-Judge Bench held that these decisions were incorrect as they amounted to impermissible

114. 2002 AIR SCW 1841

115. 1996 AIR SCW 2279: 1996(4) SCC 33

116. 1998 AIR SCW 3208: 1998 (7) SCC 507

117. 1999(7) SCC 604

118. AIR 1998 SC 1531:1998 (2) SCC 602.

119. 1996 AIR SCW 2279: 1996 (4) SCC 33

120. 1998 AIR SCW 3208: 1998 (7) SCC 507.

121. 1999 AIR SCW 3522: 1999 (7) SCC 604.

122. 1998 AIR SCW 3208.

123. 2002 AIR SCW 1841.

legislation by the judiciary (vide para 23). The seven-judge Bench was of the view that in its zeal to protect the right to speedy trial of an accused the Court cannot devise and enact bars of limitation when the legislature and statute have chosen not to do so. In paragraphs 26 and 27 of the judgment in *P. Ramachandra Rao's case* (supra) the seven-Judge Bench of this Court has clearly held that directives of a legislative nature cannot be given by the Court, since legislation is the task of the legislature and not of the Court.

Judicial activism can be both legitimate as well as illegitimate. For example, when the Courts have given an expanded meaning of Articles 14 and 21 of the Constitution vide *Maneka Gandhi v. Union of India*,¹²⁴ it was a case of legitimate judicial activism because the Court gave a wider meaning to Articles 14 and 21 in the light of the new developments in the country. This was a perfectly legitimate exercise of power.

However, as pointed out by the seven-Judge Bench decision of Apex Court in *P. Ramachandra Rao's case*^{124 125 126}, when Judges by judicial decisions lay down a new principle of law of the nature specifically reserved for the legislature, they legislate, and not merely declare the law (vide para 22 of the decision in *P. Ramachandra Rao's case*). This is an illegitimate exercise of power and many such illustration of illegitimate exercise of judicial power have been given in Prof. S.P. Sathe's book '*Judicial Activism in India*' which has been referred to with approval by the seven-Judge Bench decision of this Court.

These are instances of judicial excessivism that fly in the face of the doctrine of separation of powers which has been broadly (though not strictly), envisaged by the Constitution vide *Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.*^{12b}; *Asif Hameed v. State of Jammu & Kashmir*,¹²⁷ etc. In other words, while expansion of the meanings of statutory or constitutional provisions by judicial interpretation is a legitimate judicial function, the making of a new law which the Courts in this country have sometimes done, is not a legitimate judicial function. The Courts of the country have sometimes clearly crossed the limits of the judicial function and have take over functions which really belongs either to the legislature or to the executive. This is unconstitutional. If there is a law, Judges can certainly enforce it. But Judges cannot create a law by judicial verdict and seek to enforce it.

Moreover, it must be realized by the courts that they are not equipped with the skills, expertise or resources to discharge the functions that belong to the other coordinate organs of the Government (the legislature and executive). Its institutional equipment is wholly inadequate for undertaking legislative or administrative functions.

As observed by Hon'ble Dr. Justice A.S. Anand, former Chief Justice of India:

"Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter

124. AIR 1978 SC 597.

125. 2002 AIR SCW 1841.

126. 2008 AIR SCW 406: JT 2008 (3) SC 221.

127. JT 1989 (2) SC 548: AIR 1989 SC 1899.

productive and undermine the credibility of the institution, Courts cannot “create rights” where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become “judicial adventurism”, the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile — failure to bear this in mind would lead to chaos. Public adulation must not sway the Judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the Government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties”.

Before proceeding further, the Motor Vehicles Act is a comprehensive enactment on the subject. If there is a lacuna or defect in the Act, it is for the legislature to correct it by a suitable amendment and not by the Court. What the petitioner really prays for in his petition is for various directions which would be legislative in nature, as they would amount to amending the Act.

In *Union of India & Anr v. Deoki Nandan Aggarwal*,^{128 129 130 131 132 133} a three-Judge Bench of this Court observed (vide paragraph 14):

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.”

Apex Court cannot direct legislation vide *Union of India v. Prakash P. Hinduja*,¹²⁹ and it cannot legislate vide *Sanjay Kumar v. State of UP*,¹³⁰; *Verareddy Kumaraswamy Reddy v. State of A.P.*¹³¹, *Suresh Seth v. Commr. Indore Municipal Corporation*,¹³² and *Union of India v. Deoki Nandan Aggarwal*,¹³³

128. AIR 1992 SC 96: 1991 AIR SCW 2754.

129. (2003) 6 SCC 195: AIR 2003 SCW 3258: AIR 2003 SC 2612 (vide SCC para 30: AIR para 29).

130. 2004 All LJ 239.

131. (2006) 2 SCC 670: JT; (2006) 2 SC 361: 2006 AIR SCW 894. ,.

132. 2005AIR SCW 6380: (2005) 13 SCC 287: AIR 2006 SC 767 (vide para 5).

133. 1991 AIR SCW 2754: 1992 Supp (1) SCC 323: AIR 1992 SC 96.

The Court should not encroach into the sphere of the other organs of the State vide *N. K. Prasada v. Govt, of India*,¹³⁴ (vide paras 27 and 28).

Thus in *Supreme Court Employees' Welfare Assn. v. Union of India*,^{134 135} (vide SCC p. 220, para 55) this Court observed:

“There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly, the President of India cannot be directed by the Court to grant approval to that proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India.”

In *Union of India v. Assn, for Democratic Reforms*,¹³⁶ Apex Court observed (SCC p. 309, para 19):

“19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.”

In *Union of India v. Prakash P. Hinduja*,^{137 138} this Court observed (SCC pp. 216-17, para 30):

“Under our constitution scheme Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact particular piece of legislation. In *Supreme Court Employees Welfare Assn. v. Union of India*,¹³⁷ it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in.¹³⁹

A perusal of the prayers made in this writ petition (which have been quoted above) clearly shows that what the petitioner wants us to do is legislation by amending the law. In our opinion, this will not be a legitimate judicial function. The petitioner has prayed that we direct the Union of India to formulate a suitable Road Traffic Safety Act, but it is well settled that the court cannot direct legislation. In fact, there is already a Road Safety Council as contemplated by Section 215 of the Motor Vehicles Act; reference of which has been made in the counter-affidavit of the Central Government in which it has been stated that Central Government has constituted a Nation Road Safety Council which has held various meetings. It is an apex body comprising of Transport Ministers of various States and Union Territories, DG Police of various States/Union Territories, representatives of various Central Ministries and agencies apart from NGOs and experts in the field of road safety. In the deliberations of National Road Safety Council

134. (2004) 6 SCC 299 : JT 2004 Supp (1) SC 326.

135. (1989)4 SCC 187: AIR 1990 SC 334.

136. (2002) 5 SCC 294: AIR 2002 SC 2112: 2002 AIR SCW 2186.

137. 2003 AIR SCW 3258, (2003) 6 SCC 195: AIR 2003 SC 2612 (vide AIR para 29).

138. AIR 1990 SC 334.

139. State of J. & K. v. A.R. Zakki, 1992 Supp (1) SCC 548 : AIR 1992 SC 1546: 1992 AIR SCW 1711.

suggestions received from various quarters as also the measures being taken by the Ministry regarding road safety as also the areas of concern have been considered. In the counter-affidavit, various other steps taken by the respondent No. 1 regarding road safety have also been mentioned in detail. Some of the other respondents have also filed their counter-affidavits mentioning the measures taken for road safety, and we have perused the same

In *Suresh Seth v. Commissioner, Indore Municipal Corporation and others*,¹⁴⁰ a three-Judge Bench of this Court rejected the petitioner's prayer that appropriate amendment be made to the M.P. Municipal Corporation Act, 1956 debarring a person from holding two elected offices viz. that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. The Court observed:

"That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power or authority to enact laws and no outside power or authority can issue direction to enact a particular piece of legislation. In *Supreme Court Employees Welfare Association v. Union of India*,¹⁴¹ It has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority."

In *Bal Ram Bali & Anr. v. Union of India*,¹⁴² a petition under Article 32 was filed praying for a mandamus directing for a total ban of slaughtering of cows, horses, buffaloes, etc. Rejecting this contention this Court observed :

"It is not within the domain of the Court to issue a direction for ban on slaughter of cows, buffaloes and horses as it is a matter of policy on which decision has to be taken by the Government. That-apart, a complete ban on slaughter of cows, buffaloes and horses, as sought in the present petition, can only be imposed by legislation enacted by the appropriate legislature. Courts cannot issue any direction to the Parliament or to the State Legislature to enact a particular kind of law."

As observed by a three-Judge Bench of Apex Court in *Institute of Chartered Accountants of India v. Price Waterhouse and Anr.*,¹⁴³ Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed.

In *Madhu Kishwar & Ors. v. State of Bihar & Ors.*,¹⁴⁴ this Court observed that the Court is not fully equipped to cope with the details and intricacies of the legislative subject, and it can at best advise and focus attention on the State policy on a problem and shake it from its slumber, goading it to awaken, march and reach the goal. Thus, the Court can play a catalytic role with regard to the social and economic problems of the

140. JT 2005 (9) SC 210.

141. JT 1989(3) SC 188 : (1989)4 SCC 187; AIR 1990 SC 334

142. 2007 AIR SCW 5551 : JT 2007 (10) SC 509.

143. 1997(6) SCC 312 (vide Para 50).

144. 1996 SCW 2178: AIR 1996 (5) SCC 125 (vide para 5).

people. However, whatever the concern of the Court, it has to apply somewhere and at sometimes brakes to its self-motion, described in judicial parlance as judicial self-restraint. In particular, Court must not legislate or perform executive function.

We would also like to advert to orders by some Courts appointing committees giving these committees power to issue orders to the authorities or the public. This is wholly unconstitutional. The power to issue a mandamus or injunction is only with the Court. The Court cannot abdicate its function by handing over its powers under the Constitution or the C.P.C or Cr.P.C, to a person or committee appointed by it. Such 'outsourcing' of judicial functions is not only illegal and unconstitutional, it is also giving rise to adverse public comment due to the alleged despotic behaviour of these committees and some other allegations. A committee can be appointed by the Court together some information and/or give some suggestions to the Court on a matter pending before it, but the Court cannot arm such a committee to issue orders which only a Court can do.

Apart from the doctrine of separation of powers, courts must realize the there are many problems before the country which courts cannot solve, however much they may like to. It is true that the expanded scope of Articles 14 and 21 which has been created by this Court in various judicial decisions e.g. *Smt. Maneka Gandhi v. Union of India & Anr.*,¹⁴⁵ have given powerful tools in the hands of the judiciary. However, these tools must be used with great circumspection and in exceptional cases and not as a routine manner. In particular, Article 21 of the Constitution must not be misused by the Courts to justify every kinds of directive, or to grant every kind of claim of the petitioner. For instance, this Court has held that the right to life under Article 21 does not mean mere animal existence, but includes the right to live with dignity vide *Olga Tellis v. Bombay Corporation*.¹⁴⁶ *D.T.C. v. D.T.C Mazdoor Congress Union*,^{147 148} (paras 223, 234, 259); *Franci: Coralie Mullin v. Union Territory Delhi Administrator*,. However, these decisions must be understood in a balanced way and not in an unrealistic sense. For example, there is a great deal of poverty in this country and poverty is destructive of most of the rights including the right to a dignified life. Can then the Court issue a general directive that poverty be abolished from the country because it violates Article 21 of the Constitution? Similarly, can the Court issue a directive that unemployment be abolished by giving everybody a suitable job? Can the Court stop price rise which nowadays has become an alarming phenomenon in our country? Can the Court issue a directive that corruption be abolished from the country? Article 21 is not a 'brahmastra' for the judiciary to justify every kind of directive.

The concern of the petitioner is that many people die in road accident. But many people also die due to murders. Should then the Court issue a general directive that murders be not committed in the country? And how would such a directive (even if issued) be implemented?

The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion I does not, firstly because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly because the

145. AIR 1978 SC 597.

146. AIR 1986 SC 180.

147. AIR 1991 SC 101.

148. AIR 1981 SC 746.

judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g. peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs.

In *Ram Jawya v. State of Punjab*,^{149 150 151} (vide paragraph 12), a Constitution Bench of this Court observed:

“The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions that essentially belong to another.”

Similarly, in *Asif Hameed v. State of Jammu and Kashmir* ^a a three-Judge Bench of this Court observed (vide paragraphs 17 to 19):

“Before advertng to the controversy directly involved in the appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people’s will, have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the contempt of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.

Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Prop v. Dullers*^f observed as under:

“All power is, in Madison’s phrase, “of an encroaching nature”. Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds and not the less so since the only restraint upon it is self-restraint.....”

The directives sought for in this petition require the expertise of administrative and technical officials, apart from financial resources. Not only should the Court not give

149. AIR 1995 SC 549.

150. AIR 1989 SC 1899.

151. (1958) 356 US 86,

such directives because that would violate the principle of separation of powers, but also because these are highly technical matters to be left to be dealt with by administrative and technical authorities who have experience and expertise in the matter. For instance, what should be the maximum permissible speed for vehicles in a city, where should speed breakers be fixed, when should heavy vehicles be allowed on roads, and other matters for ensuring road safety are all matters to be dealt with by the concerned authorities under the Motor Vehicles Act and other enactments, and it would be wholly inappropriate for the judiciary to meddle in such matters. Decisions on such matters by the judiciary land the administrative agencies in practical difficulties and make them bear the brunt of the decisions of the Court some of which are wholly oblivious to administrative needs and as such ill-conceived.

Moreover, if once the Courts take upon themselves the task of issuing ukases as to how administrative agencies should function, what is there to prevent them from issuing directions as to how the State Government or Central Government should administer the State and run the country? In our opinion such an approach would not only disturb the delicate balance of powers between the three wings of the State, it would also strike at the very basis of our democratic polity which postulates that the governance of the country should be carried on by the executive enjoying the confidence of the legislature which is answerable and accountable to the people at the time of elections. Such an approach would in our opinion result in judicial oligarchy dethroning democratic supremacy.

Court should not assume such awesome responsibility even on a limited scale. The country can ill-afford to be governed through court decrees. Any such attempt will not only be grossly undemocratic, it would be most hazardous as the Courts do not have the expertise or resources in this connection. The judiciary is not in a position to provide solutions to each and every problem, although human ingenuity would not be lacking to give it some kind of shape or semblance of a legal or constitutional right, *e.g.*, by resorting to Article 21.

When other agencies or wings of the State overstep their constitutional limits, the aggrieved parties can always approach the courts and seek redress against such transgression. If, however, the court itself becomes guilty of such transgression, to which forum would the aggrieved party appeal? As the ancient Romans used to say "Who will guard the Praetorian guards?" The only check on the courts is its own self-restraint.

The worst result of judicial activism is unpredictability. Unless Judges exercise self-restraint, each Judge can become a law unto himself and issue directions according to his own personal fancies, which will create chaos.

It must be remembered that a Judge has to dispense justice according to the law and the Constitution. He cannot ask the other branches of the State to keep within their constitutional limits if he exceeds his own.

As stated by A.G. Noorani in his article on '*Judicial Activism v. Judicial Restraint*' (published in SPAN magazine of April/May, 1997 edition):

"Zeal leads Judges to enter areas with whose terrain they are not familiar; to order minutiae of administration without reckoning with the consequences of their orders. Judges have made orders not only how to run prisons but also hospitals, mental homes and schools to a degree which stuns the professional. In their judgments they draw on material which is untested and controversial and which they are ill-equipped to evaluate."

Adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges' preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely, former Chief Justice of the West Virginia State Supreme Court:

"I have very few illusions about my own limitations as a Judge I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting his judgment of that of the administrator."

As observed by Mr. Justice Cardozo for the U.S. Supreme Court:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "promotional necessity of order in the social life."

See Cardozo's "The Nature of the Judicial Process"

Chapter VIII of the Motor Vehicles Act, 1988 has provisions for control of traffic. These include fixing limits of speed (S.112), restriction on use of certain vehicles (S.115), power to erect traffic signs (S.116), fixing parking places (S.117), making driving regulations (S.118) duty to obey traffic signs (S. 119), requirement for drivers to make such signals as are prescribed (S.121), safety measures for drivers and pillion riders on two wheelers (S. 128), wearing of protective headgear (S.129), etc. These provisions are obviously meant for road safety, and if further provisions are required for this purpose the petitioner may approach the legislature or concerned authority for this purpose, but this Court can certainly not amend the law.

The people must know that Courts are not the remedy for all ills in society. The problems confronting the nation are so huge that it will be creating an illusion in the minds of the people that the judiciary can solve all the problems. No doubt, the judiciary can make some suggestions/recommendations to the legislature or the executive, but these suggestions/recommendations cannot be binding on the legislature or the executive, otherwise there will be violation of the seven-judge Bench decision of this Court in *P. Ramachandra Rao's case* (supra)¹⁵² ¹⁵³ and violation of the principle of separating of powers. The judiciary must know its limits and exercise judicial restraint vide *Divisional Manager, Aravali Golf Course & Anr. v. Chander Hass*,⁵³. The people must also realize that the judiciary has its limits and cannot solve all their problems, despite its best intentions.

The problems facing the people of India have to be solved by the people themselves by using their creativity and by scientific thinking and not by using judicial crutches like PIL's.

152. 2002 AIR SCW 1841.

153. JT 2008 (3) SC 221; 2008 AIR SCW 406.

These problems *e.g.* poverty, unemployment, price rise, corruption, lack of education, medical aid and housing, etc., are so massive that they can only be solved by certain historical, political and social forces that can only be generated by the people themselves using their creativity and scientific thinking.

The view that the judiciary can run the Government and can solve all the problems of the people is not only unconstitutional, but also it is fallacious and creates a false impression and false illusion that the judiciary is a panacea for all ills in society. Such illusions, in fact, do great harm to the people because it makes the people believe that their problems can be solved by others and not by the people themselves. It debilitates their will and makes them believe that they can solve their problems and improve their conditions not by their own struggles and creativity but by filing a PIL in Court.

In *Dattaraj Nathuji Thaware v. State of Maharashtra*,¹⁵⁴ in which Hon'ble Pasayat, J. expressed the view about public Interest Litigation in the following memorable words:

"It is depressing to note that on account of such trumped-up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent on the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our 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, unrepresented and unheard: yet we cannot avoid but expressing our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters, Government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc, are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Court, as a result of which the queue standing outside the doors to the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."

In the same decision it has also been observed that PIL is a weapon which is to be used with great care and circumspection.

Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As started in

154. 2005 AI R SCW 46, Para 8: AIR 2005 SC 540.

*Dattaraj Nathuji Thaware's case*¹⁵⁵, public interest litigation has now-a-days largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paisa income litigation'. Much of P.I.L is really blackmail.

Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together. *Common Cause (A Regd. Society) v. Union of India*.^{156 157 158}

11. "Litigation"—Meaning of.—In *Olgatellis v. Bombay Municipal Corporation*,¹⁵⁵ held to be for the interest of the general public and as such it is maintainable. What happened in the case of *Olgatellis* was that there were three groups of petitions. The first group of petitions relates to pavement dwellers, and the second group relates to both basti or slum dwellers. There were some other petitions filed by the journalist. In the facts and circumstances of that case the Supreme Court considered it to be a public interest litigation.

In *Janata Dal v. H. S. Chowdhury*,¹⁵⁵, the Supreme Court considered the scope of public interest litigation.

In para 52 of the said judgment the Supreme Court after considering what is public interest has laid down as follows :

"The expression "litigation" means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the 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." [Justice C.K. Thakker's Encyclopaedic Law Lexicon]

In paras 60, 61 and 62 of the said judgment, the supreme Court pointed out as follows:

"Be that as it may, it is needless to emphasise that 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 or public action in relation to any specific remedy sought, for has to be primarily ascertained at the threshold."

In para 96 of the said judgment the Supreme Court has pointed out as follows :

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without

155. 2005 AIR SCW 46.

156. AIR 2008 SC 2116 (Markandey Katju, J.)

157. AIR 1986 SC 180.

158. AIR 1993 SC 892 : 1993 AIR SCW 248.

any interest or concern except for personal gain or private profit or other oblique consideration.”

In paras 107, 108 and 109 of the said judgment, the Supreme Court pointed out as follows :

“It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our 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, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untolagony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters, Government or private persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

In the words of Bhagwati, J. (as he then was) “the Courts must be careful in entertaining public interest litigations” or in the words of Sarkaria, J. “the applications of the busybodies should be rejected at the threshold itself and as Krishna Iyer, J. has pointed out, “the doors of the Courts should not be ajar for such vexatious litigants”.

In para 113 of the said judgment, two tests were laid down by Mr. Jethmalani counsel and that was accepted by the Supreme Court as the correct test. These two tests are : (1) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of State policy for amelioration of their condition,

and (2) preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest.¹⁵⁹

If one judge the Kerala History Association in the light of the principles laid down in Tekraj's case (*surpa*); *Chander Mohan Khanna's* case,¹⁶⁰ we find that the fourth respondent does not come within the ambit of 'State' or 'other authorities' contemplated under Article 12 of the Constitution.

The Memorandum of Association and the Rules and Rules and Regulations clearly indicate that it does not satisfy the various tests laid down by the Courts to come within the ambit of 'State' or 'other authorities' contemplated under Article 12 of the Constitution, as also Article 226 of the Constitution.

Thus, it is clear that a writ petition cannot lie against the fourth respondent. At the most it can be said that the fourth respondent is the beneficiary of the impugned order Ext. P-3. But a writ of *mandamus* or *certiorari* cannot be issued against the fourth respondent. I hold point No. 1 in favour of the fourth respondent.

In the present case on hand, there is no necessity for Ext. P-3 to mention on the face of it that it was issued in public interest as it is only an order modifying one of the conditions of assignment under Rule 24.¹⁶¹

12. Essential ingredients to be satisfied before issuing any direction on public interest litigation.—When the High Court was not in position to precisely discern what was the complaint alleged by the petitioner and when the High Court was of the view that the prayer made by the petitioner was absurd and it also held that the officers who were alleged to have been carrying on nefarious activities were more imaginary than real the direction in general and sweeping terms to sack erring officers (whosoever they may be) and overhaul the administration by recruiting only conscientious and devoted people like the petitioner in order to satisfy the vanity of the petitioner should not have been made. If the High Court intends to pass an order on an application presented before it by treating it as a public interest litigation, the High Court must precisely indicate the allegations or the statements contained in such petition relating to public interest litigation and should indicate how public interest was involved and only after ascertaining the correctness of the allegation, should give specific direction as may deem just and proper in the facts of the case. It is only unfortunate that the petitioner, a layman, appeared in person and when his petition was entertained by the Division Bench having the then Chief Justice of High Court as a member and was disposed of by giving some direction, he must have hoped that his efforts to eradicate nefarious activities as alleged by him, have been crowned with success and it appears that he moved various authorities zealously to implement the mandate of the High Court without appreciating that such mandate was of no consequence and prayer for implementation into be dismissed unceremoniously at a later stage. Held, the High Court must precisely indicate the allegations or the statements

159. Binod Kumar Jain v. Gauhati Municipal Corporation, AIR 1994 Gau 96 at pp. 97, 98, 99 (J.N. Sarma, B.N. Singh 'Neelam', J.J.).

160. AIR 1992 SC 76 and Sofhi v. FACT, 1984 I Ker LT 32 ILR (1984) 2 Ker 71.

161. Parent Teacher Association, Maharaja's College v. State, AIR 1995 Ker 209 at pp. 216, 219 (At: Emakulam) (D.J. Jagannadha Raju, J.).

contained in such petition relating to public interest litigation and should indicate how public interest was involved.^{162 163}

When there is material to show that a petition styled as public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “polities interest litigation” or the latest trend “paise income litigation”. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to ; “her his or their personal causes or satisfies his or their personal grudge and enmity. Count of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigating will alone have a *locus standi* and can approach the Court to wipe our violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S. Chowdhary*,” and *Kazi Lhendup Dorji v. Central Bureau of Investigation*^{164 165 166}A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See *Ramjas Foundation v. Union of India*,¹⁶⁵ and *K.R. Srinivas v. R.M. Premchand*’.

A forum known as Karnataka Rakshana Vakeylara Vedike had lodged a complaint before the II Additional Chief Metropolitan Magistrate, Bangalore, alleging that the statement of the petitioner was as affirmation of an act amounting to a offence under Section 3 of the Prevention of Insult to National Honour Act, 1971. The Magistrate’s Court having taken cognizance of the complaint and process having been issued, the same was challenged by the petitioner before this Court under Section 482 of the Code of Criminal Procedure, 1973. The said petition having been contested, this Court by its order dated 14-8-2007 allowed the petition. High Court has held that the Court of the Magistrate at Bangalore had no territorial jurisdiction to try the offence and that the complaint ought to have been returned for presentation to the proper Court. It was also held that “since the Act does not bar plying musical version of the National Anthem, it cannot be said that the petitioner has committed the offence under Section 3 of the Act”. The petition was allowed and the proceedings before the Court of the Magistrate was quashed.

The present writ petition is filed in the wake of yet another complaint, before the Court of the Judicial Magistrate First Class (II Court) at Mysore by one H.N. who has alleged that the petitioner has not followed the protocol extended to the President of India, which requires the National Anthem to be sung by the entire gathering, inviting the

162. Giani Devendar Singh Sant Sepay Sikh v. Union of India, AIR 1995 SC 1847 : 1995(1) SCC 391 : 1995(1) Crimes 298(SC).

163. 1993AIR SCW 248 : 1992) (4) SCC 305.

164. 1994 AIR SCW 2190: 1994 Supp (2) SCC 116.

165. 1992AIR SCW 3460 : AIR 1993 SC 852

166. 1994(6) SCC 620.

President of India at the function, as a National honour. Instead the petitioner has willfully prevented the singing of the National Anthem, while only a recorded, instrumental version of the same was played. This act of the petitioner having been affirmed by him at press conference held at the venue, while explaining that this was done not to cause embarrassment to many foreigners who were present in the gathering, amounted to causing insult and exhibiting disrespect and dishonour to the National Anthem. It was alleged that the petitioner had hence, committed an offence under Section 3 of the Act. The Magistrate has by an order, having taken cognizance of the complaint and having directed issuance of summons to the petitioner herein, the present petition is filed. This Court by its Order, stayed further proceeding in the case registered, on the file of the JMFC (II) Court Mysore.

Musical rendition of the National Anthem not being an offence does not preclude a Court having jurisdiction from entertaining a complaint relating to the offence of the basis of material evidence in support thereof. *Ghanshyam Das Gupta v. Ananth Kumar Sinha*,¹⁶⁷ *Seth Chand Rathan v. Pandit Durga Prasad (D) by legal Representatives*,¹⁶⁸. *The Assistant Collector of Central Excise v. Jaison Hosiery Industries*,¹⁶⁹. *State of Orissa v. Ramchandra Dev*,¹⁷⁰. *State of Andhra Pradesh v. Chitta Venkata Rao*,¹⁷¹ *S. Jagadishan v. Ayyanadar*,^{171 172}. *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*,¹⁷³. *Krishnakumar Balakaram Pande, Baroda v. Municipal Corporation of the City of Baroda*,¹⁷⁴. *Punia Biswal v. Divisional Forest Officer, Rairakhol*,¹⁷⁵. *Mrs. Khorshed Aga v. State of Maharashtra* ¹⁷⁶. *Institute of Social Welfare v. State of Kerala*,^{177 178} *M/s. Jhansi Concrete Products, Jhansi v. State of U.P.*¹⁷⁹. *Balaswamy v. Government of A.P.*^{179 180}, *Master Zubeen v. Principal Judge Family Court Lucknow*,¹⁸⁰.

High Court had addressed a complaint relating to the very incident alleging the commission of an offence under Section 3 of the Act—while dealing with the Criminal Petition (2007 (5) AIR Kar R 574) challenging the order of the II Additional Chief Metropolitan Magistrate, Bangalore and to quash the complaint therein. This Court having allowed the petition and holding that the petitioner had not committed an offence under Section 3 of the Act, a question arises as to whether the proceedings now under challenge can be sustained notwithstanding the order of this Court in the above Criminal petition having become final. It is to be seen that in terms of Section 300 of the Code of Criminal Procedure, 1973, a person once convicted or acquitted by a Court of competent jurisdiction shall not be liable to be tried again for the same offence, nor on the same

167. AIR 1991 SC2251.

168. AIR 2003 SC2736

169. AIR 1979 SC 1889.

170. AIR 1964 SC685.

171. AIR 1975 SC 2151.

172. AIR 1984 SC 1512

173. AIR 1999 SC 22.

174. AIR 1990 Guj 20.

175. AIR 1990 Orissa 219.

176. AIR 1992 Bombay 427.

177. AIR 1997 Kerala 45.

178. AIR 1990 All 53.

179. AIR 1990 AP 135.

180. AIR 1994 All 147.

facts for any other offence. But the dismissal of a complaint or the discharge of the accused is not acquittal for the purposes of the above Section. It also does not bar fresh proceedings by the same magistrate or a magistrate of co-ordinate jurisdiction against the accused on the same offence even without an order for fresh enquiry under Section 398 of the Code of Criminal Procedure. This does not result in the Court of the magistrate acting in disobedience to the order of this Court nor does it result in any abuse of process especially when a complainant who is different from the earlier complaint approaches the Court, possibly with better material evidence or fresh material.

Another question that is of preliminary significance in the present petition is whether High Court can entertain this petition, when the petitioner is provided with other alternative remedies in law. This question is answered by the Apex Court in *M/s. Pepsi Foods Limited v. Special Judicial Magistrate ff* This Supreme Court has held that notwithstanding the fact that a Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, it does not mean that the accused cannot approach the High Court under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him still he must undergo the agony of a criminal trial. Further, the Svnreme Court has in the case of *Indian Oil Corporation v. NEPC India Limited*,¹⁸¹ ¹⁸² reiterated the principles relating to exercise of jurisdiction to quash complaints and criminal p 'oceedings, while placing reliance on the following decisions:

(a) *Madhavrao Jiwajirao Scindia v. Sambhajirao Angre*,¹⁸³ *State of Haryana v. Bhajan Lal*,¹⁸⁴; *State of Bihar v. Rajendra Agrawalla*,¹⁸⁵; *Rajesh Bajaj v. State NCT of Delhi*,¹⁸⁶; *Medchl Chemicals & Pharma (P) Ltd. v. BiologicalE. Ltd.*,¹⁸⁷.

(b) *Haridaya Ranjan Prasad Verma v. State of Bihar*,¹⁸⁸; *M. Krishnan v. Vijay Singh*,¹⁸⁹ *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*,¹⁹⁰, relied on.

“(i) A complaint can by quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

181. AIR 1998 SC 128.

182. (2006) 6 SCC 736 : AIR 2006 SC 2780.

183. 1988 1 SCC 692: 1988 SCC (Cri) 243: AIR 1988 SC 709.

184. 1992 Supp (1) SCC 335: 1992 SCC (Cri) 1059: AIR 1992 SC 604.

185. (1996) 8 SCC 164: 1996 SCC (Cri) 628: 1996 AIR SCW 59.

186. (1999) (3) SCC 259.

187. (2000) 3 SCC 269:2000 SCC 615: AIR 2000 SC 1869.

188. 2000) 4 SCC 168: 2000 SCC (Cri) 786: AIR 2000 SC 2341.

189. (2001) 8 SCC 645: 2002 SCC (Cri) 19: AIR 2001 SC 3014.

190. (2005) 1 SCC 122 : 2005 SCC (Cri) 283: AIR 2005 SC 9.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceedings is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) Etc. Etc.-----”

Coming now to the merits of the case on hand, the complaint alleges an offence under Section 3 of the Act, which reads as follows:

“3. Prevention of singing of National Anthem, Whoever, intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.”

It is alleged that the petitioner had intentionally avoided the singing of the National Anthem at a function organized by the petitioner to honour the President of India. This was admitted by the petitioner and the reason assigned was that it was to avoid embarrassment to foreigners present in the assembly. This according to the complainant amounted to “causing insult and exhibiting dishonour to the National honour”. It is urged that pursuant to newspaper reports of the incident, an apology was extended by the petitioner on the following day for the offence committed and therefore, there is prima facie material to initiate action against the petitioner. It is contended that under Schedule II of the Code of Criminal Procedure, an offence under Section 3 of the said Act is cognizable and non-bailable. The complainant had accordingly lodged a written complaint with the jurisdictional police of the area but since no complaint was registered in spite of the complainant’s efforts. With regard to such incident in pursuing the same—the complainant had filed the complaint under Section 190 of the Code of Criminal Procedure.¹⁹¹

13. Affect the working and functioning of the office of the Chief Minister of the State of Maharashtra.—The first respondent filed the writ petition by way of PIL in order to expose a massive and orchestrated scam by which CIDCO a special planning authority constituted under the Maharashtra Regional Town Planning Act, 1966 has diverted public lands intended for genuine Co-operative Housing Societies to a small coterie of commercial builders/developers and thereby conferred massive developers while simultaneously causing losses to CIDCO and the members of the general public. According to his, small coteries of builders/developers approached the then Chief Minister of Maharashtra and by addressing applications directly to him in the name of societies on identical or suspiciously similar computer generated stationery/letter-heads made specific requests for allotment of prime plots of land by expressly mentioning the plot or plots desired by them and that the Chief Minister endorsed each such application

191. (N.R. Narayana Murthy v. H.N. Nangegowda, 2008 Cri LJ 2206 (Kant.).

with the words “please put up” and thereupon these applications were hand delivered to CIDCO’s Head Office at Nariman Point, Mumbai and that these applications were assigned inward numbers thereby signifying that they are recommended by the Chief Minister and on the very same date, when they were received by CIDCO at Nirmal, the Vice-Chairman and M.D. added their endorsements reading please process early or words to that effect.

He would further submit that the Chief Minister’s recommendation proved so compelling that CIDCO instantly allotted the chosen plots for residential user even though the classification and earmarking of these plots was commercial plus residential on the development plan of CIDCO thereby causing loss to CIDCO of the much higher premium available on C+R lands. It was submitted by learned senior counsel for the respondent that the High Court pronounced a detailed and well-reasoned judgment which dealt with the entire subterfuge resorted to in order to make such dummy allotments at the behest of the former Chief Minister of Maharashtra and have been dealt with in great detail by the Division Bench. He further submitted that the first respondents filed the writ petition in the High Court since there had been violations of law as well as of CIDCO’s land allotment policy, inter alia, in making allotments to Co-operative Societies and that the first respondent had learnt that these allotments had been made on the basis of the recommendations by the then Chief Minister other the high functionaries acting at his behest and that all rules and norms has been disregarded by CIDCO as a consequence of such recommendations Respondent No. 1 accordingly pleaded in paras 4 and 14 of the writ petition that it appeared that these illegal allotments had been made at the behest of the Chief Minister or other Ministers of the Government of Maharashtra and in para 14 have specifically called upon CIDCO to confirm or deny this fact.

While making such notations on the representations/applications so received, the Chief Minister does not analyse each and every case since this is to be done at the level of the concerned department which then scrutinizes the same in accordance with law. The notation is not even treated as a determination of eligibility or the merit of the concerned application. It is a routine notation made in the normal course and is really an action of forwarding to the concerned department the representations/applications received by the Chief Minister. The concerned department is then expected to examine the said representations/applications and decide the same on its own merits and in accordance with law. As rightly pointed out by learned Solicitor General as to how he treats the file the nomenclature given to such matters are of matters of internal administration of the concerned department/corporation.

The words please put up only meant that the applications should be processed and decided in accordance with law and on its own merits. CIDCO which was a Corporation had detailed rules which govern the allotment of land and were to be complied with by CIDCO before any allotment of land was made. The records placed before us indicates that the applications put up to CIDCO were processed at various levels including the marketing manager, assistant marketing officer, managing director and up to the stage of board of directors.

In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are one-sided and do not merit any consideration.

The High Court did not, give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gain said that the nature of remarks made

in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice.

Held: It is thus amply clear that one is entitled to have and preserve ones reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review. The observations/strictures and remarks made by the High Court against the appellant behind his back was totally uncalled for and not warranted.⁷⁹²

14. Multiple Petitions.—Normally multiple petitions under Public Interest Litigation, on the same subject matter are not entertained. However, the first petition does not seem to have been filed *bona fide* or for real and genuine public cause and it does not inspire our confidence to treat it as Public Interest Litigation in real sense. The resolution dated 15th July, 2004 was produced at the belated stage. The relationship between some of the office-bearers and members of the Board of Trustees with the personnel of Electro Steel Castings Limited is difficult to be overlooked. The Hon'ble Supreme Court, in no uncertain terms, has observed that “when there is material to show that a petition styled as a Public Interest Litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out.” Since there is business rivalry between the said ESCL and the Respondent No. 5 and since the said ESCL is in the habit of sponsoring such petitions, we do not concur with the view of the present petitioners that there is a real and genuine public interest involved in the litigation.¹⁹²¹⁹³

15. PIL—Maintainability of. The Court should not go into the allegations made by the petitioner which are disputed by the respondents. But with a view to ensure that public safety is not in jeopardy, the Court must inquire and decide whether the provisions of the Public Liability Insurance Act, 1991 and the Public Liability Insurance Rules, 1991 are being duly complied with by the respondents. This exercise by the Court in this PIL is all the more necessary considering the fact that the life and property of the public are in great danger on account of use of explosive material in the establishments of the respondent and during transportation and storage of arms and ammunitions to places outside the State of Madhya Pradesh and accidents are alleged to have taken place in some of these establishments. Rule of law further mandates that the law made by the Parliament and the rules made under such law for safety and for compensation for loss of life and property due to accident are duly observed.¹⁹⁴

Having heard the counsel for the respective parties and having considered the materials on record, The view of the cause that although ordinarily in a case like this a writ petition under Article 32 of the Constitution would be maintainable, in the facts of

192. State of Maharashtra v. Public Concern for Government Trust, AIR 2007 SC 77 at 781, 782, 786, 788. See also Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India, 2006 AIR SCW 4287 : 2006(6) SCC 613 at pg. 645.

193. B. K. Sharma v. Union of India, AIR 2005 Guj, 203 at 215, 216.

194. Gyan Prakash v. General Manager, Ordinance Factory, Khamaria. AIR 2007 M. P. 118 at 121.

this case the writ petition does not call for any interference by this Court. The view that public interest litigation may be entertained when an issue of great public importance is involved, but not to settle private scores as was held in *Dattaraj Nathuji Thaware's case* 2005 AIR SCW 46. Furthermore, in an application under Article 32 of the Constitution there must be an element of infraction of one or the other fundamental rights contained in Part III of the Constitutions. Although, the writ petitioner has attempted to show that the writ petition had been filed for the benefit of the people of the States of Gujarat, Madhya Pradesh and Rajasthan, the facts as sought to be projected clearly indicate that the writ petition has been filed out of grudge harboured. Except for vague allegations regarding receipt of foreign funds by the respondent and their alleged use for subversive activities, none of the allegations have any evidentiary value as they are unsupported by any evidence as such. There is no material on record to show that foreign funds have, in fact, been received by respondent or that the same had been misutilized for subversive activities of an anti-national character. On the other hand, there is evidence to show that certain monetary awards had been received jointly by the respondent and Baba Amte which had been vested in a trust which had no connection with the activities of the respondent. In fact, the writ petition appears to have been filed as a fishing exercise to try and procure evidence against the said respondent. Having seen the Annexure to the counter-affidavit* filed on behalf of the respondent, we are inclined to accept sub-missions that had a private grudge against which had motivated him to file the writ petition and not in the public interest as claimed by him.^{195 196}

Although, the writ petition has been shown to have been filed to protect the interest of the people of the three States of Gujarat, Madhya Pradesh and Rajasthan, except for Shri Saxena representing the writ petitioner-association, there is no other individual who has been impleaded as petitioner to support such an argument. Although, the writ petition is alleged to be in the nature of a public interest litigation, the same appears to be a 'private in tert ;t litigation' to discredit and diffuse the agitation undertaken by the respondent Nc. 5 for rehabilitation of the displaced persons from the dam site before submergence of their habitat.¹⁹⁰

In *Sarat Chandra Sinha State of Assam*,¹⁹⁷ it was observed as follows (para. 15).—

“The Petitioner No. 1 Shri Sarat Chandra Sinha is a veteran leader of the State who has held the high office of the Chief Minister of the State. The Petitioner No. 2 Dr. Deba Prasad Barooah was the Vice Chancellor of the Gauhati University and, after his retirement, has been espousing causes for upliftment of the Society. The petitioner No. 3 Shri Pulak Choudhury is the President of Assam Jatiyatabadi Yuba Chatra Parishad and he is also connected with various social activities. It is true that two of the petitioners are actively connected with politics but this cannot be a ground for throwing out this PIL at the threshold. In a public interest litigation, the most significant aspect is public interest. Once it is shown that public interest is involved, the Court has to intervene. It is true that a PIL is to be entered if it makes out a case for violation of Article 21 or of Human Rights or where the PIL seeks relief for the poor and underprivileged who are unable to come to Court

195. *National Council For Civil Liberties v. Union of India*, AIR 2007 SC 2631, at 2636, 2637; 2007 (5) Supreme 442; 2007 (9) JT 201; 2007 (5) SCJ 507; 2007 (7) SCC 506; 2007 AIR SCW 4748.

196. *National Council For Civil Liberties v. Union of India*, AIR 2007 SC 2631 at 2637.

197. AIR 2006 Gau. 4 at 9.

due to some disadvantageous position and it must be to secure the legal rights of the members of the public at large. There is no dispute with regard to the ratio laid down in the decisions referred to by Shri Choudhury. A PIL cannot be used as a weapon to challenge the financial or economic decision of the State.”

Cause of action delay and laches cannot be attributed to appeals to reject appeal and PIL. *Janhit Manch v. State of Maharashtra (S.C.)*, 2014(7) Scale 698 : 2014(6) R.C.R.(Civil) 145.

16. Public interest litigation forum.—The forum of “Public Interest Litigation” is not meant for serving political purpose or solving political problem. Political problem ought to be solved through political process, and not through judicial process. It is pertinent to notice that the proposed “Gaurav Yatra”, as disclosed in the petition, is likely to be organized by a particular political party, and not by the Chief Secretary, State of Gujarat, New Sachivalaya, Gandhinagar (Gujarat States), figuring as the sole respondent. The Court cannot intermeddle with the affairs of any political party. Indeed, it has no jurisdiction to do so. In the opinion of the Court, the petitioner, who is not a greenhorn Lawyer, is a knight-errant roaming in pursuit of publicity, and has grossly abused judicial process by invoking the jurisdiction of this Court through instant petition under Art. 226 of the Constitution of India in the name of “Public Interest Litigation’. It is the duty of the Court to stop influx of such unworthy petitions. Thus, the petitioner, who has indulged in an unbecoming conduct of abusing the judicial process, must be saddled with costs.

For what has been said above, the petition was dismissed with costs, quantified at Rs. 1.000/- (Rupees One Thousand only), which shall be deposited by the petitioner with the State of Gujarat, within a period of one month.¹⁹⁸

17. Representative action.—Permissible, in civil dispute including property dispute. PIL can be filed as representative action on behalf of numerous persons having same interest against State and public authorities. Estoppel against tenant/licensee. Plea relating to cannot be raised in PIL. Can only be raised and decided in any suit or proceeding by or against tenant or licensee of a property.¹⁹⁹

18. The Courts and theories of Democracy, Citizenship, & Good Governance.—Dawn Oliver in constitutional Reform in the UK under the heading “The Courts and Theories of Democracy, Citizenship and Good Governance’ at page 105 states:

“However, this concept of democracy as rights-based with limited governmental power and in particular of the role of the Courts in a democracy, carries high risks for the judges—and for the public Courts may interfere in advisedly in public administration. The case of *Bromley London Borough Council v. Greater London Council*,²⁰⁰ is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public administration—hence Jowell’s point that the Courts should not step beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of Laws LJ in *InternationalTransport Roth GmbH v. Secretary of State for the*

198. *K. D. Panchai v. Chief Secretary, State of Gujarat*, AIR 2003 Guj 43 at 44; 2003 (2) GCD 1070; 2002 (3) Guj LH 597.

199. *Association of the Residents of Mhow v. Union of India*. AIR 2010 MP 40.

200. 1983 1 AC 768, (HL).

Home Department, ([2002] EWCA Civ. 158, [2002] 3 WLR 344) and of *Lord Nimmo Smith in Adams v. Lord Advocate* (Court of session, Times, 8 August 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the Courts step outside the area of their institutional competence. Government may react by getting parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would under-mine the rule of law. Government and public opinion may come to question the legitimacy of the Judges exercising judicial review against Ministers and thus undermine the authority of the Courts and the rule of law.”²⁰¹

19. Limitations on PIL.—While entertaining a public interest litigation of this nature several aspects of public interest being involved, the Court should find out as to how greater public interest should be sub-served and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) consideration of ecology; (b) interest of workers (c) interest of public sector institution, other financial institutions, priority claimed due to workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (f) the interest of a sick and closed industry and (g) schemes framed by BIFR for revival of the company. The courts in doing so would have to take into consideration a large number of factors, some of which may be found to be competing with each other. It may not be proper to give undue importance to one at the cost of the other which may ultimately be found to be vital and give effect to the intent and purport for which the legislation was made. Scope of Public Interest Litigations in view of several decisions of the Court has its own limitations.

Public Interest litigations, thus, have been entertained more frequently where a question of violation of the provisions of the statutes governing the environmental or ecology of the country has been brought to its notice as here in the matter of depletion of forest areas and/or when the executive while exercising its administrative functions or making subordinate legislations has interfered with the ecological balance with impunity. The High Court of Bombay, therefore, cannot be faulted with for entertaining the writ petition as public interest litigation.²⁰²

20. Court-fees on PIL are payable.—Court-fees are payable on a PIL filed as a writ petition under Article 226 of the Constitution, except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that it is a fit case for registering a case under Article 226 of the Constitution even though no court-fee is paid on such letter or document.

21. PIL-Can be entertained on basis of newspaper information.—Normally, a PIL cannot be entertained solely on the basis of information published in the newspapers but if the Chief Justice or a Judge designate finds that a particular information published in the Newspapers reveals gross violation of a fundamental right guaranteed under Part-III of the Constitution of a person who does not have ready access to the Court for some incapacity or the other, particularly the right to life and liberty granted under Article 21 of the Constitution, and the Chief Justice or a Judge designate has reason to believe the

201. See AIR 2003 SC 4536 at 4547.

202. *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group & Others*, AIR 2006 SC 1489.

information to be true, a PIL can be entertained only on the basis of such information published in the newspapers.

22. Legitimate Expectations.—A case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who based his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which was empowered to take the decisions under law and the Court was expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature was presumed to have intended. Even in a case where the decision was left entirely to the discretion of the deciding authority without any such legal bounds and if the decision was taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief was very much limited.²⁰³

23. CBI investigation is no ground for converting a case into PIL.—Counsel for the petitioner stated that there is, *inter alia*, a prayer for investigation by CBI and, therefore, it was in the nature of Public Interest Litigation. The Court found no substance in this plea because by merely incorporating a prayer for investigation by CBI, a purely personal litigation or a contractual litigation cannot be made a PIL.²⁰⁴

24. Guidelines for PIL.—Unfortunately, of late, it has been noticed that such an important jurisdiction, which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petition with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged.

The Supreme Court broadly tried to curtail the frivolous public interest litigation petitions by two methods - one monetary and second, non-monetary. The first category of cases is that where the court on filing frivolous public interest litigation petitions.

In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

- (1) The court must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

203. Sethi Auto Service Station & Anr. v. Delhi Development Authority & Ors., AIR 2009 SC 904.

204. Dr Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board, AIR 2001 Del. 223 at 226, 227; 2000 (87) Del. LT 187.

- (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Court who have not yet framed the rules, should frame the rules within three months. The registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.
- (3) The Courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.
- (4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
- (5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
- (6) The court should ensure that the petition which involves large public interest, gravity and urgency must be given priority over other petitions.
- (7) The Court before entertaining the PIL Should ensures that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.²⁰⁵

25. International scenario.—In Australia, Public Interest Litigation has been a method of protecting the environment. The courts have not given a definition of ‘Public Interest Litigation’, but in *Oshlack v Richmond River Council* (1998) 193 CLR 72: (1998) 152 ALR 83, the High Court Australia (apex court) upheld the concept and pointed out the essential requirements. Me Hugh J., quoted Stein J., from the lower court:

“In summary I find the litigation to be properly characterized as public interest litigation. The basis of the challenge was arguable, raising serious and significant issues resulting in important interpretation of new provisions relating to the protection of endangered fauna. The application concerned a publicly notorious site amidst continuing controversy. Mr. Oshlack had nothing to gain from the litigation other than the worthy motive of seeking to uphold environmental law and the preservation of endangered fauna.

To the court it was important that petitioner did not have any other motive than the stated one of protecting the environment. The test therefore in Australia seems to be that the petitioner when filing a public interest litigation, should not stand in some way. The US Supreme Court realized the constitutional obligation of reaching to all segments of society particularly the black Americans of African origin. The courts craftsmanship and innovation is reflected in one of the most celebrated path-breaking judgment of the US Supreme Court in *Oliver Brown v. Board of Education of Topeka*.²⁰⁶ Perhaps, it would

205. *State of Uttaranchal v. Balwant Singh Chauhsil & Others*, 2010(3) SCC 402 (SC): 2010(1)RCR (Civil) 875.

206. 347 U.S. 483,489-493 (1954).

accomplish the constitutional obligation. In this case, the courts have carried out their own investigation and in the judgment it is observed that “Armed with our own investigation” the courts held that all Americans including Americans of African origin can study in all public educational institutions. This was the most significant development in history of American judiciary. The US Supreme Court dismissed the traditional rule of Standing in *Association of Data processing Service Organization v. William B. Camp*.²⁰⁷ The court observed that a plaintiff may be granted standing whenever he/she suffers an “injury in fact” - “economic or otherwise”.

In another celebrated case *Olive B. Barrows v. Leola Jackson*,²⁰⁸ the Court observed as under:-

“But in the instant case, we are faced with a unique situation in which is the action of the state court which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court. Under the peculiar circumstances of this case, we believe the reasons which under underlie our rule denying standing to raise another’s rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained.”

The use of the PIL in England has been comparably limited. The limited development in PIL has occurred through broadening the rules of standing

In *Re. Reed, Bowen & Co.* (1887) 19 QBD 174 to facilitate vindication of public interest, the English judiciary prescribed broad rules of standing. Under the traditional rule of standing, judicial redress was only available to a ‘person aggrieved’ - one “ who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. “ However, the traditional rule no longer governs standing in the English Courts.

The *Blackburn Cases* broadened the rule of standing in action seeking remedy through prerogative writs brought by individuals against public officials for breach of private right, (e.g., mandamus, prohibition and certiorari). Under the *Blackburn* standard, “any person who was adversely affected” by the action of a government official in making a mistaken policy decision was eligible to be granted standing before the Court for seeking remedy through prerogative writs—*Regina v. Commissioner of police of the Metropolis, Ex parte Blackburn*.²⁰⁹

In *Blackburn I*, the Court of Appeal granted standing to *Blackburn* to seek a writ of mandamus to compel the Police Commissioner to enforce a betting and gambling statute against gambling clubs. The English judiciary was hesitant in applying this broadened rule of standing to action seeking remedy through relator claims - Relator claims are remedies brought by the Attorney General to remedy a breach of a public right, (e.g., declaration and injunction). Initially, Lord Denning extended the broadened rule of standing in actions seeking remedy through prerogative writs to actions seeking remedy through relator claims. In *Attorney General Ex rel McWhirter v. Independent*

207. 397 U.S 150(1970).

208. 346 U.S. 249 (1953), 73 S.Ct. 1031

209. (1968) 2-W.L.R 893 (“*Blackburn I*”)

Broadcasting Authority,²¹⁰ the Court stipulated that, “in the last resort, if the Attorney-General refuses leave in proper case, or improperly or unreasonably delays in giving leave, on his machinery works too slowly, then a member of the public who has sufficient interest can himself apply to the court. “ This rule was promptly overturned by the House of Lords in *Gouriet v. union of Post office Workers*.²¹¹ In this case, the House of Lords held that in relator claims, the Attorney General holds absolute discretion in deciding whether to grant leave to a case. Thus, the English judiciary did not grant standing to an individual seeking remedy through relator claims.

In *Xinwa & Other v. Volkswagen of South Africa (PTY) Ltd.*²¹², the Court cemented the Twala principal that “form must give way to substance” in public interest litigation. The Court explained that “pleadings prepared by lay persons must be construed generously and in the light most favorable to the litigant. Lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case required of lawyers. In construing such pleadings, regard must be had In construing such pleadings, regard must be had to the purpose of the pleading as gathered not only from the content of the pleading but also from the context in which the pleading is prepared.”

The development of public interest litigation in India has had an impact on the judicial systems of neighboring countries like Bangladesh, Sri Lanka, Nepal and Pakistan and other countries. By a recent path-braking historical judgment of the Pakistan Supreme Court at Islamabad dated 31st July, 2009 delivered in public interest litigation bearing Constitution petition No. 9 of 2009 filed by Nadeem Ahmed Advocate, both petition filed against Federation of Pakistan through Secretary, Ministry of Law and justice, Islamabad & Others, the entire superior judiciary which was sacked by the previous political regime has now been restored.

Another path breaking judgment delivered very recently on 16th December, 2009 by all the 17 judges of the Pakistan Supreme Court in Constitution petition Nos. 76 to 80 of 2007 and 59 of 2009 and another Civil Appeal No. 1094 of 2009 also has far-reaching implications.

In this judgment, the National reconciliation (No. XV) 2007 came under challenge by which amendments were made in the Criminal Procedure Code, 1898 and the Representation of the people Act, 1976 and the National Accountability Ordinance of 1999. The National Accountability Ordinance, 1999 (for short, NAO) was designed to give immunity of the consequences of the offences committed by the constitutional authorities and other authorities in power and (NRO) was declared void *ab initio* being *ultra vires* and violative of Constitutional provisions including 4, 8, 25, 62(f), 63(i)(p), 89, 175 and 227 of the Constitution. This judgment was also delivered largely in public interest.

There has been great impact of public Interest Litigation on other countries. In *Bulankulama and six others v. Secretary, Ministry of Industrial Development and seven others (Eppawala case)*, the Supreme Court Of Sri Lanka gave significant direction in public interest litigation. In the said case, Mineral Investment Agreement was entered between the Government and the private company for rapid exploitation of rock phosphate reserves at Eppawala in Sri Lanka’s agriculture rich North Central province

210. (1973) QB 629

211. (1978) A.C.435.

212. 2003(4) SA 390 (CC), P. 8

high intensity mining operation plus establishment of a processing plant on Trincomalee coast was set up which would produce phosphoric and sulphuric acid. Six residents of the area of whose agricultural lands stood to be affected filed a petition before the court in public interest. It was stated in the petition that the project was not for a public purpose but for the benefit of a private company and would not bring substantial economic benefit to Sri Lanka. The petitioners claimed imminent infringement of their fundamental rights under various provisions of the Constitution. The court invoked the public trust theory as applied in the United States and in our country in the case of *M.C Mehta v. Kamal Nath*, (1997) 1 SCC 388. The court upheld the petitioners' fundamental rights. The respondents were restrained from entering into any contract relating to the Eppawala phosphate deposit. The court allowed the petition and the respondents were directed to give costs to the petitioners. The Supreme Court of Sri Lanka protected environmental degradation by giving important direction in this case.

A three-judge Bench of the Supreme Court of Nepal in *Surya Prasad Sharma Dhungle v. Godawari Marble Industries* in writ petition No. 35 of 1992 passed significant directions. It was alleged in the petition that Godawari Marble Industries have been causing serious environmental degradation to Godawari forest and its surrounding which is rich in natural grandeur and historical and religious enshrinement are being destroyed by the respondents. In the petition it was mentioned that the illegal activities of the respondent Godawari Marble Industries have caused a huge public losses.

The Supreme Court of Nepal gave significant directions to protect degradation of environment and ecology. The court adopted the concept of sustainable development. The Indian courts may have taken some- inspiration from the group or class interest litigation of the United States of America and other countries but the shape of the public interest litigation as we see now is predominantly indigenously developed jurisprudence.

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Chapter 2

Interpretation of statutes



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1. Determination of objects of statute.—The law is well-settled that it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law to determine the purpose or object of the legislation?

2. Public Interest.—This expression means act beneficial to general public, it means action necessarily taken for public purpose. Requirements of public interest vary from case to case.¹²

3. Amending Provisions.—An amending provision can certainly give guidance to interpretation of the existing provisions.³

It is well settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory. Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.⁴

1. Ballarpur Industries Ltd. v. Union of India, AIR 1997 Del 1 at 9.
2. Babu Ram Verma v. State of U.P., 1971 All LJ 653; (1971) 2 Lab LJ 235.
3. V.M. Salgaocar & Bros. v. CIT, AIR 2000 SC 1623 at 1632.
4. M/s Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi, 2007 (3) JT 125; (2007) 289 ITR 83; (2007) 207 CTR 733; 2007 (5) SCJ 37; (2007) 199 Taxman 423.

4. Binding Nature of decision.—It is well-known that a decision is an authority for what it decided and not what can logically be deducted therefrom. It is also well-known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process.⁵

In the present case, it is only in the Notes on Clauses relating to 2002 amendment that it has been stated that the said amendment is clarificatory. There is no such mention of the said amendment being clarificatory, anywhere in the statute itself. Such a statement in the Notes on Clauses cannot possibly bind the Court when even a statement in the statute itself is not regarded as binding or conclusive. In the present case, the statute expressly states that the amendment would take effect only from 1.4.2003. Consequently, this amendment cannot possibly be applied to or in respect of any period prior to 1.4.2003.⁶

5. Conflict between two similar statutes.—If there is conflict between the provisions of the similar statutes, the provisions of the subsequent enactment will ordinarily prevail over the earlier enactment.⁷

6. Construction of statute.—The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.⁸

It is well-known rule of interpretation of statutes that the test and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.⁹

Two principles of construction—one relating to *casus omissus* and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature.¹⁰

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5. *Jaya Sen v. Sujit Kumar Sarkar*, AIR 1998 Cal 288 at 292.

6. *M/s Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi*, 2007 (1) Supreme 978; 2007 (3) JT 125; (2007)289 ITR 83; (2007) 207 CTR 733; (2007) 159 Taxman 155; 2007 (5) SCJ 37; (2007) 199 Taxman 423.

7. *Titus Denial v. South Indian Parenterals Pvt. Ltd.*, AIR 1998 Ker 205 at 210.

8. *Bhagwan Singh v. State of Bihar*, AIR 1998 SC 119 at 121.

9. *S. Gopal Reddy v. State of A.P.*, AIR 1996 SC 2184 at 2188.

10. *Padmasundra Rao v. State of Tamil Nadu*, AIR 2002 SC 1334 at 1340.

construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.¹¹

If any statute provides a particular thing to be taken in a particular manner, it is to be done in that manner, alone, or not at all, and if it is not done in accordance with the provisions of statute, the action taken, or order passed is vitiated and it becomes unsustainable.^{11 12}

While interpreting a statute the plain meaning of the word has to be followed, particularly when there is no ambiguity in interpreting the same.¹³

It not only overrides the provision of the Act but also overrides the provision of any other for the time in force. Such a *non-obstante* clause must be given its full effect.¹⁴

It is settled law that while interpreting the statute or document, nothing can be added or subtracted.¹⁵

Once it is clear that the provision itself is clear in its meaning, it is not permissible to read something in the provision by interpreting the same by referring to the provision in some other Act. While construing the provisions in a statute, it cannot be forgotten that it is essential for the Court to give full effect to the natural meaning of the words used in the statute when the words are clear and unambiguous.¹⁶

While interpreting a provision of the statute, it should not be construed to render that provision almost meaningless or by not giving significant meaning to the words staring at the face providing for consequences of non-compliance.¹⁷

It is well-settled proposition of law that although a preamble of a statute is key to interpretation of the provisions of the Act, but the intention of legislature is not necessarily to be gathered from the preamble taken by itself, but to be gathered from the provisions of the Act, where the language of the Act is clear, the preamble cannot be a guide, but where the object or meaning of the provisions of the Act is not clear then an aid from the preamble can be taken into consideration for the purpose of explaining the provisions of the Act.¹⁸

While construing a legislation, the heading of the section may also be referred to if any doubt arises as regards the nature of such enactments.¹⁹

While construing a legislation like the present Act and the notification issued there under a literal construction should be placed on the provision so that the purpose of the legislation may be allowed to be achieved rather than frustrated and stultified.²⁰

11. W.T. Commr., Ahmedabad v. Ellis Bridge Gymkhana, AIR 1998 SC 120 at 12.
12. S.K. Srivastava v. Deputy Registrar, AIR 1998 All 101 at 106.
13. National Insurance Co. Ltd. v. Shindar Kaur, AIR 1998 P&H 184 at 187(DB).
14. Swapan Kumar Adhariya v. Subhash Chandra, AIR 1998 Cal 271 at 272.
15. Prem Narain Sharma v. State Transport Appellate Tribunal, AIR 1998 MP 229 at 231.
16. Sushma Rani Jhanjee v. Margao Municipal Corporation, AIR 1999 Bom 296 at 300: (1999)4 Bom CR 518: (1999)3 56.
17. R.S.R.T.C.V. State Transport Appellate Tribunal, AIR 1999 Raj 111 at 116: (1999)3 Cur CC 353: (1999)1 Raj LW91: (1999)1 Raj LR218: (1999)1 WLC619.
18. Ramashraya v. District Panchayat Raj Officer, AIR 1998 All 87 at 91.
19. W.B. Council of Higher Secondary Education v. Subhadrata Dutta, AIR 1999 Cal 296 at 299.
20. Ballarpur Industries Ltd. v. Union of India, AIR 1997 Del 1 at 10.

There is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used. If the language is clear and explicit, the Court must give effect to it, for the case the words of statute speak the intention of the legislature.²¹

Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of the protection for the parties sought to be helped by the Legislation, should be preferred to any literal, pedantic, legalistic or technically correct alternative.²²

It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provisions so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them.²³

True, the legislature in its wisdom can legislate a law prospectively as well as retrospectively. However, it is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation.²⁴

If the enactment is expressed in language which is fairly capable of either interpretation, is sought to be construed, as perspective only.²⁵

Provisions of the Act must be construed to achieve the objective of the Act.²⁶

It is the bounden duty and obligation of the Court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated.²⁷

7. Construction of judgment.—It is well-settled rule of construction that a judgment must be read as a whole and observations from the judgment should be considered in the light of questions, which were before the Court.²⁸

8. Statement of Object and Reasons.—It is a cardinal rule of interpretation that objects and reasons of a statute is to be looked into as an extrinsic aid to find out legislative intent only when the meaning of the statute by its ordinary language is obscure or ambiguous. But if the words used in a statute are clear and unambiguous then the statute

21. Ashwani Kumar v. J. & K. Special Tribunal, AIR 1997 & K 20 at 22.

22. Santi Swarup Sarkar v. Pradip Kumar Sarkar, AIR 1997 Cal 197 at 201.

23. J. Singh v. Lt. Governor, Delhi, AIR 1997 SC 2239. at 2242.

24. Sarat Chandra Nanda v. Union of India, AIR 1997 MP 70 at 73.

25. M.P. State Road Transport Corporation v. The State Transport Appellate Tribunal, AIR 1993 MP 15.

26. Regional Executive Kerala Fishermens B. Welfare v. M/s. Fancy Food, AIR 1995 SC 1620.

27. Commissioner of Income Tax, Kerala v. M/s Tara Agencies, 2007 (5) Supreme 480; 2007 (9) JT 65; (2007) 292 ITR 444; (2007) 210 CTR 454; (2007) 162 Taxman 337; (2007) 214 ELT 491; (2007) 6 SCC 429; 2007 Tax LR 727.

28. Sathruppa Naicker v. Ramasamy, AIR 1996 Mad 290 at 292.

itself declares the intention of the legislature, in such cases it would not be permissible for a Court to interpret the statute by examining the object and reasons for the statute question.²⁹

9. Amending Act.—An amendment Act must be read as if the words of amendment had been written into the Act except where that would lead to an inconsistency.³⁰

10. Clear-cut provision in Central Statute.—A clear-cut provision in Central Statute provision unless there is an express provision in that regard.³¹

11. Deeming provision.—A deeming provision is made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail but in each case it would be a question as to with what object the legislature has made such a deeming provision. Whenever the word 'deemed' is used in a statute in relation to a person or thing, it implies that the legislature, after due consideration, exercised its judgment in conferring that statute or attribute to a person or thing. Where a thing is to be deemed something else, it is to be treated as that something else with the attendant consequences, but it is not that something else.³²

12. Definition clause.—While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.³³

The legislature has power to define the words even artificially. So the definition of a word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word was defined to "mean" such and such, the definition was *prima facie* restrictive and extensive; whereas, where the word defined was declared to "include" such and such, the definition was *prima facie* extensive.³⁴

13. Ejusdem generis rule.—To invoke the application of *ejusdem generis* rule there must be distinct genus or category. The specific words must apply not to different objects of the widely different character but to something which can be called a class or kind of object, where this is lacking the rule will not apply and mention of single species will not constitute genus.³⁵

14. Enactment and commencement of an Act.—The commencement of an Act was at times controlled by the provisions of the Act itself. Sometimes an Act commences as soon as it receives the assent of the President of India but sometimes the commencement

29. S.S. Bola v. B.D. Sardana, AIR 1997 SC 3126 at 3208, See also Aswini Kumar Ghosh v. Arabinda Bose, AIR 1952 SC 369.

30. Yadlapati Venkateswarlu v. State of A.P., AIR 1991 SC 704 at 709.

31. State v. Bank of Baroda, AIR 1997 Guj 130 at 131.

32. Manindra Kumar Ray v. B.D.A., AIR 1998 Ori 141 at 142; UCO Bank v. Rajender Lal Capoor, AIR 2008 SC 1831.

33. K.V. Muthu v. Angamuthu Ammal, AIR 1997 SC 628 at 631; Raman Lal Bhai Lal Patel v. State of Gujarat, AIR 2008 SC 1246; Hamdard Waqf Laboratories v. Deputy Labour Commissioner, AIR 2008 SC 968.

34. Balkrishnan v. Mohsin Bhai, AIR 1999 M.P. 86 at 89; (1999)2 MPLJ 31; (1999)1 Jab LJ 399 (MP).

35. M. Kumar v. Bharat Earth Movers Ltd., AIR 1999 Kant 343 at 361; (1999)5 Kant LJ 193.

of the Act was deferred to a future date depending on the provisions of the Act which empower a delegated authority to bring the Act into operation on a future date, may be in parts or may be the whole of the Act in one so. Sometimes it provides that the different dates may be appointed for commencement of different provisions for different areas within a state.³⁶

15. Explanation.—It is well-settled that Explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up.³⁷

The scope of an explanation to the main provision of law is very much limited and at any rate the explanation does not take place of the substantive law.³⁸

16. Fiscal Statute.—It is settled position of law that exemption notification particularly in fiscal matters has to be strictly construed and the person claiming its benefit is obliged to satisfy the Court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts.³⁹

17. Harmonious construction.—Interpretation of a provision depends on the text and the context which it is used, normal rule is to read the words of a statute in ordinary sense, in case of ambiguity, rational meaning has to be given whereas in case of apparent conflict, harmonious meaning to advance its object and intention of legislature has to be given.⁴⁰

Different provisions contained in different Chapters of the Act must, as far as possible, receive harmonious construction. With a view to give harmonious construction, the effect of an exemption clause must be borne in mind. It has not been denied or disputed that keeping in view the different clauses contained in Section 52 of the Act, public trusts which had vested in the State would come within the purview of the Chapter X. Once it is held that all those trusts would also go out of the statute, the provisions of Chapter X would become otiose in a large number of cases. Application of such principle of interpretation is not permissible.⁴¹

Senior counsel for the appellants has strenuously used before us that when there is general rule which lays down that if persons mentioned in Rule 43B (1) are not available then reading along with Note (2) appended to Rule 43B, appointment can be made from open market. Counsel submitted that general provisions would prevail over the particular rule. Court considered the submission of counsel but Court regret to say that this submission is not sustainable. The maxim, general principle of "*Generalia specialibus non derogant*" means, particular provision will override the general provision. In the present case, appointment of a teacher in language is a special provision in Rule 43 B and the Rule 43 deals with appointment of teacher other than language teacher. In fact, language teacher is a specific category. Rule 1 empowers Manager of private school to make appointment of teachers who possess requisite qualification. Note 1 is enabling

36. Ghulam Mohsin Jafri v. State of Bihar, AIR 1999 Pat 115 at 120: (1999)1 Pat LJR 907: (1999)2 BLJR 842: (1999)2 BLJ 777.

37. Universal IMP (USSR) Electrical Ltd. v. Shiv Bihari, AIR 1997 MP 115 at 123.

38. Jiwan Nath v. State of Maharashtra, AIR 1991 Bom 196 at 198.

39. Grasim Industries Ltd. v. State of M.P., AIR 2000 SC 66 at 67.

40. Prakash v. Phulavati (SC), 2016(2) SCC 36 : AIR 2016 SC 769 : 2015(11) Scale 643 : AIR 2015 SCW 6160 relied on 2001(7) SCC 358.

41. Deewan Singh & Ors. v. Rajendra Pd. Ardevi & Ors., 2007 (1) Supreme 52: 2007 (1) UJ (SC) 108: 2007 (1) JT 223: AIR 2007 SC 767: 2007 (1) Scale 32.

provision. If the note had not been there, then perhaps the argument of counsel would have been accepted. But the note which was specifically inserted with the avowed purpose to make non-teaching staff eligible for appointment, in case persons for promotion are not available and if they possess necessary qualifications required for the post then such members of the non-teaching staff can be considered. Thus, Note:- 1 contemplates a particular contingency that in the event the persons are not available by way of promotion, under Rule 43B or under Rule 43, then in that case, such class of persons can be considered for appointment provided they fulfil the requisite qualifications. But so long as the categories of persons mentioned in Rule 43B are available, then there is no necessity for the Manager of the Private School to go in for appointment by other method under the Rules. In fact, learned Division Bench has quoted the object for insertion of this rule which makes it abundantly clear that in order to achieve the above purpose, this Note (1) was added by notification dated 19-10-1982. The purpose reads as under.

“Since there is no avenues for promotions of non-teaching staff Government have decided to make provisions for promotion of qualified non-teaching staff to the post of Clerk and teachers. The amendment is intended to achieve this object.”

Therefore, the intention of the rule framing authority can be brought forth by reading these two provisions harmoniously. The settled principle of interpretation of statute is that if two rules can be read harmoniously and the object sought to be achieved can be achieved without violation to any rule then it should be so read. Secondly, it may also be relevant to mention that the Note (1) to Rule 1 was inserted in 1982 subsequently knowing fully well that Rule 43B starts with non-obstante clause. Therefore, the note which is subsequent to the Rules of 1959 can be read harmoniously without doing any violence to Rule 43 B.

Our attention was invited to a decision of this Court in *S. Prakash & Anr. v. K. M. Kurian & Ors.*,⁴² their Lordships have very clearly held that if language of general provision is clear and unqualified, it prevails over special provision, and special provision must give way to general provision if legislative intent was to establish a rule of universal application. Their Lordships have further held by referring to an earlier decision of this Court in *Ajoy Kumar Banerjee & Ors. v. Union of India & Ors.*⁴³ as follows:

“The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.”

But so far as the present case is concerned, there is no such conflict with regard the aforesaid matter. In fact situation in the present case is contrary *i.e.*, the particular law has followed the general law. The general law was to fill up the post as mentioned in Rule 43B and in case if for any reason, any person is not available in the said category

42.. (1999)5 SCC 624.

43. (1983)3 SCC 127.

mentioned in Rule 43B, then persons belonging to the non-teaching category could be considered provided they possess necessary qualification.⁴⁴

18. Illustrations to a section.—An illustration to a section of a statute or to a rule cannot limit the operation of the rule. It is impossible to give illustrations to meet circumstances and the only object of an illustration is to make the rule more easily intelligible.⁴⁵

It may be remembered that illustrations to the section are parts of the section and help to elucidate the principle of the section.⁴⁶

19. Intention of Legislature—The primary and foremost task of a Court in interpreting a statute, is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute.⁴⁷

It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the one which would be consistent with the smooth working of the system which the statute purported to be regulating should be chosen and the court should not adopt the construction which would lead to an absurdity or obvious injustice or which will introduce uncertainty, friction or confusion with the working of the system.⁴⁸

It was argued before us on behalf of the appellant that Sections 391 to 394A were procedural provisions and when once a company was under liquidation, the Chapter dealing with winding up applied and the only provision or substantive provision conferring power of stopping the winding up was conferred on the court by Section 466 of the Act, and unless the court is satisfied that the Company is being taken out of liquidation by way of revival and that it will sub-serve public interest and will conform to commercial morality, the court cannot accept a scheme proposed under Section 391 of the Act. The argument on the side of the respondent is that Section 391 is a self-contained code and read with Section 392 of the Act, which was peculiar to our Act, it was clear that a Company Court could approve, independently of Section 466 of the Act, a scheme and could take the company out of liquidation and even pass an order of stay in terms of Section 391 read with Section 392 of the Act. Section 466 of the Act was not attracted

44. P. Raghava Iturup & Anr. v. Ananthakumari & Ors. 2007 (2) Supreme 503: 2007 (3) JT 622: 2007(2) SLR 740: (2007) 113 FLR 652: (2007) 2 SCC (L&S) 372: 2007 (6) SCJ 321.

45. Kesvanand Srivastava v. State, AIR 1952 All 122.

46. Mahesh Chand Sharma v. Raj Kumar Sharma, AIR 1996 SC 869 at 877.

47. Manubhai F. Patel v. State of Gujarat, AIR 2000 Guj. 170 at 175.

48. M/s Gimar Traders v. State of Maharastra & Ors., 2007 (6) Supreme 25: 2007 (3) Cur. CC 337: (2007) 7 SCC 555: AIR 2007 SC 3180: 2007 AIR SCW 5782: 2007 (10) Scale 391.

when a scheme approved by the shareholders, creditors, members of the Company and so on was put forward before the Company Court.⁴⁹

20. Legislation by incorporation and adaptation of existing Laws.—There is a vital difference between legislation by incorporation, and adaptation of existing law to operate in the given territory subject to adaptations made by the legislature adapting the same to operate within the territorial region of its operative field. In the former it is a case of enactment afresh to cover the field so far uncovered by the legislative field open for the legislature, by bodily lifting the provision of another statute by incorporating words by word as a part of enactment being made, resulting in repeal of all previous laws operating in the field. In case of adaptation, what is enacted is the adaptation of provisions as implemented to continue to operate within the occupied held, except to the extent adaptation made. In other words, adaptation in method of legislation by which law in operation is adapted for continued operation as it is, subject to the provisions made afresh in the adapting enactment. In such event, it stands to reason that subordinate legislation which is operative law, remains in continued operation, unless independent or contrary provisions are made in adapting statute" ⁵⁰

21. Legal documents—Construction of.—While constructing legal documents substance and not forms of document should be considered.⁵¹

22. Liberal construction of statute.—There must be a liberal interpretation in favour of the persons for whose benefits the particular provisions have been enacted.⁵²

Held: It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service; but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, should be construed liberally.⁵³

23. Interpretation of Statute.—Exemption Notification must be construed liberally.⁵⁴

24. Mandatory or directory provisions.—In construing Acts of public utility, words which may otherwise be considered permissive are really mandatory. The permissive form is a mere courteous contention. The Act really imposes a duty on the

49. *M/s Meghal Homes Pvt. Ltd. v. Shree Niwas Gimi K. K. Samiti & Ors.* 2007 (6) Supreme 387; 2007 (1) UJ (SC) 1036; 2007 (10) JT 389; (2007) 139 Comp. Cas. 418; (2007) 80 CLA 304; (2007) 7 SCC 753; AIR 2007 SC 3079; 2007 (4) BC 491; (2007) 10 Scale 298.

50. *State of Rajasthan v. Bhilwara Spinners Ltd.* AIR 2001 Raj 184 at 203.

51. *State of UP. v. Pradhan Sangh Kshetra Samiti*, AIR 1995 SC 1512.

52. *Nathu v. Amar Nath Agrawal*, AIR 1995 All 420; *Manipal Academy of Higher Education v. Provident Fund Commissioner*, AIR 2008 SC 1951.

53. *Indian Bank & Anr. v. N. Venkatramani*, 2007 (6) Supreme 263; 2007 (10) JT 530; (2007) 115 FLR 190; 2007 (3) LLJ 829; 2007 (8) SCJ 72; AIR 2007 SC 3159; 2007 (10) Scale 475.

54. *State of Orissa v. M/s Tata Sponge Iron Ltd.*, 2007 (6) Supreme 380; 2007 (11) JT 390; (2007) 9 VST 415; (2007) 8 SCC 189; 2007 (2) UJ(SC) 1202.

executive and it is implied that public body will carry out the duties indicated by the legislature in order that the purpose of the legislature may not be frustrated. But the case is otherwise where a public body or officer is invested with authority to exercise a judicial discretion. The words “it shall be lawful” in such a case are not equivocal, but are plain and unambiguous. They merely make that legal and possible which there would otherwise be no right or authority to do; and according to their natural meaning they are permissive or enabling words only.⁵⁵

Held: The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensure or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

Several statutes confer power on authorities and officers to be exercised by them at their discretion. The power is in permissive language, such as, it may be lawful, it may be permissible, it may be open to do, etc.

In certain circumstances, however, such power is coupled with duty and must be exercised.⁵⁶

25. Marginal notes.—Marginal notes to the section can be referred to for the purpose of construing the provisions of the section.⁵⁷

26. A Method of Contemporanea Exposition.—Court in the case of *K. P. Varghese v. Income Tax Officer, Ernakulam*⁵⁸ while considering the binding nature of the circular issued by the Central Board of Direct Taxes on the department, has also observed that the Rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to exposition it has received from contemporary authorities, though it must give way where a language of the statute is plain and unambiguous. It is useful to refer to the observation made by the Court, which reads as under:

“These two circular of the Central Board of Direct Taxes are, as we shall presently point out, binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of *contemporanea expositio* furnishing legitimate and in the construction of sub-section (2). The rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction (1940 Edn.) where it is stated in paragraph 219 that-

55. *Lachmichand Sachanty v. Ram Pratap Choudhry*, AIR 1934 Pat 670: 152 Indian Cases 805: ILR 14 Patna 24.

56. *M/s Dhampur Sugar Mills Ltd. v. State of U. P. & Ors.*, 2007 (7) Supreme 132: 2007 (11) JT 293: (2007) 8 SCC 338: 2007 (2) UJ (SC) 1257.

57. *Salaam M. Barazier v. Mohd. Azgaruddin*, AIR 1995 AP 312.

58. 1981) 4 SCC 173

“administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considered weight; it is highly persuasive.”

The validity of this rule was also recognized in *Baleshwar Bagarti v. Bhagirathi Dass*⁵⁹ where Mookerjee, J. stated the rule in these terms:

It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, and this statement of the rule was quoted with approval by this Court in *Deshbandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd.* (1979) 4 SCC 565. It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provision of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessee and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section.”

The appeals of the appellants are devoid of any merit because of the following reasons:

1. In the impugned judgment, the Division Bench of the High Court was justified in observing that the parts of computer by employing legal fiction need to be treated as computer under Sr. No. 20(i) of the Part ‘C’ of the Second Schedule of the Act;

2. The computer itself is produced by assembling various parts or configuration. When the legislature intended to exempt the computer then by employing the legal fiction it would be appropriate to hold that parts of computer and its peripheral are also exempted from payment of tax;

3. The language employed in the exemption notifications and items in respect of which exemption was granted had to be understood in the context in which exemption notifications were issued;

4. The Rule of Construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authorities. When language of the statute is plain and unambiguous, the method of *contemporanea expositio* need not be employed;

5. It is well settled that even if it is assumed that the things are not made clear and explicit in the exemption notifications, it is proper and reasonable to place the construction which is beneficial to the assessee by exempting levy of tax on parts of computer and computer peripherals;

6. It is our duty and obligation to properly comprehend legislative intention while constructing the Statute. In the instant case, computer, computer peripherals, computer consumables, computer cleaning kit and computer software are exempted from the levy of tax. To reach the conclusion that the State intended only computer parts and computer peripherals for levy of tax would not be proper in this background; and

7. Plain construction of the statute leads to a clear conclusion that the legislature intended to exempt computer and parts of computer and computer peripherals from levy of turnover tax.⁶⁰

27. Meaning of provision.—If two meanings of a statute are possible, the Court is expected to choose the meaning of his accords with reason and Justice.⁶¹

28. —Plain, literal and grammatical meaning of words—Onus of showing that words do not mean what they say lies on party who alleges it. *State of Rajasthan v. Babu Ram*,⁶²

Held: Furthermore, it is not the law that the court, irrespective of the nature, purport and object of the statute, shall assign a meaning which was not intended to be given by the Legislature. Legal fiction created in terms of Sub-section (3) of Section 32 of the Act was only in regard to the receivability of instrument in evidence. The legal fiction for the aforementioned purpose is raised only to the extent that for the said purposes it shall be deemed to have been originally duly stamped, viz., the determination of chargeability of additional duty would be no significance if the additional duty determined by the Collector, if any, has been deposited.

Court, however, accepted that if the meaning of the provision of a statute is clear and explicit, it is not necessary to advert to the objects and reasons thereof in view of the decisions of this Court in *Aswini Kumar Ghose v. Arabinda Bose*⁶³ and *State of W. B. v. Union of India*,⁶⁴ as by taking recourse to the statements of Objects and Reasons, the generally of the words used in the statute cannot be cut down. It is axiomatic that an extended meaning thereof also cannot be given. If the contention of counsel is accepted, an extended meaning will have to be assigned to Sub-section (3) of Section 32 of the Act which is not contemplated under the statute.⁶⁵

29. Minority opinion.—In a situation where the majority of the Judges of the Supreme Court expressly chose not to examine a particular issue and decided the suit on certain other grounds, then the expression by the minority on such an issue has a binding force on the Courts in India.⁶⁶

30. Natural and Ordinary Meaning of Words. —It is well settled principle that the words of a Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or there is something in the context or in the object of the statute to suggest to the contrary. The true way is to take the words as the legislature have given them, and to take the meaning which the words given naturally imply, unless where the

60. *State of Karnataka & Ors. v. Balaji Computer & Ors.* 2007(2) Supreme 441: 2007(1) JT 250: (2007) 2 SCC 743.

61. *Mahesh Fabrics Pvt. Ltd. v. Nirma Corporation*, AIR 1996 Raj 111.

62. 2007 (5) Supreme 92: 2007 (8) JT 510: 2007 (3) Crimes 24: AIR 2007 SC 2018: 2007 (2) EFR 204: (2007) 6 SCC 55: (2007) 3 SCC (Cri.) 52: (2007) 8 SCC 382.

63. (1953 SCR 1)

64. (1964) 1 SCR 371

65. *Raymond Ltd. & Anr. v. State of Chhattisgarh & Ors.*, 2007 (2) Supreme 647: 2007 (3) JT 582: 2007 (1) UJ (SC) 0321: (2007) 3 SCC 79: AIR 2007 SC 2854: 2007 (3) Scale 341.

66. *Prem Prakash Gupta v. Union of India*, AIR 1977 All 482: 1976 All LR 435.

construction of those words is, either by the preamble or by the context of the words in question, controlled or altered. As is often said the golden rule is that the words of a statute must *prima facie* be given their ordinary meaning and natural and ordinary meaning of the words should not be departed from unless it can be shown that the legal context in which the words are used requires a different meaning.⁶⁷

31. *Non-obstante* clause.—The non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of the enactment.⁶⁸

It is well-settled principle of interpretation of statutes that a *non-obstante* clause is means to give an overriding effect to a provision and it must be so interpreted as to give full meaning to the intention of the legislature unless there are some exceptional reasons to restrict such an interpretation.⁶⁹

32. Penal statutes.—In the interpretation of a penal provision the well-settled rule is that the subject should be held to be free unless he can be found guilty according to the clear and unambiguous language of the statute.⁷⁰

If it recognised rule of construction of penal statutes that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of doubt should be given to the subject, and against the legislature which has failed to explain itself.^{71 72 73}

Held'. This Court as well as the various High Courts of the country have consistently held that the statute creating the penalty is the first and the last consideration and must be construed within the term and language of the particular statute. In *Bijaya Kumar Agarwala v. State of Orissa* it has been held by this Court in para 17 and 18 as under:—

“17. Strict construction is the general rule of penal statutes. Justice Mahajan in *Tolaram relumal v. State of Bombay*,⁷¹ stated the rule in the following words:

“(I) If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.”

18. The same principle was echoed in the Judgment of the five Judge Bench in the case of *Sanjay Dutt v. State* through C. B. I.,⁷⁴ which approved an earlier expression of the rule by us in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*,⁷⁵

67. *Guru Jambheshwar University, Hisar v. Dharam Pal*, 2007(1) Supreme 400: 2007(2) JT 418: 2007 LLR 297: (2007) 112 FLR 880: (2007) 2 SCC 265: 2007(2) SLR 475: AIR 2007 SC 1040: 2007(1) LLJ 1006: (2007) 1 SCC (L&S) 792: 2007(4) SCJ 570: 2007(2) Scale 340.

68. *Laxmi Narayan Saw Mill v. State of Orissa*, AIR 1995 Ori 114.

69. *Rev. T. Ananthan v. P.C. Benjamin*, AIR 1992 AP 93 at 96.

70. *Bansraj v. State*, AIR 1956 All 27 at 29 : 1955 All LJ 704.

71. *Diwan Singh v. Emperor*. AIR 1936 Nag 55.

72. 1996 (5) SCC 1.

73. AIR 1954 SC 496 at pages 498-499

74. 1994 (5) SCC 402.

“Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law.”

Keeping in view the rules of interpretation of criminal statute and the language and intent of the Order and the Act, we find ourselves in agreement with the view expressed by Ranganath Misra, J. as he then was, in *Prem Bahadur v. State of Orissa*,^{75 76}:

“The Orissa Order does not make possession without a licence an offence. Storage, however, has been made an offence. Between “possession” and “storage” some elements may be common and, therefore, it would be appropriate to say that in all instances of storage there would be possession. Yet, all possession may not amount to storage. “Storage” in the common parlance meaning connotes the concept of continued possession. There is an element of continuity of possession spread over some time and the concept is connected with the idea of a regular place of storage. Transshipment in a moving vehicle would not amount to storage within the meaning of the Orissa Order.”⁷⁷

Workability of a statute vis-a-vis the question as to whether it is vague or otherwise must also be considered having regard to the question as to whether it is at all practical.

Where two interpretation are possible, having regard to the workability or unworkability of a statute, the one which leads to the workability of the statute must be preferred than the other, keeping in view the principle ‘*uz rest magis vaieat quam pereat*’. [See *State of Tamil Nadu v. M. K. Kandaswami and Others* (1975) (4) SCC 745],

Court may, however, notice some precedents operating in the field: In *M. K. Kandaswami* (Supra), this Court observed:

“It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose, and in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation.” A penal statute must receive strict construction. Only in exceptional cases the principles of purposive construction shall apply to a penal statute.⁷⁸

A penal statute, in the event, the different meanings are possible to be given, must be construed liberally in favour of an accused.

While the Court shall give due weight to the need of the victim, it cannot ignore the right of an accused. In a case of conflict, construction which favours the accused shall prevail.⁷⁹

75. 1990 (4) SCC 76, at page 86 para 8.

76. 1978 Cri. LJ 683, at page 685, para 4

77. *M/s Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi*, 2007(3) JT 125: (2007) 207 CTR 733: (2007) 159 Taxman 155: 2007(5) SCJ 37: (2007) 199 Taxman 423.

78. *State of Kerala & Ors. v. Unni & Anr.*, 2007(1) Supreme 179: 2007(1) SCJ 116: (2007) 2 SCC 365: AIR 2007 SC 819: 2007 AIR SCW 531: 2006(13) Scale 208.

79. *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr.*, 2007(3) Supreme 379: 2007(6) JT 204: 2007(2) JCC 153(NI): (2007) 137 Comp. Cas. 1: 2007 (2) Bank J 250: 2007 Cri. LJ 2417: (2007) 6 SCC 528: (2007) 3 SCC (Cri.) 209: 2007(2) ISJ (Banking) 290.

33. Preamble.—It is established law that preamble discloses the primary intention of the statute but does not override the express provisions of the statute.⁸⁰

It is one of the cardinal principles of the statutory construction that where the language of an act is clear, the preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear the preamble may be resorted to explain it.⁸¹

34. Presumption as to constitutionality.—There is a presumption in favour of constitutionality of a legislation or statutory rule unless *ex facie* it violates the fundamental rights guaranteed under Part III of the Constitution. If the provisions of a law or the rule is construed in such a way as would make it consistent with the Constitution and another interpretation would render the provision or the rule unconstitutional, the Court would lean in favour of the former construction.⁸²

35. Previous legislation.—Where the language of a statute has received judicial interpretation and Parliament again employs the same language, there is a presumption that the language so employed by Parliament in the subsequent statute bears the sense that the judiciary has attributed it.⁸³

36. Procedural Law.—Interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding the justice is to be adopted. The procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.⁸⁴

37. Proviso.—Construction of proviso cannot be so interpreted to set at naught the main enactment. But the proviso has to be harmoniously interpreted. The main junction of proviso is to carve out an exception to main enactment.⁸⁵

It is well-settled rule of interpretation of statutes that a proviso to be a particular section should be read and construed in relation to the matters stated in the principal section to which the proviso is attached. It cannot have a different meaning altogether which the Legislature has not intended while interpreting the main section. The proviso should be limited to the subject-matter of the enacting clause in the statute.⁸⁶

A proviso to a section is not independent of the section calling for independent consideration or construction detached from the construction to be placed on the main section as it is merely subsidiary to the main section and is to be construed in the light of the section itself.⁸⁷

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision which it has been enacted by the proviso and to no other.

80. Competent Authority, Gujarat Housing Board v. Dhamji Vijendra Mehta, AIR 1997 Guj 106 at 112.

81. Rashtriya Mill Mazdoor Sangh v. N.T.C. (South Maharashtra) Ltd., AIR 1996 SC 710 at 713.

82. M.L. Kamra v. Chairman-cum-Managing Director, (1992) 1 Serv LR 421 at 425 (SC).

83. Kunwarlal Singh v. Provincial Govt., AIR 1944 Nag 201.

84. Shreenath v. Rajesh, AIR 1998 SC 1827 at 1828.

85. Krishna Chandra Mandal v. Smt. Mandri Devi, AIR 1996 Pat 169 : See also Karshi Pirozsha Bhatnagar v. State of Gujarat, 2007 Cri LJ 3958 : AIR 2008 NOC 138(Guj.)

86. Dileep T. Varghese v. State of Kerala, 1999 Cri LJ 4490 at (Ker).

87. Ambattu Gopalakrishnan v. Asstt. Registrar, AIR 1998 Ker. 63 at 67.

The proper function of a proviso is to accept and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case.⁸⁸

Held: When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso."

A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso.⁸⁹

38. Purposive interpretation.—The Courts must interpret the law as it reads. While two interpretations are possible, the purposive interpretation must be such as preserves the constitutionality of the provision.⁹⁰

39. Prohibition against slaughtering of cows.—Having specifically spoken of cows and calves the framers of the Constitution in the Article 48 chose not to catalogue the list of other milch and draught cattle and felt satisfied by employing a general expression "other milch and draught cattle" which in their opinion any reader of the Constitution would understand in the context of the previous words "cows and calves". "Milch and draught", the two words have been used as adjectives describing and determining the quality of the noun 'cattle'. The function of a descriptive or qualitative adjective is to describe shape, colour, size, nature, merits or demerits of the noun, which they precede and qualify. In a document like the Constitution, such an adjective cannot be said to have been employed by the framers of the Constitution for the purpose of describing only a passing feature, characteristic or quality of the cattle. The expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle which by their nature are not milch or draught and said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding "Cows or Calves". A species of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. On ceasing to be milch or draught it cannot be pulled out from the category of "Other milch and draught cattle" Any other meaning assigned to this expression is likely to result in absurdity. A milch cattle goes through a life cycle during sometime it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk for a short period as a part of its life cycle, it goes out of the purview of Article 48, and can be slaughtered, similar is the position as regards a draught

88. Manindra Kumar Ray v. Bhubaneshwar Development Authority, AIR 1998 Ori 141 at 142.

89. M/s Binani Industries Ltd., Kerala v. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Ors., 2007(3) Supreme 416; 2007(5) JT 311; (2007) 6 VST 783; 2007(1) UJ(SC) 515; 2007(5) SCJ 142.

90. Tejkumar Balakrishna Ruia v. A.K. Menon, AIR 1997 SC 442 at 445,

cattle, in light of this interpretation it has to be construed accordingly.

The facts stated in the preamble and the Statement of Objects and reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the Court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the preamble are taken to be correct and they justify the enactment of law for the purpose, sought to be achieved.^{91 92}

A statute is an edict of the legislature and the conventional way of interpreting or construing a Statute is to seek the intention of its maker. A statute is to be construed according to “to the intent of them that make it” and “the duty of judicature is to act upon the true intention of the legislature the *mens* or *sentential legis*”—Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on the information derived from past and present experience. When the purpose and object or the reason and spirit pervading through the statute is clear. Court has to adopt purposive approach in interpreting such a statute. ’

40. Redundant words in statute.—It is well-settled principles of interpretation that legislature does not use redundant words of a statute.⁹³

41. Repeal by subsequent enactment.—There is no doubt that a later statute may repeal an earlier one either expressly or by implication.⁹⁴

42. Repugnancy between Central and State amendment.—State amendment will not be enforceable if there is repugnancy between the two provisions.⁹⁵

43. Retrospectivity.—If two interpretations are possible with respect to the question of retrospectivity, the interpretation that the provision of prospectivity will be preferred.⁹⁶

The general legal principle in interpretation of statutes is that the general Act should lead to the special Act’. Upon this general principle of law, the intention of the U. P. legislature is clear, that the special enactment UP Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in co-operative societies and its machinery and provisions. The general Act the UPID Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the UPCS Act. This is also clear from necessary implication that the

91. State of Gujarat v. Mirzapur Moti Kyrwahu Kasab Jamat and others, AIR 2006 SC 212.

92. Hari Singh Nalwa v. Kartar Singh Bhadana, AIR 2001 P&H 86 at 98.

93. Awadh Kishore Singh v. Brij Bihari Singh, AIR 1993 Pat 122 (1993) 2 Pat LJ 1 (1993) 2 BLJR 1995: 1993 BBCJ317.

94. R.S. Raghunath v. State of Karnataka, AIR 1992 SC 81 at 90.

95. Cherutta Kunhambu v. Kunnathu Yesoda, AIR 2001 Ker 167 at 169.

96. Saffia Bee v. B. Sathar, AIR 2000 Mad. 167 at 173.

legislature could not have intended 'head-on-conflict and collision' between authorities under different Acts.⁹⁷

In the present case, Court found that for determining the nature of amendment, the question is whether it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment should be also one which would touch upon their substantive rights. Unless a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective. Insofar as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. In this regard that entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". It can be seen that the Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1992. However, the amendment itself was not brought into force immediately and in sub-section (1) of Section 1 of the Amending Act, it was provided that it would come into force on such day as the Central Government may by Notification in the official Gazettee, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. Although this Court has held that the amendment would be prospective if it is deemed to have come with effect on a particular day a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect.⁹⁸

44. Rule of literal interpretation.—The language is clear and explicit. In case the other meaning is sought to be given then one has to read something more in the section. The Court cannot add anything to the statute.⁹⁹

It is a well-settled principle of interpretation of a statute that where literal meaning leads to anomaly and absurdity, it should be avoided. [See *Raghunath Rai Bareja and Another v. Punjab National Bank and Others*, 2006 (13) Scale 511].

It is the duty of the court to accept a construction which promotes the object of a legislation.¹⁰⁰

Rule of interpretation of statutes are useful servants but difficult masters, object of interpretation is to discover the intention of legislature.¹⁰¹

Although golden rule of interpretation viz., literal rule should be given effect to, if it is to be held that the Devasthan Commissioner appointed under Section 7 of the Act would be an agency of the State, the same would lead to an absurdity or anomaly. It is a

97. *Ghaziabad Zila Sahkarai Bank Ltd. v. Addl. Labour Commissioner & Ors.*, 2007(2) Supreme 308; 2007(2) JT 566; (2007) 113 FLR 50; 2007(2) LLJ 239; (2007) 3 SCC 321.

98. *Mr. C. Gupta v. Glaxo Smithkline Pharmaceutical Limited*, 2007 (8) JT 480; 2007(4) SLR 745; (2007) 114 FLR 585; (2007) 3 LLJ 253; (2007) 7 SCC 171; (2007) 2 SCC (L&S) 605.

99. *Sunil Sardar v. State of West Bengal*, AIR 2001 Cal 72 at 75; *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, AIR 2008 SC 192; *Bihar State Council of Ayurvedic & Unani Medicine v. State of Bihar*, AIR 2008 SC 595.

100. *Sanjay Dutt v. State through CBI Bombay (II)*, (1994) 5 SCC 410; *Rosali V. v. Taico Bank & Ors.*, 2007(1) Supreme 599; 2007(2) JT 611; 2007(1) Cur. CC. 206; 2007(1) Land LR 601; AIR 2007 SC 998; 2007(4) SCJ 641; 2007 AIR SCW 779; 2007(2) Scale 301.

101. *Prakash v. Phulavati (SC)*, 2016(2) SCC 36 : AIR 2016 SC 769 : 2015(11) Scale 643 : AIR 2015 SCW 6160 relied on 2001(7) SCC 358.

well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided.¹⁰²

45. Special enactment.—According to the settled principles of interpretation, a special enactment would prevail over a general enactment if both operate technically in the same field.¹⁰³

The Court is required to give a literal meaning to the expression used by the Legislature, while interpreting the provisions of a statute. In terms of Form 1II-A, a trader would be exempted from payment of purchases tax only in the event the terms and conditions thereof are satisfied. Necessary condition for obtaining such exemption is that the assessee must sell the commodity it purchased in the same form and condition. The requirement of law, thus, is that goods once sold to a registered dealer must be sold in the same form and condition in which he had purchased. The sales made by the assessee of chassis with mounted body would be selling a product which is in different condition from the chassis or the body, and, thus, the same would be liable to purchase tax under sub-section (a) of Section 3-AAAA of the Act.¹⁰⁴

46. Statutory rules.—There can be no quarrel to the legal proposition that statutory rules have the force of law.¹⁰⁵

47. Substantive and procedural statutes.—A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature.¹⁰⁶¹⁰⁷

48. Validity of law or rule.—A statute or a rule usually should be most agreeable to convenience, reason and should do justice to all. If a rule leads to an absurdity or manifests injustice from any adherence to it, the Court can step in.¹⁰⁷

49. Question of law relating to interpretation of Article 295 of Constitution and provisions of the Cantonment Act.—Petition collectively filed contending that lands and bungalows under their occupation are not property of Union of India but property of State of Madhya Pradesh. Such collective or representative action is recognized as one kind of “public interest litigation” maintainable, particularly, when substantial questions of law relating to interpretation of Article 295 of Constitution and provisions of the Cantonment Act, 1924 have been raised which need to be decided by the High Court.¹⁰⁸

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102. Deewan Singh & Ors. v. Rajendra Pd. Ardevi & Ors., 2007(1) Supreme 52: 2007(1) UJ (SC) 108: 2007(1) JT 223: AIR 2007 SC 767: 2007 AIR SCW 461: 2007(1) Scale 32.

103. Rajkot Municipal Corporation v. State, AIR 1997 Guj 46 at 47; See also Suresh Nanda v. CBI, AIR 2008 SC 1414.

104. M/s Kumar Motors, Bareilly v. Commissioner of Sales Tax, U. P., Lucknow, 2007(2) Supreme 301: 2007(3) JT 193: (2007) 1 UJ (SC) 287: 2007(3) SCJ 664: (2004) 4 SCC 140.

105. R.S.R.T.C. v. State Transport Appellate Tribunal, AIR 1999 Raj. Ill at 115: (1999) 3 Cur CC 353: (1999) 1 Raj. IW91: (1991) 1 Raj LR218: (1999) 1 WLC619.

106. K.S. Paripuram v. State of Kerala, AIR 1995 SC 1012.

107. M/s. Kelvin Cinema v. State of Assam, AIR 1996 Gau. 103.

108. Association of the Residents of Mhow v. Union of India, AIR 2010 MP 40.

Chapter 3

Locus Standi



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1. Concept of Locus Standi.—The concept of *locus standi* has had a steady refinement by the law Courts over the years. With the changing structure of the society and complexities in life, there was as a matter of fact an ardent effort on the part of the judiciary to liberalise the concept of *locus standi*. On the wake of 21st Century, probably a rigid insistence on the strict rules of the concept of the *locus standi* cannot but be termed to be opposed to the present day concept of justice. Needless to record, however, that with the changing structure of the society, the concept of justice has also had a very-wide change. See 5.5. *Rao v. Union Govt, of India*, AIR 1999 A.P. 38: (1998) 6 An LD 349 : (1998) 6 An LT 121. The observations of the Supreme Court in the case of *S.P. Gupta v. Union of India*, AIR 1982 SC 149 : 1982 Lab IC 356 lend support to the view expressed above. Bhagwati, J. (as his Lordship then was) very succinctly observed (at page 189 : of AIR):

“Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty has no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the Country will also adopt this operative goal-oriented approach.”

Bhagwati. J., went on to observe :—

“If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty if no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting *bona fide* and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.”

Incidentally, the observations of the high powered committee constituted by the Government of India, which included two very distinguished Judges of the Supreme Court of India, viz., Justice P.N. Bhagwati and Justice V.R. Krishna Iyer ought also to be noted here. The Committee observed :—

“We have injustice, inherited and acquired..... The victims are large numbers of the community..... The Community suffers the hardships..... In our expensive Court system, it is impossible for the lower income groups and the poor to enforce rights..... The people of a village may be prevented from walking alone a public pathway by a feudal chief, Harijan workers may be denied fair wages, women workers as a class may be refused equal wages. Collective wrongs like this call for class action..... There may be representative suits necessary when one man's wrong is typical (of many like consumer interests). Each one being driven to Court on his separate cause of action is itself a public wrong..... The rule of *locus standi* requires to be broad-based and any organization (or individual) must be able to start such legal action..... Community proceedings, public interest litigation, class action and the like before Courts, tribunals and other authorities must be financed and/or undertaken by legal aid organizations and public interest lawyers. (Report on National Juridicare

(1977) Ministry of Law, Justice and Company Affairs, Government of India p 61)”

Public interest litigation constitutes in the present-day judicial system a significant step. While it is true this new concept has provided the law Courts with much greater responsibility for rendering the concept of justice available to the disadvantaged section of the society, but this new phenomenon has overloaded the law Courts rendering the ordinary litigants to wait for a further period of time. Law’s delay is not unknown, specially in the Indian sub-continent and this additional responsibility of the law Courts will render the burden more awesome. As such, in the fitness of things, the law Courts, though should normally entertain these litigations, but great care and caution ought to be exercised in the matter of exercise of jurisdiction under this new phenomenon in our jurisprudential system. The oppressed and the depressed peoples’ interest ought to be looked into with care and caution by the law Courts so that justice is made available to the one who cannot afford the luxury of litigation *in spite* of violations of his rights as guaranteed under the Constitution. It is here, however, that Chief Justice Mukherji in *State of Himachal Pradesh v. Umedh Ram*,¹ did administer a very serious caution. Chief Justice Mukherjee observed :—

“In public interest litigation cases the most crucial question for the Court is to measure the seriousness of the petitioner and to see whether he is actually the champion of the cause of the persons or groups he is representing. The effect of a public interest litigation should go beyond the sphere of the parties present in the proceedings and it is to be noted that public interest litigation must be accompanied by adequate judicial control so as to prevent this technique from being used as an instrument of coercion, blackmail or for other oblique motive.”

It, therefore, should not be the act of a busybody or an interloper or with motive, but only genuine ones so as to afford relief to the society at large. (See 5. 5. *Rao v. Union Govt, of India*, AIR 1999 A.P. 38 at 39, 40 : (1998) 6 An LD 349 : (1998) 6 An LT 121).

As a matter of fact, the recent trend of judicial pronouncements is that public interest litigation has traversed beyond the original objective of providing access to the judicial process to the poor and disadvantaged section of the community. But with the passage of time, a movement to secure better access to the doctrine of judicial review so far as the under-privileged are concerned has crossed over into the realm of policy making and implementation. The caution exercised by Bhagwati. J., as noted above, is applicable in its entirety in the present context. Extreme care and caution ought to be there in the matter of entertaining a petition. Be it noted that this concept of public interest litigation has gained momentum in the country for the purpose of making available the doctrine of judicial review to the poor and oppressed class of the society, who are not in a position to afford high-cost involved litigation. It was not for private gain and motive, but for the general redress to the public at large. (Ibid at 40)

The Andhra Pradesh High Court in the case of *K. Prabhakar Reddy v. State of A.P.*,² it was observed :

“Individual disputes ought not to gain momentum in a Court of law under the coverage of public interest litigation and attempts to that effect ought always to be decided by the law Courts and as a matter of fact, there should be a positive

1. AIR 1986 SC 847: 1986 (2) SCC 68.
2. (1998 (2) ALT 1).

discouragement to such an individualistic litigation in the garb of a public interest litigation and it is only in the clearest of cases of general affectation of right of the community at large or a wide variety of cross-section of the people, the law Court would extend its assistance, so as to avoid any social or general mischief having due regard to the concept of justice.”

This Court further in the case of *B. Kishtaiah v. Government of India*,³ it was observed

“It is not as if any person can walk into the portals of the Court and lodge a complaint making irresponsible allegations against any officers or the authority concerned. We would like to observe that in public interest litigation, cases of this nature the Court would have to make a very strict scrutiny of the pleadings at the threshold itself. The Court has to satisfy to itself about the *bona fides* of the petitioners in filing the public interest litigation. The petitioners in public interest litigation are bound to disclose their full particulars, details about their avocation and the effort made and methods adopted by them in obtaining and collecting the data and information for filing the public interest litigation. Credibility of the person initiating public interest litigation is an important aspect which requires the attention of the Court at the threshold, otherwise the unscrupulous litigants would hijack the system and use it as an instrument of blackmail. Liberalising the rule relating to standing is no licence granted to one and all for filing cases of their choice in the name of public interest litigation. Relaxation is meant to seek judicial redress by public spirited citizens on behalf of unorganized, poor, weaker sections of the society. Public interest litigation cases initiated by social and democratic organizations, academicians, social scientists, human rights activists gained a growing acceptance and judiciary recognized them as representatives espousing the *ci* use of community’s interest. This strategic arm of legal aid movement was never intended to resolve and settle personal scores. It was never intended to confer any respectability upon busybodies, and meddlesome interlopers.”

Before advertng to the contextual facts, at this juncture, it would be convenient to note a recent decision of the Supreme Court in the case of *State of HP. v. Ganesh Wood Products*,⁴ wherein the Supreme Court observed (at page 164 : of AIR):—

“We must say that in the light of the above considerations, the High Court was not right in observing that Shri Yogendra Chandra cannot be accepted as a public-spirited citizen approaching the Court to protect public interest—more so, when it has recorded a simultaneous finding that there is no evidence of collusion between him and Shankar Trading Company (Mahesh Udyog). The credentials of Shri Yogendra Chandra appear to be impeccable. He is not only a member of the Himachal Pradesh Legislative but also the convenor of the Indian National Trust for Art and Cultural Heritage. He is also the President of the Himalayan Wild Life and Environment Preservation Society. The said organizations may be big or small, may be well-established ones or recently started ones—that is immaterial. Once it is found that he was not acting at the instance of or at the behest of or for protecting the interests of Shankar Trading Company, there was no reason to hold that he was not acting *bona fide* in approaching the Court to preserve the forest

3. 1998 (4) ALT 738.

4. AIR 1996 SC 149 :(1995) 6 SCC 363.

wealth of the State in the interest of environment and ecology. His inability to produce material in support of his allegation of illicit felling in the State does not tell upon his *bona fides*. ”

It was on this backdrop that a petition under Article 226 of the Constitution as filed by the appellant herein shall have to be considered. The appellant said to be working as a Sub-Inspector of Police in Kurnool sought a direction by way of writ of Mandamus directing respondent No. 4, being the National Commission for S.C. & S.T., Government of India, to enquire into the allegation of production false certificate of social status by respondent Nos. 7 and 8, being Sri S.V. Prasad, I.A.S., Principal Secretary to the Chief Minister, Government of Andhra Pradesh and Sri S.V. Ramana Murthy, I.P.S., D.I.G. of Police, Kurnool Range, Kurnool respectively, and obtaining selection to I.A.S. and I.P.S. cadre and also directing respondent No. 1, being the Union of India, to take appropriate action against the above noted two respondents. The appellant also prayed that pending enquiry into the matter, the two noted respondents be placed under suspension for production of false certification of social status. It has been the appellant's definite case that both respondents, being respondents 7 and 8, were selected to their respective cadres under the quota reserved for Scheduled Caste and Scheduled Tribes, though they do not belong to any one of the Caste or Tribes enumerated in the respective Schedtde ? in the Constitution of India. The appellant contended that both of them belong to Kapu caste which is not listed either as Scheduled Caste or Scheduled Tribe in relation to the State of Andhra Pradesh and as a matter of fact, they cannot possibly be termed to be belonging to the specified category but they ought to be treated upon open category. The appellant contended that the selection of these respondents in the respective cadres have been effected under reserved quota which is utterly illegal and unconstitutional and by reason of a deliberate fraud practiced upon the Union Government. Hence the writ.

During the course of hearing, strong reliance was placed on the decision of the Supreme Court in the case of *Fertilizer Corpn. Kamagar Union v. Union of India*,⁵ In paragraphs 41 and 42, the Supreme Court observed (at pages 354-355 ; of AIR):

“41. Law, as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pendantry now surrounding *locus standi*.”

Schwartz and H.W.R. Wade wrote in Legal Control of Government:

“Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some Government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?” Professors Bernard Schwartz and H.W.R.

5. AIR 1981 SC 344: 1980 Lab 1C 1367.

Wade, O.C., in *Legal Control of Government* (1972) p. 291. They further observed

“The problem of standing, or *locus standi* is inherent in all legal systems.....But in the United States, perhaps because of the constitutional basis which the subject has acquired in federal law it can be discussed as a single topic. In Britain, it is a thing of shreds and patches, made up of various differing rules which apply to various different remedies and procedures. It is a typical product of the untidy system of remedies, each with its own technicalities, which all British administrative lawyers would like to see reformed”. (Ibid)

The Court has no doubt that having regard to the conditions in Third World countries, Cappelletti is right in his stress on the importance of access :—

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement—the most basic human right—of a system which purports to guarantee legal rights.” (M. Cappelletti, *Rabels Z* (1976) 669 at 672).

The need for a radical approach has been underscored in New Zealand by Black :—

“..... today it is unreal to suggest that a person looks to the law solely to protect his interests in a narrow sense. It is necessary to do no more than read the newspapers to see the breadth of the interests that today’s citizen expects the law to protect—and he expects the Court where necessary to provide that protection. He is interested in results, not procedural niceties.” (Black. “The Right to be Heard”. *New Zealand L.J.* No. 4, 1977, 66).

As a matter of fact, the Supreme Court concluded by recording that public interest litigation is a part of the process of participative justice and standing in civil litigation of that pattern must have liberal receipt at the judicial doorsteps. Subsequently also the Supreme Court in no uncertain terms observed that a person has a locus to file a proceeding for redressal of a grievance which is public in nature without himself being a busybody or meddler and without being guided by any private motivation. What is that has guided this particular appellant to move this Court under Article 226 of the Constitution as a public interest litigation? The petition was delightfully vague on this score and excepting alleging that respondent Nos. 7 and 8 have produced false certificates, there is no other material on record as to how he has interest or how the society would be better off without them. It is on this score, the observations of the learned single Judge, as appears from the judgment under appeal, seem to be rather significant. The learned single Judge observed :—

“However, the allegations made by the petitioner in the affidavit filed in support of the writ petition, are absolutely bald and vague, except stating that the petitioner reliably learnt that the respondents 7 and 8 belong to ‘Kapu’ community, the petitioner does not anywhere disclose the basis of such belief or the source of information by which he has come to believe so. If persons holding a public office are to be exposed to such a litigation on the basis of allegations which have no

apparent basis or at any rate the basis of which it is not disclosed to the Court, no holder of a public office would be able to conduct the affairs of his office peacefully. Every time, somebody decides to entertain a doubt about the honesty, integrity of a holder of a public office without disclosing any basis to the Court for such a doubt, if this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, permits such litigation, in my view, it would only create speculative litigation, perhaps often motivated by personal vendetta.”

In this context, the observations of this Court in the case of *K. Hanumantha Rao v. Prl. Sub-Judge*,⁶ ought also to be noted. In paragraph 14 of the judgment, this Court observed

“14. The petitioners do not even disclose their complete identity except stating that they are all permanent residents within the limits of Vijayawada Municipal Corporation and have been fighting for the cause of general public. The idea, if any entertained by the public interest litigants that they need not disclose to the Court the complete details about them needs to be dispelled. They are bound to disclose the full particulars about them including their status, avocation and host of other details. The Court would be in a better position to appreciate the question raised and the competency of the public interest litigants to raise such questions provided the required information is made available to the Court. It is not as if any person or body of persons can casually approach and invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by levelling unfounded allegations against the Government and its Officers and other private individuals without any basis. The petitioners in public interest litigation are bound to reveal the complete facts and assist the Court in a dispassionate manner. The facts stated by the public interest litigant should reveal that he is genuinely concerned in public interest, and only then the Court would be satisfied and proceed further in the matter. No person in the name of public interest litigation can claim an automatic right of hearing and such hearing cannot be provided by the Court unless the Court is satisfied about the *bona fides* of the person approaching the Court. The Apex Court in a judgment in *S.P. Anand v. H.D. Deve Godwa*,⁷ was observed :—

“Before we part, we cannot help mentioning that on issues of constitutional law, litigants who can lay no claim to have expert knowledge in that field should refrain from filling petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. This is the impression that one gets on reading the present petition. It is of utmost importance that those who invoke this Court’s jurisdiction seeking a waiver of the *locus standi* rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as the Court that he does not rush to Court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can

6. 1997 (4) ALT 444

7. (1996)6 SCC 734.

be lost if petitions are filed on half backed information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly it must also be borne in mind that no one has a right to the waiver of the *locus standi* rule and the Court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the Court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy.....”

It is on this factual backdrop that the issue has to be decided as to whether in fact a public interest litigation can be maintained by the appellant writ petitioner. The single Judge ascribed it to be speculative. It was true that the Courts have allowed public-spirited persons and organizations to invoke this extraordinary jurisdiction on behalf of the Society for vindication of their rights. But that does not, however, mean and imply that any busybody would be blue to invoke the jurisdiction of the Court under Article 226 of the Constitution in the garb of public interest litigation, its personal grievance or vendetta. The factual matrix depict that the selfsame issue has been looked into and considered by the appropriate agencies at all levels on more than one occasion. But the appellant without disclosing his specific interest in the matter and how the public at large would be benefited has again moved this Court and invoked writ jurisdiction in the garb of public interest litigation. In adversative litigation one can understand and appreciate, but not a public interest litigation being tainted with some motive, which the learned single Judge describes it as personal vendetta. The writ petitioner has no interest whatsoever; neither a petition for issuance of writ of Mandamus is maintainable in the contextual facts. The writ petitioner has been indulging in utter frivolity and initiation of a proceeding under Article 226 of the Constitution in the contextual facts is totally in abuse of the process of the Court.

While it is true that this recent phenomenon in Indian jurisprudence is not to keep the door closed but keep it ajar for the benefit of the society but that by itself does not and cannot mean and imply that even personal vendetta and individual motive need to be encouraged by the Law Courts in the form of a public interest litigation.⁸

From above it is clear that the Public Interest Litigation lies where legal harm has been caused to a person or determined class of person and where the Constitutional and legal rights have been violated. Every person has *locus standi* if his fundamental right is violated. On the concept of *locus standi*, the Allahabad High Court held that the traditional concept of *locus standi* has now been jettisoned by a number of the decisions of the Apex Court and a new dimension to this concept has been given by evolving new strategies to overcome the technical rules.⁹

Supreme Court observed that “*locus standi*” of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence

8. S.S. Rao v. Union Govt, of India, AIR 1999 A.P. 38 at 44, 45: (1998) 6 An LD 349: (1998) 6 An LT 121.

9. Mechanical Departmental of Primary Co-operative Bank Ltd. v. Joint Secretary Ministry of Agriculture and Co-operation, New Dehli, AIR 1999 AllD 173.

provides for the eligibility of the complainant, by necessary, implication the general principle gets excluded by such statutory provision.¹⁰

2. Guidelines for entertaining a Public Interest Litigation.—Though it is imperative to lay down clear guidelines and propositions and outline the correct parameters for entertaining a Public Interest Litigation—Particularly on the issue of *locus standi* yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such a adumbrations is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.

Be that as it is may, it is needless to emphasise that 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 or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.

The traditional syntax of law in regard to *locus standi* for a specific judicial redress, sought by an individual person or determinate class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violation of his or their legal right or a right legally protected, the invasion of which gives rise to actionability within the categories of law. In a private action, the litigation is bipolar; two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. The character of such litigation is essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally inhere or their legally constituted representatives who are thus obviously most competent to commence the litigation.

In contrast, the strict rule of *locus standi* applicable to private litigation is relaxed and a broad rule is evolved which gives the right of *locus standi* to any member of the public acting *bona fide* and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting *bona fide* and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like *actio popularis* of Roman Law whereby any citizen could bring such an action in respect of a public delict.

3. A private interest case can also be treated as public interest case.—The writ petitioner before the High Court was a firm of the Chartered Accountant. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to or in furtherance of the impugned action of the appellants. By reason of such an action on the part of the appellants as also the Reserve Bank of India, as noticed herein before the citizens of India had to pay a higher amount of tax as also a higher amount of interest for fault on their part. The same had been recovered from them without any authority of law. While entertaining a public interest litigation, the Court in exercise of its jurisdiction under Art. 32 of the Constitution of India and the High Courts under Art. 226 thereof are entitled to entertain

10. A. R. Antulay v. Ramdas Srinivas Nayak, AIR 1989 SC 74.

a petition moved by a person having knowledge in the subject matter and, thus, having an interest therein as contra distinguished from a busy body, is the welfare of the people. The rule of locus standi has been relaxed by the Courts for such purposes with a view to enable a citizen of India to approach the Courts to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right.

Where a writ petition has been held to be not entertained on the ground or otherwise of lack of locus, the Court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievance, the Court furtherance of public interest may treat it a necessity to enquire into the State of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.¹¹

When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes or vendetta to bring to terms a person not of ones liking, or gain publicity or a facade for blackmail, said petition has to be thrown out. Public interest litigation which had now come to occupy an important field in the administration of law should not be “Publicity interest litigation” or “Private interest litigation or the latest trend “paise income litigation”. There must be real and genuine public interest invoked in the litigation and concrete or credible basis for maintaining a cause before Court and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a personal or body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. The credibility of such claims or litigations should be adjudged on the credit worthiness of the materials averted and not even on the credentials claimed of the persons moving the Courts in such cases. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or an oblique consideration.

The Court has to be satisfied about (a) the credentials of the applicant; (b) the *prima facie* correctness or nature of information give by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others, and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy-bodies or meddlesome interlopers impersonating as public spirited

11. See Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, AIR 1987 SC 294. Indian Banks Association, Bombay and others v. Devkala Consultancy service and others, AIR 2004 SC 2615.

holy men. They masquerade as crusaders of justice. They pretend to act in the name of *Pro Bono Publico*, though they have no interest of the public.¹²

It will be befitting to recall the observation of this Court in *People's Union for Democratic Rights v. Union of India*,¹³ which read (para 9):

"But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of *locus standi* which has revolutionised the whole concept of access to justice in a way not known before to the western system of jurisprudence.....it is, therefore, necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost".

R.S. Pathak, J. (as the learned Chief Justice then was) while agreeing with the directions proposed by *Bhagwati, J.* (as the learned Chief Justice then was) in *Bandhua Mukti Morcha v. Union of India*,^{14 15} expressed his view stating. "In public interest litigation the role held by Court is more assertive than in traditional actions."

M.N. Venkatachaliah J. speaking for the Bench in *Sheela Barse v. Union of India*⁵ has brought out the distinction between private litigation and public interest litigation in the following words (Para 6 of AIR)

"In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bipolar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State..... The dispute is not comparable to one between private parties with the result there is no recognition of the status of a *dominus litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, *ad hoc*, according as the exigencies of the emerging situations. The proceedings do

12. *Dr. B. Singh v. Union of India and others*, AIR 2004 SC 1923.

13. (1982) 3 SCC 235; AIR 1982 SC 1473.

14. AIR 1984 SC 802 at p. 841, para 56. (1984) 2 SCR 67 at 159.

15. AIR 1988 SC 2211 (1988) 4 SCC 226.

not partake of predetermined private law litigation models but are exogenously determined by variations of the themes.”

Though in our country, Court have recognised a departure from the strict rule of *locus standi* as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and in-flexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of Court, is one of the reasons for Court as reflected from the various decisions of Court, is one of the reasons for Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of *locus standi* no ‘rigid litmus test’ can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process.

In this context, it would be quite relevant to recite the observations made by *Bhagwati, J.* (as the learned Chief Justice then was) in *S.P. Gupta v. Union of India*,¹⁶ reading thus:

“Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal rights have been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.”

(*Emphasis supplied*)

As briefly pointed out in *S.P. Gupta*’s case,^{17 18} there are certain exceptions carved out of the strict rule of standing, to be made applicable to PIL cases. By way of illustration, it may be stated that under Order XXXII of the Code of Civil Procedure, any person acting as the next friend of a minor may bring an action in his name for judicial redress. So also any other person other than the person under detention may file an application for issue of a writ of *habeas corpus* challenging the legality of the detention of the detenu. Similarly, the Judicial Committee of the Privy Council approved the exception to the strict rule of standing in *Durayappah v. Fernando*.¹⁸ In United States of America also,

16. AIR 1982 SC 149 at p. 189. 1981 (Supp) SCC 87 at page 210.

17. AIR 1982 SC 149.

18. (1967) 2 All ER 152 (PC): (1967) 2 AC 337.

though the exception has been recognised and the strict rule of standing has been liberalised in the interest of justice, it has been attenuated later on in some of the cases.^{19 20 21}

In the United Kingdom, there have been remarkable developments on account of the dynamic activism of Lord Denning.

In Attorney General (on the relation of *Me Whirter v. Independent Broadcasting Authority*?²⁰ Lord Denning, M.R., while dealing with the case of a relator action observed as follows:

“In the light of all this I am of the opinion that, in the last resort, if the Attorney General refuses leave in a proper case, or improperly or unreasonably delays in giving leave, or his machinery works too slowly, then a member of the public, who has a sufficient interest, can himself apply to the Court itself. He can apply for a declaration and, in a proper case, for an injunction, joining the Attorney General if need be, as defendant. In these days when Government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizens of this country; so that they can see that those great powers and influence are exercised in accordance with law. I would not restrict the circumstances in which an individual may be held to have a sufficient interest.....I have said so much because I regard it as a matter of high constitutional principle that if there is ground for supposing that a Government department or a public authority is transgressing the law or is about to transgress it, in a way which offends or injures thousands of her Majesty’s subjects, then in the last resort anyone of those offended or injured can draw it to the attention of the Courts to law and seek to have the law enforced. But this, I would emphasise, is only in the last resort when there is no other remedy reasonably available to secure that the law is obeyed.”

In *R. v. Greater London Council*? one Albert Raymond Blackburn and Tessa Marion Black bum applied for an order of prohibition to issue against the Greater London Council (the ‘GLC’) to prevent them from exercising their censorship powers over the public exhibition of cinematography films in accordance with a test of obscenity which was bad in law. The Divisional Court of Queen’s Bench Division refused the order and dismissed the application. Challenging that order Raymond Blackburn came before the Court of Appeal. The appeal was opposed on the ground of *locus standi* contending that Blackburn had no sufficient interest to bring those proceedings against the GLC. Lord Denning rejected that contention relating to *locus standi* concluding thus:

“In my opinion, therefore, Mr. Blackburn has made out his case. He has shown that the GLC have been exercising their censorship powers in a manner which is unlawful; because they have been applying a test which is bad in law. If they continue with their present wrong test and in consequence given their consent to films which are grossly indecent, they may be said to be aiding and abetting a

19. *Vide* (1) *Data Processing Service v. Camp*, (1970) 397 US 150: 25 L Ed 2d 184; (2) *Flast v. Coclhen*, (1968) 392 US 83.: 20 L Ed 2d 947; (3) *Office of Communication of the United Church of Christ v. FCC*, 123 US App DC 328; (4) *Us v. Richardson*, (1974) 418 US 166; and (5) *Warth v. Seldin*, (1975) 422 US 490.
20. (1973) 1 All ER 689.
21. (1976) 3 All ER 184.

criminal offence. In these circumstances this Court can and should issue an order of prohibition to stop them.

Subsequently in *Gouriet v. Union of Post Office Workers*,²² the House of Lords while dealing with the case of relator action in which the appellant, John Prendergast Gouriet after having failed to obtain the consent of the Attorney General to bring an action at the relation of the plaintiff against the Union of Post Office Workers ('the UPW') for an injunction restraining the UPW from soliciting or endeavouring to procure any person wilfully to detain or delay any postal packet in the course of transmission between England and Wales and the Republic of South Africa, issued a writ in his own name against the UPW seeking the same relief, held that it was a fundamental principle of English law that public rights could only be asserted in a civil action by the Attorney General as an officer of the Crown representing the public and that a private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs and, therefore, the Court had no jurisdiction to grant relief, whether by way of an injunction or declaration, in such an action.

This decision evoked serious debate and was subjected to severe criticism by the jurists in England and elsewhere.

So far as the newly invented concept of PIL in Indian legal system is concerned, we can be proud of saying that there is a tremendous development and dynamic progress in the cosmos of PIL in spite of multiple criticism levelled against the various aspects of PIL. The melioration of the philosophy of PIL is demonstrably radiated by the long line of decisions, a few of which we will presently refer to.

This Court in *Sunil Batra v. Delhi Administration*,^{23 24} has accepted a letter written to the Supreme Court by one Sunil Batra, a prisoner from Tihar Jail, Delhi complaining that the Jail Warden had subjected another prisoner serving life term in the same jail to inhuman torture. This Court treated that latter as a writ petition and by an elaborate judgment allowed the petition and issued certain directions inclusive of one for taking suitable action against the erring official to the Ministry of Home Affairs and all State Governments on the ground that prison justice has pervasive relevance, thereby enlarging the scope of *habeas corpus* by making it available to a prisoner not only for seeking his liberty but also for the enforcement of a constitutional right to which he was entitled to even while in confinement.

This Court in *Dr. Upendra Baxi v. State of U.P.*,²⁵ entertained a letter sent by the two Professors of Delhi University seeking enforcement of the constitutional right of the inmates in a Protective Home at Agra who were living in inhuman and degrading conditions in blatant violation of Art. 21 of the Constitution. The said letter was treated as a writ petition and the two Professors were permitted to maintain an action for an appropriate writ.

Again in *Miss Veena Sethi v. State of Bihar*,²⁵ this Court treated a letter addressed to a Judge of this Court by the Free Legal Aid Committee at Hazaribagh, Bihar as a writ petition.

22. (1977)3 All ER 70.

23. (1980) 3 SCC 488: AIR 1980 SC 1579.

24. (1983) 2 SCC 308.

25. AIR 1983 SC 339: (1982) 2 SCC 583.

In *People's Union for Democratic Rights v. Union of India*,^{26 27 28} a letter addressed by the petitioner-organisation seeking a direction against the respondents for ensuring observance of the provision of a various labour laws in relation to workmen employed in the construction work of projects connected with the Asian Games, was entertained by relaxing the traditional rule of standing.

Treating a letter sent by an organisation demanding the release of bonded labourers as a writ petition this Court in *Bandhua Mukti Morcha v. Union of India*,²⁹ issued several directions to the Central Government and State of Haryana not only for the release of the bonded labourers but also for their future improvement and betterment. Though R.S. Pathak (the Chief Justice as he then was) and A.N. Sen J. have delivered separate judgments, in general they agreed with the directions issued by Bhagwati, J. in his separate leading judgment.

A number of writ petitions were filed by two journalists along with the Peoples Union for Civil Liberties Committees for the Protection of Democratic Rights and two other pavement dwellers under Article 32 of the Constitution of India challenging the correctness and legality of the decision of the Bombay Municipal Corporation to demolish the dwellings of the slum hutments on several grounds, one of which being violation of Article 21 of the Constitution. These writ petitions were heard by a Constitution Bench of this Court in *Olga Tellis v. Bombay Municipal Corporation*. The respondent challenged the very maintainability of the writ petitions. Chantdrachud, C.J. speaking for the Constitution Bench rejecting the challenge of the respondent therein entertained those petitions and held that the right to life conferred by Article 21 is of wide sweep and far reaching and one of the facets of such right is the right to livelihood.

In *Ramsharan Autyanuprasi v. Union of India*,²⁹ a writ petition was registered under Article 32 of the Constitution on the basis of a petition addressed by the writ petitioners to one of the learned Judges of this Court as a Public Interest Litigation but Mukherjee, J. (the learned C.J. as he then was) speaking for the Bench dismissed the writ petition holding (Para 14 of AIR):

“..... the allegations are too vague, too indirect and too tenuous to threaten the quality of life of people at large or any section of the people. The acts complained of resulting in the threats alleged are too remote and, to be amenable under Article 32 of the Constitution. The petitioners further assert that there has been violation of Article 51 -A (j) of the Constitution as a duty has been cast on every citizen to value and preserve the rich heritage of our composite culture. Indeed, it is our duty but the enforcement of that duty by means of a writ under Article 32 of the Constitution.....”

Krishna Iyer, J. speaking for the Bench in *Akhil Bhartiya Soshit Karamchhari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association v. Union of India*,³⁰ overruling the plea that a writ petition filed by an unrecognised association cannot be sustained observed that “We have no hesitation in holding that the

26. AIR 1982 SC 1473.

27. AIR 1984 SC 802: (1984) 2 SCR 67.

28. AIR 1986 SC 180: 1985 Suppl. (2) SCR 51 : (1985) 3 SCC 545.

29. AIR 1989 SC 549: 1989 Supp (1) SCC 251.

30. AIR 1981 SC 298.

narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdiction."

In *Fertilizer Corporation Union v. Union of India*,³¹ Chandrachud, C.J. speaking for himself and on behalf of Fazal Ali and Kaushal, JJ. observed that the violation of fundamental right is the *sine qua non* of the exercise of the right conferred by Article 32 and dismissed the writ petition is not maintainable having regard to the facts of the case. Krishna Iyer, J. speaking for himself and Bhagwati, J. (as he then was) in a separate judgment though concurred with the conclusion of the majority held that if a person belonging to an organisation which has special interest in the subject-matter has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered and pointed out (Para 44 of AIR)

"Public interest litigation is part of the process of participative justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial door steps."

He further added (Para 38 of AIR)

"We have no doubt that in a competition between Courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless street. In simple terms, *locus standi* must be liberalised to meet the challenges of the times. *Ubis ibi remedium* must be enlarged to embrace all interests of public-minded citizens or organisation of public resources and the direction and correction of public power so as to promote justice in its triune facets

In *National Textile Workers Union v. P.R. Ramkrishnan*,³² Bhagwati, J. (as he then was) speaking for the majority expressed his view that the workers of a company are entitled to appear at the hearing of the winding up petition whether to support or to oppose it and they have a *locus standi* to appear and be heard both before the petition is admitted and an order for advertisement is made as also after the admission and advertisement of the petition until an order is made for winding up the company. A.N. Sen, J. dissented from the above view.

In passing it may be stated that in *A.R. Antulay v. Ramdas Srinivas Nayak*,^{33 34 35} Supreme Court observed that "*locus standi* of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision."

Reference also may be made to

- (1) *D.S. Nakara v. Union of India*?* (decision of a Constitution Bench):
- (2) *P. Nalla Thampy Thera v. Union of India*?³⁵

31. AIR 1981 SC 344.

32. AIR 1983 SC 75: (1983) 1 SCR 922.

33. AIR 1984 SC 718: (1984) 2 SCC 500.

34. AIR 1983 SC 130.

35. AIR 1984 SC 74.

(3) *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*?³⁶ and

(4) *Kurkshetra University v. State of Haryana*?

From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also entertaining writ petitions filed under Article 32 of the Constitution by public-spirited and policy-oriented activist persons or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions rendered many virtuosic pronouncements and issued manifold directions to the Central and the State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world.

It may not be out of place to mention here that there may be numerous circumstances justifying the entertaining of public interest litigation but we cannot obviously enumerate an exhaustive list of all such situations.

Bhagwati, J. in *S.P. Gupta's case*,TM (popularly known as Judges' Appointment and Transfer case) which was heard by a Bench of seven learned Judges has clearly defined 'what PIL means and is' and expressed his views in meticulous detail in the following terms (Para 17 of AIR):

"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 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. This Court will readily respond even to a letter addressed by such individual acting *pro bono publico*. It is true that there are rules made by this Court prescribing the procedure for moving Supreme Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of ³⁶ ³⁷ ³⁸

36. AIR 1985 SC 652: (1985) 2 SCC 431.

37. AIR 1977 SC 2229: (1977) 4 SCC 451.

38. AIR 1982 SC 149.

procedure in the exercise of its dispensing power and treat the letter of public-minded individual as a writ petition and act upon it. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases.”

After having elaborately explained the concept of PIL, the learned Judge held that:

“.....any member of the public having sufficient interest can maintain an action for judicial redress for public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives.”

However the learned Judge has sounded a note of caution to the Courts to be observed while entertaining a Public Interest Litigation as follows:

“But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.”

The other learned Judges—namely, Gupta, Tuizapurkar, Fazal AU Desai and Pathak, JJ.—who were parties to the above judgment have all agreed in general with views expressed by Bhagwati, J. on the question of *locus standi*. However, Desai, J. added a note saying “that the contention about *locus standi* is now of academic interest and I do not propose to deal with it. However, I am in full agreement with learned Bhagwati, J.”

However, Venkataramiah, J. (as the learned Chief Justice then was) in his separate judgment with regard to the question of *locus standi* of lawyers in filing petitions in respect of matters concerning Judges, Courts and administration of justice has registered his opinion thus:

“It has, however, to be made clear that it cannot be said that lawyers only because they have a right to practice in a Court have ‘*locus standi*’ to file petitions in respect of every matter concerning Judges, Courts and administration of justice. There are many such matters in which they have no ‘*locus standi*’ to ask for relief. By way of illustration, lawyers cannot question the establishment of a new Court on the ground that their professional prospects would be affected thereby. Even in these cases on the question of non-appointment of Mr. S.N. Kumar and on the

question of transfer of Mr. K.B.N. Singh, the lawyer-petitioners may have no voice. But for the active participation of these two persons, the petitions regarding reliefs concerning them individually would have probably become liable to be dismissed on the ground that the lawyers have no '*locus standi*' to make these prayers."

The petitions cannot be rejected merely on the ground that the petitioners who are lawyers have no *locus standi* to file these petitions. Before leaving this topic, it has to be observed that other question of *locus standi* in the field of administrative law is still in a fluid state and it is not possible to lay down in any one case the principles which can govern all situations.

On an assiduous analysis and scrupulous study of the major landmark decision of Gupta's case,³⁹ which serves as a charter of PIL, it was held that the said decision describes the broad definition of the expression 'PIL' explores the conceptual problems, outlines the evolution of legal strategies, discusses the institutionalisation of the PIL movement and concludes with innovative methods and devices for increasing citizens' participation to promote reforms of the legal system in order to ensure real access to the justice delivery system, and to encourage the continuation and expansion of public interest representation. Above all, it has opened wide the doors of the Court to millions of the poor, ignorant and socially or economically disadvantaged to articulate their grievances and seek justice which otherwise would have been denied to them.

In short, the decision in Gupta's case is a golden master key which has provided access to the Courts for the poor and down-trodden.

Vexatious and frivolous litigations.

While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of sever warning that Courts should not allow its process to be abused by mere busybody or a meddlesome interloper or way-farer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

In Gupta's case,⁴⁰ Bhagwati, J. emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution:

"But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation other oblique consideration. The Court must not allow its process be abused by politicians and others to delay legitimate administrative action or to gain a political objective

In *State of HP. v. Parent of a Student*,⁴¹ it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

39. AIR 1982 SC 149.

40. AIR 1982 SC 149.

41. AIR 1985 SC 910; (1983)3 SCC 169

Khalid J. in his separate supplementing judgment in *Sachidanand Pandey v. State of West Bengal*,⁴² said:

“Today public spirited litigants rush to Courts to file cases in profusion under the attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive function. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants.”

Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *Ramsharan Autyanuprasi v. Union of India*,⁴³ was in full agreement with the view expressed by Khalid, J in *Sachidanand Pandey*’s case,⁴⁴ and added that ‘public interest litigation’ is an instrument of the administration of justice to be used properly in proper cases.

See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha v. Union of India* ⁴⁵

Sarkaria, J. in *Jasbhai Desai v. Roshan Kumar*,⁴⁶ expressed his view that the application of the busybody should be rejected at the threshold in the following terms (Para 36 of AIR)

It was held that in the context of *locus standi* to apply for a writ *certiorari*, an applicant may ordinarily fall in any of these categories:

- (i) ‘person aggrieved;
- (ii) ‘stranger’;
- (iii) busybody or meddlesome interloper.

Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. They indulge in the pastime or meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than speaking as wheels of administration. The High Court should do well to reject the applications of such busybodies at threshold.

In *Fertilizer Corporation v. Union of India*,⁴¹ it was held that:

- 42. AIR 1987 SC 1109, paras 45, 58 and 60: (1987) 2 SCC 295 and 331.
- 43. AIR 1979 SC 549.
- 44. AIR 1987 SC 1109.
- 45. AIR 1984 SC 802.
- 46. AIR 1976 SC 578: (1976) 3 SCR 58.

If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million peoples of this country, the door of the Court will not be ajar for him.

In *Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P.*TM it was held that it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottle neck in the Superior Court preventing other genuine violation of fundamental rights being considered by the Court.

In a decision of this Court in *Union Carbide Corporation v. Union of India*,^{47 48 49} Jaganath Mishra, C.J. in his separate judgment while judgment concurring with the conclusions of the majority judgment has said thus:

“.....that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled.”

In *Subhash Kumar v. State of Bihar*,⁵⁰ Supreme Court held that public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioner from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for

47. AIR 1981 SC 344.

48. AIR 1990 SC 2060: (1990) 4 SCC 449.

49. (1991) 4 SOC 584 at 610: AIR 1992 SC 248 at 262

50. (1991) 1 CR5 : 1991 AIR SCW 121

the disposal of cases of the genuine litigants. In fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard, while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases where in huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

In the words of Bhagwati, J. (as he then was) “the Courts must be careful in entertaining public interest litigations” or in the words of Sarkaria, J. “the applications of the busybodies should be rejected at the threshold itself and as Krishna Iyer, J has pointed out, “the doors of the Courts should not be ajar for such vexatious litigants.”

It should not be misunderstood that by the expression of our above view, there is any question of retreating or recoiling from the earlier views expressed by this Court about the philosophy of public interest litigation in many outstanding judgments which we have already referred to; on the other hand we look back to the vantage point from which we started on journey and proceed on our onward journey in the field of PIL.

Keeping in mind the recent development of the doctrine of PIL and the judicial exposition of the rule governing *locus standi*, Supreme Court should revert to the facts of the instant case and carefully examine the questions; (1) Whether petitioner has *locus standi* to file this litigation, and (2) Whether this litigation will fall within the ambit and scope of PIL seeking declaratory as well as injunctive reliefs. Before the special Judge, he filed the petition under Article 51-A of the Constitution proclaiming that he being the General Secretary of an organisation, calling itself as Rashtriya Jan Parishad which is devoted to uphold the Rule of Law and fight against in justice, has got a fundamental duty to inform the Court “regarding the activation of the complainant (CBI) in the aforesaid case which has tarnished the image, credibility of the nation and has also lowered the national prestige”. According to him, the prosecution has been malevolently launched with rancour, stimulated by political vendetta after Shri V.P. Singh became the Prime Minister, who with his colleagues have attributed mendacious charges publicly, that there was payment of kickbacks and receipt of bribe from Bofors.

The sum and substance of the inculcation as gathered from the averments made in the petition and the submissions made by Mr. Bhagat on behalf of H. S. Chowdhary in short, are that those who were at the helm of the affairs in the then Government during

January, 1990 in their attempt to lock horns with those who were in power of the then outgoing Government with *mala fide* intention of vindicating their electoral rivalry have been instrumental in registration of the FIR containing the unveracious and vile charges by using every possible trick and ruse at their command and disposal and making vociferous verbal attack with their lung power to settle their personal scores with their political opponents. The further attack against the author of the FIR and the investigating agency is that the CBI under “pressure of its political masters in conspiracy with them have been giving recklessly the names of various leaders of this country to tarnish their image without any basis”; and the onset of the investigation is biased, unfair and unethical and the procedure adopted in utter violation of the provisions of the Constitution and the procedural law.

Mr. Jethmalani expostulating the objectives of PIL urged with vehemence and persistence that H.S. Chowdhary does not have any *locus standi* to initiate this litigation and as such his petition is liable to be rejected even at the threshold. According to him the true public interest litigation is one in which ‘a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court either for (1) Enforcement of fundamental right of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of State policy for amelioration of their condition, and (2) preventing or annulling executive acts and omissions violative of constitution or law resulting in substantial injury to public interest.

According to him, the present litigation brought by Mr. Chowdhary does not satisfy the definition of PIL even remotely. With strong intensity of conviction, he states that the appellant does not stand in a better footing that of a busybody or a rank meddlesome interloper or wayfarer or officious intervener having no concern except for some private motivation and oblique consideration. He continues to a crimoniously urge that Mr. Chowdhary is acting as a proxy under the mask of public interest litigant for the benefit of all the real accused, in the discovery of whose identity the whole nation is interested and that Mr. Chowdhary on being inspired by some other extraneous consideration is attempting to keep all the named and unnamed accused behind a smoke screen to that the identity of those recipients of the kickbacks and bribes should not be discovered and go unpunished and the bribe money deposited in Swiss Banks should not be frozen. He also says the very purpose of filing this petition by Mr. Chowdhary for quashing the proceedings if only to stultify and frustrate the proceedings against the accused. He further states that when the scandal of Bofors’ affairs involving clandestine payoffs at the highest level which has come to light and surfaced by the Swedish Radio Broadcast, has assumed mammoth proportion, Mr. Chowdhary pretentiously claiming to be a crusader for justice in the name of *pro bono publico* has filed this *benami* litigation at the instance of the holders of foreign bank accounts and is attempting to thwart and stall the proceedings by masquerading the accused persons as paragons of virtue.

Mr. Anand Devi Gin, the learned Solicitor General stating that public interest litigation is not in the nature of adversative litigation and it is intended to promote and vindicate public interest which demands that violation of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position, should not go unnoticed and unredressed. According to him, the very litigation itself is not within the definition of public interest litigation and more so H. S. Chowdhary absolutely has no *locus standi* to approach the Court by filing the petition

under Sections 397 and 482 of the Code of Criminal Procedure by way of revision of the order of the special Judge and also quashing the criminal case filed against some known and unknown persons, involved in a series of criminal offences of conspiracy, criminal breach of trust, cheating and bribery, it is the submission of the Solicitor General that Mr. Chowdhary, wearing the isignia of a public interest litigant has preferred the quashing petition before the High Court for the glare of publicity. According to him, the petition by Mr. Chowdhary has been drafted in an ingenious way without mentioning as to who all are respondents besides the Union of India and it is an ignoble and unscrupulous action and, therefore, both the Special Judge and the learned Judge of the High Courts were justified injecting this petition holding that Mr. Chowdhary does not even have the semblance of public interest litigant and as such he has no *locus standi*.

Mr. K.G. Bhagat, learned senior counsel appearing on behalf of Mr. Chowdhary after stating the *pro bono* parties must have real, tangible and perceptible interest urged that in the present case, Mr. Chowdhary has espoused only real public interest and, therefore, his right of *locus standi* cannot be questioned. He asserts that the very registration of the case smacks of political vendetta.

After deeply and carefully considering the submissions of all the parties, we see much force in the submissions made by the learned Solicitor General Mr. A.D. Gin and Mr. Jethmalani, senior counsel. A perusal of the petitions filed H.S. Chowdhary before the Special Judge and the High Court clearly unfolds that Mr. Chowdhary appears to be very much concerned with the personal and private interest of the accused in the criminal case and there is absolutely no involvement of public interest can it be said that this litigation is in the nature of PIL to vindicate and effectuate the public interest? The emphatic answer would be that not even a single ray of the characteristic of public interest litigation is visibly seen.

In the petition filed before the High Court. Mr. Chowdhary has stated that it is his duty to see that 'individuals' get justice from the Indian Courts. From whichever angle one may survey and audit the contentions in both the petitions before the Courts below and the petition filed before this Court, there can be no escape except to come to the conclusions that Mr. Chowdhary has no *locus standi* at all to file these petitions, as found by the Courts below.

"In this connection, we would like to add a few words about the dismissal of the applications of the interveners."

The High Court rejected the applications of the interveners as having no right to be impleaded as a consequence of the dismissal of the petition of H. S. Chowdhary on the ground that he has no *locus standi*. Court too in its earlier order having held that H. S. Chowdhary has no *locus standi* to file the petition or to invoke the revisional or extraordinary inherent jurisdiction of the High Court under Sections 397 and 482 of the Code of Criminal Procedure respectively and that the petition under Art. 51-A of the Constitution cannot come within the true meaning and scope of public interest litigation, dismissed the application of the interveners holding thus:

"Consequent upon the above conclusions (1) and (2), the appellants namely, Janta Dal, Communist party of India (Marxist) and Indian Congress (Socialist) who are before this Court equally have no right of seeking their impleadment/intervention. For the same reasons, Dr. P. Nalla Thampy there also

has no right to file the Writ Petition (Cr) No. 114 of 1991 as a public interest litigant.”

The above paragraph is self-explanatory and the intervention petitions were rejected only consequent upon our conclusions (1) and (2) recorded in our earlier order.

It is significant to note that Mr. Prashant Bhushan in his written submissions has stated, “the Janta Dal never claimed any locus to intervene in the matter; and that in fact its stand is that Mr. Chowdhary has no locus to interfere in the investigation and that the Janta Dal intervened in the matter only after the High Court began to seriously entertain the petition of Mr. Chowdhary without even deciding the question of his *locus standi* that the Janta Dal’s intervention was only to prevent sabotage of the investigation.”

Revisional and inherent powers of the High Court.

The inherent power under Section 482 of the Code of Criminal procedure is not the rule but an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when *prima facie* it appears of court that the trial would likely to be ended in acquittal. In other words, the inherent power of the court under Section 482 of the code of criminal procedure can be invoked by the High Court either of prevent abuse of process of any court or otherwise to secure the ends of justice.

There must a reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offence, an arrest must be avoided if a police officer issues notice to a person to attend the Station House and not to leave station without permission would do?¹

The next question of law that comes for our consideration is the *suo motu* power of the High Court in exercise of its powers under Sections 190 (dealing with powers of the offence), 397 (empowering the High Court or any Sessions Judge to exercise powers of revision), 401 (dealing with the High Court’s power of revision) and 482 (dealing with the inherent powers of the High Court) of the Code of Criminal Procedure. Justice M.K. Chawla, learned Judge of the High Court relying on the decisions, namely, (1) *Ratan Singh v. State of Maharashtra* (or *State of Madhya Pradesh* Ed.),^{51 52} (2) *Mohammad v. State of Kerala*,⁵³ and *Range Forest Officer, Sirsa v. Anand Venktaraman Hedge*,⁵⁴ has held in his order, impugned he rein thus : “A bare perusal of these provisions leave no doubt in my mind that this Court by itself can call for the record of the lower Court if it comes to or is brought to its knowledge that any illegality is being committed at the instance of the State or by the Investigating Agency in the garb of discharging their duties under the provision of law.” Justice M.K. Chawla on his own stating that there are ‘six *prima facie* illegalities’ which, according to him, warranted *suo motu* cognizance in

51. *Som Mittal v. Govt, of Karnataka*, 2008 Cr. LJ 1610 (SC): AIR 2008 SC 1126: 2008 AIR SCW 1003: 2008(60) All Cri C 980: 2008(60) All Cri C 980: 2008(1) All Cri LR 742. 2008(65) All Ind Cas 187: 2008(2) Andh LT (Cri) 427 SC: 2008(1) Chandh Cri C 300: 2008 Cri LR (Raj) SC 180: 2008(2) Ker LJ 402: 2008(3) Ker LT 219: 2008(2) Mad LW (Cri) 969: 2008(40) OCR 123: 2008(1) Rec Cri R 880: 2008(3) SCC 753: 2008(2) Scale 108: 2008(2) SCC(Cri) 73.
52. 1977 Cri. LJ 673.
53. 1982 Cri. LJ 1120 (Ker).
54. 1978 Cri. LJ 1374, (Kant).

exercise of the powers under Sections 397, 401 and 482 of the Code directed the office to register the case under the title, "Court on its on motion v. *State and CB* "

Justice M. K. Chawla has taken an extreme view that "the Court can take judicial notice of any illegality being committed by any Court, with a view to prevent the injury being caused the known or unknown aggrieved party", even when the investigation is at its threshold. The very sentence which have been quoted above is indicative of the fact that the learned Judge in order to protect any possible injury that might be caused either during the investigation or on the culmination of the criminal proceedings to the known or unknown aggrieved party has determined to take *suo motu* cognizance and proceed with the matter, by virtually stepping into the shoes of the accused parties both present and prospective.

Now it need briefly cogitate over the legal issue relating to the revisional and inherent jurisdiction of High Court to call for the records and examine the records of any proceeding before any inferior criminal Court within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and to quash criminal proceeding, deliberate on the legality and correctness of the later part of his order of Justice M.K. Chawla in and by which he has assumed the jurisdiction to initiate *suo motu* proceedings, particularly for quashing the First Information Report and all other connected and allied proceedings arising during the course of the investigation.

Sections 397, 401 and 482 of the new Code are analogous to Sections 435, 439 and 561(A) of the old Code of 1898 except for entertain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on own motion, if it so desires and certainly when illegalities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court.

By virtue of the power under Section 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise come to its knowledge.

The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts—a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

Section 482 of Criminal Procedure Code which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers of the High Court. The rule of inherent powers has its source in the maxim "*Quod lex aliquid aliqui concedit, concedere videtur id sine quo ipsa, esse non potest*". Which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

The Criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

The Judicial Committee in (1) *Emperor v. Nazir Ahmed*,⁵⁵ and (2) *Lala Jai Ram Das v. Emperor*,^{56 57} has taken the view that Section 561-A of the old Code gave no new powers but only provided that those which the Court already inherently possessed should be preserved. This view holds the field till date.

This Court in *Dr. Raghubir Sharan v. State of Bihar*,⁵¹ had an occasion to examine the extent of inherent power of the High Court and its jurisdiction when to be exercised. Mudholkar, J. speaking for himself and Raghuvir Dayal, J. after referring a series of decisions of the Privy Council and of the various High Courts held thus:

".....every High Court as the highest Court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers....."^{58 59}

Thus, the inherent power under this section can be exercised by the High Court, (1) to give effect to any order passed under the Code; or (2) to prevent abuse of the process of any Court; or (3) otherwise to secure the ends of justice.

In relation to exercise of inherent powers of the High Court, it has been observed in *Madhu Limaye v. State of Maharashtra*,^{5<)} that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party and that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice and that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.⁶⁰

55. AIR 1915 PC 18,22.

56. (1945) 47 Bom LR 634 : AIR 1945 PC 94.

57. AIR 1964 SC 1 : (1964)2 SCR 336.

58. See Talab Hazi Hussain v. Madhukar Purshottam Modkar, 1958 SCR 1226 AIR 1958 SC 376, and Pampathy v. State of Mysore, 1966 (Supp) SCR 477 AIR 1967 SC 286.

59. AIR 1978 SC 47: (1978) 1 SCR 749.

60. Vide (1) Talab Hazi Hussain, v. Madhukar Purshottam, AIR 1958 SC 376 1958 SCR 1226, (2) Khusi Ram v. Hashim, AIR 1959 SC 542 and (3) State of Orissa v. Ram Chander

This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage. This Court in *State of Haryana v. Ch. Bhajan Lal*⁶¹ to which both of them were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. It was felt not necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code.

The question that arises for our consideration is whether Mr. Justice M.K. Chawla in exercise of his inherent power is justified in directing the office of the High Court to register a case so that he could exercise his discretionary revisional and inherent powers. The next and tenor of the impugned order spells out that the initiation of the *suo motu* proceedings is to quash the FIR and the proceedings connected therewith as clearly borne out from the learned Judges statement reading that the FIR filed by the CBI in this case on the face of it does not disclose any offence.”

The three decisions cited and relied upon by Mr. Justice M.K. Chawla in his order cannot be of any assistance for initiating a *suo motu* proceeding when the matter is under serious investigation.

In *Rattan Singh's* case,^{61 62} the High Court of Madhya Pradesh finding certain illegalities in the prosecution relating to setting aside the conviction of two accused persons in an appeal preferred by them, extended the benefit to a non-appealing accused by exercising its *suo motu* revisional jurisdiction.

In *Mohammad's* case,⁶³ the observation of the Kerala High Court that “if a clear illegality or injustice comes to the notice of the High Court by whatsoever means it might be, the *suo motu* jurisdiction of the High Court is available to correct such mistake”. This observation was made having regard to the facts of that case wherein the appellant instead of filing an appeal, filed a revision which was dismissed. Thereupon, realising the mistake the appellant filed an appeal before the appellate Court with an application for condonation of delay which was dismissed as barred by limitation. Then the appellant filed a revision before the High Court which allowed the petition holding that it would advance the ends of justice. It was only in those circumstances the observation about the *suo motu* exercise of the power was made.

In the third case relied on by Justice M.K. Chawla, namely, Range Forest Officers⁶⁴ a vehicle belonging to the respondent was confiscated. The respondent unsuccessfully preferred an appeal against the order of confiscation before the Sessions Judge. Thereafter, the respondent filed a revision before the High Court under Section 397 of the

Agarwala, AIR 1979 SC 87 (1979) 1 SCR 1114.

61. 1990 (3) Supp SCR 259.

62. 1977 Cr L.J 1120.

63. 1982 Cr LJ 1120.

64. 1978 Cri LJ 1374 (Kant).

new Code which was allowed and the confiscation was set aside. The appellant in this case filed an application under Article 134(1) of the Constitution for a certificate of fitness for appeal to the Supreme Court. Presumably, the jurisdiction under Section 401 of the Code was not invoked. Therefore, the High Court observed that even if the respondent had no right to file the revision nevertheless, the High Court could exercise its power of revision *suo motu*.

On carefully going through all the three decisions, we unhesitatingly hold that none of the decisions would be of any help to the facts of the present case.

The inherent power of a High Court to stay proceedings has been repeatedly debated in many English Courts and a majority of the judgments has stressed the power of staying proceedings would be reserved only for exceptional cases.

In *Connelly v. D.P.P.*,⁶⁵ Lord Ried at page 1296 expressed his view “there must always be a residual discretion to prevent anything which savours of abuse of process” with which view all the members of the House of Lords agreed but differed as to whether this entitled a Court to stay a lawful prosecution.

The inherent power of a Court to stay proceedings was again the subject of debate in *D.P.P. v. Humphrays*^{66 67}

Most of the decisions of the English cases laid down the dictum that only in cases where there is substantial amount of delay or potential abuse of process or vexatious prosecution or the proceedings tainted with malice etc. alone the Court can step in by exercise of the inherent power.

The Privy Council in *Emperor v. Khwaja Nazir Ahmad*,⁶¹ examined the question of the inherent power of the High Court in interfering with the statutory investigation of the police and laid down the following dictum:

“Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C., to give directions in the nature of *habeas corpus*. In such a case as the present, however, the Courts functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561-A has given increased powers to

65. 1964 AC 1254.

66. 1977 ACL

67. AIR 1945 PC 18.

the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation.”

In *R. v. Metropolitan Police Commissioner*,^{68 69 70 71 72} it was held that:

“Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police or the Chief Constable as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources of any particular crime or area. No Court can or should give him direction on such a matter.”

In *Jehan Singh v. Delhi Administration*,^w it was held that when the First Information Report discloses the commission of a cognizable offence, the statutory power of the police to investigate the cognizable offence cannot be interfered with in exercise of the inherent power of the Court.

In *Kurukshetra University v. State of Haryana*,¹⁰ it was held that:

“Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with the circumspection and in the rarest of rare cases. Thus, the High Court in exercise of inherent powers under Section 482, Criminal P.C. cannot quash a first information report more so when the police had not even commenced the investigation and no proceeding at all is pending in any Court in pursuance of the said FIR.”

Desai, J. articulating for the Bench in *State of Bihar v. J.A.C. Saldanhaf* has clearly well demarcated the sphere of activity in the field of crime detection in the following words (Para 25 of AIR)

“Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government.”

In *Eastern Spinning Mills Shri Virendra Kumar Sharda v. Shri Rajiv Poddarf*~ this Court has observed thus (Para 4):

68. (1968) 1 All ER 763 at 769.

69. (1974) 3 SCR 794; AIR 1974 SC 1146.

70. AIR 1977 SC 2229; (1977) 4 SCC 451.

71. (1980) 1 SCC 554; AIR 1980 SC 326.

72. AIR 1985 SC 1668.

“We consider it absolutely unnecessary to make reference to the decision of this Court and they are legion which have laid down that save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation.”

In *State of Haryana v. Ch. Bhajan Lal*,⁷³ Court had an occasion to examine the scope of the inherent power of the High Court in interfering with the investigation of an offence by the police and laid down the following rule :

‘The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent the breach and pass appropriate orders as may be called for without leaving the citizen to the mercy of police personnel’s since human dignity is a dear value of our Constitution.”⁷⁴

See also *Jasbhai Desai v. Roshan Kumar*,⁷⁵ *Amarnath v. State of Haryana*,TM and *State of Bihar v. Vop. Sharma*.

Sawant, J. in his submission note in *Kekoo J. Maneckji v. Union of India*¹¹ has expressed his opinion thus (Para 21)

‘This is admittedly a stage where the prosecuting agency is still investigating the offences and collecting evidence against the accused. The petitioner, who is the accused, has therefore, no *locus standi* at this stage to question the manner in which the evidence should be collected. The law of this country does not give any right to the accused to control or interfere with the collection of evidence.”

The Seven-Judges Full Bench of the Allahabad High Court went into the matter very exhaustively in *Ram Lal Yadav v. State of U.P.*,⁷⁵ has held that “the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in exercise of its inherent

73. 1990 (3) Supp SCR 259.

74. (1976) 3 SCR 58: AIR 1976 SC 578.

75. (1977)4 SCC 137: AIR 1977 SC 2185.

76. 1991 (1) Scale 539.

77. 1980 Cri LJ 258 (Bom).

78. 1989 Cri LJ 1013.

powers under Section 482, Cr. P.C. ‘This decision has overruled to earlier decisions of that Court in *Prashant Gaur v. State of U.P.*¹⁹, and *Puttan Singh v. State of U.P.*^w

After the proposition of law enunciated by this Court in a series of decisions relating to exercise of the extraordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Code in *Bhajan Lal’s* case.⁸¹ Certain category of cases have been by way of illustrations wherein the power of quashing could be exercised either for preventing abuse of process of any Court or otherwise to secure the ends of justice stating that it may not be possible to lay down any precise, clearly defined and sufficient channelised infrangible guidelines and rigid formula to give an exhaustive list of various kinds of cases wherein such power should be exercised. However, it has become necessary at least to deal with the first alleged illegality. Court was constrained to do so because of the assertion of the High Court; that being “that the First Information Report on the face of it does not disclose any offence.”

According to Mr. Ram Jethmalani, the conclusion arrived at by Mr. Justice M. K. Chawla is absolutely unjustified and perverse since the First Information Report in paragraphs Nos. 8, 16, 67, 68, 73 clearly alleges that the payments made by Bofors are illegal gratification paid to Indian public servants either to influence them or as a reward for the contract given to Bofors.

The then Minister of Defence. Shri K.C. Pant had stated that “if any evidence is produced involving violations of the law, the matter will be thoroughly investigated and the guilty, whoever they may be punished, and thereafter the then Prime Minister on 20th April, 1987 declared that “if any evidence proving the involvement of middlemen or payoffs or of bribes or commissions are brought, the Government will not hesitate to take action and will not allow anybody, however high-up to go free which statement was subsequently reasserted by the Minister of Defence. The excerpts of both the statements in the Parliament have been cited in the earlier part of this judgment.

While so, it shocks judicial conscience that Mr. Justice M.K. Chawla before whom no aggrieved or affected party had come challenging the FIR, has taken *suo motu* action and recorded such categorical assertion that ‘no offence’ thereby meaning much less a cognizable offence is made out in the FIR.

As pointed out in *Nirmaljit Singh Hoon v. State of West Bengal*^f that once an investigation by the police is ordered by a Magistrate under Section 156(3) of the Code, the Magistrate cannot place any limitations or direct the officer conducting it as to how to conduct the investigation. When that is the position of law, Mr. Justice M.K.. Chawla, has overstepped his jurisdiction and made the statement which is unwarranted and uncalled for, any further deliberation on this matter may affect the merits of the case at any later point of time.

Therefore, Court was constrained to set aside the statement, holding that the opinion of Justice Chawla in this regard has no legal effect or consequence. So far as the rest of the alleged illegalities are concerned. That those grounds were not available for *suo motu*

79. 1988 All WC 828 (FB).

80. 1987 All LJ 599.

81. 1990 Supp SCR 259.

82. 1973) 3 SCC 753: AIR 1972 SC 2*

exercise of power in the light of the well-settled legal principles enunciated by this Court for the exercise of such powers.

In the end Court observed thus:

“In the result, we reiterate our earlier conclusion that we agree with the first part of the order dated 19-12-1990 of Mr. Justice M.K. Chawla but quash the later part of the impugned order taking *suo motu* cognizance under Sections 397, 401 read with Section 482 of the Code issuing show-cause notice to the CBI and the State. We make it clear that we do not express any opinion on the merits of the case including the legal tenability of the alleged illegalities opined by Mr. Justice M.K. Chawla in his impugned order.”⁸³

Identity of litigant.—For the purpose of filing petition it was unnecessary to go into the question as to whether Divine Retreat Centre is not a person contemplated by Article 21 of the Constitution and express any opinion as to whether any right guaranteed by Article 21 of the Constitution has been infringed. Suffice it to note that, the Director of the appellant institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition leveled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order. The appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction of the Court under Article 136 of the Constitution of India. The decisions in *Janta Dal v. H.S. Chowdhary*, 1993 AIR SCW 248 and *Union of India and another v. IV. N. Chadha*, 1993 AIR SCW 423 : 1993 Supp (4) SCC 260 laying down the law that hearing to the accused is provided by the Code under specified circumstances are not relevant to decide the issue of locus in cases where challenge is to a judicial order under which institutions and/or persons connected therewith are subjected to inquiry and investigation. It was a case where any informant alleging commission of any cognizable offence by the appellant has given no information to the police and the persons associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a learned Judge of the Kerala High Court, which was *suo motu* taken up as a proceeding under Section 482 of the Code. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 of the Code. It was contended that nomenclature of the petition is not decisive. The High Court can exercise power *suo motu* either under Article 226 or under Section 482 Cr. P.C., or under both. It was submitted that if for any reason the petition entertained by the High Court is held not maintainable under Section 482 of the Code, the same can always be treated as the one filed under Article 226 of the Constitution of India. Reliance was placed upon the observations made by the Court in *Pepsi Foods v. Special Judicial Magistrate*, 1998 (5) SCC 749. The decision in *Pepsi Foods* is an authority for the proposition that nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. The Court took the view that if the court finds that the appellant could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. The observations were

83. *Janta Dal v. H.S. Chowdhary*, AIR 1993 SC 892: 1993 Cri LJ 600: 1993 SCC (Cri) 36: (1992) 3 Crimes 199: (1992) 4 SCC 305 (Del) (S. Ratnavel Pandian and K. Jayachandra Reddy, JJ.).

made in the context of correcting grave errors that might be committed by the subordinate courts. The decision does not lay down any law that the High Court in exercise of its power under Section 482 of the Code or Article 227 may be resorted to constitute any special Investigating Agency to investigate into allegations made for the first time in an anonymous petition.⁸⁴

4. Principle of locus standi—What presuppose?—The principle of '*locus standi*' presupposes the presence of a person or body of persons who suffered a legal injury. In all the public interest litigation cases the person or body of persons who moves the Court for relief is well-known and certain. Thus the public interest litigation petitions are always synonymous with authority. Therefore, the anonymous complaints or petitions forwarded to this Court shall not be entertained as 'Letter O.P.s' involving public interest litigations, under Article 226 of the Constitution.⁸⁵

5. Scope and object of theory.—In *S.P. Gupta v. President of India*,⁸⁶ the law was stated thus (Page 189 of AIR).

“.....But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed. To answer these questions it is first of all necessary to understand what is the true purpose of the Judicial function. This is what Prof. This stated in his book “*locus standi* and Judicial Review” (Page 190 of AIR)

“Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public (Jurisdiction *de droit object* if) or is it mainly directed towards the protection of private individuals by preventing illegal encroachment on their individual rights (Jurisdiction *de droit subject* if)? The first intention rests on the theory that Courts are the final arbiters of what is legal and illegal..... Requirements of *locus standi* are therefore necessary in this case since they merely impede the purpose of the function as conceived here.” (at p. SC 192 of AIR 1982).

....If public duties are to be enforced and social collective diffused' rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation—litigation undertaken for the purpose of redressing public injury, enforcing public duty protecting social, collective, 'diffused' rights and interests or vindicating public

84. *Divine Retreat Centre v. State of Kerala & Others*, AIR 2008 SC 1614.

85. *Some Employees of Hindustan Latex Ltd. v. State*. AIR 1996 Ker 193 at 194: (1996) 1 Ker LJ 59: (1996) 1 Ker LJ 136: (1996) 1 Civil Court Cases 307.

86. AIR 1982 SC 149.

interest, and citizen who is acting *bona fide* and who has sufficient interest has to accord standing.....” (at page SC 194 of AIR 1982).

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

No doubt, in *Shri Sachidanand Pandey v. State of West Bengal*,⁸⁷ a note of caution was administered by the Supreme Court (at page 1134 of 1987):

“..... Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicions. See the facts of this case and the end result.”

“This public interest litigation took its birth, perhaps from the righteous indignation of the petitioners, against the State Government at their bartering away of four acres of land belonging to the zoo to the Taj Groups of Hotels. The writ petition is mainly based on the ground that the decision of the Government is arbitrary. The question to be answered is whether this accusation can be justified. On a perusal of the records I find that the State Government had made available to the Court all the relevant documents so as to satisfy the Court about the propriety of its action. (Page 1136 of AIR 1987):

My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move Courts. Public interest litigation has not come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

Traditional litigation should not stay put. They have to be tackled by other effective methods, like decentralising the judicial system and entrusting majority of traditional litigation to village Courts Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.

But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigation.⁸⁸

87. AIR 1987 SC 1109.

In *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*,⁸⁹ wherein the seed of the concept of public interest litigation was first sown by Krishna Iyer, J the Supreme Court held thus (Page 1458 of AIR):

“Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a party. When foul play is grace of processual justice. Test litigations, representative actions, *pro bona publico* and like broadened forms of legal proceedings are in keeping with the current accent of justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcoming. Even Article 226, viewed in wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher 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 adjectival law.”

The object of the Public Interest Litigation is rendering of social and economic justice to the weak and underprivileged. For the purpose of vindication and protection of the rights of weak and poor people the public interest litigation are instituted. *State v. Union of India*, AIR 1996 Cal 181.

6. Strict Rule of locus standi.—In *Janata Dal v. H.S. Chowdhury*,⁸⁹⁸⁹⁹⁰ will indicate that in defining the rule of *locus standi* no rigid litmus test can be applied as the law is still developing:

‘Though we have, in our country, recognised a departure from the strict rule of *locus standi* as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of *locus standi* no ‘rigid litmus test’ can be applied since the broad contours of PIL

88. R.R. Delavai v. The Indian Overseas Bank, AIR 1991 Mad 61 at pp. 69, 70, 71 (Srinivasan J.).

89. AIR 1976 SC 1455 (1976) 3 SCC 832 quoted in *State v. Union of India*, AIR 1996 Cal 181 at 192: (1996) 1 Com LJ 258.

90. AIR 1993 SC 892: (1992) 4 SCC 305 quoted in *State v. Union of India*, AIR 1996 Cal 181 at 200: (1996) 1 Com LJ 258.

are still developing space seemingly with divergent views of several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process.”

Public interest lies in having a medical store inside the campus under the control of authorities in order that genuine medicines at prescribed rates are available when needed for patients even at the dead of night. Their main grievance is that no medical store should function in-side the campus of the hospital. This is to further their private interest. An objection by shopkeepers across the road close to the hospital that opening of a medical store in the campus will jeopardise their interest and they will not be able to sustain themselves does not constitute any legally tenable right in favour of the shop keepers.

There is no reason, therefore, for not accepting the submission advanced by ‘N’ that the petition has been brought with *mala fide* intention to serve the personal interest of petitioners 3 and 4 and not in public interest.

Since the petitioners have not shown that they were not aware of the public notice before the lease was granted in favour of respondent No. 7 and that had they known about it, they would have applied for the grant of lease in their favour, no fundamental right of theirs under Art. 14 of the Constitution has been violated and they have not sustained injury to any legally protected interest.

Thus, a person who professes to bring a litigation as public interest litigation should do so to achieve some public purpose and should not be motivated by some personal private interest. Further, such person should act *bona fide*. If on the other hand, a petition is brought with *mala fide* intention in the name of public interest to achieve some private purpose, it does not deserve to be entertained as public interest litigation. Where a petitioner bringing such petition resorts to falsehood to hide the private motivation, a clear case of abusing the judicial process is made out. Such a petitioner is not to be left lightly.

It is necessary to discourage people from bringing petitions which are motivated by merely personal interests in the name of public interest, for which they have no *locus standi*. Abuse of the process of the Court in the garb of public interest adds to the Courts already heavy docket. This at times also results in manifest injustice to a public cause, because of interim orders.^{91 92}

In *Janta Dal v. H.S. Chowdhury*,ⁿ the Supreme Court held thus (Paras 59 and 66 of AIR 1993):

“Though it is imperative to lay down clear guidelines and propositions; and outline the correct parameters for entertaining a Public Interest Litigation particularly on the issue of *locus standi*, yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.”

91. Prayag Vyapar Mandal v. State, AIR 1997 All 1 at 5, 6, 7 (R. Dayal and Kundan Singh, JJ).

92. AIR 1993 SC 892 quoted in State v. Union of India, AIR 1996 Cal 181 at 196. 197 (1996) 1 Com LJ 258 (Samresh Banerjee, J.).

Though we have, in our country, recognised a departure from the strict role of *locus standi* as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and in-flexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of *locus standi* no 'rigid litmus test' can be applied since the broad contours of PIL are still developing space seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process.

7. Sufficient Interest.—The point for consideration now is whether, on the materials placed before the Court, *aprima facie* case is made out for entertaining the writ petition or whether it is a fit case for dismissal *in limine*.

Before going into the merits of the rival contentions, it is necessary to deal with the preliminary objection raised by the Advocate General about the *locus standi* of the petitioners to file this writ petition. This Court observed, this argument merits no serious consideration in view of the expanding horizons of the concept of *locus standi* and the principles enunciated by the apex number of judgments. In *S.P. Gupta v. President of India* ⁹³ the Supreme Court held as follows:

'Whenever there is a public wrong or public injury caused by an act or omission of the State or public authority which is contrary to the Constitution or law, any member of the public acting *bona fide* and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or meddlesome interloper but who has sufficient interest in the proceeding.....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. It is not possible for the Court to lay down any hard and fast rule or any straitjacket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the Court.'

In the same case, the Supreme Court has also observed that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not

allow itself to be activated at the instance of such person and must reject his application at the threshold.^{94 95}

In the case of *Bihar Legal Support Society v. Chief Justice of India*⁹⁴ the Supreme Court laid down, “ordinarily only a person whose rights are violated can move a Court for redress. However, where there is likelihood of any Government injuring the interests of many persons, any one may move the Court for relief.”

In *R. v. Commr. of Police*,⁹⁶ Lord Denning observed:

“If there is a good ground for supposing that a government department or a public authority is transgressing the law or is about to transgress, in a way which offends or injures thousands of her Majesty’s subjects, then in the last resort any of the offended or the injured can draw it to the attention of the Court of law and seek to have the law enforced.”

After all, as observed by the Supreme Court in *Chaitanya Kumar v. State of Karnataka*,⁹⁷ advancement of public interest and avoidance of public mischief are the paramount considerations in the administration of justice and the Court cannot close its eyes and persuade itself to uphold the publicly mischievous executive actions which have been exposed.

In the instant case, the petitioners, who are members of the legal profession, are seeking to draw the attention of the Court to certain irregularities and illegalities alleged to have been committed in relation to the exploitation of the mineral wealth of the nation and conservation of forests which are undoubtedly matters of public interest. There is no reason to doubt their *bona fide* or to think that they are acting out of political motivation or other oblique considerations or for personal gain. This Court has, therefore, no hesitation in rejecting the submission of the Advocate General on the question of *locus standi*.⁹⁸

In writ petition the petitioner M. Krishna Swami claim sufficient interest to file the writ petition as a member of the Tenth Lok Sabha and as an advocate of Madras known to Mr. Justice V. Ramaswami for long. In this petition, it is alleged that certain illegalities in the procedure adopted by the Inquiry Committee prejudicial to Mr. Justice V. Ramaswami have rendered the inquiry invalid. On the basis of the illegalities in procedure, alleged in the petition, the relief sought is for quashing the proceedings of the committee as invalid. This is the alternative prayer in the petition while the primary relief claimed in the petition is substantially the same as in the other petition to quash the notice of motion admitted by the speaker of the Ninth Lok Sabha and the charges framed by the Committee against Mr. Justice V. Ramasami. Another prayer made to hold that the Inquiry Committee is disqualified to conduct the inquiry was given up at the hearing by Shri Sibal accepting the position that the allegation of bias against the committee could be examined only at the instance of Mr. Justice V. Ramaswami who is not even a

94. See *V. Satyam Reddy v. Union of India*, AIR 1996 AP 175 at 180, 181: (1996) 1 Andh WR 32 (C.V.N. Sastry, J.).

95. AIR 1987 SC 38.

96. (1973) 1 WB 629 quoted in AIR 1996 AP 175 at 181.

97. AIR 1986 SC 825.

98. *V. Satya Reddy v. Union of India*, AIR 1996 AP 175 at 180, 181: (1996) 1 Andh WR 32.

party in either of these two writ petitions. In substance, the primary relief claimed in both these writ petitions is for reconsideration of the earlier Constitution Bench decision in Sub-Committee on Judicial Accountability, 1919 AIR SCW 3049, and for accepting the view expressly rejected in the majority opinion therein. In writ petition the alternative prayer for quashing the proceedings of the Inquiry Committee on the ground of illegality in the procedure adopted by it for conducting the inquiry is alleged to be based on the decision in Sub-Committee on Judicial Accountability which held that the proceeding relating to inquiry conducted by the Committee is statutory in nature subject to judicial review.

Consideration of the points raised in the petitions in these circumstances. It may be mentioned that the Judge was a party in the earlier proceedings..... Sub-Committee on *Judicial Accountability v. Union of India*."

Shri Sibal submitted that the order dated 27-2-1992, by a Division Bench direction that the papers be placed before the learned Chief Justice of India for constituting a Constitution Bench to hear this petition after mentioning the contentions of Shri Sibal requires that we must decide those contentions on merits and we cannot dispose of the writ petition on this preliminary point without going into the merits of those contentions. Without expressly saying so, the suggestion of Shri Sibal is that there is no option in the matter in view of the aforesaid order dated 27-2-1992 by a Division Bench except to decide these contentions on merits. It may be mentioned that the contentions of Shri Sibal mentioned in the order dated 27-2-1992 are mainly for reconsideration of the decision in Sub-Committee on Judicial Accountability and amount to reagitating the very same points which were considered and rejected by majority in the earlier Constitution Bench decision. Apart from the question whether reconsideration of that decision can be sought in this manner. There is no doubt that the order dated 27-2-1992 made by the Division Bench could not bind even that Bench much less a larger Bench in the manner suggested by Shri Sibal when the reference to a Constitution Bench is to hear the petition as a whole and not merely decide certain questions of law without even issuing Rule. The course adopted was available to that Division Bench itself even after making the order dated 27-2-1992 if it had heard the matter thereafter instead of referring the petition for hearing by a Constitution Bench. This contention does not merit any further consideration.

The two main preliminary points which arise in these petitions are:

(1) Tenability of the plea for reconsideration of the decision in Sub-Committee on *Judicial Accountability v. Union of India*,⁹⁹ ¹⁰⁰ at the instance of the petitioners; and (2) Maintainability of the petitions for reliefs claimed for the benefit of Mr. Justice V. Ramaswami without impleading him as a party.

It has been already indicated the impropriety of considering and deciding the question of grant of reliefs claimed in the petitions for the benefit of Mr Justice V. Ramaswami in his absence even as a party. Ordinarily, it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also the claim is made in substance by the person affected even though the form be different and it is so stated expressly. The only reason given for the learned Judge not doing so, by Shri Sibal, has been considered by this Court earlier and not found sufficient

99. (1991) 4 SCC 699; 1991 AIR SCW 3049.

100. (1991) 4 SCC 699; 1991 AIR SCW 3049.

to support his submission. It may also be mentioned that in a similar situation Mr. Justice Murphy of the High Court of Australia, the apex Court of that country, while facing proceedings for his removal from office, had brought an action for injunction to restrain the proceedings against him in his own name. The judgment of the High Court of Australia in that matter is *Murphy v. Lush*^m. That case is referred only to indicate that the grievance in a similar situation was made by the concerned Judge of the apex Court himself and not by someone else even without impleading him. Subsequently in Writ Petition No. 514 of 1992 (Reported in 1992 AIR SCW 2683), the petition was filed by the wife of the Judge wherein the Judge gave a writing to the effect that the writ petition was in substance for and on his behalf with the decision in which he would be bound. There is nothing on record in these petitions to indicate a similar stand by the Judge. Moreover, if the subsequent writ petition for his benefit is filed by his wife in this manner, there is no reason why the learned Judge would not adopt the same method to raise the points involved in these petitions, if he was so advised.

The plea for reconsideration of the earlier judgment in Subcommittee on Judicial Accountability^{101 102 103} at the instance of the present petitioners is made placing strong reliance on *A.R. Antulay v. R.S. Nayak*,^{xm} The decision in *Antulay* is of no assistance to the petitioner in the present case. In the first place, it is not the learned Judge Mr. Justice V. Ramaswami who has asked for reconsideration of that decision, assuming he could do so by a petition under Article 32 of the Constitution instead of by a review petition, since Mr. Justice V. Ramaswami was a party in that matter. On the other hand, it was *Antulay* himself who had challenged by a petition under Article 32 the decision rendered against him by this Court. In addition, the settled principles for reconsideration of a decision which have been once again reiterated in the *Union of India v. Raghubir Singh*, (Dead by Lrs.)¹⁰⁴ clearly indicate that the plea for reconsideration is not to be entertained merely because the petitioner chooses to reagitate the points concluded by the earlier decision in Sub-Committee on Judicial Accountability.¹⁰⁵ In the *Keshav Mills Co. Ltd. v. Commr. of Income-tax, Bombay North*,¹⁰⁶ it was pointed out that interest of public good should be the guide and there must be compelling reasons for reconsideration of a decision of this Court for public good. There is no good much less public good being served in reopening those questions which are concluded by a decision of the Constitution Bench in Subcommittee on Judicial Accountability particularly when the plea is not even made by the concerned Judge himself and the attempt to reagitate those points is related to the same learned Judge facing the same proceedings for his removal. *Antulay's* case,¹⁰⁷ is also distinguishable for the reason that therein the result of the earlier decision against him challenged by *Antulay* in the petition under Article 32 had the effect of conferring jurisdiction on a Court contrary to the specific statutory provision; and the error in the earlier judgment to this effect was considered to be sufficient for *Antulay* himself to challenge that decision by an independent writ petition instead of a review petition. Moreover, judgment of Mishra, J. as well as that of Mukherjee, J. as their Lordships were

101. (1886) 65 ALR 651.

102. 1991 AIR SCW 3049.

103. (1988) 2 SCC 602; AIR 1988 SC 1531.

104. (1989) 2 SCC 754; AIR 1989 SC 1933.

105. 1991 AIR SCW 3049.

106. (1965) 2 SCR 908; AIR 1965 SC 1636.

107. AIR 1988 SC 1531.

then, give a clear indication that the decision therein was not intended to be a precedent and was confined to the peculiar facts and circumstances of that case. This distinction is sufficient to hold that Antulay does not permit these petitioners to claim reconsideration of the earlier decision in these circumstances.

Shri Sibal contended that the petitioners not being a party to the earlier decision in Sub-Committee on Judicial Accountability,¹⁰⁸ the remedy of review of that decision is not available to them. This argument instead of supporting their claim for seeking reconsideration of the judgment, actually negatives it. If they are not entitled to seek review as they were not parties in the earlier proceedings in which the judgment was rendered and the person directly affected remains the same learned Judge who was a party then but not now, these petitioners cannot have the right which they seek to assert when the context remains the same. Moreover, it was deemed appropriate to consider these questions at their instance in these circumstances.

The written submission of petitioner Raj Kanwar are in substance no addition to the points urged by Shri Sibal and, therefore, do not require any separate consideration. We might, however, mention that petitioner "R" persisted in claiming to be also heard orally in addition, which the Court refused for the given. The petitioner "R" appears to be a busybody who has filed the petition for no ostensible public purpose. He has described himself as an advocate practising in the District of Kamal without indicating the reason for his persistence in repeating the same challenge in his individual capacity when Shri Kapil Sibal, Senior Advocate has argued at length the point he raises, on behalf of a Member of Parliament and Advocate of Madras claiming a personal relationship with the learned Judge for long and the Supreme Court Bar Association and the Sub-Committee on Judicial Accountability have appeared as interveners before Court.

Court would have refrained from making these observations but for the fact that petitioner after the conclusion of the hearing in which he was permitted to file written submissions which Court have taken into account chose to adopt the extraordinary course of an application to the Chief Justice of India to make the wholly unjustified grievance that he was not orally heard. As an advocate he should have known that such an application is untenable apart from being misconceived. He should have appreciated that public interest was served better by early conclusion of the hearing rather than its prolongation to enable every individual, who so desired, to address it orally. In a matter of this kind, it was not only unnecessary but also inappropriate to permit the hearing being converted into a debate for participation of every individual in the, name of public interest. The persistence of "R" is not in public interest.

The view Court is taking of the role of petitioner, "R" in Writ Petition (Civil) No. 140 of 1992 is in consonance with the decision in *S.P. Gupta v. Union of India*,¹⁰⁹ wherein this aspect was considered at length. In his petition as well as in written submissions all that he said was to seek relief on merits on the points raised which are concluded by earlier Constitution Bench decision without even showing as to how he is entitled to make the claim. Later he added that the absence of the Judge is immaterial and the points be decided without any relief being granted to anyone.

The basis of the right claimed by the petitioner, "R" has to be found in some principle to amount to the right of the kind the claims. There is no special injury to him

108. 1991 AIR SCW 3049.

109. 1981 (Supp) SCC 87: AIR 1982 SC 149.

alleged and, therefore, the right he claims is better than that available to every other advocate in the country. If the mere membership of the Bar can provide the foundation for the right which “R” asserts to maintain a separate petition then on principle every advocate in the country would be entitled to file a separate petition, and as he claims also entitled to be heard orally even though it may only be at best repetition of the same arguments which Shri Kapil Sibal, Senior Advocates advanced at length. Since it cannot be visualised that every Advocate as an individual can claim such a right in public interest, it cannot be doubted that the claim made by petitioner, ‘R’ to this effect and his insistence on being orally heard when he had nothing additional to contribute, as is evident from his petition and the written arguments, is clearly misconceived. It is necessary that this tendency is curbed in public interest to avoid wastage of Courts time and abuse of its process.

It is beneficial in this context to reproduce certain portions from the decision in *S. P. Gupta*,¹¹⁰ The opinion of Bhagwati, J. (as he then was), on this aspect reflects the opinion of the Bench and he stated as under:

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

Before parting with this general discussion in regard to *locus standi*, there is one point to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want. (Paras 24, 25 pages 219-220 of (Supp) SCC : (Paras 23-24 at p. 195 of AIR).

Supreme Court have taken a broad and liberal view in regard to *locus standi* and held that any public spirited advocate acting *bona fide* and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging an unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. But the persons for whom the relief is sought must be ready to accept it; they must appear and make it known that they are claiming such relief; it cannot be thrust upon them unless they wish it.

The Court does not decide issues in the abstract. It undertakes determination of a controversy provided it is necessary in order to give relief to a party and if no relief can

be given because none is sought, the Court take upon itself a theoretical exercise merely for the purpose of deciding academic issues, howsoever important they may be. The Court cannot embark upon an inquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by such misuse or abuse of power. The Court cannot take upon itself the role of a commission of inquiry.....a knight errant roaming at will with a view to destroying evil wherever it is found.” (Para 57, pp. 264-265) of (Supp) SSC: Para 56, at pp. 226-227 of AIR).

Venkataramiah, J. stated thus:—

“It has, however, to be made clear that it cannot be said that lawyer only because they have a right to practice in a Court have ‘*locus standi*’ to file petitions in respect of every matter concerning judges, Courts and administration of justice. There are many such matters in which they have no ‘*locus standi*’ to ask for relief.....”

“But for the active participation of these two persons the petitions regarding reliefs concerning them individually would have probably become liable to be dismissed on the ground that the lawyers have no ‘*locus standi*’ to make these prayers.” (Para 989, page 773 of (Supp) SCC: Para 974, at p. 571 of AIR):

In *S. P. Gupta*,¹¹¹ while widening the ‘*locus standi*’ in matters of public interest, the limitations to prevent abuse of the process of Court were also indicated and the case of only those judges was examined who were parties before the Court.

Supreme Court have dealt with this aspect at some length and also referred to the decision in *S. P. Gupta* since in the present context it has become necessary to reiterate the same to disabuse the mind of persons, like ‘R’ who insist that they have such a right in the abstract. Petitioner ‘R’ could have served the public interest better if he had assisted Shri Kapil Sibal in the main petition, assuming he had something additional to say. The assertion of petitioner ‘R’ that he has any such right in the abstract is misconceived.

Even though the hearing in these petitions had concluded before Supreme Court heard Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683), yet it deferred the decision of these writ petitions till now on the express request made by Shri Kapil Sibal not to decide these matters before deciding Writ Petition No. 514 of 1992.^{111 112}

The short sift of the facts pertinent to the points posed are that on February 27, 1991 a notice of motion signed by 108 members of the 9th Lok Sabha was presented to the speaker to initiate proceedings against Hon’ble Mr. Justice Veeraswami Ramaswami, a sitting, Judge of this Court, alleging commission of financial irregularities in the discharge of his administrative duties as Chief Justice of the Punjab and Haryana High Court. The speaker admitted the motion on March 12, 1991 and constituted a Committee comprising of Sri Justice P. B. Sawant a sitting Judge of this Court, as Presiding Officer and Sri Justice P. D. Desair, the Chief Justice of the Bombay High Court and Sri Justice

111. AIR 1982 SC 49.

112. *Krishna Swami v. Union of India*, AIR 1993 SC 140 at 1409, 1410, 1411, 1412 1413 1414 1415, 1416 1993 AIR SCW 538: (1993) 1 JT (SC) 67: (1993) 1 Civil LJ 487 (1993) 2 SCJ 1: (1993) 1 BLJR351.

0. Chinnappa Reddy, a retired Judge of this Court, a distinguished jurist as members under Section 3(2) of Judges (Enquiry) Act 41 of 1968 (for short 'the Act'). The 9th Lok Sabha was dissolved on March 13, 1991. The sub-committee on Judicial Accountability filed a writ petition in this Court under Article 32 of the Constitution and a host of writ petitions ensued, which were disposed of by a Constitution Bench reported in the sub-committee on *Judicial Accountability v. Union of India*,¹¹³ for short 'SCJA' in which this Court declared that the motion admitted by the speaker of the 9th Lok Sabha is valid; his action under the Act is outside the Parliament, it did not lapse and directed the Union of India to notify his constituting the Committee under Section 3(2) of the Act. Pursuant thereto, a notification was issued by the Central Government, The Secretary to the Committee issued notice in Form I of the Judges (Enquiry) Rules, 1969 (for short 'the Rules') on January 14, 1992 communicating definite charges and requested Mr. Justice V. Ramaswami to put in his written statement of defence on or before February 4, 1992 and to appear either in person or through counsel on February, 10, 1992 along with his evidence. At request, George Fernandez, Jaswant Singh, SCJA and the petitioner were permitted only to assist the Advocate of the Committee to prove the case against the Judge and to keep secrecy of the facts and the proceedings. The petitioner's insistence to prove the innocence of the Judge was not acceded to. So he filed the Writ Petition.

When the matter came up for admission before a Bench of three Judges on February 27, 1992 to which one of us (K. J. Reddy, J.) was a member, having heard the counsel Sri Sibal, formulated the following five questions, and having regard to the importance of those questions raised, referred the matter to the Constitution Bench.¹¹⁴

(1) Sub-section (1) of the Judges (Inquiry) Act, 1968, mandates that the Speaker of the House of People shall either admit or refuse to admit a motion for presenting an address to the President of India for the removal of a Judge of the Supreme Court of India only after considering such materials, if any, as may be available to him and failure to comply with the said *since-qua-non*, viz. consideration of available material before admitting the motion, vitiates his decision for non-application of mind. In the present case since then the Speaker, respondent No. 3 is not shown to have applied his mind to the available material before admitting the motion, his decision to admit the motion and constitute the Committee comprising respondents Nos. 4, 5 and 6 is unsustainable in law.

(2) Sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968, invests the Speaker with the power to constitute a Committee for the purpose of making an investigation into the grounds on which the removal of the Judge is sought, but such power must be exercised consistent with the established practice and norms and consistent with the idea of independence of judiciary, after consultation with the Chief Justice of India. In the present case all the three Committee members were directly approached by the Speaker, respondent No. 3 who thereby departed from the well-established practice and hence the constitution of the Committee clearly vitiated in law.

(3) Although sub-section (1) of Section 4 of the Judges (Inquiry) Act empowers the Committee to regulate its own procedure in making the investigation, which procedure must be consistent with the rules of natural justice, the Committee has not outlined any procedure for investigation and the procedure it has hitherto followed in framing charges without undertaking any preliminary investigation to ascertain if there

113. 1991 2 SCR 741: 1991 AIR SCW 1573.

114. 1992 2 JT SC 63, Para 1.

is sufficient *prima facie* material for framing a charge and in refusing to provide the concerned Judge with copies of documents sought on unsustainable grounds and in permitting third parties to assist the Committee through its counsel against the Judge and in not permitting the petitioner to assist the Committee to establish the innocence of the Judge, the Committee has completely mutilated the '*sui juris*' character of the investigation and thereby rendered the proceedings illegal and wholly inconsistent with the principles of natural justice.

(4) If the provisions of sub-sections (3) and (4) of Section 3 are read to mean that they empower the Committee to frame charges without holding a preliminary investigation at which the concerned Judge may participate, the said two sub-sections would be rendered *ultra vires* Art. 124(5) of the Constitution.

(5) When the Constitution Bench decided the case *Sub-Committee on Judicial Accountability v. Union of India*,¹¹⁵ the proceeding which took place in the House of People were not before it, which proceedings now available, clearly indicate that the Speaker himself was alive to the fact that he was constitutionally obliged to place the notice before the House and his decision on the admission of the notice was to depend on the collective wisdom of the House.

In view of this factual aspect reflected in the proceedings of the House, the decision of the Constitution Bench needs reconsideration.

The substratum of the petitioner's pleas and ably argued by his learned Senior counsel, Sri Kapil Sibal are that Sri Rabi Roy, the Hon'ble Speaker of the 9th Lok Sabha, the third respondent herein, did not have with him all the material matrix before admitting the motion to remove the Judge, nor applied his mind to the materials to find *prima facie* case, which is a condition precedent the Act and the Rules, to be consistent with Article 124 of the Constitution of India. He should have conducted preliminary enquiry in that behalf. The record does not bear out any reason. Non-application of the mind or bereft of reasons smacked the exercise of jurisdiction by the Speaker to admit the motion and at any rate it is illegal. This Court on the earlier occasion did not have the advantage of the record now available to deal with this aspect. The petitioner being a non-party is not bound by the Constitution Bench Judgment which requires fresh look in the light of the above material. The constitution of the Committee without consultation and nomination by the Chief Justice of India became illegal. The enquiry, not having been preceded by any investigation, is *ultra vires* of Art. 124(5) of the Constitution. If it is otherwise, sub-sections (3) and (4) of Section 3, Section 4(1), etc. of the Act are *ultra vires* of Act, 124(4). He further contends that the Committee cannot be a Prosecutor and a Judge. Before framing definite charges, it has to conduct an investigation into the allegations after giving reasonable opportunity to the learned Judge. The Committee did not adopt that procedure. Instead, it framed charges which lack factual foundation nor are supported by unimpeachable evidence. There is dichotomy between investigation and enquiry. In the investigation, the Committee, after giving reasonable opportunity to the Judge, was to find whether from the material the charges could be framed and if it finds in the negative, the need to conduct the enquiry does not arise and it should report accordingly to the Speaker who would drop further action. Only after the investigation, finding that there is *prima facie* material or evidence, definite charges shall be framed, followed by an enquiry conducted against the learned Judge after giving reasonable opportunity. The enquiry shall be confined

115. (1991) 4 SCC 699: 1991 AIR SCW 3049.

only between the learned Judge and the committee. The Advocate appointed to assist the committee cannot proceed as if he a prosecutor against the learned Judge. The Committee did not inform the judge before hand as to what procedure it seeks to follow in this matter. The Committee committed manifest illegality in permitting Messrs. George Fernandez and Jaswanth Singh and the SCJA to participate as prosecutors against the learned Judge. They have no *locus standi* either to participate or adduce evidence against the Judge. The specious plea of purity of judicial administration is an actuated pretence to malign the Judge. The evidence establishes that the advocate for the committee along with the advocates of the Members of Parliament and the SCJA had prior consultations and in fact tutored the witnesses before the proceedings commenced which is repugnant to the dignity of Judicial process impinging upon Article 21 as an unfair procedure. The Committee itself cross-examined the witnesses that answered favourably to the Judge. On the basis of the material placed before the Court, he argued that the evidence does not establish any of the charges levelled against the learned Judge. His conduct to attract Article 124(4) of the Constitution and the Act as misbehaviour impinging upon the integrity of the learned Judge must be grave but not the trivial administrative lapses to initiate proceedings for removal or an enquiry thereon. Diverse circumstances available before the Committee would not establish any misbehaviour by the learned Judge. Advocate-intervener, contended that the alleged misbehaviour was committed while discharging his duties as Chief Justice of Punjab and Haryana High Court; as per Article 217(1) (C) on his elevation to this Court, they ceased to be of any relevance for an investigation under Article 124 (5), the Act and the Rules, the action does not touch upon his misbehaviour as a Judge of this Court which alone is germane. So the motion for removal and consequent enquiry are devoid of jurisdiction and authority of law.

Sri G. Ramaswamy, the learned Attorney General contended the Union of India did not file any counter, nor is interested in taking any particular stand in the matter. As Attorney General, on notice, contended that in a public interest litigation the essential requirement is that the petitioner must be genuinely interested to seek declaration of public law. Only persons like busybody or actuated with malice, should have no *locus standi*. The petitioner, being an advocate and a Member of Parliament, gets sufficient interest to maintain the writ petition.

The omission to implead the learned Judge, though ideal to have him impleaded, does not become a handicap to declare the law which would bind the learned Judge as well. But the relative merits of the dispute personal to the learned Judge should not be considered, nor be given relief. For example in respect of the relief by the petitioner concerning the alleged bias by the Committee, the writ petition is not maintainable at his behest. The procedure for investigation and proof of misbehaviour under Article 144(5) of the Constitution and Sections 4(1) and 3(3) of the Act are distinct and different. The former refers to inquisitorial and the later partakes of adversarial. Section 3(3) of the Act occupies the field of adversary process whereas Section 4(1) encompasses both. "Investigation" acquired distinct connotation under Item 8 of the List I of 7th schedule to collect evidence to facilitate enquiry or trial. In support thereof he placed reliance on the provisions in the Code of Criminal Procedure. During the investigation the authority is empowered, without predisposition, to sift the evidence and the enquiry confines to the field of proof of the charge for the determination of the guilt or innocence and to record a finding in that behalf. This would be done as an independent Tribunal or as Court after giving opportunity to the contending parties to adduce evidence. Its endeavour is to bring

out the truth and not to bolster up the case. The counsel for the tribunal has no role to play in proof of misbehaviour against the Judge. There can be neither a counsel for nor witnesses of the Committee. It is enjoined to adjudicate the credibility of evidence and reach its conclusions of guilt or innocence but not to act as prosecutor to prove the case against the Judge. The correctness of the procedure adapted by the Committee things upon the declaration of law in this behalf by this Court for which the learned Judge is neither a necessary, nor a proper party. Even otherwise in his absence also the declaration would be given which binds him. No third party other than the learned Judge and the advocate appointed under Section 3(9) of the Act has a right to participate or adduce evidence during the investigation and enquiry done by the Committee. The decision in SCJA case requires reconsideration. Even otherwise the declaratory reliefs of public law could be made by this Court.

The Senior Counsel appearing for the Committee with equal ability fairly contended that the petitioner has neither *locus standi* nor the writ petition maintainable to review the earlier decision. The motion for removal of the learned Judge is a political process. Though the Speaker is a statutory authority, he does not act like a judicial or administrative authority to record reasons before admitting the motion. He is a constitutional functionary of high authority. The fact that he admitted the motion does indicate that he had applied his mind and found *prima facie* grounds to admit the motion for removal of the learned Judge. Accordingly, he admitted the motion and constituted the Committee. It is neither necessary for him to make prior investigation nor give notice to the Judge. It is not mandatory that he should consult the Chief Justice of India. It is his discretion. The constitution of the Committee without consulting the Chief Justice of India is not illegal. The Committee is not required to make investigation before framing definite charges. The Committee is to consider the record sent by the Speaker and if it found *prima facie* evidence or material to frame definite charge or charges, it would be open to the Committee to do so and issue notice in Form I to the learned Judge. Before framing the charges, the learned Judge is not entitled to any notice or opportunity. Only after communication of the charges in Form I, the learned Judge is entitled to submit his written statement of defence and also his adducing evidence in support thereof. He is also entitled to legal assistance as well as to be heard. Investigation and enquiry contemplated under the Act and the Rules is overlapping and synonymous. Even if the learned Judge opts to remain *ex parte*, the committee is obligated to conduct the enquiry into the definite charges and the Advocate be appointed to assist the Committee to prove the charges framed against the learned Judge by adducing evidence. The Committee consists of eminent members having long judicial experience an impeccable integrity and erudite. The proceedings before the Committee are in the nature of a trial of a civil suit in which the learned Judge or his counsel and the Advocate alone are entitled to participate and lead evidence. Permission to third party to participate in the proceedings flows from the discretion of the Committee to adopt its own procedure and in exercise thereof limited right to participate in the enquiry was given to third parties. The Committee has to submit its report recording finding/findings whether or not the charge or charges has/have been proved. If the Committee finds that charges have been proved, then the political process under Article 125 (4) again would revive. If the committee finds that the charges have not been proved, then the Speaker has to drop the proceedings in terms of the Act and the Rules. The petitioner cannot seek the reliefs asked for in the writ petition. The Judge alone is entitled to impugned the proceedings or claim for reasonable opportunity. Since the learned Judge opted to remain *ex parte*, the petitioner cannot challenge the proceedings since any adverse findings given by this Court would not bind the Judge as

he is not conomine party to the writ petition. He also further contended that neither the decision in SCJA case,¹¹⁶ is open to be reviewed nor the petitioner has locus to do so. Sri Jitendra Sharma, Secretary of the Supreme Court Bar Association adopted the contentions of Sri Nariman, Sri Shanti Bhushan, the learned Senior counsel for SCJA, while supporting Sri Nariman, further argued with usual vehemence that they are *bona fide* interested to uphold the dignity of the Court and the efficiency of the rule of law; they are also interested that the learned Judge should come out unscathed at the earliest; their *locus* was upheld by this Court, and they are interested to bring on record the true and correct facts. The permission granted by the Committee is not illegal. The members of the Parliament having moved the motion are interested to prove the allegations.

The main question that needs adjudication is whether the petitioner has locus to maintain the writ petition. Indisputably, the petitioner is an advocate of Madras High Court Bar and he is also a Member of the Parliament. Therefore, it cannot be said that he is a *pro bono publico*. His genuine interest to uphold the dignity of the judiciary is not doubted. The petitioner sought time to implead the learned Judge as a party respondent to the writ petition. But ultimately, it was given up. By itself it would not detract, if the relief/reliefs otherwise would be considered and given. The facts present interpretation of the Constitution, the scope of the Speaker's power to admit the motion to remove a Judge, his dignity coupled with the independence of the judiciary, the pivotal organ of the State. Some of the questions raised are of far-reaching importance. As a member of the Bar, he would definitely be interested in setting the law of the procedure to remove a Judge of higher judiciary under Article 124(5); read with the Act and the Rules. Moreover, the procedure for the removal of a Judge is *stti generis*. The discretion left to the Committee under Section 4(1) of the Act to regulate its own procedure to investigate into the definite charges against the learned Judge bears vital importance. It is trite to burden the judgment with bead roll of precedents but suffice to reiterate that any member of the public having sufficient interest could maintain an action for judicial redress from public inquiry arising out of the breach of public duty or of law and seek enforcement of such public, constitutional or legal duty. Strict rule of *locus standi* was relaxed and personal right enforcement was whittled down. The ratio in *S. P. Gupta v. Union of India*,¹¹⁷ is an authority on this score. In the public interest therefore, any person genuinely interested to uphold independence of the judiciary and the law would get sufficient interest and acquires *locus standi* to seek to lay down public law in that behalf. The writ petition, therefore, should not be thrown out on the ground that the petitioner lacks *locus standi* to litigate the lis. But every Advocate need not be heard which would be only a surplus age at the hands of 'R'.

The question then is whether the writ petitioner is by way of a review of the earlier decision. It is settled law that a judgment of this Court cannot be impugned or its correctness assailed by way of another writ petition on any ground whatever. In *N. S. Mirajkar v. State of Maharashtra*,¹¹⁸ nine Judges Bench held that the judicial order is not liable to be questioned in a writ petition. The same view was reiterated by another Seven

116. 1991 AIR SCW 1573.

117. (1982) 2 SCR 365 at p. 530 D to F: AIR 1982 SC 119 at p. 194.

118. (1966)3 SCC 744: AIR 1967 SC 1.

Judges' Bench in *A. R. Antiday v. R. S. Naik*,¹¹⁹ It would thus be held that the correctness of the judgment of this Court in SCJA's case¹²⁰ is not amenable to the writ jurisdiction.

Sri Kapil Sibal, therefore, contended that the petitioner is not assailing the correctness of the judgment but he is placing another facet touching the jurisdiction of the Speaker, in admitting the motion and constituting the Committee under the Act to conduct the enquiry, on the basis of fresh material which was not available to this Court when SCJA's cases were decided. It is settled law that it is the decision and not the reasons in support thereof that would be conclusive and binds all parties. Therefore, even if there is any additional material that was subsequently discovered, it would be of little avail to assail the correctness of the judgment except by way of review before the Bench that decided SCJA's case.

The Constitution confers in explicit language judicial review on the Supreme Court and by operation of Articles 138, 139 and 140, enlarged that power, to elongate and effectively adjudicate the questions doing full and effective justice. The power of judicial review is to stamp out to excesses in exercise of power, injustice or miscarriage of justice. The decision of this Court is the last word on the interpretation of the Constitution and the laws as law of the land under Article 141. The Judge is the living oracle working in dry light of realism pouring lit and force into the dry bones of law to articulate the felt necessities of the time. The Judge, in particular from the higher judiciary possesses undoubtedly, power and jurisdiction to decide rightly or may err as well. The error must be corrected as provided under law. In its absence, it cannot be disturbed. The superior Court has jurisdiction and power to determine its own jurisdiction and error in that behalf does not constitute an error of jurisdiction. The people would shape their course of conduct or dealings or legal affairs in accordance with law. The law laid down by this Court operates as precedent. The law laid, thus, needs stability, continuity and certainty. The judicial vacillation would undermine the respect for the law and utility of the very judicial process as well its efficiency. Courts are bound by the taught traditions and built-in-heritage of law. Adherence to precedents, *stare decisis*, is usually a wise policy for rule of law unless there is clear, compelling and substantial reasons for its reconsideration in the larger public interest. Reconsideration of an earlier view is not due to an act of judicial fallibility but an index of supremacy of law. So when all the relevant provisions of law or material aspects of the case or binding precedent was not brought to the notice of the Court and its impact on the general administration of law, it would need reconsideration. The obvious error committed by the Court leading to miscarriage of justice would need correction by Art. 142 or Section 114 read with Order XLVII Rule 1 or Section 151, C.P.C. But by itself it is not a licence to unsettle the settled law or keep the law at variance at pleasure or whim.

This Court in *Keshav Mills Co. Ltd. v. C. L. T. Bombay*,¹²¹ laid that:

"In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Art. 141, binding on all Courts

119. 1988 (1) (Supp) 1 SCR LAIR 1988 SC 1531.

120. 1991 AIR SCW 1573.

121. (1965) 2 SCR 908 at 921-922: AIR 1965 SC 1636 at p. 1644.

within the territory of India, and so, it must be constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by the Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations

“What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision better followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.”

In *Union of India v. Raghubir Singh*,^{122 123} this Court laid stress on the importance of finality of decisions rendered by the Constitution Bench of this Court; it could only be upset where the subject was of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that “It is wiser to be ultimately right rather than to ‘be consistently wrong’”. The majority ratio in *A.R. Antulay v. R. S. Naik*,^m rests upon its peculiar facts offending Articles 14 and 21 and so the earlier direction for trial by a High Court Judge was reversed. The rule of law laid by this Court, from the above perspective, in SCJA’s case,¹²⁴ is clear, precise, certain and needs to maintain consistence. It is, therefore, not desirable to reopen the said ratio. But this finding does not conclude the controversy. Facts gave rise to diverse questions of far reaching importance which had not arisen when the earlier decision was rendered or canvassed.

The public are vitally interested in the cleanliness of the public administration of justice which is of paramount importance. Public justice is the hallmark of public good. A person genuinely or *bona fide* interested in seeking declaration of law of public importance would always get sufficient interest and be entitled to seek declaration on

122. (1989) 2 SCC 754: AIR 1989 SC 1933, para 24.

123. AIR 1988 SC 1531.

124. 1991 AIR SCW 1573.

that behalf which binds not only the State but every person, even if affected thereby, though not economic a party respondent to the proceedings. A relief in favour of that person in his absence could in an appropriate case also be granted. In *Makhanlal Waza v. State of Jammu & Kashmir*,¹²⁵ the Constitution Bench held that the law declared by this Court was binding on the State and its officers and they are bound to follow it whether majority of the respondents were parties or not to the previous petition. In *S. P. Gupta's case*,^{126 127} this Court having regard to the magnitude and importance of the constitutional questions involved in the cases accorded locus to the Advocates. In *B. Prabhakara Rao v. State of A.P.*,¹²¹ this Court held that the relief claimed is of a general nature and against the State and so the failure to implead all the affected parties is not a bar to maintain the writ petition. SCJA's case,¹²⁸ itself is an authority for the proposition of declaration of public law when laid by the Advocates. In this case three Judges' Bench referred public law questions to this Bench which are of wider constitutional ramifications touching upon the independence of judiciary and the interpretation of the constitution and the Act.

In the larger public interest as the questions have arisen for the first time, it would be just and fit for this Court to declare the law of proper procedure to be followed in admitting the motion to remove a judge of higher judiciary and the investigation thereon by the Committee so that it would be the law of the land under Article 141 of the Constitution. Though it would be ideal to implead the learned Judge as respondent, his absence too would stand to no impediment to declare public law which would bind him too. In that view, it must be held that the petitioner being a legal practitioner would be entitled to seek only declaration of law of certain aspects which would be adverted to hereinafter.

Supreme Court in SCJA's case,¹²⁸ held that the Speaker of the House of the People is a "Statutory authority". Under Article 93 of the Constitution, the House of the People having chosen the Speaker, he/she holds the office till he/she ceases as per Article 94 to be a member of the House of the People or removed or resigned. The office of the Speaker is of trust by the House of the People elected by adult franchise by the People. Under Section 3(l)(a), on presentation of a motion praying for the removal of a Judge signed by not less than 100 members of the House of the People, "the Speaker, may" under Section 3(1) of the Act, after consulting "such persons", if any, as he thinks fit and "after considering such material", if any, as may be available to him either admit the motion or refuse to admit the same.

The primary requisite which the Speaker is enjoined to do so is to find whether the motion was signed by not less than 100 members of the House of the People. Equally, he is required to consider the grounds and the materials, if any, available to him, before taking a decision to admit or refuse to admit the same. The word 'may' though couched with discretion, when the exercise of the power effects the rights of the Judge, causes convulsions on judiciary and generate psychological setback on on-going process, the Speaker was authorised to wisely exercise discretionary power by consulting such persons, if any, as he may have chosen and thinks fit to be consulted. Before admitting the motion, it may be expected may be prudent that the Speaker may consult persons like

125. (1971) 1 SCC 749 at 753 para 6: AIR 1971 SC 2206 at p. 2209, Para 5.

126. AIR 1982 SC 149.

127. 1985 (Supp) SCC 432: AIR 1986 SC 210.

128. 1991 AIR SCW 1573.

the Chief Justice of India, the fountainhead of judiciary, and the Attorney General of India, the principal Advisor of the Govt., whose duty should be to give advice upon legal matters or to perform such duties of legal character. If the Speaker consults the Chief Justice of India he would help him by proper advice, and the Attorney General is under the constitutional duty to tender advice and to assist the Honble Speaker to discharge the constitutional function, *i.e.*, to decide in admitting or refusing to admit the motion to remove the judge of the constitutional judiciary. It is also equally salutary that before admitting the motion to remove the judge, there shall exist factually foundation. The grounds mentioned in the motion, the material or evidence placed in support thereof and the advice tendered, if consulted, would form “the record”. He would consider that record and filter the process before deciding to initiate proceedings or refusal thereof. He need not weigh the pros and cons to find *prima facie* case. He acts, neither as a quasi-judicial nor an administrative authority but, purely as a constitutional functionary and with high sense of responsibility and on due consideration of ‘the record’ and arrives at a decision to admit or refuse to admit the motion to remove the Judge. The Speaker, therefore, would act with utmost care, caution, circumspection and responsibility and wholly guided by considerations of larger interest of the public administration of justice. He would equally keep in his gaze and in the mind the seriousness of the imputations, nature and quality of the record before him and “its indelible chilling effect on the public administration of justice and independence of the judiciary in the estimate of the general public”. Existence of definite material or evidence in support of the ground of the motion, before initiation of the motion for removal of the Judge is, thus, a condition precedent. Lest it would be an open invitation to initiate, for obvious reasons, proceedings to remove the Judge and then resort collecting perjured evidence in support thereof against the judge which is subversive of judicial independence and a death-knell to rule of law. Action in any other way, the Speaker would forfeit the trust reposed by the founding fathers of the Constitution in that office as well as the confidence of the House of People, *i.e.*, the people of Bharat themselves. The fact that the Committee framed charges from the record transmitted by the Speaker fortifies that he had before him definite material and it furnishes presumptive inference that he had due consideration thereof before admitting the motion.

The question then is the scope of judicial review of the admission of the motion by the Speaker. Articles 32, 131 to 136 entrust in express terms judicial review to the Supreme Court; in particular Article 32 as the ultimate repository and guardian of the rights and liberties of the people. The constitution is the fundamental law of the land. It limits, as its touchstone, the powers and functions of the organs of the State, *viz.* the Executive, the Legislature and the Judiciary. The Constitution also demarcated and delineated the powers and functions of these organs which implies that each organ would maintain a delicate balance with self-imposed restrictions for smooth functioning of the parliamentary democracy to establish an egalitarian social order under rule of law. Judicial review thus is an incident of and flows from the Constitution to securing and protecting the welfare of the people as effectively as it may, according justice—social, economic and political in all the institutions of national life. Court is the living voice of the Constitution which stands against any winds that blow as a haven of refuge to those who might otherwise suffer due to their helplessness, inability, non-conformity, handicaps, exploitation, victims of prejudice or public excitement etc. The paramount duty of the Court is to protect their rights and translate the glorious and dynamic contents

of the Directive principles and the fundamental rights as a living law, making them meaningful to all manner of people.

In this light the question emerges whether the decision of the Speaker to admit the motion to remove the Judge moved by requisite number of members of the House of the People is amenable to judicial review. Undoubtedly, in a parliamentary democracy governed by rule of law, any action decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or starting from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be-arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Art. 21. But exceptions are envisaged keeping institutional pragmatism into play, conscious as are of each other's limitations. The process to remove a Judge under Article 124(4) consists of several steps, *i.e.*, the motion duly moved *i.e.*, consideration of the record by the Speaker and decision to admit the motion; his immediate constituting of the Committee under Section 3(2) of the Act; drawing up of definite charges by the Committee and investigation for proof of misbehaviour or incapacity after adhering to the procedure envisaged therein; recording finding or findings there m and transmission of the report and the evidence to the Speaker and in case of proof of misbehaviour or incapacity placing the report and the evidence on the floor of the House and address by each house and majority resolution recommending to the President to remove the Judge. The entire process though integral, all the steps in the process do not take the same colour of judicial process but bear different contours. The initiation of the motion is statutory and address by each House and resolution recommending removal of the Judge are political process. Its admission, the constitution of the Committee are statutory functions. Investigation by the Committee is judicial process. The Speaker, in this setting, acts neither as an Executive authority nor as a quasi-judicial authority. He merely discharges the functions of high constitutional responsibility. His decision to admit the motion to remove the Judge of the Constitutional Court for absence of reasons stated or starting from the record is not violative of Art. 14 or Art. 21 of the Constitution nor offends the Principles of natural justice.

Section 3(2) of the Act also does not envisage to place the motion as an agenda before the Lok Sabha to secure the collective wisdom of the House before admitting or refusing to admit the motion. The Act exclusively confers on the Speaker the power, to his/her individual discretion, to take a decision in this behalf. The further contention that the Speaker is constitutionally obligated to conduct a preliminary enquiry to ascertain the veracity of the grounds made in the motion and to determine whether or not *prima facie* case for investigation has been made out is devoid of substance. As seen earlier he merely performs, though as a statutory authority, a constitutional function to admit or refuse to admit the motion to remove the Judge. The Constitution entrusted to the Speaker that responsibility with the expectation that he acts as a reasonable man, as stated earlier, with high degree of responsibility, considers the grounds for the removal in the motion and the record before taking a decision to admit the motion or refusal thereof. The further allegation that the Speaker acted at the behest of the Janta Dal and Bhartiya Janta Party and that the admission of the motion "coloured by political motivation" is not based on any acceptable factual foundation and is personal to the Judge.

Whether the Speaker is enjoined to consult the Chief Justice of India before constituting the Committee under Section 3(2) of seek nomination of a sitting Judge of

this Court or one of the High Court's Chief Justices is the next question. Section 3(2) contemplates that if the motion to remove a Judge is admitted, the Speaker shall, keep the motion pending and constitute, as soon as may be, Committee "for the purpose of investigation into the grounds on which the removal of a Judge is prayed for" (Emphasis supplied) under Section 3(1) consisting of sitting Judge of this Court, one of the Chief Justices of the High Courts and a distinguished Jurist. *Ex facie*, it enjoins no obligation on the speaker to have consultation with the Chief Justice of India nor to seek nomination of a sitting Judge of the Supreme Court in terms of Section 3(2)(a) or one referred to in clause (b). It is his individual choice to constitute the Committee after obtaining the consent of the concerned member/members. The constitution of the Committee, therefore, without consultation of any of the members is not *per se* illegal. It is desirable and salutary that the Speaker and Chairman of the Rajya Sabha may set up convention in this behalf. As it is first case the failure thereof is neither subversive of Article 124(5) nor *de hors* Section 3(2) of the Act. The Act fastens no obligation to ascertain collective wisdom of the House through either political parties or their floor leaders. The further contention that the Speaker ought not to have directly approached a sitting Judge of this Court seeking this consent in terms of Section 3(2)(a) of the Act, also lacks substance. The further contention that the sitting Judge of this Court and the Chief Justice of Bombay High Court are not performing their normal constitutional duties when act as members of the Committee under the Act unless the President of India gives his consent and treats the function as part of their duties by notification does not appear to be well-founded. Giving consent is one part. Performance of duties as members of the Committee is a different facet. There is no constitutional obligation to obtain prior consent of the President. But before entering upon the duties by a sitting Judge of this Court and the Chief Justice of a High Court as Presiding Officer and member of the Committee respectively, a notification, as directed to be issued in this behalf in SCJA's case, is necessary. In this situation, the latter contention lost its luster. In this situation, the latter contention lost its luster. That apart the admission of the motion was already upheld by this Court.

The next question is the validity and legality of the procedure adopted by the Committee to investigate into the alleged misbehaviour. To appreciate that question in its proper perspective and to cull out its effect, it is necessary to note the pertinent provisions of the Constitution the Act and the Rules. The foundation to remove a Judge under Article 124(4) through political process, is the "proved misbehaviour or incapacity". Article 124(5) envisages to regulate the procedure by law for the presentation of the address and "investigation and proof of the misbehaviour or incapacity. Section 4(1) provides the procedure thus:

"Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation....."

The Rules expressly do not provide any specific procedure in this behalf. Two members of the Parliament, viz. Sri George Fernandez from Janta Dal and Sri Jaswant Singh from Bhartiya Janta Party and the SCJA sought permission, to place on record certain material in their possession said to be against the learned Judge and to lead evidence against him through their counsel and it granted conditional permission to assist the Advocate appointed under Section 3(2) to conduct the case against the learned Judge. A conjoint reading of Section 3(3) framing of definite charges for

investigation; their supply, together with a statement of grounds on which each charge is based to the Judge; his right of objections to the charges under Rule 6 read with Section 3(8) and if found tenable, revision thereof by Rule 7, giving reasonable opportunity to present his fresh written statement of defence under Sections 3(8) and 3(4) and Rule 7; right to cross-examine witnesses; adduction of evidence in defence; right of hearing under Section 4(1) before submitting the report coupled with the duty to conduct *ex parte* enquiry under Rule (8), if the Judge refuses to participate, does indicate that the Parliament intended that the investigation into the misbehaviour or incapacity of the Judge, shall be confined only between the advocate appointed under Section 3(9) of the Act and the learned Judge or his counsel who alone are entitled to participate and lead evidence in proof or disproof of the charges and be heard. By necessary implication, the Act and the Rules exclude participation or adduction of evidence by any other person to prove the alleged misbehaviour or incapacity. In the virgin area, the Committee appears to have permitted them hedged with conditions to subserve the purpose. But none should be permitted to sully the reputation, integrity or conduct of the Judge concerned by subsequently fabricating any material or adduction of evidence *de hors* the one already placed before the Speaker who transmitted to the Committee or the one summoned by the Committee. The contention of Sri Shanti Bhusan that 108 members who moved the motion are interested to participate and prove the charges against the Judge runs counter to the scheme of the Act and the Rules and does not warrant acceptance. The political process starts only with the requisite members of the Parliament moving the motion and it is the only mode to set in motion the process to remove a Judge. Undoubtedly, they are people's representatives but the lawmakers did not preserve to themselves the role of the prosecutor but assigned it to the Advocate appointed under Section 3(9) and referred to the Speaker to set up the Committee to investigate into the misbehaviour since the Constitution had already preserved their right to participate in the address to the President on the floor of each House of the Parliament to discuss the conduct of the Judge. Their statutory obligation under Section 3(1) was to state the grounds to move the motion praying for removal of the Judge with requisite majority; and lay the evidence before the Speaker/Chairman. Their right to participation would revive only when the report and the evidence with finding/findings that the misbehaviour or incapacity has been proved was laid on the floor of the House and discussion was initiated under Article 124(4) and the Rules.

This statutory and constitutional setting and larger public interest furnishes a source to conclude that no third party has right to barge or butt in the proceedings and that none be permitted to participate in the investigation nor entitled to adduce evidence for or against the Judge. It is the Judge and the Advocate alone to participate and prove or disprove the charge/charges and be heard. No one except the Judge, in the event of an adverse finding of guilt and none, when the Judge was absolved of the charge/charges, be permitted to assail the correctness, legality or validity of the proceedings, process or findings of guilty or not guilty. None has rights or interest with askance eye to parade the correctness of the proceedings or conclusions of the Committee, nor to avail judicial review.

The further contention that the procedure under the Commissions of Enquiry Act of public notice inviting evidence against the Judge from any person who has such evidence in his possession gets crushed by the teeth of the built-in procedure prescribed in the Act and the Rules. Lest it should be, as stated earlier, an open invitation to the disgruntled to place fabricated evidence and it would be fraught with grave dangers endless

investigation and protraction for publicity seeding insidious effects. It is transparent from the scheme that any evidence sought to be used against the Judge must be laid by the requisite members of the House of People or Rajya Sabha before the Speaker/Chairman and none be permitted thereafter. Take for instance that in the motion the grounds of misbehaviour with material facts or particulars were made and Photostat copies in support thereof were enclosed. To satisfy and ensure correctness, authenticity and reliability the Enquiry Committee may summon the original records even before framing a charge. On a charge of corruption the grounds with material particulars were mentioned and the source was also specified. But there may not be any documentary evidence in support thereof. Often would not be available or the person in possession of such evidence may not be willing to commit himself before hand. The Committee has discretion depending upon the nature of the source or its dependability or reliability to frame a charge or may summon the person to swear to an affidavit and later may be examined as a witness or to tender ocular evidence at the investigation and be subjected to cross-examination. Suppose the grounds of corruption are delightfully vague, benefit of particulars and the source was not specified, it may be that the Committee may not feel it expedient to frame even a charge. Suppose even when the details and source were specified in the grounds, but if the Committee feels that the source is highly doubtful, undependable, etc. It may be open to the Committee to refrain framing a charge/charges. It is, thus, clear that the Act left wide discretion to the Committee to devise its own procedure and adopt its own function during the investigation to discover and collect the evidence. This perspective leads us to conclude that the permission granted to M/s F and J and SCJA is illegal and without authority of law and jurisdiction. Any adverse evidence against the learned Judge placed or adduced by them which was not already part of the record of the Speaker, should be expunged, should not be considered and be excluded from the record of evidence of the Committee.

Equally, the contention that the procedure envisaged in Section 3(3), (4) and Section 4 are unconstitutional and *ultra vires* of the Article 124(4) of the Constitution is misconceived. Article 124(4) of the Constitution postulates that the Judge of the Supreme Court/High Court shall not be removed from his office except by an order of the President passed after an address by each House of the Parliament supported by a majority of the total membership of that House and by majority not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal, on the ground of proved misbehaviour or incapacity". Sub-Article (5) thereof regulates by law the procedure for the presentation of the address and for the "investigation and proof of misbehaviour or incapacity of the Judge". In exercise of the power under Article 124(5) read with Article 246(1) and entry 77 of List I of VIIIth Schedule to the Constitution, the Act was made.

Under Section 3(1) the motion for removal of the Judge must contain "the grounds on which the removal of the Judge was prayed for". It is obvious that the grounds are based on sufficient material or evidence. Section 3(3,) envisages that "the Committee shall frame definite charges against the Judge "on the basis of which the investigation is proposed to be held" (Emphasis supplied). Sub-section (4) thereof contemplates of communication in Form I of the Rules, of those charge/charges so framed, together with a statement of the grounds on which each such charge is based. On consideration of the grounds and the material or evidence in the motion the definite charge/charges are to be framed which is the foundation to start investigation to prove the charges. Members of the Parliament are not familiar to or versed with the process or distinction between grounds and charge. They need to state the grounds and it is the duty of the Committee to

scan the evidence or material and to frame definite charge/charges. A reasonable opportunity for presentation of the written statement of the defence within a specified time should be given to the Judge who has the right to object in writing to the sufficiency of the framed charges. If the objection is sustained, the Committee would amend the charges under Section 3(8) read with Rule 7; and the Judge be given reasonable opportunity to present fresh written statement. If the Judge admits that he is guilty of misbehaviour or suffers from incapacity, the Committee shall record such admission and may state its finding on each of the charges in accordance with such admission [Rule 7(1)]. If the Judge denies the charge/charges or refuses or omits or is unable to plead or desires that the Committee shall proceed with the enquiry under Section 4(1), or if the Judge does not appear, on proof of service as per Rule 8, the Committee may proceed with the enquiry *ex parte*. Under Section 3(9) the Central Government may appoint at the request of the Speaker/ Chairman an Advocate to conduct the case against the Judge. Rule 11(1) gives the Judge the right to consult and be defended by an Advocate of his choice like in Art. 22(1) of the Constitution. Section 5 gives the Committee all the powers of the Civil Court while trying a suit under the Code of Civil Procedure, 1908, to summon the witnesses required, discovery and production of the documents, to receive evidence on oath, issue commissions for the examination of witnesses or documents or such other matters as may be prescribed. The advocate obviously should examine witnesses under Section 4(1) to prove the case against the Judge with an opportunity to the latter to cross-examine those witnesses; and adduction of his own evidence in rebuttal and an opportunity hearing in his defence. Under Section 4(2) read with Rule 9, as the conclusion of the investigation, the Committee should submit to the Speaker a report with its findings on each charge separately if there are more than one with such observations on the whole case as it thinks fit. If the report is not unanimous as per sub-rule (1) Rule 9 majority view in terms of sub-rule (4) thereof should be communicated. If the majority finds that the charges are not proved and one member found the misbehaviour or incapacity proved it should be kept confidential and withheld to the Parliament or any other authority, body or person. Under Rule 10, the evidence of each witness examined by the Committee should be taken down in writing and under the personal dictation and superintendence of the Presiding Officer thereof. The provisions of the Civil Procedure Code shall, as far as may be, apply' for the examination of any witness in the inquiry. The majority finding of guilt forms the base for report. The evidence and the documents together with report of proved misbehaviour/incapacity should be laid before each House of the Parliament along with the report and evidence and minority contra view sent under Section 4(2).

A resume of the fascicule of these provisions would show that the Committee has been empowered to regulate its own procedure, as is eligible, based on fact situation, to make investigation into the charge/ charges of the misbehaviour or incapacity of the Judge consistent with the Act, Rules and fair play like the trial of a civil suit. If the Committee finds that there is no *prima facie* evidence to frame even charges, the need to proceed further into the charge/charges is obviated. It would be entitled to record findings together with a statement of general observations of the case and would submit its report that the record or facts do not warrant even the framing of a charge or charges or investigation, it would be a futile exercise, and retransmit the record to the Speaker in terms of the Act and the Rules. Framing of charges is thus the foundation for investigation. By necessary implication it excludes the adaptation of inquisitorial process. If the Committee finds *prima facie* case it would be open to it to frame definite/charges and would ensue follow up action. The power under Section 3(5) is to summon the

original record from proper custody or any record in support of the charges and sought to be relied on or witnesses to prove the charges and given an opportunity to the Advocate and the Judge to examine their witnesses to prove/disprove the respective case. By necessary deduction it is not a condition precedent to follow inquisitorial procedure as an initial step and thereafter to have adversarial enquiry. The power of the Committee to summon the record is to supplement the material placed before the Speaker/Chairman by original record or other necessary evidence/witness but not to supplant any new material unrelatable to the grounds in the motion or charges framed. The witnesses summoned or examined on commission are to prove as a fact the charges made against the Judge. The investigative power granted to the administrative agencies normally is inquisitorial in nature but the Act devised a special media or modus keeping the judicial independence beyond the ken of coloured visions and entrusted the power of Committee consisting of a sitting Judge of the Supreme Court, a sitting Chief Justice of a High Court and a distinguished Jurist, in one word a high "Judicial authority". The proceedings before the Committee is neither civil nor criminal but *sui generis*.

The appointment of the Advocate at the behest of the Speaker/ Chairman was to prove the charged misbehaviour/incapacity against the Judge. He presumptively acts on behalf of the Speaker like a counsel for the plaintiff without any hold or control by the Speaker and would assist the Committee as an independent agent. The Committee while making investigation does not act like a prosecutor nor itself would lead evidence against the Judge but acts akin to a Civil Court. The Speaker/ Chairman also has no say or away during investigation into the alleged misbehaviour of the Judge. The Committee has only statutory duty to submit to the Speaker its report and the evidence at the conclusion of the investigation.

The investigation done by the Committee, thus is to find whether the alleged misbehaviour/incapacity has been proved. Undoubtedly, the public law litigation often contradicts the premise behind those or private law. In public law wider public interest is involved over and beyond the contending parties. It concerns the future and private law litigation is retrospective in operation. Prof. Wade in his *Administrative Law*, 5th Edn. at p. 803 has stated that:

"It is fundamental that the procedure before a tribunal, like that in a Court of law; should be adversary and not inquisitorial. The tribunal should have both sides of the case presented to it and should judge between them, without itself having to conduct an inquiry of the own motion, enter into the controversy and call evidence for or against either party. If it allows itself to become involved in the investigation and argument, parties, will quickly lose confidence in its impartiality, however fair minded it may in fact be."

The word 'investigate' was defined in *Black's Law Dictionary*, 6th Edition, at p. 825 thus:

"To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry."

The word 'investigation' was defined at p. 825 thus:

"The process of inquiring into or tracking down through inquiry."

The word 'proof' was defined at p. 1215 thus:

"The effect of evidence; the establishment of a fact by evidence. Any fact or circumstance which leads the mind to the affirmative or negative of any proposition. The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged. The establishment by evidence of a requisite degree of belief concerning a fact in the mind of the truer of fact or the Court....."

"Proof is the result or effect of evidence, while evidence is the medium or means by which a fact is proved or disproved, but the word 'proof' and "evidence" may be used interchangeably. Proof is the perfection of evidence; for without evidence there is no proof, although there may be evidence which does not amount to proof; for example, if a man is found murdered at a spot where another has been seen walking but a short time before, this fact will be evidence to show that the latter was the murdered, but, standing alone, will be very far from proof of it."

The Committee as Judicial authority adopts the procedure of a trial of a civil suit under the Code of Civil Procedure; It is not inquisitorial but adversary to search for the truth or falsity of the charge/charges by taking evidence during the investigation like a trial of a civil suit and it should be the duty of the Advocate and the learned Judge, or his counsel to prove/disprove if burden of proof rests on the Judge, as a fact by adduction of evidence or the affirmation or negation or disproof of the imputation under investigation. The word 'investigation' is to discover and collect the evidence to prove the charge as a fact or disprove. The Evidence Act defined the words "proved" and "disproved" as when after considering the matters before it, the Court either believes the fact to exist or not to exist or its existence is so probable/non-existence is probable and the test of acceptance or non-acceptance by a prudent man placed in the circumstances of a particular case was adopted. The consideration of the evidence is like a criminal case as the finding would be 'guilty' or 'non-guilty' of misbehaviour under Section 6 of the Act. The test of proof is "proof beyond reasonable doubt". The words 'investigation and inquiry' used in Article 124(5) the Act and the Rules are interchangeable and do not take different colours from varied contexts but connote the same theme to prove/disprove misbehaviour or incapacity charged against the Judge beyond reasonable doubt.

The problem could be broached through a different perspective as well. In normal parlance, in a criminal case, investigation connotes discovery and collection of evidence before charge-sheet is filed and based thereon definite charges are framed. Enquiry by a Magistrate is stopped when the trial begins. The trial is a culminating process to convict or acquit an accused. In Service Jurisprudence, departmental enquiry against a delinquent employee, bears similar insignia to impose penalty. At the investigation stage the accused or the charged officer has no say in the matter nor is he entitled to any opportunity. The disciplinary authority or enquiry officer, if appointed on finding that the evidence discloses *prima facie* ground to proceed against the delinquent officer, the enquiry would be conducted. The Criminal Court frames charges after supplying the record of investigation relied on. Equally, the disciplinary authority/inquiry officer would frame definite charge or charges and would communicate the same together with a statement of the facts in support thereof sought to be relied on and would call upon the delinquent officer to submit his explanation or written statement of defence etc. At the trial/enquiry the person is entitled to reasonable opportunity to defend himself. The higher judiciary holds the offence of constitutional responsibility and is a constitutional functionary. His conduct is not subject to any discussion, under Art. 121 on the floor of Parliament.

Therefore, no-one is entitled even to act as plain clothes spy to pry into his/their conduct to set rumors afloat. If it would be otherwise, the disgruntled would concoct stories, crow into the ears and pass on as palpably palatable truth either to deter or demoralise an upright, indomitable and unamendable Judge. When definite material or evidence was placed before the Speaker of the House of the People or Chairman of the Rajya Sabha, the Speaker/Chairman, on due satisfaction as stated hereinbefore, that the ground/grounds needs investigation would admit the motion and transmit the record to the Committee *i.e.*, high Judicial authority for investigation into the alleged misbehaviour. The investigation contemplated in Article 124(4) of the Constitution or investigation inquiry envisaged in the Act are synonymous and interchangeable.

The behavioural discipline of a Judge is an integral component of judicial independence. Admission of the motion is statutory function. Investigation into misbehaviour or incapacity of the Judge through integral part of composite scheme to remove an erring Judge through political process, the proceedings before the Committee is purely judicial with all indicia as the C.P.C. was expressly made applicable. The Constitution the Act and the rules aimed to discipline the disciplined when gone astray so as to establish the supremacy of law so that the pure flames of public administration of justice are always burning bright and aloft. Thereby it would balance the competing interests of independence of the judiciary and accountability. The makers of the Act after a great deal of deliberations made an admixture or amalgam of political and judicial process to remove an erring Judge at tune to the constitutional creed and left the choice to the high judicial authority to adopt its own procedure to investigate into the charges of misbehaviour while adhering to the scheme of the Act, the Rules and fair play. The removal of a Judge is paved by a judicial verdict after following fair and just procedure. It is, therefore, most efficacious, most salutary and the best mode in vogue in the world's democratic countries to uphold independence of the judiciary. Thus it must be held that the Act and the Rules provided built-in fair procedure to prove the alleged misbehaviour or incapacity of a Judge. It is akin to adversarial and trial of a civil suit and the Committee acts as an independent "Judicial statutory authority". The provisions are consistent with Articles 124(4), 14 and 21 of the Constitution of India and they are not *ultra vires* of the Constitution.

The meaning of the word 'misbehaviour' in Article 124(4) of the Constitution is the crux of the question. Before embarking into the question, it is necessary to gaze the founding father's animation and anxiety to wean away or ward off or disabuse the executive mind of the judges of the constitutional Court in judicial review. Article 124(2) of the Constitution fixes their tenure. Article 125 read with Schedule II guarantees him/her undiminished salary, privileges and perks prevalent on the date of assumption of office as a Judge and during the tenure. Article 124(4) assures irremovability from office, except for "proved misbehaviour or incapacity" in accordance with the procedure therein, the Act and the Rules. Article 121 then lifts the rigour of the total ban of public discussion against the conduct of the Judge only when the finding of proved misbehaviour or incapacity was recorded by the Committee; the report together with the evidence, the source material for discussion, was laid on the floor of each House of Parliament under Section 6 of the Act read with Rule 9(5) of the Rules and discussion was initiated, that too of the concerned Judge. The process for removal of the Judge had initiation from statutory process but finding of "proved misbehaviour" was recorded by Judicial process and final act of removal by the president was after an address on the floor of each House of Parliament as political process determined by majority resolution as enjoined by Art. 124(4) of the Constitution. Obviously, Article 121 accords to the

members of the Parliament full freedom to discuss the conduct of the Judge vis-a-vis proved misbehaviour and may concur with the Committee or vote down the motion *i.e.*, the presumptive finding is that the charge is deemed to have been proved or disproved under Section 6(3) or even if proved facts do not warrant removal of the Judge. Otherwise, there is a total ban on the discussion of the conduct of any Judge/Judges in the discharge of his/their duties. Resolution passed by majority in the manner laid by Art. 124(4) is the foundation for the President to pass an order removing the Judge from his office.

The underlying insulation and pervasion is to secure judicial independence to the Judge to do that should be just, equitable, fair or fix for a Judge to do. The reason is that the Judge is to make judicial review not only between citizen and citizen but also between the Executive Authority and the citizen or the States *inter se* or the Centre and the State. When the right of a citizen is attacked from any quarter or his claim is denied or is wrong the judiciary alone should punish the wrong-doer or restore the violated right or redress the legal injury. Stronger weapon in the armoury of judiciary is the confidence it commands and faith it inspires and generates in the public in its capacity to do even-handed justice and keep the scales in balance in any dispute. The judiciary is thus the custodian and guardian of the right of the citizen. It should, therefore, be independent, impartial and incorruptible. He/She should have the courage, uprightness and conviction to do his/her (duty in terms of the oaths.

It could be pondered over in tune with constitutional philosophy. Judicial review is the touchstone and repository of the Supreme law of the land. Rule of law as basic feature permeates the entire constitutional structure. Independence of the judiciary is *sine qua non* for the efficacy of the rule of law. This Court is the final arbiter of the interpretation of the Constitution and the law. It has to maintain the delicate balancing wheel of the whole constitutional system keeping the Executive and the Legislature within the confines of their power and jurisdiction and also check their excesses and declare *ultra vires* their powers and actions while keeping a self-check. The independence of the judiciary in the scheme is essential to establish real parliamentary democracy and maintenance order, removing the existing imbalances, social and economic inequalities assuring liberty, equality, fraternity and to further justice social, economic and political with dignity of the persons and fraternity to integrate Bharat. Independence of judiciary thus constitutes the cornerstone and the foundation on which our democratic policy itself is to rest and work on sound principles.

To keep the stream of justice clean and pure, the judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. The judges of higher judiciary should be men of fighting faith with touch fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short the behaviour of the Judge is the bastion, for the people to reap the fruits of the democracy, liberty and-justice and the antithesis rocks the bottom of the rule of law.

From this constitutional orientation, let us plough the seeds or roots of causation of “misbehaviour” in Article 124(4). The Constitution or the Act, obviously, gave no definition of misbehaviour. In *Corpus Juris Secundum* 1, Volume 58, the word “Misbehaviour” was defined as conduct, improper or unlawful behaviour. It has been held to be synonymous with misconduct. The words and phrases as judicially defined in Volume 3, “Misbehaviour” has been defined as “outrageous or improper conduct.”

Black’s Law Dictionary, 6th Edition, p. 998, defined ‘misbehaviour’ as “ill conduct, improper or unlawful behaviour,. ‘Misconduct’ was defined at p. 999 as “A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour misdeed, misbehaviour, delinquency, impropriety mismanagement, offence, but not negligence or carelessness. ‘Misconduct in office’ was defined as “Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act”.

In *Encyclopaedic Law Dictionary*, 3rd Edition, at p. 720 ‘misbehaviour’ was defined as “improper or unlawful conduct, generally applied to a breach of duty or propriety by an officer, witness, etc. not amounting to a crime, p. Ramanathan Aiyar’s *The Law Lexicon*, Reprint Edition, 1987 defines ‘misbehaviour’ at p. 820 as “ill conduct; improper or unlawful behaviour. ‘Misconduct’ was defined at p. 821 as “the term “misconduct” implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude”. The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or status which is being construed. ‘Misconduct’ literally means wrong conduct or improper conduct”. ‘Misconduct in office’ was defined as “unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected”.

Every act or conduct or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mens rea* by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of *mens rea*. The holder of the office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour both on and off the Bench are normally high. The falling moral or ethical standards in the society are neither accepted nor refused to slacken the higher standards of judicial conduct. The society, therefore, is entitled to expect higher degree of propriety and probity in the judicial conduct from higher judiciary. There cannot be any fixed or set principles, but an unwritten code of conduct of well-established traditions are the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity and impartiality of the judge must be eschewed. It is expected of him to voluntarily setting forth wholesome standards of conduct reaffirming fitness to higher responsibilities. Even the private life of a judge must adhere to standards of responsibilities, probity and propriety, acceptable to others. They alone would receive confidence and respect from the public. This legal setting

would furnish the foundation to focus the question whether the learned Judge had committed financial improprieties or irregularities undermining the above standards in his administrative disposition and whether would constitute misbehaviour is to be angulated and findings given from the proven evidence by the Committee. Such finding of proved misbehaviour would undoubtedly be subject to requisite majority voting and when voted would become “deemed proof under Section 6(3)” for removal under Article 124(4). Then alone can the finding of proved misbehaviour be deemed accepted and would become final. If the motion is voted down, by necessary implication, the finding of the Committee stands disproved and rejected.

Declaration of law would be laid only to apply it to the facts of the case on hand for or not granting the relief. The facts of the case presented an extraordinary scenario. The Constitution or the Act did not define ‘misbehaviour’. Several International forums for judicial independence suggested to define misbehaviour but to no avail. No legislature in any democratic country attempted to do so as it would appear to be difficult to give a comprehensive definition to meet myriad situations. The scope of judicial review after the Committee records findings that the misbehaviour has been proved would appear to be fraught with imponderables. The occasion for judicial review would scarcely arise. There are no set rules of conduct. The law laid by this Court under Article 141 of the Constitution is the law of the land. Under these diverse circumstantial constraints I undertook to survey and declare the law and left it for application by the Committee to the proved facts.

Though Sri Sibal attempted to argue on the grounds of violation of the principles of natural justice for non-supply of needed documents etc. Court refrained to go into the diverse questions. Firstly, the reliefs sought are personal in nature to the learned Judge. He alone should seek and none else be permitted to assail. In a proceeding of this or the like or of departmental enquiry or in criminal matters no one except the person aggrieved is entitled to ventilate the grievances regarding the legality, propriety, correctness or otherwise of the charges, the procedure the Committee adopted or the findings recorded therein. If the law permits *suo motu* or inherent exercise of power and the facts warrant exercise of the power, it would be open to the Court tribunal in an appropriate case, to do public justice to correct the same. Secondly, investigation has since been completed and the report is ready, sure the learned members with their rich and variegated experience, must have subjected the evidence to the same standard of consideration and reached at their findings. Even if otherwise a fresh look in this light, if need be, may not be surplus age but assuages a reassurance of the confidence. So it is for the Committee to look into and if need be afresh. This Court cannot trench into that area. If the findings are positive they would be subject to political process of discussion on the floor of each House of Parliament and resolution per majority.

The writ petition is accordingly allowed to the extent of the above declarations and we direct the Registrar General to address a letter to the Committee with a request to exclude the entire adverse evidence or record against the learned Judge placed either by M/s. George Fernandez, Jaswant Singh or the Sub-Committee on Judicial Accountability, except the one part of the record sent by the Speaker. In other respects, subject to the

above declaration of law the writ petition stand dismissed, but in the circumstances, without costs.^{130 131}

8. No locus standi for personal gain.—In *Janta Dal v. H.S. Chowdharyfi*" the Supreme Court observed that it is only a person acting *bona fide* having sufficient interest in the proceedings of PIL who can have a *locus standi* to approach the Court in order to wipeout the tears of the poor and the needy suffering from the violation of their fundamental rights and not a person who acts for personal gain or private or political motive. The Court held that while genuine litigation with legitimate grievances relating to civil matters or criminal cases in which person sentenced to death facing gallows undergo untold agony remain pending for long years and standing in a long serpentine queue for years in the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, way farers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others of for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly making them lose faith in the administration of our judicial system.¹³²¹³³

In *K.R. Srinivas v. R.M. Premchand*,^m held that a person who moves the Court in public interest belatedly has no *locus standi* to do. The following passage from the judgment is instructive:

"A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands, like any other writ petitioner, must further come with a clean heart, clean mind and a clean objective. It cannot be assumed that the respondent who at the relevant time was a Research scholar and part and parcel of the University, did not know the regulations where under the answer books were destroyed within six months from the examination under formal orders of the functionaries. It cannot also be assumed that he did not know about the destruction of the answer books of the appellant at the time when he moved the High Court in public interest. Therefore, he had no *locus standi* to move the High Court in public interest at the belated point of time. Accordingly, the order of the Division bench set aside and the operative part of the single Judge of the High Court is restored. As a sequel, all the remarks against the appellant's father in the judgment of the Division Bench of the High Court not only get expunged but the whole basis on which they rest stands affected.

9. Parties to Public Interest Litigation.—It is clear that the society has sought for a writ of prohibition restraining respondents 1 to 3 from shifting the fish market from the Nehru Maidan Market to the new fish market wing of the Central Market situated at

130. *Krishna Swamy v. Union of India*, AIR 1993 SC 1403 at 1416-1434: 1993 AIR SCW 538: (1993) 1 JT (SC) 67: (1993) 1 Civil LJ 487: (1993) 2 SCJ 11: (1993) 1 BLJR 351 (J.S. Verma, N.M. Kasliwal, K. Ramaswamy, K. Jayachandra Reddy and S.C. Agrawal, JJ).

131. AIR 1993 SC 392 quoted in AIR 1996 Kant 112 at 1119: (1996) 1 Kant LJ 1.

132. See *Lalithamma v. State*, AIR 1996 Kant 112 at 119: (1996) 1 Kant LJ 1.

133. (1994) 6 SCC 620 quoted in *Lalithamma v. State*, AIR 1996 Kant 112 at 120: (1996) 1 Kant LJ 1.

Market Road, Mangalore, without providing accommodation to 132 stall-holders and 61 dry fish vendors in the new market where they are proposed to be shifted and for the consequential benefits including an interim order.

The society in question came to be registered in the year 1972. The object of the society was to look after the welfare of the stall-holders of the fish market established and owned by the Corporation Corporation in Mangalore Town and to represent their grievance with the authorities and in the Courts of law to protect their rights etc.

According to the averments of the petitions, the members of the society consists of, *inter alia*, 132 stall-holders of the Mangalore, fish market though at present it is situated in Nehru Maidan at Mangalore and also about 61 dry fish merchants. Therefore, the society represents its members for and on behalf of them.

It is not dispute that the fish market of Mangalore which was previously called Webster Market came to be owned and run by the Mangalore City Municipality now the Corporation of the City of Mangalore. The said market was situated in the Market Road and Bhavanthi street, Mangalore. It is the biggest market in the whole of Karnataka wherein trading of fish both dry and raw has been going on for the last many decades. Fish is supplied from Mangalore fishing area to various parts of Karnataka and other States in India. Indeed, fresh fish was being supplied even to Delhi, capital of India.

It is again undisputed that some of the members of the petitionersociety right from the period of their ancestors had been doing business in fish, grocery, coir products and other household articles in various stalls situated in the said Webster market originally. It is stated that about 132 stalls-holders who happen to be the members of the society had been carrying on their business in various household articles in several stalls. Similarly, there had been many stalls in the market dealing in fish with adequate facilities for cleaning and drying fish etc.

The Mangalore City Municipality, the predecessor of the present Corporation planned to construct a new central fish market in place of the erstwhile Webster market and with the said object it directed in the year 1960 all the stall-holders, dry fish vendors raw fish vendors and vegetable vendors to vacate their respective stalls in the Webster market and to shift their business to the alternate temporary sheds put up in Nehru Maidan about half a kilometer away from the Webster market. Accordingly, the entire market fish vendors, vegetable vendors and grocery vendors had been shifted to the new place in Nehru Maidan in the year 1960.

According to the said plan, Corporation constructed a building in a portion of the market area, a portion of which was earmarked for the vegetable vendors. After the construction of the building in the year 1965, only vegetable vendors were shifted from the Nehru Maidan to the new market building. It is stated but disputed by the contesting respondents that about 124 stalls-holders carrying business in grocery and other household articles and all the fish vendors were also directed to shift their business to the temporary sheds put up in the open space available adjacent to the new market building. An order made to this effect. Accordingly, the stall-holders and fish vendors shifted their business to the temporary sheds and continued their business there. Dispute this, once again in the year 1971, the authorities of the City of Mangalore Corporation directed all the stall-holders and raw and dry fish vendors to shift their business to the Nehru Maidan with a promise to them, as alleged, that within five years from that day, a separate and substantial fish market would be constructed in place of the temporary sheds and they

would be given full-fledged stalls in the new market place. Such a notice came to be issued. Thereafter, a letter was also addressed to the Commissioner and Secretary,

Municipal Administration, Bangalore, by the Commissioner of the Corporation bringing to his notice the promise held out by the concerned Minister to provide accommodation to the stall-holders and fish vendors in the new market area and stating that the Mayor of the Corporation also agreed to do so. There was a reminder issued to the Government.

According to the averments of the petition, the assurance given by The Corporation was not complied with though it constructed a two storeyed building in the portion of the land where Webster market was situated in the year 1980. According to the petitioner instead of offering accommodation in the new building to the existing stall-holders and fish vendors, it was provided to somebody else. In other words, despite construction of the building in the year 1980 the vendors and stall-holders continued their business in the temporary sheds in the Nehru Maidan Market and instead of providing accommodation as assured to them formed certain shops and office rooms in the new market building both in the first and second floors with a view to make money. The said shops were sold in public auction and were let out by issuing licences of fabulous rents. In other words, deviating the assurance held out to these vendors, with a view to make money provided shops and office rooms in the new market to person other than the stallholders and fish vendors doing business in the temporary sheds. When they approached the authorities of Corporation to fulfil the promise held out in their favour they were replied that an adjacent land was sought to be acquired and after the acquisition was over, stalls would be constructed there and thereafter accommodation would be made available there to them. It was stated that even that promise was not complied with. This was the main grievance of the petitioners.

It is stated that the present market area in the Nehru Maidan was having about 60,000 square feet. There were 132 stall-holders carrying business in grocery' and other household items with adequate facilities for drying fish, cleaning and movement of vehicles. The bus terminus was also situated just in front of the said market area. The stall-holders and fish vendors having shifted their business to the temporary sheds in the Nehru Maidan as early as 1971 continued their business thereby spending a large amount of money towards shutters, floor etc., for which no provision was made by the Corporation. The Corporation constructed the temporary sheds with bamboos, wooden poles and tiled roofs. Therefore, the stall-holders had to make their own arrangements to safeguard their business from rain and wind and this position has continued for over 14 years since they last shifted their business from the central market to the Nehru Maidan as the Corporation failed to provide accommodation in the newly constructed market with necessary infrastructure.

It is averred in the petition that Corporation being the successor of the erstwhile Mangalore City Municipality, having control over the fish market, put up sheds with asbestos roofs in about 12,000 sq. ft., in the open yard adjacent to the vegetable market on market road in about July, 1985. The new sheds do not provide adequate facilities for the vendors. The city of Mangalore has been growing out of proportions since its population has been increasing. Corporation failed to take appropriate steps to provide them adequate accommodation in the new market building. The new sheds put up by it consist of 8 mutton stalls, 8 beef stalls, one pork stall, 6 chicken stalls and 42 stalls for dry fish merchants. Earlier stalls in the Webster market were measuring 8' x 6' whereas the stalls in the sheds newly put up measure on 3' x 6' which is hardly enough to meet

the requirements of the fish merchants. Further, there is no facility whatsoever for storing, shifting, drying or cleaning the dry fish which is absolutely necessary to carry on the business in hygienic manner and to preserve the dry fish in good condition. It is stated that the opening ceremony of the new sheds in the central market was held and till the filing of the petition, the 132 stall-holders in the Nehru Maidan were not provided any facilities as assured in the resolution. It is also stated in the said resolution that the lease of the land in the Nehru Maidan where the temporary sheds are put up expired and by virtue of the expiry of the lease period, the temporary sheds in the Nehru Maidan have to be demolished unless the lease has been renewed by the competent authority. In that view of the matter, the petitioner society was hopefully expecting that necessary pucca building would be constructed providing accommodation to the stall-holders before the expiry of the period of the lease. Since the Corporation failed to comply with the assurance given to the 132 stall-holders, they are put to great hardship since they are made to run their business with the inadequate accommodation provided to them in the temporary sheds.

The application filed under Order 1, Rule 10, C.P.C. by respondents 4 and 5 has been allowed by this Court by an order and accordingly they have been impleaded as such in the petition. Their application for vacating the interim order for stay granted in W.P. came to be disposed of by High Court with the observation that since the writ petition was to be heard, it did not require consideration. The impleading application filed under Order 1, Rule 10, C.P.C., by respondents 6 to 8 was allowed on 5-11-1988 and accordingly they have come on record as such.

To complete the pleading in these two writ petitions, it is better to refer to the stand taken in the statement of objections filed in detail by Corporation. It is stated therein that the Corporation was not aware of all the 132 stall-holders and 61 dry fish vendors being members of the petitioner-society much less its Secretary is competent to file the writ petition. The averment that there are 138 stall-holders including fish vendors is denied. According to the Corporation, there are no permanent stall-holders as such. Averments of paras 2 and 3 of the writ petition are denied as false. It is stated that on account of the growth of Mangalore Town, it became necessary to modernise the market by providing regular stalls with modern facilities and passages for customers. It was with that idea, that the stall-holders were requested to move on to the temporary market established in the Nehru Maidan, but it was not admitted that all the stall-holders in the Central market moved on to the temporary market. It is brought to the notice of this Court that, and on their own showing as per Annexure-A that only 85 stall-holders shifted to the temporary market. The Corporation has been maintaining a regular list of stall-holders and when compared with, a number of original stall-holders had left perhaps after assigning the stalls for valuable consideration to others. Many new entrants are also in the temporary market. Such stall-holders cannot claim by right of a licensee as they are not the allottees of the stalls much less new stalls constructed in the new market have been allotted to them. Some of these stall-holders are either legal representatives of the original stall-holders or they have been brought in as new corners without any right of lease conferred on them. The original market came to be divided into two-vegetable market and fish market which includes mutton market.

Supreme Court in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association etc. v. Union of India*,¹³⁴

134. AIR 1981 SC 298; 1981 Lab IC 1325.

to drive home this point. In paragraph 63 of the judgment, the Apex Court held as follows (At page 317 of AIR)

“63. A technical point is taken in the counter-affidavit that the 1st petitioner is an unrecognised association and that therefore, the petition to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through ‘class actions’, public interest litigation’, and ‘representatives proceedings’. Indeed, little Indians in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participate justice in our democracy. We have no hesitation in holding that the narrow concept of ‘cause of action’ and ‘person aggrieved’ and individual litigation is becoming obsolescent in some jurisdiction. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions.”

In that view of the matter, having regard to the nature of the grievances put forward and the reliefs sought for in these petitions and the principle laid down by the Supreme Court in the above case. It must be held that these petitions involving class actions in the interest of public and being representative, proceedings can be construed as public interest litigation petitions and hence they are maintainable. However, the question of *locus standi* of the petitioners maintaining these petitions before this Court will be dealt with an appropriate place later.

As to the second point on whether the petitioners have a right referable to Articles 14, 19(1)(g) and 21 of the Constitution in view of their being granted licences to carry on business in the temporary sheds (i) that the stall-holders and other vendors doing business in the temporary sheds in the Nehru Maidan on the strength of the licences granted to them have acquired a fundamental right guaranteed under Arts. 14, 19 (1) (g) and 21 of the Constitution; therefore, and action to curtail such a right would enable them to approach this Court to challenge such an action of the Corporation; (ii) that a promise having been held out by the Corporation as well as the State of Karnataka that the stall-holder would be provided alternate accommodation with adequate facilities in the new market building constructed by the Corporation, there is a promissory estoppel against respondents 1 and 2 when they took out a stand that the stall-holders were not entitled to alternate accommodation in the new market building; (iii) and that once stalls are allotted, the stall-holders or their legal representatives are entitled to continue in the stalls allotted unaffected and any attempt to dispossess them from the so-called stalls would affect their fundamental right guaranteed under the Constitution.

At the outset, it must be pointed out that in the absence of the rejoinder by way of reply to the statement of objections, Court took it for granted that though not all of them at least 87 out of them were granted licences originally. Even assuming for the purpose of arguments that all the 132 stalls holders were originally inducted as stall-holders on the basis of the licences granted to them, how far such persons would be entitled to seek reliefs in these petitions before High Court, has to be considered. To answer the above questions, it is better to refer to the provisions of the Easements Act. Section 52 thereof defines “Licence” as follows:

“Where one person grant to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

Court distinguished a right arising out of the licence defined under Section 52 of the Easements Act from that of the lease in respect of immovable property defined under Section 105 of the Transfer of Property Act. Section 105 thereof defines ‘lease’ as follows:

“A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

Thus, a right arising out of a licence is different from right arising out of a lease. In other words, a person enjoying a right of lease is not comparable with a person enjoying a right of a licence as a licensee. This question came to be settled long back by a Division Bench of the Madras High Court in *Chinnan v. Ranjitharnmail*,^{135 136} wherein it has been held as follows at page 217:

“A licence is not annexed to the property in respect of which it is enjoyed, nor is it a transferable or heritable right, but is a right purely personal between grantor and licensee. Unless a different intention appears it cannot be exercised by the licensee’s servants or agents.”

This view has been followed by a Division Bench of this Court in *Savithri V. Rao n. Commissioner, Corporation of the City of Mangalore*. ‘ ‘ ‘ ‘ Indeed, this Court had an occasion to consider whether the Corporation was entitled under Section 370 of the Karnataka Municipal Corporation Act, 1976 as amended by Karnataka Act No. 14 of 1977 to evict occupants of public markets without recourse to the procedure provided under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. The Division Bench referring to the provisions of Section 370 held as follows at p. 2175:

“It is true that the 1974 Act is a special enactment which prescribes a special procedure for eviction of unauthorised occupants from public premises and having regard to the definition of the words ‘public premises’ in the said Act, every premises belonging to a local authority like the Corporation is a public premises. But it is also a general provisions applicable to all premises of the State and all its instrumentalities including local authorities. Section 370 however, is a special provision applicable to public markets belonging to the Corporation. It has been incorporated designedly by the Legislature to regulate the occupation of public markets. It has no application to all other buildings/premises of the Corporation, that is, other the public markets. In respect of buildings/premises other than public markets, the Corporation, in order to evict an unauthorised occupant, has to resort to the 1974 Act. It is also significant that the Municipal Corporations Act is a later enactment than the 1974 Act. The incorporation of Section 370 into the Municipal

135. AIR 1931 Madras 216.

136. ILR 1986 Kar 2167.

Corporations Act makes it clear that the Legislature considered that a special provision as the one contained in the said section was essential in order to control markets and the power to evict a person occupying a premises in public market on anyone of the grounds specified in Section 370 of the Act was essential in public interest, and, therefore, the Legislature has considered that such a special power has to be conferred on the Commissioner of the Corporation under Section 370 of the said Act. The contention advanced, if accepted, would render Section 370 otiose and therefore should be rejected. Under the said section corporation is entitled to evict any person occupying a premises in a public market, if any one of the grounds mentioned in the said provision was available.”

There the contention that the premises held by the Corporation would come within the purview of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 and that therefore persons in occupation of the markets could not be evicted without recourse to the procedure provided in the 1974 Act was repelled by holding that the provisions of the said Act were not applicable to the markets held and controlled by the special provisions of Section 370 of the Corporation Act of 1976. Thus, a person who had been enjoying right of licence cannot contend that he has a right to be evicted only under the Public Premises Act. It is also made clear in the above decision that a licensee has no right of protection of the statute against action of eviction. Therefore, it is not possible to concede to the submission of Sri Shankar that persons doing business in the stalls belonging to the Corporation on the basis of the licences granted to them can seek protection under the statute. Secondly, all the 87 persons who were originally granted licences by the Corporation are not before this Court. Some of the unauthorised persons or the legal representatives of the original licenses are before us. The question is whether they would be entitled to protection under the statute Court answered it in negative because when a person enjoying certain right under a licensee himself has no protection under the statute against eviction, his legal representatives or any unauthorised person cannot have better right and hence none of them would be entitled to such protection, his is the view taken by the Madras High Court. That being so, it is needless to point out that no protection under the statute would be available to third persons who have come before this Court merely on the ground that they are members of the petitioner-society. To say in one word, such persons do not have *locus standi* to maintain these petitions.

Now the question is whether the fundamental rights guaranteed to a citizen of India under Articles 14 and 19(1)(g) of the Constitution would come to the aid of the petitioner herein. Sri Shankar placed strong reliance on the decision of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation and Vattapuri Kuppusami v. State of Maharashtra*,¹³⁷ and *Sodan Singh v. New Delhi Municipal Commissioner*,^{138 139} to sustain his arguments. In *Olga Tellis's* case, the Supreme Court referred to the provisions of Article 21 of the Constitution read with Section 314 of the Bombay Municipal Corporation Act, held in paragraphs 31 and 32 as follows at pages 193 and 194 of AIR 1988:

‘The scope of the jurisdiction of this Court to deal with writ petitions under Article 32 of the Constitution was examined by a Special Bench of this Court in *Smt. Ujiam Bai v. State of Uttar Pradesh*.¹³⁹ That decision would show that, in

137. AIR 1986 SC 180.

138. AIR 1989 SC 1988: 1989 All LJ 1097.

139. (1963) 1 SCR 778: AIR 1962 SC 1621.

these classes of cases, the question of enforcement of the fundamental rights would arise, namely:

- (1) where action is taken under a statute which is *ultra vires* the constitution;
- (2) where the statute is *intra vires* but the action taken is without jurisdiction; and
- (3) an authority under an obligation to act judicially passes an order in violation of the principles of natural justice. These categories are, of course, not exhaustive. In *Naresh Shridhar Mirajkar v. State of Maharashtra*,¹⁴⁰ a Special Bench of five learned Judges of this Court held that, where the action taken against a citizen is procedurally *ultra vires*, the aggrieved party can move this Court under Article 32. The contention of the petitioners is that the procedure prescribed by Section 314 of the B.M.C. Act being arbitrary and unfair, it is not, "procedure established by law" within the meaning of Article 21 and, therefore, they cannot be deprived of their fundamental right to life by resorting to that procedure. The petitions are clearly maintainable under Article 32 of Constitution.

While summing up the petitioners case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, the Court assumed the factual correctness of the premises that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which is to be considered is whether the right to life includes the right to livelihood. There is only one answer to that question namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right of livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of the effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live. Only a handful can afford the luxury of living to eat.

140. (1966) 3 SCR 744: AIR 1967 SC 1 at 17.

That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey*,¹⁴¹ that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illionis*,^{142 143} means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh n. State of U.P.*^w

Court was of the opinion that the above ruling came to be laid down by the Supreme Court while interpreting the provisions of Article 21 based upon the peculiar facts and circumstances of case where action was/sought to be taken by the Municipal Corporation, Bombay seeking to evict pavement dwellers in Bombay City. That is not the point or the factual position arising in these petitions. Secondly, the ruling in *Olga Tellis's* case came to be distinguished by the subsequent judgment in *Sedan Singh's* case wherein their Lordships were called upon to deal with the question whether trading of pavements of the streets could be said to be a right referable to Article 19(1)(g) of the Constitution. Distinguishing the ruling in *Olga Tellis's* case, the Supreme Court held that street trading is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, but it is obviously subject to reasonable restrictions imposed by the State under Article 19(6) of the Constitution. However, it has been further held that there is no fundamental right of a citizen to occupy a particular place in any street for the purpose of engaging himself in 'street trading'. In the instant case, Supreme Court have not been called upon to deal with a case of street trading or trade on pavements of the streets. On other hand, Supreme Court have been called upon to decide the question whether a licensee doing business in a stall belonging to the Corporation would be entitled to seek for enforcement of fundamental right under Article 19(1)(g) of the Constitution. Having regard to the facts arising in these cases, the principles laid down by the Supreme Court in the above two cases cannot be pressed service to decide a right of a person doing business as a licensee that too after the expiry of the period of license. Such a person cannot invoke the provisions of Articles 14 and 19(1)(g) much less Article 21 of the Constitution.

The doctrine of promissory estoppel operates against the Corporation on its failure to the comply with the promise held out by it to the stall-holders that they would be given adequate alternate accommodation in the new market, factually the petitioners have not been able to impress upon the Court that there was such a promise held by the authorities particularly respondent-1 in their favour. A mere reference to the paper cuttings from the daily newspapers produced before the Court as Annexure do not constitute evidence that there was a promise held out. On the other hand, in the counter-affidavit, these averments have been denied as false. Therefore, in the absence of positive evidence that there was such promise, the plea taken in the petitions remains as the plea only. In other words, in the absence of any proof that there was a promise held out. No doubt, there were representations said to have been made by the stall-holders before the Commissioner, Administrator, Mayor and the Hon'ble Minister in this behalf, but as against these representations, no specific assurance or promise is given by the competent authority. To reiterate the argument of Sri Holla, the averments in this behalf has been denied and no

141. (1954) 347 MQ 442.

142. (1877)94 US 113.

143. (1964) 1 SCR 332: AIR 1963 SC 1295.

rejoinder has been filed to traverse this denial in the statement of objections. Even otherwise, the contention of Sri Shankar is not tenable because there cannot be estoppel against the State. The law on this aspect has been clearly laid down by the Supreme Court in the very judgment in Volga Tellis's case. In that judgment, considering the provisions of Section 115 of the Evidence Act with reference to Articles 14, 16, 19, 21 and 226 of the Constitution, the Supreme Court has held in paragraphs 28 and 29 as follows:

‘There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession; if enforced would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful state could easily attempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits.’

Thus, the question of enforcing Section 115 of the Evidence Act as against the State or the first respondent Corporation which is an instrumentality of the State under Article 12 of the Constitution does not arise in a case like this. In that view of the matter, the contention of Sri Shankar with regard to doctrine of estoppel will have to be rejected.

Another limb of argument of the learned counsel for the petitioner is that the directive principles of State policy under Part-IV of the Constitution are attracted in a case of this kind for the purpose extending benefit thereof to the members of the petitioner-society. He submitted that in the absence of a right available to the petitioners under Articles 19(1)(g) and 21 of the Constitution and in the absence of any statutory provisions, the Court may consider the protection given to such persons under chapter-IV of the Constitution. There is no force in this submission. The Supreme Court had an occasion to consider the similar question in *Kesavananda Bharati v. State of Kerala*,¹⁴⁴ wherein referring to Article 39(b)(c) of the Constitution, the Supreme Court held:

‘These clauses, together with other provisions of the Constitution, contain one main objective, namely, the building of a welfare State and an egalitarian social order to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfil the basic need of the common man and to change the structure of the society, without which political democracy has no meaning.’

But, at the same time, the Court held:

‘A law made for implementing these directives, instead of being contrary to the Preamble, would be in conformity with it because while it may cut down

individual liberty of a few, it widens the horizon for the many e.g., a scheme for agrarian reform. “¹⁴⁵

The Court further held:

“Because the Directive Principles cannot directly override the Fundamental Rights and because without implementation of the Directive, the very conditions for the enjoyment of Fundamental Rights by all cannot be created, the Constitution has been amended several times, culminating in the insertion of Art. 31-C to ensure that the implementation of Art. 39(b)(c) cannot be blocked by the guarantee of Fundamental rights.”

But all that we have got to notice is whether any right arising out of Chapter-IV of the Constitution is enforceable or justiciable in the Courts of law. To answer this, the Supreme Court held in the very decision:

The Directives, however, differ from the Fundamental Rights contained in Part-III of the Constitution or the ordinary laws of the land, in the following respects:

- (i) The Directives are not enforceable in the Courts and do not create any justiciable rights in favour of individuals.

Therefore, even presuming for the purpose of argument that any such rights as are contained in Chapter-IV of the Constitution are available to the petitioner for enforcement, such rights not being justiciable or enforceable in the Court of law, they cannot be equated with those arising out of Chapter-III of the Constitution. Sri Shankar has not been able to convince the Court that the rights accrued to the petitioners from Chapter IV of the Constitution could be enforceable. In deed, as observed by the Supreme Court with a view to building up a welfare State and an egalitarian social order, to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution, it is for the legislature to look into these matters and to make an appropriate legislation with a view to safeguarding interests of the citizen including persons such as members of the petitioner-society. In the absence of any such legislation, it is not possible to hold that any such rights said to have been accrued to the petitioners could be enforceable or justiciable. There was no force in the submission of Sri Shankar.

Dealing with the question whether the stall-holders can continue to do their business in the temporary sheds in the Nehru Maidan until alternate arrangements are made in the new market to be constructed by the Corporation, at the outset. According to Sri Holla, learned counsel for respondent-1 Corporation, certain lands-were sought to be acquired by the State Government on behalf of the Corporation in the year 1985 and that as there was an interim order staying further proceedings of the acquisition possession of the said lands could not be taken and hence there was delay.

The stay having been vacated, the State was able to issue final notification and thereafter an award in this behalf came to be passed in the year 1989; that pursuant to the passing of the award, possession of the lands was also taken over and that the lands were then available at the disposal of the Corporation for construction of the new market building according to the approved plan. In this behalf, Sri Holla also submitted that once the proposed project was complete and the building constructed in accordance with the approved plan, there might not be any difficulty for respondent-1 to provide accommodation for all the stall-holders in the new market. However, he submitted that

145. H.S. Srinivasa v. State of Karnataka, AIR 1987 SC 1518.

that was not a ground to prevent respondent-1 from taking action to evict the stall-holders as, according to him, the stall-holders had no right under the statute much less vested right in them and that therefore they were liable to be evicted in the interests of the Corporation of the City of Mangalore as it has been losing heavy revenue for the last seven years. He further submitted that the interim order of stay granted by this Court in these cases had been operating since 1985 and that therefore large amount of revenue was being lost to the Corporation.

The stand taken by the Corporation in the statement of objections referred in the earlier paragraphs. The specific stand taken by respondent-1 is that in view of the special provisions of the statute governing the markets and the stall-holders, respondent- 1 Corporation is entitled to take action to evict the stall-holders as that action is in the larger interests of the Corporation. While considering whether a person having a right on lease can be put on par with a person having a right on licence, Court have referred to the decision of a Division Bench of this Court in Savitri's case where the question arose for consideration was whether, in view of the special provisions of Section 370 of the Act, the Corporation was entitled to evict occupants of public markets without resort to the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974, and have held that rights arising out of a licence and a lease are different and a person doing business on the strength of a licence has no right to continue to do so after the expiry of the period of licence, following the decision of this Court in Savitri's, case.

Another aspect that is required to be considered in this case is that the Karnataka Municipal Corporation Act, 1976 (Karnataka Act No. 14 of 1977) is a self-contained Code and apart from the special power conferred upon the Corporation under Section 370, there are other provisions particularly Section 369 which deal with power of municipal authorities in respect of public markets in regard to imposition and collection of fees for the sale of goods in public markets etc. The fees impossible and recoverable under Section 369 are in respect of public markets established and run by the Corporation and let out under licences. It is an undisputed fact that a licence issued in respect of a public market s revocable and the licence granted by the corporation to an individual citizen in respect of a stall in the public market is neither transferable nor heritable as held by the Madras High Court in Chin-nan's case, referred to above. In that view of the matter, let alone others, even the 87 stall-holders originally granted licences as contended by Sri Holla, learned counsel for respondent- 1, and as stated in the statement of objections, have no transferable or heritable rights. In other words, any right arising out of a licence not being transferable or heritable, and third person based upon such licence cannot contend that he has a right to remain in the stall after the expiry of the period of licence. Admittedly, the licences issues were for a period of two years and without the same being renewed from time to time, such licensees cannot have any right or interest to continue in the stalls and in the absence of any contract or statutory right, it is impermissible for the stall-holders to contend that they have a right to remain in the stalls till alternate arrangements are made. As already stated, it is for the Corporation to allow them to be in, or evict them from the stalls maintained by it, in the interests of public. According to Sri Holla, learned counsel for respondent-1 accommodation provided in the Nehru Maidan to the stall-holders and fish vendors was only a tentative arrangement and when the full-fledged stalls were constructed in the new market and were offered for occupation, the stall-holders entitled to occupy the stalls offered cannot contend that they would continue in the present place until adequate facilities are provided in the new market. His contention is that in order to comply with the statutory obligation,

respondent-1 has to take action for eviction of the stall-holders. That the stall-holders have no statutory right conferred on them to continue their business in the Stalls in question. The eviction of stall-holders from the Nehru Maidan is required to comply with the statutory obligation on the part of respondent-1 to prevent nuisance or obstruction in any market-place and to maintain hygienic conditions in the interest of general public and the Corporation has undoubtedly got power to do so vested in it under Section 370 of the Act as held by this Court in Sautiri's case. In the circumstances, they cannot contend that they are entitled to continue to be in the temporary stalls at the Nehru Malidan until alternate arrangements are made in the new market. Hence, point No. 5 answered in the negative.

The stall-holders that all of them should be simultaneously shifted along with fish and mutton vendors to the full-fledged stalls in the new market. Court have to notice it only to be rejected for the simple reason that, first of all, all of them are not entitled to be accommodated in the new market, for the reasons stated above, and hence question of shifting them simultaneously along with fish and mutton vendors to the new market does not arise at all. Secondly, the contention of Sri Holla is that at present the Corporation cannot accommodate all the eligible stall-holders in the new market building for want of stalls and that the remaining eligible stall-holders and other vendors would be accommodated in the new market building to be constructed on the land now acquired for the purpose. Therefore, there is no logic in the contention of the stall-holders that all of them should be simultaneously shifted along with fish and mutton vendors to the newly constructed market building with adequate facilities.¹⁴⁶

10. Public Accountability.—Facts, which are not denied are (1) the State Assembly debated the issue and blamed the State Government and some other persons for concocting cases against innocent persons and deliberately shielding dishonest persons and the persons involved in the alleged offences, (2) newspapers and news magazines carried many informations about involvement of certain persons who themselves were preparing reports and trying to deflect the entire case towards persons who were innocent to save themselves. Such was the *vox populi* which, according to the petitioner, prompted them to go into the depth of the matter to find out as to what was being done in connection with the serious cases of criminal breach of trust and other allied offences by the Senior Police Officers of the State of Bihar. The petitioner has claimed that he picked up that *vox populi*, and obtained informations from various sources including the Personnel in the Police Department of the State of Bihar, what the Director General of Police, the State Government and the C.B.I. were expected to do was done by the petitioner. It is not possible in such a situation to say that the petitioner has been set up by any person to defend himself or espouse his cause. It is also not possible on the facts aforementioned to suggest that the petitioner has no interest for the public in his mind, as the prosecution of offender in a criminal case and protection of the innocent from malicious prosecution is always a matter of public interest. After all bringing to book an offender and protecting innocent from illegal prosecution is a social cause which every person in the country is entitled to adopt. *Locus standi* rule of the Court has undergone a change beginning from the day when a person aggrieved was described as a person who suffered some legal injuries to his right. Passing through the period when interest in the cause and the interest of a rank stranger were distinguished, Courts have come to allow

146. Mangalore Municipal Market Welfare Socy. v. Corpn. of Mangalore, AIR 1993 Kam. 220 at p. 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236 (1993) 1 Kant LJ 84 (M. Ramakrishna, J.)

petitions by those who bring a cause of the public to the Court whether they have any interest of their own or not because it cannot be said that a member of the public does not have interest in common with other public. Since we are now living in the days where those who are required to discharge legal duties and act to protect the interest of the public are found faltering or failing, Courts have decided not to insist upon the old rule of *locus standi* so that administration of justice is done in the interest of all. The Police and the executive have a public accountability of every act they do. Courts have themselves acknowledged that they too have a social accountability. Any refrain in such matters is self-imposed or a self carted refrain. No law prevents the Court from entertaining a cause which is worth entertaining. The instant application has raised a cause of the public. There is no reason to the application on the ground of *locus standi*.¹⁴⁷

11. Locus standi is matter of substantial Public Interest.—In the present public interest litigation, the petitioner organisations claimed to be working for the welfare of the tribal and are interested in ensuring the maintenance of ecological balance in Nagarhole National Park, which according to them, is essential to be maintained for the environmental reasons as also to protect the interests of the tribal residing in and nearby areas of the National Park.

The petitioners have challenged the legality and propriety of creating leasehold rights in certain properties situated in the midst of the Nagarhole National Park, under the lease deed by the Government of Karnataka in favour of the 5th respondent, namely, M/s. Gateway Hotels and Gateway Resorts Limited, a private Company for running its business of boarding, lodging and restaurant, for a period of 18 years.

The legality of the impugned grant of leaseholds rights has been assailed by the petitioners on the ground that the same has been made in flagrant violation of the statutory restrictions contained in the Wild Life Protection Act, 1972, and the Forest (Conservation) Act, 1980. The propriety of the transaction has been questioned keeping in view larger interest of the tribals residing in the forest and the apprehension that the promoting of such eco-tourism will spell doom for the precious undisturbed forest cover and will bring in modern day vices of the ultra urban culture.

The leasehold properties form part of the Nagarhole National Park, which comprises deep forestation, having rich wildlife like elephants, fourhorned antelopes, sloth bear, leopard, giant squirrel, adjutant stork, malabar pied hornbil, shahin falcon., etc. and also variety of birds of rare varieties.

If the Court finds that the question raised are of substantial public interest, then the issue of *locus standi* of the person placing relevant facts and materials before the Court becomes irrelevant.

The issues raised therein are quite fundamental in nature affecting the wider public interest requiring maintenance of ecological balance and environmental requirements. As such the Court cannot refuse to enter into the said issues on the plea of laches which has been evolved to subserve the equity and not to defeat the same. All the three pleas are therefore rejected without entering into any greater details.

For the said reasons, there cannot be any escape from directing the fifth respondent to immediately stop all its activities on the forest land in question and hand over its

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147. Asscn. for Protection of Public Rights and Interest v. State of Bihar, 1990 Cr LJ 1928 at p. 1957, 1958 (Pat).

possession to the State Government. The present public interest litigation thus succeeds and accordingly allowed with costs assessed at Rs. 10,000 to be paid equally by the State Government and the 5 th Respondent.¹⁴⁸

A recent decision of the Supreme Court to which reference need be made, in this connection, is the case of *Bangalore Medical Trust v. B. S. Muddappa*.¹⁴⁹ Dealing with the contention regarding the *locus standi* of the inhabitants of a locality challenging, by way of PIL, the allotment to a private hospital of a space reserved for park it was observed at page 180 of (1991) 3JT(at p. 1915 of AIR),as follows:

“It is too late in the day, therefore to the claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering a great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conserving yardstick of the rule of *locus standi* or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the Courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil to or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of the administration. If furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of *locus standi* nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.”¹⁵⁰

The Court has reservations whether the petitioner may have a *locus standi* to present this writ petition as a public interest litigation. The Court has no hesitation in placing on record that it cannot substitute itself to carry out any obligation which the Government may have to discharge, as a consequence of the failure or the success of State planning on which Counsel for the petitioner’s has addressed the Court as a critic of the politics of the State or the State of the economy. The problems which have been indicated to the High Court either on the petition or on the submission are clearly the functions of the elected representatives. The petitioners Counsel submits criticism about them, but the High Court shall refrain comments.

The High Court cannot run the administration and if the sugar mills have ceased production. Whatsoever, may have been the reason, this cannot be attributed to the High Court. The failure or success of State plans and policies not for debates at the High Court. Only the illegalities come on the anvil for judicial scrutiny.¹⁵¹

148. Nagarhole Budakhattu Hakku Sthapna Samittii v. State, AIR 1997 Karnataka 288 at pp. 288, 289, 294.

149. (1991) 3 JT (SC) 172: AIR 1991 SC 1902.

150. P.V. Kapoor v. Union of India, 1992 Cri LJ 128 at p. 135 (Del).

151. Jeeva Kant Jha v. Union of India, 2001(1) BLJ 299 at 300 (Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.)

Very fact that so many Government Departments are involved in the process of clearance or issuing no objection certificates before starting the project itself, is indicative of the fact that it is a matter of importance and is likely to affect either way environment, ecology and public interest of the residents of that village. Petition cannot be said to be abuse of process of Court or lacks *bona fide* or does not specify any of the ingredients of Public Interest Litigation.

Stricto sensu can hardly be applied to Public Interest Litigation unless and until delay in approaching Court is *mala fide* and its entertainment would imbalance equities between affected parties to extent of causing injustice which the conscience of Court does not permit or its economic effect is such that it would be more appropriate for Courts to reject the petition on that ground. Though there was some delay, no case of patent inordinate delay where petitioners have slept over their rights totally or approached Court *mala fide*. Petition cannot be dismissed on ground of delay and laches.

Facts showing that public hearing was given and petitioners had participated in it. Expert Body like Maharashtra Pollution Control Board and experts in Ministry of Environment and Forests had examined various aspects of the matter. Issues were deliberated upon and discussed at meetings. Court would not sit as appellate Authority as it has no expert means and tools to examine whether view of Expert Authority is correct or not. *Held* that however as conditions imposed by Competent Authority in relation to proper water and electricity supply to concerned villages were not complied with, authorities directed to ensure that water supply and electricity supply schemes were fully implemented.^{152 153}

12. Liberal Approach.—In *Fertilizer Corporation Kamgar Union v. Union of India*, where the terminology of the public interest litigation was used for the first time, the Supreme Court held thus (at pages 353-54 of 1981 AIR):

“We have no doubt that in competition between Courts and streets and dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless street. In simple terms, *locus standi* must be liberalised to meet the challenges of the times. *Ubi jus ibi remedium* must be enlarged to embrace all interests of public minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets.”

The argument is, who are you to ask about the wrong committed or illegal act of the Corporation if you have suffered no personal injury to property, body, mind or reputation? An officious busybody picking up a stray dispute or idle peddler or blackmail-litigation through abuse of the process of the Court cannot be permitted to pollute the Court instrumentality, for private objectives. Public justice is always and only at the service of public good, never the servant or janitor of private interest or personal motive.

Law, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. Court cannot be scared by the fear that all and sundry will be litigation happy and waste their time and money and the

152. Dighi Koli Samaj Mumbai Rahivasi Sangh, Mumbai v. Union of India, AIR 2009 fNOC) 2876 (Bom); 2009 (5) AIR Bom R 258.

153. AIR 1981 SC 344: (1981) 1 SCC 568 quoted in State v. Union of India, AIR 1996 Cal 181 at 192 (1996) 1 Com LJ 258.

time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participating public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be replied from it by narrow pedantry now surrounding *locus standi*.

Public interest litigation is part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial doorsteps.

13. Petition by third party.—When the persons directly interested to not complain and do not express any grievance, then a third party even if it is the State cannot seek to champion their cause as a public interest litigation.¹⁵⁴

14. Petition by Journalists—Maintainability of.—The petitioner was a taxpayer; a journalist serving the cause of the public through journalism last 30 years; he was a senior feature writer and investigative reporter for a leading Kannada daily newspaper “*Prajavani*”, he is an income tax assessee; a member of the Karnataka Working Journalist Association and was the President of the Press Club, Bangalore, for three years from 1986-88 and at present he is the editor of Kannada fortnightly “*Sanketa*”. As such he claims to have the *locus standi* to maintain his writ petition.

The 2nd respondent was the former President of India getting a monthly pension from the Central Government. He has owned a palatial building at Anantpur in Andhra Pradesh; his sons are well-placed and he has got properties and income much above the average income of Indian citizens.

The State of Karnataka is in a financially critical position for the last five years; is unable to meet the basic needs of the residents of Karnataka in spite of the difficult financial position prevailing in the State to the detriment of the people of Karnataka the first respondent has been spending lavishly for the benefit of the 2nd respondent which is neither necessary nor it serves any public cause. The petitioner further contends that there are several houseless people in the country including Karnataka. The 1st respondent has provided a palatial bungalow at prominent place at Bangalore to the 2nd respondent though he has got a house. The 1st respondent has incurred more than Rupees 54 lakhs for entertaining the 2nd respondent in the last 22 months as on the date of filing the petition by providing two cars with drivers, several servants including gardeners and providing security personnel. All the expenditure is made by the 1st respondent on the second respondent at the cost of the people of Karnataka.

The 1st respondent in the cabinet meeting held on 20-11-1987 decided to provide a suitable well-furnished government accommodation and a car with a driver for two to three years to the 2nd respondent. According to the petitioner this decision was taken by the 1st respondent under an impression that the Government of India will bear the expenditure on this account. Even as per the said decision of the Cabinet the 1st respondent could have incurred expenses only for providing a well furnished rent-free accommodation and a car with a driver to the 2nd respondent for two to three years. But spending huge amount by the 1st respondent in providing him servants, security personnel, gardener and by paying his light bills, water bills, telephone bills, security

expenditure, petrol to the car and also bearing his travelling expenses to Delhi are not supported by any such Cabinet decision. The 1st respondent being liable to account to the people of Karnataka for spending each paisa is liable to be directed to recover from

154. Janata Dal v. H.S. Chowdhury, AIR 1993 SC 892: (1992) 4 SCC 305 quoted in State v. Union of India, AIR 1996 Cal 181 at 190: (1996) 1 Com LJ 258.

the 2nd respondent the amount thus already spent on the 2nd respondent unauthorisedly and illegally. The 2nd respondent who had occupied the post of a President of India is legally and morally bound to reimburse the amount.

On the basis of these averments the petitioner has raised the following grounds in the writ petition:

- (1) The action to the 1st respondent in providing and continuing the financial and other benefits to the 2nd respondent is illegal, arbitrary, illegal and against the interest of the general public;
- (2) The 2nd respondent being well-placed is capable of maintaining himself and his family according to his status. Hence it is unnecessary for the 1st respondent to provide benefits to the 2nd respondent at the cost of the people of Karnataka;
- (3) The 1st respondent being not in a position to meet the basic demands of its people is liable to be restrained from providing such facilities to the 2nd respondent.

The writ petition was filed on 16-5-1990. This Court on 17-5-1990 issued rule and interim order.

1AS-I and II were filed by applicants in the said IAS to get them impleaded in the writ petition. IA-I11 was filed by the petitioner seeking amendment of the writ petition. This Court on 19-7-1990 allowed the applicants in 1AS-I and II to assist the Court as intervenors and allowed IA-I11 filed by the petitioner seeking amendment of the writ petition.

The respondent-1 has filed the statement of objections contending that the petitioner was not entitled for any relief sought for in the writ petition. The 2nd respondent was staying in his house in Ananthpur Andhra Pradesh; he required regular medical attention and as such he desired to reside in Bangalore the place where better medical facilities were available and was nearer to Ananthpur. The first respondent considered the request made by the 2nd respondent and an order bearing No. DPAR 112 GMR 87 dated 1-6-1988 came to be issued allotting premises No. 29, Sankey Road, Bangalore, for occupation of the 2nd respondent making it clear that the said premises would be the official residence of the 2nd respondent. In this objection statement details of expenditure made by the 1st respondent on 2nd respondent are given. The total expenses incurred by the 1st respondent on the facilities provided to the 2nd respondent works out at Rs. 19,58,660-16 ps. The 1st respondent contends that this amount was spent lawfully and in pursuance of the orders passed by the 1st respondent with necessary competence to do so. On 23-4-1990 a fresh order was issued continuing the facilities hitherto enjoyed by the 2nd respondent up to 19th June 1991 the date on which the term of three years would be completed. The fact that the former President to be treated giving special facilities now has the approval of the Parliament inasmuch as the President's Emoluments and Pension (Amendment) Bill 1990 was passed by the Parliament and it has received the assent of the President on 3-6-1990. The 1st respondent has also contended that the petitioner being a journalist was deemed to have been aware of the facilities given to the 2nd respondent for over two years and the writ petition filed at the belated stage is liable to be summarily rejected. The 1st respondent has also denied that the facilities were provided to the former President with the belief that the amount will be reimbursed by the Government is not correct. However efforts are being made to get the reimbursement

from the Union of India. The 1st respondent asserts that efforts have been made for reimbursement of the amount spent on second respondent.

An additional affidavit is filed on behalf of respondent-1 by the Under-Secretary, DCA & DPAR (General) stating that the amount spent on the 2nd respondent is fully in accordance with the law. After this Court passed an interim order, the first respondent received a telex message from the Union of India stating that Union of India will reimburse the expenditure incurred subsequent to passing of the interim order *i.e.* on or after 18-5-1990. The 1st respondent has spent a sum of Rs. 19,58,660-16 ps. up to 18-5-1990 *i.e.* between the period 20-11-1987 to 17-5-1990. The efforts are in progress to get even this amount reimbursed by the Union of India. Assuming the Union of India is not going to reimburse the said amount the amount spent on respondent-2 is fully protected under the provisions of Articles 202 to 204 of the Constitution of India since the amount has been spent under the heading Head of Account 2070 other administrative services—1 13 Government House, Government Hostels etc. (non-plan) and the amount so spent is a voted expenditure. It is also further stated in the said affidavit that though the amount has not been specifically earmarked for expenditure on the 2nd respondent it is permissible in law under the account mentioned above.

In the objections statement filed by the 2nd respondent it is contended that the petitioner has no *locus standi* to maintain the petition as admittedly petitioners personal legal rights are in no way affected; Government is not under duty to account to the petitioner for the expenses it incurs on hospitality to a former President of India or for that matter to anyone. The question as to what hospitality should be extended by the State Government to its guests is not a justiciable issue. It is essentially a matter of governmental policy and discretion. A decision such as this as to whether it is reasonable to extend hospitality to a former President and to what extent is a matter entirely within the sphere of the executive and Courts cannot be asked to sit in judgment over the same. The writ petition is liable to be rejected on the ground of inordinate delay and laches. The 2nd respondent has also explained as to under what circumstances he desired to stay at Bangalore. Respondent 2 has denied that his sons are well-placed holding IAS posts. He has only one son who is a practising doctor at Ananthpur. He has further contended that what is spent on the hospitality is a small amount compared to the finances of the State.

It is further stated that one car with driver is provided; security provided is minimum. Sometimes guests come to the house who are entertained at the cost of the 2nd respondent himself and not at State expense. It is denied that Rupees 54 lakhs have been spent by the State Government for entertaining the 2nd respondent during the last 22 months. The contention of the petitioner that the extension of benefits to the 2nd respondent does not serve any public cause and that it is against the interest of the people of Karnataka runs counter to the traditions and culture of India and it in no way hurts the people of Karnataka and that too when the amount spent is negligible. The second respondent further contended that prayer of the petitioner for reimbursement of the amount spent on amenities is unjust and untenable; as far as accountability of the Government is concerned the obligation is discharged when the State budget is placed before and passed by the State Legislature. With these contentions the 2nd respondent has prayed for dismissal of the writ petition.

Sri Chaitanya Hedge, counsel for the petitioner submitted that the benefits provided to respondent-2 are in exercise of executive power of the State Government. He drew Courts attention to Arts. 73 deals with extent of executive power of the Union. Art. 162 deals with the extent of executive power of State which reads thus

‘162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

He contended that providing hospitality or benefits to respondent-2 is not a matter with respect to which the Legislature of the State has power to make laws. The expenditure of funds made on respondent-2 require the authorisation of the Legislature either directly or under the provisions of a statute which is lacking in this case, inasmuch as the expenditure incurred on respondent was neither included in the financial statement nor appropriation bills were introduced. In short he contended that without compliance of Article 202 to 207 of the Constitution the said expenditure is illegal and arbitrary. In support of this submission he relies on the judgment of the Supreme Court in the case of *Rai Sahib Ram Jawaya Kapur v. State of Punjab*,¹⁵⁵ particularly drawing the attention to para 15 of the said judgment which reads thus:

“15. Suppose now that where the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start a trade or business. It is necessary that there must be a specific legislation legislating such trade activities before they could be embarked upon. Such legislation is always not necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under the provisions of a statute.

What is generally done in such cases is, that the same required for carrying on the business and entered in the annual financial statement which the Ministry has to lay before the House or Houses of legislature in respect of every financial year under Article 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assert or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Article 203).

After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (Article 204). As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution.”

In this argument, the counsel for the petitioner assumed that the expenditure made on respondent 2 is unauthorised because it was not included in the financial statement.

But in this regard the Corporation has taken specific stand in para 7 in the affidavit filed on 19-11-1990 which reads thus:

“Assuming that the Union Government is not going to reimburse the said amount, with respect it is submitted that the amount has been spent on the former

President is fully protected under the provisions and under Articles 202 to 204 of the Constitution of India since the amount has been incurred under the heading "Head of Account 2070..... other administrative service 1113 Government House, Government hostels etc. (non plan) and the amount so spent is a voted expenditure. In other words, though the amount had not specifically been earmarked for expenditure towards the second respondent and there being no necessity for it, the expenditure of the same is permissible in law under the account mentioned *supra*".

Further respondent- 1 has placed official memorandum dated 31-3-1987 showing the budget estimate for 1987-88 authorising to incur expenditure for the full year. Similarly official memorandum dated 30th June, 1988. Both these official memorandums show at items Nos. 42 and 43 respectively that an amount of Rs. 14,13,77,000/- and Rupees 14,92,96,000/- were included towards expenditure under the head miscellaneous demands of Chief Minister Revenue. In the very first paragraphs of both these memorandums reference is made in para 1 showing that the act authorises grants/appropriations to the extent indicated in the Schedules attached. This being the factual position. There was no merit in the submission of the counsel for the petitioner that the expenditure made on respondent-2 was bad or illegal for want of following procedure under Articles 202 to 207 of the Constitution. In the same judgment of the Supreme Court referred to above in paras 6 and 7 the scope of Articles 73 and 162 of the Constitution is considered. The expenditure made on respondent-2 is not in exercise of executive power. On the other hand, it is a voted expenditure which has the approval and seal of the Legislature. The submission of the counsel with reference to the exercise of executive power under Article 162 of the Constitution has no force.

In the case of *Piarelal Singh v. State of Madhya Pradesh, Nagpur*,¹⁵⁶ the Special Bench had an occasion to consider a question having bearing on the controversy raised in this writ petition. In the said judgment it is observed thus in para 12:

"The assembly being the master of its own procedure, could condone the irregularity in the procedure followed by the Government. Apart from that, the irregularity had occurred in the proceedings before the Assembly. The validity of those proceedings cannot, by virtue of Cl. (1) of Article 212 of the Constitution, be called in question before a Court of law on the ground of irregularity in procedure."

Further, in para 39 it is stated thus:

"39. It is said that it is a prerequisite for the exercise by the Assembly of its powers under this article that the Budget itself should state the purpose for which every item included in the demand was required and that by omitting to state it, the State Government had contravened the provisions of Cl. (2) of Article 203 of the Constitution. The short answer to this argument is that this article refers to 'demands' only and makes no reference whatsoever to the separate items constituting the demands, or to the purpose for which each item was required. It is, therefore, difficult to understand how the provisions of this clause have been contravened. Indeed, the only requirements of Article 203 are that every demand shall be recommended by the Governor and that it shall then be put separately to

the vote of the Assembly. Both these conditions were satisfied in this case and therefore there was no contravention of Article 203 of the Constitution.”

Under the circumstances, there was no hesitation to reject the contention of the learned counsel for the petitioner that the expenditure made on respondent-2 was either unauthorised or arbitrary or illegal.

Counsel for the petitioner cited the decision in the case of *Asif Hameed v. State of Jammu and Kashmir*,¹⁵⁷ to emphasise that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether Legislature or the executive has acted within the powers and functions assigned under the Constitution and if not the Court must strike down the action. He relied on the decision of *Rai Sahib Ram Jawaya Kapur v. State of Punjab*,¹⁵⁸ to state the limits within which the executive Government can function. He also relied on the decision in the case of *M/s. Kasturi Lal Lakshmi Reddy v. State of Jammu*,¹⁵⁹ drawing my attention to para 11 to state unlike a private individual, the State cannot act as it pleases. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. He cited the decisions in the cases of *Sheela Barse v. Union of India*,¹⁶⁰ to explain the powers of the Court to grant relief in public interest litigation, The proposition of law laid down in these decisions cannot be disputed. But in the view Court have taken the question of applying the principles laid down in the decisions to the facts at hands does not arise.

As per the amended writ petition the petitioner has sought for a writ of mandamus directing the first respondent not to provide financial or any other benefits to the 2nd respondent, direct the first respondent to recover from the 2nd respondent all the amounts spent by it except the expenses incurred by it providing him a well-furnished accommodation and a car with a driver or direct the second respondent to reimburse such amounts spent on him to the 1st respondent. In view of the fact that the Union of India has come forward to meet the expenditure on respondent No. 2 with effect from 18-7-90 the first prayer does not survive. The petitioner contended that Rs. 54 lakhs were spent on the 2nd respondent during 22 months between 20-11-1987 to 17-5-1990. The same was denied by the Corporation. According to the Corporation a total sum of Rs. 19,58,660-16 ps. were spent during this period. According to the petitioner he wants direction to respondent-1 to recover the amount spent on respondent 2 except the expenses incurred by it for providing him well-furnished accommodation and a Car with a driver. In other words, the expenditure made for providing respondent-2 well-furnished accommodation and a car with driver is to be excluded from Rs. 19,58,660-16 ps. In view of the conclusion arrived at by the Court that the expenditure made by the Corporation on respondent 2 was authorised and according to law in the matter of providing hospitalities to him, the writ petition has to be dismissed. That apart no writ can be issued to respondent-2 to reimburse the amount spent on him by respondent-1.

Counsel for the respondents urged that the writ petition was liable to be dismissed as the petitioner has no *locus standi* to maintain the petition. Even otherwise the writ

157. AIR 1989 SC 1899.

158. AIR 1955 SC 549 para 13.

159. AIR 1980 SC 1992.

160. AIR 1988 SC 2211; Appanna v. State of Karnataka, AIR 1980 Kant 113; and M/s. Shiv Shanker Dal Mills v. State of Haryana, AIR 1980 SC 1037.

petition is liable to be dismissed on the ground of delay and laches. The counsel urged that the petitioner being enlightened citizen that too being a journalist should be deemed to have been aware of the facilities given to respondent-2 as early as on as late as on 16-5-1990 is liable to be rejected on the ground of delay and laches. They further urged that the petitioner has no *locus standi* as neither the petitioner's rights are affected in any way by the impugned action of the Government, nor the Government is under any duty to account to the petitioner for the expenses incurred on hospitality to a former President of India. The counsel justified and supported the action of the Government stating that the expenditure made on respondent-2 was fully authorised by the Legislature which is the representative body of the people of Karnataka State. They also submit that the Union of India has come forward to reimburse the expenditure made on respondent 2 with effect from 30-7-1990 as per memo dated 17-12-1990 filed by respondent-1.

In view of the long line of decisions as to the *locus standi* in a matter like this. Court was of the opinion that the petitioner has *locus standi* to maintain the petition. Then again the petition cannot be thrown out on the ground of delay and laches as there is nothing to show the petitioner had the knowledge of the details of the benefits given to respondent 2 right from the beginning. That apart in the public interest litigation when the attention of the Court is drawn depending on the facts and circumstances of the case. Co_ f may not throw away the writ petition on the ground of delay and laches alone. This is not a writ petition which should be dismissed on the ground of delay and laches.¹⁶¹

In *Niyamavedi v. Raman Srivastawa*.¹⁶² The Court observed as follows:

‘The press has now assumed the role of the public educator. The purpose of the press is to advance the public interest by publishing facts and opinions. Such publication of fact is highly essential for educating the public. Newspapers are purveyors of news and views having a bearing on the public administration. Such news-items coming in the papers cannot be brushed aside as totally baseless and unacceptable. They must be regarded as having a factual foundation. When the administration is found to be acting against these publications, a public spirited individual may feel agitated. If the incident relates to a situation which affects the very security of the nation, then the feeling of the citizen will be more intense. In such a situation he, according to us, can certainly approach the Court to have the entire matter examined.....’

It can safely be said that there is nothing wrong in the petitioners association which are intricately connected with the Maharaja's College coming forward with a Writ Petition challenging when they felt that the construction of a commercial building and renting to a hotel would affect the academic atmosphere in the college campus.

As regards the *locus standi* of the petitioners, it can be said that after the concept of *locus standi* is given a wide amplitude by reason of public interest litigation, the petitioners certainly have *locus standi*. The decision of the Supreme Court in *Janata Dal v. H.S. Chowdhury*,¹⁶³ explains what is meant by ‘Public Interest’. In paragraph 51 relying upon *Strouds Judicial Dictionary* Vol. IV, the Court interpreted ‘public interest’ as follows:

161. I.K. Jagiidar v. State, AIR 1992 Karnataka 175 at pp. 176, 177, 179, 180, 181 (Shivaraj Patil, J.).

162. (1995) 1 Ker LT 206.

163. (1992) 4 SCC 305.

“A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

Referring to *Black's Law Dictionary*, the Court observed as follows:

“Public interest something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.....”

A Division Bench of this Court in *C.K. Rajan n. State*, acted upon a petition filed by C.K. Rajan which is later supported by sworn to statement, and dealing with the question of jurisdiction under Article 226 of the Court observed as follows:—

“..... Where the rights of innumerable persons have been infringed bordering on violation of fundamental rights.... (in instant case the right of a religious denomination under Article 226 is involved)..... the remedy by way of suit is likely to be dilatory and the delay will irreparably prejudice and damnify the public. In a public interest litigation where a substantial population of the country.....the general public, are interested in the vindication of the rights and the enforcement of some public duty, the Court is bound to consider the gravity or seriousness of the complaining and in so considering, if satisfied, *prima facie*, that the information laid before Court is of such a nature that it calls for examination, the availability of alternative remedy will never prevent the Court nor will it fetter the exercise of jurisdiction under Article 226.”

The Court also pointed out:—

“The bar relating to alternate remedy is a rule of self-imposed limitation by the Courts.... a rule of policy and expediency, convenience and discretion.... In a public interest litigation, the entire complexion changes and the availability of alternate remedy sinks into oblivion.”

In view of this pronouncement, it can safely be said that the petitioners do have a *locus standi* to file the O.P. though they cannot be described as aggrieved parties or affected parties.^{164 165}

15. Demanding certain Writ procedures to be followed-PIL nature? -Petitioner was an Advocate by profession and is practising at Gauhati Bar in the district of Kamrup. This application has been filed claiming it to be a public interest litigation claiming the following reliefs

- (a) a writ in the nature of *mandamus* or *certiorari* or any other appropriate writ should be issued for declaration of Sections 322 to 342 of the Gauhati Municipal Corporation Act, 1969 as *ultra vires* the provisions of the Assam

164. AIR 1994 Ker 179.

165. Parent Teacher Association Maharaja's College v. State, AIR 1995 Ker 209 at pp. 219, 220 (At: Emakulam) (D.J. Jagannadha Raju, J).

Town and Country Planning Act 1959, the Land Acquisition Act 1894, and the Assam Land and Regulation Act and the Constitution of India;

- (b) issuance of a writ of *mandamus*, *certiorari* or any other appropriate writ or direction forbidding the respondents from demolishing any type of construction within the City of Gauhati and from issuing any notice under the provision of Section 337 of the Gauhati Municipal Corporation Act for demolition and from acting upon such notices, if any, issued for the time being;
- (c) issuance of an appropriate writ, direction or order on the respondents to show cause as to why an inquiry Commission or any other judicial inquiry should not be ordered to assess the loss done by respondents by demolition and the excesses committed by them in effecting such demolition and after enquiry the land and buildings be restored to actual owners/ occupiers with suitable compensation.
- (d) issuance of appropriate writ direction or order for rehabilitation of the occupiers if the land or buildings or houses are not restored to them. Pending disposal of this Rule, an interim stay/injunction order prohibiting or restraining the respondents, their employees, workmen, servants or agents from demolishing any type of construction in Gauhati City either in pursuance of any notice or otherwise is also prayed.

Held, In view of the matter, Court found that this application cannot be deemed to be a public interest litigation and the petitioner has no right to file this application for the reliefs as indicated above. This application held not maintainable in the form of PIL.¹⁶⁶

16. Petition by Consumers Association.—The petitioner, who claims to be the Chairman, Madras Provincial Consumers' Association, Convener, Civil Liberties panel and the elected Honorary President of the Triplicane Co-operative Bank Limited Madras-5, has filed this writ petition for issue of *mandamus* directing (1) the third respondent to seek the expert opinion of the "Auditor-General of India and act on his advice concerning the overseas operations of the first respondent during the period 1981 to 1987 in its branches at Sayapur, Singapore, Hongkong and Indonesia and (2) the respondents to place before this Court the full Inspection Report of Shri A. Namasivayam, the present Executive Director of the first respondent together with the original correspondence among them to enable this Court to arrive at a fuller understanding of the issues raised in the affidavit of the petitioner and formulating corrective guidelines that may be essential in preserving national wealth. The first respondent in the writ petition is the Indian Overseas Bank, represented by its Governor. The third respondent is the Union of India represented by the Additional Secretary, Ministry of Finance.

In the affidavit filed in support of the petition, the petitioner has stated that he is a tax-payer and a citizen of India. The following are the relevant allegations made in the affidavit in support of the prayers in the writ petition; Notwithstanding the instructions, statutory obligations and restraints imposed by and enjoined by the various Acts, Ordinances, Banking regulations governing the corporate system of banking in India, in particular by passing the Inspection Report of Sr. former Deputy General Manager and at present Executive Director of the first respondent and contravening the advisory notes

166. Binod Kumar Jain v. Gauhati Municipal Corporation, AIR 1994 Gau. 96, 97, 99 (J.N. Sarma and B.N. Singh 'Neelam', JJ).

and communications of Sri P.S. Khera Bar-at-law, New Delhi and Sri S. Kanniappan, Associate Lecturer, Government College of Arts and Crafts, Madras, Director on the Board of Directors of the first respondent, nefarious and corrupt practices, have crept into the overseas branches of the first respondent bank. There is a systematic depletion of safety funds, nearly 200 crores of rupees from and out of the Hongkong and Singapore Branches of the first respondent in its operations covering Sayapur, Singapore, Hongkong and Indonesia. Staggering loss was sustained by the first respondent, due to *mala fide* and indiscriminate advances granted by the Senior Executives of the Overseas Branch Offices favouring uninvestigated business concerns who offered worthless securities or no security fully aware of the irrevocability of the advances. Loss was occasioned by the appointment of unscrupulous person in surreptitious manouvres the top cadres oriented exclusively to the relatives of the top echelons of the first respondent. Adoption of sick industries was another mode by passing proper checks on the credibility of the concerns. An employee Director of the Board of Directors of the first respondent culled out from the Inspection Report of "A" on the activities of the Bank, as on 9-2-1985 that a former Chairman-Managing Director of the first respondent and the then Regional Manager, Singapore Branch of the first respondent, misused their powers for personal gain. A list of fraudulent deals was revealed in the Inspection Report. A writing off of the losses as normal business losses is contemplated. The *modus operandi* adopted by the concerned officers is set out in detail. At one stage, the Ministry of Finance, Department of Economic Affairs (Banking Division), directed a review of the position. The Ministry proposed impounding of the passports of the individuals responsible for loss and their extradition to India. The officers offered resignation at that stage, which were accepted without the concurrence of the Board of Directors, whose admonitions were by-passed by the Chairman-Managing Director. The Government nominee and the Reserve Bank nominee on the Board of Directors failed to evidence due care. The Inspection report dated 9-2-1985 on "A" on the operations of the Singapore Branch read with the letters dated 6-3-1984 and 12-7-1985 of the two Directors of the Board of Directors, and the former Chairman Managing Director and his co-brother General Manager, and the then Regional Manager of having contrived an atmosphere to defraud the first respondent to the tune of Rs. 200 crores, which is now sought to be written off. During the years 1981 to 1987, the first respondent lost crores of rupees in its overseas ventures, particularly in Sayapur, Singapore and Hongkong and the present Senior Executives are seeking to suppress and conceal the true facts in the public eye. Successive Managements have kept the depositors in the dark. The successors to the top echelon General Manager manipulated and deliberately attempted to prevent the revelation of the *mala fide* acts of their predecessors, committing collusion. General Manager had misguided the Board of Directors in respect of the advances made by the Singapore Branch of the first respondent by recommending the acceptance of the resignation of an erring officer and reporting that the operation of the first respondent in Singapore were in good order. The illegal acts and omissions resulting in unprecedented irregularities in the history of banking in India, have damaged the reputation of the first respondent in its overseas branches in the Eastern Board of the world. As a result, the following ignominious situations have arisen:

- (a) The Reserve Bank of India had, in order to maintain the equilibrium in the liquidity concerning the first respondent and to preserve the "liquid ratio", extended its guarantee to the Central Bank of Singapore and Hongkong, as it was essential to protect the interests of the depositors in cities and to conserve the image of the first respondent.

- (b) Considerable erosion has set in on the National Economy at the relevant points of time and public which could otherwise have been utilised for public good was wasted.
- (c) Had the first respondent been a private sector bank it would have gone into liquidation.
- (d) Banking Regulations, directives of the Reserve Bank of India, the lukewarm warnings of the Ministry of Finance, the dispatches of the Board of Directors, the counseling of individual Directors, were spumed for gratification.
- (e) The consensus opinion of a C.B.I. Investigation did not materialise.
- (f) The Auditors appointed by the first respondent were at their wits and to approve the annual balance-sheet of the first respondent. They appear to have refused certification.
- (g) There is "writing off in the air inasmuch as there is no escape.

The petitioner has no other remedy except to approach this Court, ways and means have to be devised for the recovery of the huge sums of money scattered as advances to the spurious concerns involved. This Court alone can take the matter in hand and issue directions and guidelines for safeguarding the Public interest and frame measures for prevention of recurrence of similar situations among the Banking fraternity in India. The matter at present is eminently suitable to be referred to the Auditor General of India for his expert opinion on the said issues. The guilty have to be identified and evidence gathered against them for eventual arrangement. The second and third respondents have conspicuously been unmindful of the magnitude of the loss. No timely action was initiated to dispel the anxiety of the public at large. There is likely to be further deterioration as even the present management has spelled out its penchant for adopting sick mills and industries as reported in 'The Hindu' dated 18-5-1988. The first respondent has proposed to write off the cumulative loss over the years as reflected in its Annual Balance Sheet for the year 1987. The Balance Sheet was published beatedly on 17-5-1988. It appears to be a qualified one as so approved by the auditors of the first respondent. While it is common knowledge that the first respondent has shown in its publication a balance of profit of Rs. 6.62 crores, obviously to mislead the public at large and suppressing the loss during the previous years. In the circumstances, the relief prayed for in the petition should be granted.

On notice of motion, a counter-affidavit was filed on behalf of the first respondent raising certain preliminary objections regarding the maintainability of the writ petition and the *locus standi* of the petitioner herein. According to the first respondent, the petitioner must satisfy this Court that a specific right of his under the statute of the constitution has been violated for him to move a petition under Article 226 of the Constitution of India. The stand taken by the first respondent in the counter affidavit is that the wrongs alleged by the petitioner, assuming for a moment were proved, are not remediable and consequently, the petition is bereft of remedies, thus nullifying the petitioner's prayers. It is stated that when Parliament has by specified statutes endowed power to watch the affairs of a Bank to certain authorities, the petitioner cannot assume in law a superior status to that of an authority such as Reserve Bank of India and Ministry of Finance, Government of India. The Bank's accounts and affairs are audited every financial year by a statutory Auditor who is not an employee of the Bank. The first

respondent is adhering to all the norms of acceptable banking practices and therefore, there is no specifically alleged dereliction of duty on the part of the Managing Director for the Bank to be exposed to the extraordinary jurisdiction of Article 226 of the Constitution. It cannot be assumed that the deficiencies in the society which have failed to correction by other means could be cured in Courts. When a parliamentary committee consisting of Members of Parliament scrutinises the functions of the Bank. The petitioner cannot introduce elements wholly alien and outside the authority of law, either to investigate the affairs of the Bank or to seek a writ from this Court to issue directions to a Constitutional functionary such as the Auditor General of India. It is not proper or correct in law for the petitioner to ferret information from the Bank through a proceeding under Article 226 of the Constitution of India and then endeavour to make out a case for invoking the extraordinary jurisdiction. The deponent of the counter affidavit will be violating his oath of secrecy if he were to divulge in any manner the details of any account. The financial position of a client with a Bank is a highly privileged one and if on an inchoate set of allegations, the deponent is to lay bare several accounts, their business would be immediately adversely affected, ruining them and also the vital interests of the Bank. This Court should consider another essential element of public interest that of protecting the inviolability of the precious rights of secrecy of the customers of the Bank. The Joint Secretary from the Ministry of Finance and a Senior representative from the Reserve Bank of India have a special status in the Board of Directors as they are representatives directly appointed by the Government of India, Ministry of Finance and Reserve Bank of India, respectively. The Ministry of Finance keeps itself informed of all aspects of the administration of the Bank. Hence, the writ petition should be dismissed.

Held, There is no difficulty in holding that the petitioner has *locus standi* to maintain the writ petition. In this country public interest movement has been almost entirely initiated and nurtured by the apex Court. Being aware of the limitations of legalism, the Supreme Court in the main and the High Courts to some extent for the last decade and a half did their best to bring law into the service of the poor and down trodden under the banner of Public Interest Litigation. The range is wide enough to cover from bonded labour to prison conditions and from early trial to environmental pollution. It is not confined to enforcement of fundamental rights of an individual or a group of persons, but would take in the rights of the public at large. One of its distinctive characteristic is liberalisation of the rules of standing. In *Mahara] Singh v. State of U.P. and others*,¹⁶⁷ the Supreme Court declared the law thus 'Where a wrong against community interest is done, no *locus standi*', will not always be a plea to non-suit an interested public body chasing the wrongdoer in Court. In the case before us, Government, in the specious sense of 'person aggrieved' as comfortably placed. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management Committee and is liable to be divested without add any time. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State, the watch-dog of the whole project, is to be a helpless spectator of its purposeful bounty being wasted or lost. It must act, out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use. Long arguments is otiose to make out a legal grievance in such a situation of peril and, after all, the star of processual actions *pro bono publico* has to be on the

167. AIR 1976 SC 2602.

ascendant in a society where suspensiveness must be substituted by activism, if the dynamic rule of law is to fulfil itself. '*Locus standi*' has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old."

In the light of the above principles enunciated by the Supreme Court there is no doubt that the petitioner as a citizen and tax payer of this country has the requisite 'standing' to maintain the writ petition as has complaint is that the high officials of Nationalised Bank have failed to do their duty resulting in a huge loss of over 200 crores of rupees to the bank and thereby to the nation. It is wholly unnecessary for him to invoke the provisions of the Consumer Protection Act. There is considerable force in the arguments of learned counsel for the first respondent that the said Act is not applicable to this case. Court taken the view that the petitioner has '*locus standi*' to file this writ petition as a rate-prayer in this country.¹⁶⁸

17. Problems of Roads and sanitation in colony.—The petitioners own residential houses in what they have described as Govindpuri Colony', within the Corporation limits of Gwalior City. They have approached this Court in what they describe as Public Interest Litigation, for compelling the authorities of Municipal Corporation, Gwalior and the other concerned authorities, made as respondents, representing the Departments of Local self-government, Public Health Engineering and Town and Country Planning, to provide civic amenities to the Colony in which the petitioners own buildings and residential houses. The allegation made by them is that as members of Co-operative Societies arrayed as respondents 4 and 7 to this petition, they purchased plots and built their houses after obtaining due clearance from the Town and Country Planning Department and sanction for construction from the Municipal Corporation, Gwalior. It is their case that the Corporation is levying all kinds of taxes, such as property tax, development Cess and conservancy tax, from them. The Municipal Corporation, however, is totally neglecting the maintenance of roads, sewage-line, drainage system and streetlights in the Colony. It has been submitted that because of the insanitary conditions prevailing in the locality, it has become hazardous to the safety and health of the inhabitants and difficult to live in the colony. Repeated approaches were made to the authorities, but no attention was paid to the problems of the residents of the colony which has compelled the residents to bring this Public Interest Litigation to this Court.

This Court issued notices to the respondents representing the concerned authorities of the Corporation and the State. A Commission, consisting of an Advocate of this Court, was appointed for making a spot inspection of the prevailing conditions of roads and sanitation in the Colony. The Commission has submitted its report showing the unhygienic conditions prevailing in the locality.

The Corporation has submitted its return and the Commissioner and the Deputy Commissioner of the Corporation were present before Court at the time of hearing of the case to explain the practical problems faced by the Corporation in carrying out the necessary civil works for maintenance of roads, drainage and sewage system in the Colony. The legal stand of the Corporation is that the Colony was allowed to be developed through Co-operative Housing Societies which are parties to this petition, under a written agreement, copies of which have been filed as Annexure R/ 1 and R/2. It is pointed out that under the terms of agreement entered into between the Corporation and

168. R.R. Delavai v. The Indian Overseas Bank, AIR 1991 Mad 61 at 62, 63, 64, 65 (Srinivasan,

the concerned Cooperative Housing Societies, the entire development of the Colony which included carving plots, laying streets and roads inside the Colony and providing a drainage system so as to connect it with the main drainage line of the Corporation, was the sole responsibility of the Society concerned. It is submitted that the Societies have failed to completely develop the colonies as per the terms of the agreement and the colonies fully developed, have not yet been handed over the Corporation for maintenance. It is denied by the Corporation that any conservancy tax is being levied on the residents of the locality. It is explained that the property tax is being levied which has to be paid by the owners irrespective of the development of the Colony on every construction which is raised within the limits of the Corporation. The contents of certain receipts showing charging of development cess, described in Hindi as 'VIKAS KARYA SHULKA', is sought to be explained by the Corporation stating that under the terms of the agreement, in order to connect the sewage lines of the Colony with the main line of the Corporation, for construction of V shape drainage system, the Corporation had agreed to levy a fee the rate of Rs. 50/- per sq. ft. on every plot holder. The VIKAS KARYA SHULKA, therefore, represents the amount charged for construction of V shape drainage system. It is submitted by the counsel appearing on behalf of the corporation that in the absence of the development of plots by the Housing Societies and handing them over to the Corporation in terms of the agreement, there is no statutory liability on the Corporation to provide the Civil amenities which have been claimed by only some of the plot holders from this Court.

The Housing Societies which are parties as respondents 4 to 7 in the petition were noticed, but only respondent No. 4, Nehru Griha Nirman Society, has appeared and filed a return through a counsel engaged by it. In the return submitted by respondent No. 4, it is stated that at the time when the Colony was developed and houses were constructed by the members of their Society, certain fixed amount at prescribed rates for development was charged from each of the plot-holders who were members of their Society. That estimated costs, for development after being collected had already been spent and no further amount has been paid by the members nor any fund is available with the Society for further development and maintenance of civic amenities in the Colony. The Society, respondent No. 4, has, therefore, expressed its financial inability to provide necessary civic amenities to the members residing in the Colony and partly developed by that Society.

After hearing the learned counsel for the parties and the authorities which were present before Court in the course of hearing, and looking into the relevant provisions of the M.P. Municipal Corporation Act, 1956, M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 and the M.P. Cooperative Societies Act, 1962, Court was of the opinion that this Public Interest Litigation cannot be completely rejected on technical pleas of *locus standi* and non-observance of contractual obligations and statutory requirements by the Societies and the petitioners concerned. Although it could not be disputed by the petitioners that they are all owners of houses in the colonies which they purchased from the concerned Society and they purchased from the concerned Society and they are members of the Societies, the cause they have brought before this Court and the grievance which they want to be redressed, however, are not such which only individual pertain to them. It can be assumed that the localities and the colonies are also inhabited by several citizens and persons who may not be members of the Society, but have come to occupy houses and buildings within the locality as tenants and members of the owners. It is also a locality or the colony to which public has an access. It is within the Corporation Limits and,

therefore, the public at large has substantial interest in maintenance of sanitation and proper living conditions in the locality. The petition has been filed by members of Housing Societies, but it is in a representative capacity to safeguard the interests of all citizens and residents of that locality.; The petition, therefore, cannot be thrown off on the ground that it is a private grievance of individual members of the Housing Societies and is not a Public Interest Litigation.^{169 170 171}

18. Environment—Maintainability of.—Environment, more than anything else, is and should be a concern for all. It is one thing which is available free to all the inhabitants of an area and it is essential that this environment is maintained for the purposes of ensuring a healthy life. This issue, in fact, is no longer *res Integra*. The Supreme Court, in *Subhash Kumar v. State of Bihar*,TM observed that:

“..... Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.....”

With regard to locus *standi*, the answer is squarely given by the judgment of the Supreme Court in the case of *Janata Dal v. H.L. Chowdhary*.TM Dealing with the question of locus *standi*, viz-a-viz public interest litigation, it was observed by the Court, at page 909, as follows:—

“..... In contrast, the strict, rule of locus *standi* applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus *standi* to any member of the public acting *bona fide* and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance to the provision of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged group and individual or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting *bona fide* and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularis of Roman Law whereby any citizen could bring such an action in respect of public delict.....”

At page 919, the Supreme Court took note of the contention of the counsel, which was as follows:—

“..... Mr Jethmalani expostulating the objections of PIL urged with vehemence and persistence that H.S. Chowdhary does not have any locus *standi* to initiate this litigation and as such his petition is liable to be rejected even at the threshold. According to him the true public interest Litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury

169. *Citizen & Inhabitants of Municipal Ward v. Municipal Corpn., Gwalior*, AIR 1997 MP 33 at 33, 34, 35 (D.M. Dharmadhikari and Fakhruddin, JJ.).

170. (1991) 1 SC 598, at 604; 1991 AIR SCW 121 at 127.

171. AIR 1993 SC 892.

approaches the Court either for (1) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of State policy for annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest.....”

The said contention was approved by the Supreme Court at page 920 in paragraph 117 in the following words:

“.....After deeply and carefully considering the submissions made by the learned Solicitor General, Mr. A.D. Giri, and Mr. Jethmalani, Senior Counsel.....”

It would, therefore, follow that a public interest litigation at the behest of an organisation or a group of individuals, who have no personal gain or private motive or any other oblique consideration except to see that public injury does not take place and to prevent or executive acts and omissions which are violative of the Constitution or the law, would be maintainable. In the present case, this is precisely so. The two petitioners are voluntary organisations deeply concerned involved in the maintenance of a clean environment. The only poin. which has been raised by them is that has been a violation of the law inasmuch as the impugned notification which has been issued by the Government is in conflict with Section 26- e (3) of the Wildlife (Protection) Act, 1972 and is, therefore, *ultra vires*. None of the petitioners has any personal gain or any other oblique motive in filing the present petitions and High Court satisfied that they have the *locus standi* to file the present petition.^{172 173}

Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interloper/⁷⁵.

The object of P. I. L. is to ensure observance to achieve advanceness to the disadvantaged group by permitting any person having no personal gain or private motivation or any other oblique consideration but acting *bona fide* and having sufficient interest in maintaining an action for judicial redress for public injury to put the redressal machinery.¹⁷⁴

19. Group of persons have no *locus standi* to file Public Interest Litigation.—

State Assembly debated the issue and blamed the State Government and some other persons for concocting cases against innocent persons and deliberately shielding dishonest persons and the persons involved in the alleged offences. Newspapers and news magazines carried many informations about involvement of certain persons who themselves were preparing reports and trying to deflect the entire case towards persons who were innocent to save themselves. Such was the *vox populi* which, according to the petitioner, prompted them to go into the depth of the matter to find out as to what was being done in connection with the serious cases of criminal breach of trust and other allied offences by the Senior Police Officers of the State of Bihar. The petitioner has claimed that he picked up that *vox populi*, and obtained informations from various sources including the Personnel in the Police Department of the State of Bihar. What the Director General of Police, the State Government and the C.B.I, were expected to do was

172. Consumer Education and Research Society v. Union of India, AIR 1995 Guj. 133 at 142, 143 (B.N. Kirpal, C.J. and H.L. Gokhale. J).

173. P. V. Kapoor v. Union of India, 1992 Cr. LJ 128

174. Janata Dal v. H. S. Chowdhary, AIR 1993 SC 892.

done by the petitioner. It was not possible in such a situation to say that the petitioner has been set up by any person to defend himself or response his cause. It was also not possible on the facts aforementioned to suggest that the petitioner has no interest for the public in his mind, as the prosecution of a offender in a criminal case and protection of the innocent from malicious prosecution was always a matter of public interest. After all bringing to book an offender and protecting innocent from illegal prosecution was a social cause which all persons in the country are entitled to adopt. *Locus Standi* rule of the Court has undergone a change beginning from the day when a person aggrieved was described as a person who suffered some legal injuries to his right. Passing through the period when interest in the cause and the interest of a rank stranger were distinguished, courts have come to allow petitions by those who bring a cause of the public to the Court whether they have any interest of their own or not because it cannot be and that a member of the public does not have interest in common with other public. Since the Court are now living in days where those who are required to discharge legal duties and act to protect the interest of the public are found faltering or failing. Court have decided not to insist upon the old rule of *locus standi* so that administration of justice was done in the interest of all. The Police and the executive have a public accountability of every act they do. Courts have themselves acknowledged that they too have a social accountability. Any refrain in such matters was self imposed and a self created refrain. No law prevents the Courts from entertaining a cause which was worth entertaining. The instant application has raised a cause of the public.^{175 176 177}

20. Construction activity not conforming to the law.— In order to maintain the ecology and scenic beauty in the hilly town of Manali, the petitioner had the locus standi to file the petition against the haphazard construction of hotels, guest houses and other commercial establishments. *Krishan Banon v. State of H.P.*,¹⁷⁶. In *K.Ramadas Shenoy v. The Chief Officers, Town Municipal Council, Udipi*,¹⁷⁷ it is observed in para 27 of the judgment that:—

"The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative."

And in para 28:—

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The scheme is for the

175. *Association for Protection of Public Rights and Interests v. State of Bihar*, (1991)1 BLJ 528 at 562, 563 (Pat) (P.S. Mishra and B. Prasad, JJ.)

176. AIR 1999 H.P. 87 at 93,94

177. AIR 1974 SC 2177

benefit of the residents of the locality the Municipality acts in aid of the scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the Courts will quash orders passed by Municipalities in such cases.” In *S.P. Gupta v. Union of India*,¹⁷⁸ on the question of locus standi all the seven learned Judges constituting the Bench concurred that the traditional rule in regard to locus standi that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his right stood revolutionised with the passage of time and changing need of the hour. It is held in para 17:—

“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 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 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. This Court will readily respond even to a letter addressed by such individual acting *pro bono publico*. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public minded individual as a writ petition and act upon it but we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases.” In *Bangalore Medical Trust v. B.S. Muddappa*,¹⁷⁹ it is pointed out in page 35 (at para 1915 of AIR):—^{178 179}

178. AIR 1982 SC 149,

179. (1991) 4 SCC 54: AIR 1991 SC 1902,

“*Locus standi* to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose part was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public-spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of *locus standi* or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the Courts, Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of *locus standi* nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.”

In *Janta Dal v. H.S. Chowdhary*¹⁸⁰, it is held in paragraph 66:—

“Though we have, in our country, recognised a departure from the strict rule of *locus standi* as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL. Probably some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of *locus standi* no ‘rigid litmus test’ can be applied since the broad contours of PIL are still developing space seemingly with divergent views on several aspects of the concept

180. AIR 1993 SC 892: 1993 Cri LJ 600.

of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process.”

And concluded in para 107 after referring to catena of case law from *S.P. Gupta v. Union of India*,¹⁸¹ (Supra) onwards:—

“It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance deserves rejection at the threshold.”

In the light of these above judgments of the Supreme Court on *locus standi*, the next point for consideration is whether the petitioner has acted *bona fide* in filing this petition or has oblique motive to create obstacles in the construction of Sagar Resorts, which was coming up in the neighbourhood of the hotel of the petitioner. The manner in which this writ petition has been pursued by the petitioner there remains no doubt that initially the petitioner had started his journey on the main road of public interest litigation with intention to ensure that the respondents should regulate the construction of hotels, guest houses and commercial establishments so that the beauty as well as ecology of Manali town are preserved but after traveling a few steps he has entered into the by-lane of construction of hotel Sagar Resorts complaining that it was being constructed in violation of sanctioned plan as well as the instructions of the Government, mainly, number of storeys, which has definitely changed the nature of litigation from public interest to personal interest. This conclusion is fortified from the fact that in the writ petition the petitioner had made general complaint against number of other hotels, namely, Hotel Piccadilly, Azrim, Hotel Highway Inn, Hotel Holiday Home, Hotel Chetna etc. etc. that they had made construction of their building in violation of building bye-laws and also sanctioned plans in connivance with Notified Area Committee, Manali, which turned blind eye at the time of construction and later on compounded the deviations at nominal fee, but specific allegations were made and vigorously pursued against M/s Sagar Resorts only. The interim order passed initially on 1-5-1991 in general terms restraining the Notified Area Committee, Manali from permitting any construction in violation of its building bye-laws and the scheme of town planning turned into the interim directions in the individuals case of M/s. Sagar Resorts at the later stages. This casts a cloud over the intentions of the petitioner and put this Court on guard., However, since the writ petition has been pending for the last about eight years, it will not be fair and just to dismiss the writ petition on this ground alone. Therefore, we proceed to consider the writ petition on merits. The allegations of the petitioner that the hotels in Manali town in general and Hotel Sagar Resorts in particular are being construed in violation of building bye-laws are very vague, as firstly it is not stated in the writ petition that which are those bye-laws which have been violated and secondly what is the nature and extent of violation.

In the above stated facts the first question arises for consideration is whether the instructions, violation whereof has been complained of by the petitioner, are justiciable, which will depend upon the nature as well as the authority of law under which these have

181. AIR 1982 SC 149.

been issued. It is not in dispute that there are buildings bye-laws made under the Municipal Act which prescribed construction of buildings up to five storeys including the basement and the attic in Manali Town and there is no violation of these bye-laws. No doubt these bye-laws could be supplemented by the executive instructions or guidelines framed by the Notified Area Committee but the instructions with which we are dealing were issued by the State Government from time to time prescribing the number of storeys for sanctioning building plans in Manali town, more specifically, in the area around Circuit House and Log Huts. The perusal of these instructions shows that these are in the nature of guidelines to the Notified Area Committee, Manali during the transitional period in which the Country and Town Planning Act had come into force on 28-5-1984 but the development plan was not finalised and Kullu Development Authority was not constituted till 2-11-1991. The learned counsel for the petitioner has not been able to show that these instructions were issued under Article 162 of the Constitution. He has made a feeble attempt to show that these instructions were issued under Section 247 of the H.P. Municipal Act, 1968. But after going through this Section we find that the learned counsel for the petitioner is misconceived. Section 247 pertains to the powers of the Deputy Commissioner to suspend any resolution or order of the Committee. There is another Section 252, which pertains to general power of the State Government over the Officers. There is no Section in the Municipal Act of 1968, which gives powers to the State Government to issue instructions and directions to the Notified Area Committee supplementing its bye-laws/rules. In fact in view of five storeys including basement and attic as prescribed under the bye-laws, limiting the storeys up to a lesser number does not supplement the bye-laws but supplant them, which cannot be permitted. *In G. J. Fernandez v. State of Mysore*,¹ in para 12 it is held that:—

“..... We are, therefore, of opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefore.....”

Since the counsel for the petitioner has not been able to show that the instructions in question were issued under the authority conferred upon the State Government by some statute, these cannot be held justiciable and violation thereof cannot be complained of in this writ petition. It has been consistent view of the Supreme Court that the guidelines in the nature of instructions regulating the actions of its departments and authorities do not have statutory force and are justiciable?⁸³

We are afraid that we cannot go into these disputed questions of fact in exercise of writ jurisdiction. It was held in paragraph 18:—

“In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ Court is not the proper forum for seeking relief. The right course of the High Court to follow * *

182. AIR 1967 SC 1754.

183. J.R. Raghupathy etc. v. State of A.P., AIR 1988 SC 1681 and Union of India v. S L Abbas, 183 AIR 1993 SC 2444: 1993 Lab IC 1311.

was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petitions and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.” Also see: *Jai Singh v. Union of India*, AIR 1977 SC 898.

The result of above discussion is that no relief can be granted to the petitioner as prayed for in this writ petition.

21. Person shall have no *locus standi* to file a writ petition if he is not personally affected.—Generally speaking, a person shall have no *locus standi* to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor was there any imminent danger of such rights being invaded or his acquired interest have been violated ignoring the applicable Rules. The relief under Article 226 of the Constitution of India was based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule was only in cases where the writ applied for was a writ of *habeas corpus* or *quo warranto* or filed in public interest. It was a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there was an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it was shown that the legal wrong or legal injury or illegal burden was threatened and such person or determined class of persons was, by reason of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

In the instant case, the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the Court. In the discharge of his professional obligations, the petitioner. Advocate was not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition. Section 30 of the Advocates Act, 1961 only entitles an Advocate to practice the profession of law not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of professional obligation of the Advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no *locus standi*. *Vinoy Kumar v. State of U.P.*,¹⁸⁴ Relying on in *Chairman, Railway Board v. Chandrima Das*,¹⁸⁵ is misplaced inasmuch as in that case the writ petition had been filed in public interest where it was found on facts that the affected persons was not in a position to approach the Court for the redressal of her grievances.

22. Where the Court should entertain writ petition in the nature of Public Interest Litigation—No public interest involved.—It is well-known that the Public Interest Litigation should pass the following tests:—

184. (2001)3 BLJ 627 at 627, 528(SC)

185. (2000) 1 JT (SC) 426: (2000)2 SCC 465

- (1) Enforcement of Fundamental Rights of those who genuinely do not have adequate measures of access to judicial system or denied benefit of the solutions provisions incorporating the directly principle of State Policy for amelioration of their condition, and
- (2) Preventing or annulling acts and omissions violative of constitution of Law resultive of constitution of Law resulting in substantial injury to Public Interest.

Some of the principles which should also be borne in mind by the Court are:—

- (1) The Court must be careful that the members of the public who approach the Court are acting *bona fide* and not in personal garb of private profit or political motivation or other oblique considerations. The Court must not allow its process to be abused.
- (2) The Court should not take cognizance in such matters merely because of its attractive name. The petitioner must inspire the confidence of the Court and must be above suspicion.

The High Court while entertaining a Public Interest Litigation must indicate how the public interest is involved in the case viz.:—

- (1) It was for the aggrieved person to assail the illegality of the offending action and no third party has a *locus standi* to canvass the legality or correctness of the action. A case should not be entertained unless the petition points out that his legal rights have been infringed.
- (2) If a person wants a relief in a Court independent of a statutory remedy, he must show that he is injured or subjected to or threatened with a legal wrong. The Courts are to interfere only where legal rights are involved. In fact legal wrong requires judicially enforceable right and the touchstone to judiciability in injury to a legally protected right.¹⁸⁶

So far as the alleged mismanagement of the company is concerned, the Apex Court in *Sri Ramdas Motor Transport Ltd v. Tadi Administration Reddy*,¹⁸⁷ had upheld the judgment of one of Court (M-H.S. Ansari) which was set aside in appeal by the Division Bench stating:—

“The learned single Judge before whom the present writ petition came up for hearing very rightly held that the Companies Act provides a forum to consider the grievances made out by the first respondent in the writ petition. When such a forum, statutorily constituted, exists, it is but appropriate that resort to Article 226 of the Constitution should be discouraged. There is an efficacious alternative remedy available under the statute. In fact under the Companies Act, a more satisfactory solution is available. The single Judge was right in pointing out that some of the shareholders have initiated proceedings before the Company Law Board. The only grievance of the petitioner in the writ petition is that no orders have been passed thereon. The single Judge has rightly held that such a grievance

186. Milan Kumar Pradhan v. Union of India, AIR 2000 Cal 5 at 7,8: (1999)3 ICC 730 (S.B. Sinha, Actg. C.J. and M.H.S. Ansari, J.).

187. reported in (1997)5 SCC 446: AIR 1997 SC 2189.

cannot constitute a ground for invoking the jurisdiction of the High Court under Art. 226 of the Constitution. He, therefore, dismissed the writ petition.

“In appeal, however, the Division Bench of the Andhra Pradesh High Court presided over by the Chief Justice, entertained the appeal on the ground that the petition raised many serious issues as to falsification of the accounts of a public limited company. It said that the acts of the company would jeopardize public interest. Therefore, the petition involved wider “public interest” and should be entertained. In the result the Division Bench issued a direction to the Central Government to make its own verification of the allegations in the writ petition. In other words, the Division Bench of the High Court directed an investigation into the affairs of the company by passing the detailed provisions with in-built safeguards under the Companies Act, designed specially for this purpose. The only ground for intervention appears to be “public interest”. We fail to see what public interest is involved in disputes of the kind referred to in the writ petition, The basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company, Its shareholding is very closely held. The only factor referred to in the writ petition to invoke the doctrine of so-called public interest, is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well-reasoned judgment of the single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an *ipse dixit*. ”

In *Janata Dal v. H.S. Chowdhury*,¹⁸⁸ it was held:—

“It is, thus, clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought the Court for vindicating any personal grievance, deserves rejection at the threshold.” In *Raunaq International Ltd. v. I. V.R. Construction Ltd.*,¹⁸⁹ the Apex Court has cautioned the High Courts in granting interim matter in relation to grant of contract stating:—

“Therefore, in granting an injunction of Stay Order against the award of a contract by the Government or a Government agency, the Court has to satisfy itself that the public interest in holding up the project far out-weighs the public interest in carrying in out within a reasonable time. The Court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost.”

23. Validity of Amendment of Designation of Senior Advocates Rules, 1999—Writ petition challenged.—On the question of *locus standi* of the Advocates to maintain writ petition, seven Judges judgment of Hon'ble Supreme Court is the leading and

188. reported in AIR 1993 SC 892.

189 AIR 1999 SC 393

landmark judgment in the case of *S.P. Gupta v. president of India*,¹⁹⁰ all the Judges constituting the aforesaid Bench concurred on the question that the practising lawyers have vital interest in the independence of judiciary and if any unconstitutional or illegal action is taken by the state or any public authority which has the effect of impairing the independence of the judiciary they would certainly be interested in challenging the constitutionality or legality of such action. They had clearly a concern deeper than that of busybody and they cannot be told off at gates. Concurring with the aforesaid view Hon'ble Tulzapurkar, J. observed as under:—

“The practising lawyers, who are nothing short of partners in the task of administration of justice undertaken by the Judges, are vitally interested in the maintenance of a fearless and an independence judiciary to ensure fair and fearless justice to the litigants. Hence, in challenging the constitutionality of law Minister's circular and grant of short term extensions to sitting Additional Judges of High Courts, the practising lawyers, either in their individual capacity or representing Lawyers' Associations have not merely sufficient interest but special interest of their own in the subject-matter of the writ petitions and they cannot be told off at the gates and the petitions at their instances are clearly maintainable.”

If the facts of the present case are judged in the light of the aforesaid observations there remains no doubt that petitioners have sufficient *locus standi* to maintain the present writ petition. They have questioned the validity of the Rules alleging that they are not in consonance with Section 16(2) of the Advocates Act. They have also challenged the procedure, which has been evolved for consideration of the advocates being considered to be designated as senior advocate under the Advocates Act, which excludes the advocates practising in district Courts. For such challenges lawyers practising in the Allahabad High Court cannot be termed to be busybodies and intermeddlers. They have vital interest in the subject matter of considerations in this writ petition. Hon'ble Supreme Court in the case of *Janta Dal v. H.S. Chowdhary*,^{190 191} after considering all the previous judgment of Apex Court on the question of *locus standi* held in para 109 as under: (at page 918 of AIR 1993 SC):—

“109. It is thus clear that order a person setting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.”

In the instant case, counsel for the respondents have not been able to point out that petitioners have filed the writ petition for any personal gain or private profit or political motive or any such other oblique consideration. No *mala fide* on the part of the petitioner has been alleged. Designation of Advocate practising in the Bar as Senior Advocates, which forms a distinguished and elite class among Advocates is of vital interest for the Advocates practising in the Court and subordinate Courts and it is difficult to accept that

190. AIR 1982 SC quoted in AIR 2000 All 300 at 305; 2000(3) AWC 2383; 2000(2) All CJ 1099; 2000 ALJ 2459; 2001(42) ALR 83

191. AIR 1993 SC 892; (1992)4 SCC 305.

they have no interest in the matter. *Democratic Bar Association v. High Court of Judicature at Allahabad*,¹⁹²

24. Allegations of the full time Law teachers against the petitioners are based on surmises and conjecture.—The Petitioner-No. 1, who has filed the present public interest litigation is an Advocate of the Court and is a responsible Officer of the Court. No clear evidence is led by the Respondents—Full time Law teachers to prove and establish that filing of the writ petition is in any manner motivated or instigated by the aforesaid two Professors of the Law Faculty of Delhi, who according to the said respondents were inimical towards them. The cause which is sought to be espoused through the present writ petition is of public importance. The same is also required to be looked into as the Bar Council of India which is the primary body for maintaining discipline amongst the enrolled Advocates has also proceeded to take action against some of the full time Law teachers and against the rest it is dependent on the outcome of these petitions. Therefore, in our considered opinion this writ petition cannot be dismissed on the ground of maintainability. Having held thus, the court now proceed to examine the issues that arise for consideration on merits of the case. Reference is made to the provision of Section 2 (1) (a) of the Advocates Act. 1961 which defines the term “advocate” meaning an Advocate entered in any roll under the provisions of the said Act. Rule 103 of the Rules framed by the Bar Council of Delhi has been extracted above. In the aforesaid rule it is provided that any person either in part-time or full time employment cannot be enrolled as an advocate but under the proviso it is provided that a part-time teacher of Law could be admitted as an advocate. Therefore, under the aforesaid provision a part-time Law teacher could be enrolled as an advocate but no such privilege or benefit is available to a full time Law teacher. Strong reliance was placed by the respondent-Full time Law teachers on the provisions of Advocates rights to take up Law Teaching Rules, 1979 (hereinafter referred to as “the 1979 Rule”). The said provisions are also extracted hereinabove. A bare reading of the said Rules indicate that the said rule uses the terminology “advocates” and deals with the right of practicing advocate to take up law teaching. By virtue of the aforesaid provision an advocate is empowered to take up law teaching provided the same does not exceed three hours a day. Therefore, the said rules clearly establish that the same are applicable and come into operation post enrollment and have no application to a person prior to his enrollment as an advocate. It was sought to be contended by all the law teachers that a person can combine law teaching and law practice simultaneously provided law teaching does not exceed three hours a day. It was submitted by them that after adaptation of the aforesaid rules, a lawyer could take up full time law teaching in regular scale of pay and, therefore, the converse was also possible and, therefore, a Law teacher could also be enrolled as an Advocate. However, on proper reading of the said provision would make it crystal clear that such an interpretation is not only fallacious but also absurd. It was settled law that an interpretation which leads to absurdity should always be avoided.¹⁹³

25. Misuse of Public money by a subdued bureaucracy.—In the backdrop of expanded frontiers of the expression *Locus Standi* and the fact that the generalists, advocates and elites and judicial activists have been prompted to raise common cause in public interest, we feel that the petitioner, who is a media person, has no axe to grind in

192. AIR 2000 All 300 at 304, 305; 2000(3) AWC 2383; 2000(2) All CJ 1099; 2000 ALI 2459; 2001(42) ALR 83 (R.R.K. Trivedi, S.R. Singh and M. Katju, JJ.)

193. *Anees Ahmad v. University of Delhi*. AIR 2002 Del 440 at 453. 454,

the matter. Importance of media in a democracy cannot be overemphasized. Increasing corruption has led to investigative journalism which is of value to a free society. There is nothing on record to indicate that the antecedents of the petitioner were such as would debar him from being called a public spirited person. Certainly he could be said to be an intermeddler. Interloper or a man of straw. The concern of the petitioner was simply to bring into limelight the misuse the public money by a subdued bureaucracy. Since the Court was capable of taking action *suo motu*, the question of locus standi of the petitioner pales into insignificance.¹⁹⁴

26. Allotment of land.—It is required to be noted that the petitioner No. 1 has filed an affidavit in the Court before the process was issued, pointing out the circumstances in which he supported the resolution making a grievance that nothing was done in the matter by the respondent No. 3. Being a public spirited citizen, he thought it fit to file an affidavit and he has not suppressed any material fact. With regard to other petitioner, nothing was alleged against him.¹⁹⁵

27. PIL is not to be entertained in Service matters.—As rightly submitted by learned counsel for the appellant, writ petition itself was not maintainable, to that extent the High Court's order cannot be maintained. But it appears that the official respondents have already initiated action as regards the caste certificate. Though PIL is not to be entertained in service matters, that does not stand on the way of the officials from examining the question in the right perspective. In the instant case, admittedly the officials have initiated action. What action will be taken in such proceedings is not the subject matter of controversy in the present appeal. However, it shall not be construed as if the Court have expressed any opinion on the merits of the proceedings stated to be pending. The only issue which has been examined relates to the *locus standi* of the writ petitioner (respondent No. 7) to file PIL.¹⁹⁶¹⁹⁷ For issuance of writ of *quo warranto*, High Court has to be satisfied that appointment is contrary to statutory rules.¹⁹⁸

28. Dereliction of duty by public authority.—It manifest that that where an injury is caused to public and there is dereliction of duty by the public authority and where the action of a public authority is not within the four comers of law it would be open for a citizen to prefer a writ petition under Article 226 of the Constitution of India under the caption of Public Interest Litigation. It should be remembered that State Counsel are paid from public exchequer wherein money comes through taxes realised from the public. It is because of this, as also because public has a vital stake in the administration of justice that it would be open for a member of public to approach the Court.¹⁹⁸

29. Rule of locus standi.—No rigid litmus test can be laid down for defining the rule of *locus standi* because broad contours of PIL were still development apace.¹⁹⁹

194. Kunwar Pal Singh Rathi v. State of U. P., AIR 2002 All 27 at 43; 2002 All 11 C 851- 2001 ALJ 2690; 2001 (4) AWC 3104.

195. Kanchanbhai v. Municipal Corporation, Vadodara. AIR 2002 Guj 31 at 37; 2002 (1) Guj LTT 790.

196. Neetu v. State of Punjab, AIR 2007 SC 758 at 760, 761.

197. Han Bansh Lal v. Sahodar Prasad Mahto. AIR 2010 SC 3515.

198. Suraj Narain Srivastava v. State of U. P., AIR 2003 ALL 259 at 274; 2003 ALJ 1961; 2003 (3) ESC 1779 (Lucknow Bench).

199. Ibid.

It is a person who has a locus standi who can approach the Court and not someone else on his behalf, more so in service matters law where it is the law that Public Interest Litigation cannot be filed.²⁰⁰

Where alternate remedy of initiating proceedings against a person who falsely personated himself as a advocate, is available, a petition as PIL cannot be entertained for that purpose.²⁰¹

30. Illegal construction.—It is clear that it cannot be contended that the petitioner/appellant has come with some profit motive or political motive, in order to get cheap publicity. On the other hand, the petitioner is admittedly a District Consumer Council Member and has been invited for the Government functions, in the capacity of Secretary of District Consumer Council by the Government itself, as seen from one of the invitations produced before this Court. Under those circumstances, the Court has no hesitation to entertain this Public Interest Litigation as the Public injury, as in view of the Court, the alleged illegal construction activities in public roads have been brought to the notice of the Court.²⁰²

31. Repair of road.—If the petitioner was truly interested that the funds must not lapse then he should raise this issue before his Panchayat not as a public interest litigation straightway before the High Court.²⁰³

Road tax levied to reimburse expenditure incurred by Government in formation and maintenance of roads. Tax payers rightful in asking for repair and maintenance of roads and high ways. *Held* duty is cast on Court to find out whether or not tax amount is actually utilized for the purpose for which it was levied.²⁰⁴

32. Public Interest Litigation a new devise.—Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining Writ Petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or legal injury or whose constitutional or legal rights have been violated, but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.²⁰⁵

33. Ecological balance and P.I.L.—In this case the petitioner organisation claimed to be working for the welfare of tribal as well as maintenance of ecological balance in Nagarhole National Park. The protection of Nagarhole National Park was necessary to be maintained for environmental reasons. For the purpose of protection of Nagarhole National Park, substantial questions of public interest were raised the Court held that—if

200. Forum of SC and St Legislators And Parliamentarians v. Oil And Natural Gas Corporation Ltd., (Delhi), 2017(2) RSJ 235.

201. Jaswant Sarpal v. State of Punjab. (P&H)(DB), 2017(1) Law Herald 570.

202. N. G. Karunakaram v. Chairman, National Highways Authority of India, New Delhi, AIR 2005 Del. 248 at 253; 2005(2) Mad LJ 446.

203. Mohd. Kalimuddin Ansari v. State of Bihar. AIR 2003 Pat 37 at 38.

204. B. Krishna Bhat and etc. v. Union of India, AIR 2009 (NOC) 1342 (Kant); AIR 1983 SC 634—Relied on.

205. S. P. Gupta v. Union of India, 1981 (Supp.) SCC 87 : AIR 1982 SC 149.

the questions raised before the Court are of substantial public interest, then the issue of *locus standi* of the person placing relevant facts becomes irrelevant.^{206 * 208}

34. P.I.L. as a weapon.—It was held that Public Interest Litigation is weapon which has to be used with great care..... The judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the executive and legislature.²²

35. P.I.L. and judicial activism.—Public Interest Litigations lead to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process. *Janata Dal v. H. S. Chowdhary*, AIR 1983 SC 892.

36. Abuse of the process of the Court.—People who bring petitions which are motivated by merely personal interest through P.I.L. without having *locus standi*, is the abuse of the process of law as well as Court. AIR 1983 SC 892 quoted in *State v. Union of India*TM

37. Sufficient interest.—Any member of public who has sufficient interest can file a petition for judicial redress. His action would be maintainable only when injury is arising from breach of public duty or there have been violation of some provision of Constitution. The violation for some Constitutional provision is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the Constitutional objective.²⁰⁹

38. Litigation for enforcing public duty.—If the public duties are to be enforced and social collective diffused rights and interests are to be protected, it is necessary to utilise the initiative and zeal of public minded persons and organisation by allowing them to move the Court and act for general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in Public Interest Litigation—'Litigation undertaken for the purpose redressing public injury', enforcing public duty protecting social collective, diffused rights and interests or vindicating public interest and citizen who is acting *bona fide* and who has sufficient interest has to accord standing.²¹⁰

39. True purpose of judicial function and *locus standi*.—Only those persons have the right to file the Public Interest Litigation who have the true purpose of judicial functions. There may be cases where the state or a public authority may act in violation of a Constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury.²¹¹

40. Enlargement of *Ubi jus ubi remedium*.—We have no doubt that in competition between Courts and streets and dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless street. In simple terms, *locus standi* must be liberalized to meet the challenges of the times. *Ubi jus ubi remedium* must be enlarged to embrace all interests of public minded citizens or

206. *Nagarhole Budakhattu Hakku Sthapna Samiti v. State*, AIR 1997 Kar 288

207 *State of H. P. v. A Parent of a Student of a Medical College, Shimla*, AIR 1985 SC 910

208. AIR 1996 Cal 181 at 196.

209. *S. P. Gupta v. President of India*, AIR 1982 SC 149

210. Ibid.

211 Ibid.

organizations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets."¹¹

41. No locus standi to interfere with the evidence.—This is admittedly a stage where the prosecuting agency is still investigating the offences and collecting evidence against the accused. The petitioner, who is the accused, has therefore, no *locus standi* at this stage to question the manner in which the evidence should be collected. The law of this country does not give any right to the accused to control or interfere with the collection of evidence.²¹

42. P.I.L. and pro bona publico.—It was held that the Public Interest Litigation should be *pro-bona publico* for the benefit of public. It should not be for the benefit of the people of particular Section for their personal gain.^{212,213,214}

The Court accepted a letter as Writ Petition. In this case the Court issued some directions in regard of suitable action against the erring officials to the ministry of Home Affairs. In this case the Court enlarged the scope of habeas corpus.²¹⁵

Two professors of Delhi University sent a letter to enforce the Constitutional right of the inmates in a protective home at Agra. In protective home Agra the inmates were living in inhuman and degrading conditions. This was in violation of Article 21 of the Constitution of India. The Court treated this letter as Writ Petition and the professors were permitted to maintain an action through appropriate writ.²¹⁶

A letter was addressed to a Judge of Supreme Court treated this letter as Writ Petition. *Miss Veena Sethi v. State of Bihar*,²¹⁷

A letter was addressed by the petitioner seeking a direction against the respondent regarding projects of Asian Games. This letter was accepted as Writ Petition by relaxing the traditional rule of standing.²¹⁸

The Court issued several directions regarding the problems of bonded labour. The Court further gave the directions for bonded labour regarding their future improvement and betterment.²¹⁹

43. Locus standi for the interest of people.—Public Interest Litigation is the process to participate in the administration of justice.²²⁰

It must be enlarged to embrace all interests of public minded citizens or organizations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets.²²¹

44. Appointment of amicus curiae/ac'-credentials of litigant in doubt.—Where bona-

212. *Fertilizer Corporation Kamgar Union v. Union of India*, 1981 (2) SCR 52.

213. *Kekoo J. Maneckji v. Union of India*, 1980 Cri LJ 258 (Bom).

214. *Ram Sharan v. Autyanuprasi*, AIR 1989 SC 549.

215. *Sunil Batra v. Delhi Administration*, 1980 (3) SCC 488.

216. *Dr. Upendra Baxi v. State of U. P.*, 1983 (2) SCC 308.

217. 1982 (2) SCC 583.

218. *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

219. *Bandhua Mukti Morcha v. Union of India*, 1984 (2) SCR 67.

220. *Fertilizer Corporation Union v. Union of India*, 1989 Supp (1) SCC 251 : AIR 1989 SC 549.

221. *Fertilizer Corporation Kamgar Union v. Union of India*. AIR 1981 SC 344 : 1980 Lab IC 1367 : 1981(1) SCC 568: 1981(1) Lab LJ 193:42FacLR 192: 1981(2) SCR 52. "

fides of litigant are doubtful, in exceptional cases the Court can examine issue relating to serious nature of public causes. However genuine a cause brought before a Court by public interest litigation may be, the Court has to decline its examination at the behest of person who, in fact, is not a public interest litigant and whose *bona fides* and credentials are in doubt. In a given 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 Amicus Curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant. Court can place no trust on a *mala fide* applicant in public interest litigation. These are basic issues, which are required to be satisfied by every public interest litigation. Central Empowered Committee (CEC) has been appointed and so also Amicus Curiae appointed to assist Court is determining issues relating to depletion of forests and preservation and conservation of forests in the country. Many forest survey reports recognise that various orders by Court have helped in arresting fast depletion of forests. Some insinuations were sought to be made against CEC and Amicus Curiae. Court strongly deprecate this approach of the applicant. Assuming in a given case an error is necessary for the applicant to use temperate language in the pleadings and not the one used by the applicant.²²²

45. Where *bona fide* of a public interest litigant are in doubt the Court may still examine the issue having regard to various nature of the public cause?— genuine cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose *bona fides* and credentials are in doubt. In a given exceptional case where *bona fides* of a public interest litigant are in doubt, the court may still examine the issue having regard to serious nature of the public cause and likely public injury by appointing Amicus Curiae to assist the court but under no circumstances with the assistance of a doubtful public interest litigant.

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222. T.N. Godavarman Thirumulpad v. Union of India & Ors., AIR 2006 SC 1774; 2006 AIR SCW 2082; 2006 (4) A11MR 118; 2006 (5) SCC 28; 2006 (5) SCJ 346; 2006 (4) Scale 252.

Chapter 4

Judicial Activism



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1. Courts duty.

(i) Speedy Trial—Undue delay in judgement.—Law reports abound with expressions of concern and anguish at delayed delivery of judgments that not only add to the litigant's woes but also undermines the common man's faith in the institution. The Civil procedure code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extra ordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points, which the litigant considers important, may have escaped notice. But what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice as it is often must at not only be done but appear to be done. A judicial order pronounced several weeks or a few months after hearing is concluded needs to record the reasons for the delay unless the discussion in the judgment implicitly explains the same. The delay in the pronouncement of the judgment in this case would have verily detracted from the reasons found in support of the conclusion but since the impugned order can otherwise not be sustained on merits, it is set aside and the writ petition allowed. The Central Government will proceed to decide on the appellants application only on the basis of the documents furnished and without calling for any further evidence. Such decision should be communicated to the appellant within eight weeks from date and in the event the appellant is found eligible for pension under the scheme, he should be paid the arrears

with interest at the rate of nine per cent per annum from the respective due dates till actual payment.¹

(ii) Petition on newspaper report—Locus Standi.—Petitioner No. 1 claimed to be a society registered under the Indian Societies Act, 1961 having its office at Kolkata. The petitioner No. 2 claims that he is a citizen of India and is the Secretary of the Society—petitioner No. 1. The petitioners, therefore, state that they took up the cause for alleviation of the sufferings of the aggrieved persons particularly the downtrodden section of the society. They stand up against the social norms and values. The petition also claimed to have earlier filed public interest litigation regarding famous Nandigram episode being W.P. 335 (w) of 2008.

The petitioner submitted that in the aforesaid writ petition on 30 April 2007. The Court directed, the respondent authorities to ensure protection to the local residents of Nandigram area including their lives and liberty in accordance with Article 21 of the Constitution of India. The State Authorities were directed to take adequate measures to ensure the maintenance of law and order in the area in the present case, after investigation of the matter in accordance with the direction issued by this Court in Writ Petition No 21563 of 2007, the State authorities have failed to initiate any criminal proceedings against respondents No. 5, 6 and 7. Therefore, necessary directions need to be issued by this Court to secure that persons with vested interest of protecting the guilty are punished in accordance with law. Learned counsel also immediately on reading newspaper reports, the petitioner has not been able to attach much of the relevant materials with the petition. The petition may be permitted to file the same as and when it would be available to the petitioner, with the leave of the Court.

It was held that the petition was motivated and has been at the instance of some unknown person(s). The writ petition is in fact, a Publicity interest Litigation which has been filed only by taking advantage of the publicity. Which surrounded death of Rizwanul—The writ petition was filed purely on the basis of the newspaper report. No judicial notice can possibly be taken of the aforesaid newspaper reports in the absence of the maker of the statement appearing in the Court and deposing to have perceived the facts reported. This principle of law has been laid down by the Supreme Court in the case of *Laxmi Rajshetty v. State of Tamil Nadu*, reported in AIR 1998 SC 1274. In this case the Supreme Court reiterated the law as to the admissibility of the newspaper reports as evidence as laid down by the Supreme Court in the case of *Samant N. Balakrishna v. George Fernandez*, reported in AIR 1969 SC 1201. There the question arose whether Sri George Fernandez the successful candidate returned to parliament had delivered a speech attributed to him as reported in newspapers. The Supreme Court held as follows :

“A newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a secondhand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

Public interest litigation is weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice vested interest and/or publicity

1. *Indu Bhusan Jana v. Union of India*, AIR 2009 Cal 24.

seeking is not lurking. It is to be used as an effective weapon in the armour of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of person or member of the public, who approaches the Court is acting *bona fide* and not for personal 'gain or private motive or political motivation or other oblique considerations. The Court must not allow as process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. The petition of such busy bodies deserves to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.²

Petition based only on newspaper reports wholly bereft of material particulars to establish credentials of petitioners. Failure of petitioners to satisfy Court as to whose cause is being espoused by them, no judicial notice can possibly be taken of aforesaid newspaper reports in absence of maker of statement appearing in Court and deposing to have perceived facts reported. Held, writ petition dismissed as being frivolous, vexatious and not filed *bona fide*.³

(iii) To check if it is Public interest or Publicity interest.—High Court should refrain from entertaining PIL in respect of alleged wrongful sale of property of religious bodies. Vesting of property in Deity is religious endowment but has no public element in it grievance of which can be made in writ petition filed in public interest. *Shree Shree Ram Janki Ji Asthan Tapovan Mandir v. State of Jharkhand* (SC), 2019(6) SCC 777 : 2019(5) JT 42 : 2019(7) Scale 215 : 2019(3) B.L.Jud. 220 : 2019(1) C.W.C. 722 : 2019(5) MLJ 458 : 2019(3) PLJR 148 : 2019(3) JLJR 148 : 2019(2) JBCJ 305.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking was not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. The Court must be careful to see that a body of persons or member of public, who approaches the Court was acting *bona fide* and not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of modeling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they were actuated by a desire to win notoriety or cheap popularity.

It is true that in certain cases even though the court comes to the conclusion that the writ petition was not in a public interest, yet if it finds that there is scope for dealing with the matter further in greater public interest, it can be done. This can be done by keeping the writ petitioner out of picture and appointing an *amicus curiae*. This can only be done in exceptional cases and not in a routine manner.⁴

2. Empathy & Anr. v. Central Bureau of Investigation & Ors., AIR 2009 Cal. 118.

3. Association of the Residents of Mhow v. Union of India, AIR 2010 MP 40. Ibid

4. Holicow Pictures v. Prem Chandra Mihstra, AIR 2008 SC 913.

2. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision.—Courts should not place reliance on decisions without discussing as to how the factual situation fits in which the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.⁵

3. Enlargement of provisions of Act by Court.—It is not open to Courts to curtail or enlarge the provision beyond obvious meaning. And interpretation has to carry the object and meaning without destruction.⁶⁷

4. Order passed by the Court contrary to mandatory provision of statute.—It is settled law that any order passed by the Court contrary to the mandatory provision of the statute is an invalid and void *abinitio*.

5. Whether the jurisdiction of a Court is ousted or not ?.—While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of judges is to expound and not to legislate. The Courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied degree of discretion and choice, the Court would adopt particularly in areas such as constitutional adjudication dealing with social.⁸

6. If the person has no personal interest but brings to the notice of the Apex Court or the High Court that the public interest is affected by action of the State or its authorities.—The foundation of exercise of jurisdiction under Article 226 of the Constitution of India was the personal and individual right, though in some cases, like in the writ of *habeas corpus* and *quo warranto*, the aforesaid rule was relaxed or modified. In recent past, even if the person has no personal interest but brings to the notice of the Apex Court or the Patna High Court that the public interest was affected by action of the State or its authorities, the writ was maintainable even at his instance on the ground that he has espoused the public cause. Such litigations have been classified as 'public Interest Litigation'. In exercise of extraordinary power, the Court under Article 226 of the Constitution does not insist upon the *locus standi* of the persons if the prayer made on his behalf was to remedy the public mischief. It is well-settled that when an application was made by a party aggrieved the Court will intervene *ex debito justitiae* (injustice to the applicant). However, when the Court was moved by stranger, the Court considers whether in the public interest, it should be intervened in the matter. In both the category of cases, the matter rests ultimately in the discretion of the Court.⁹

5. Padmasundara Rao v. State of Tamil Nadu, AIR 2002 SC 1334 at 1339.

6. Nathibai v. Maheshwari Samaj Ramola Trust, AIR 1997 MP 19 at 23.

7. Swapan Kumar v. Subhas Chandra Bhattacharjee, AIR 1998 Cal 271 at 276, 277.

8. Bhatia International v. Bulk Trading S.A., AIR 2002 SC 1432 at 1437.

9. Md. Hasnain v. State of Bihar, (2001)2 BLJ 813 at 816(Pat) (Nagendra Rai and Aftab Alam, JJ).

7. Order or direction for removal of the Chief Minister and his other Ministers for having violated the constitutional mandate of Part IX-A of the Constitution.—

In public interest litigation, office bearers of the Congress Party, a major opposition party in the Assembly, sought a Writ of *Quo-warranto* or any other writ, order or direction for removal of the Chief Minister and his other Ministers, for having violated the constitutional mandate of Part IX-A of the Constitution by not holding elections to Nine Municipalities around Hyderabad within the stipulated period. Petitioners are legislators and are concerned for governance of the State in consonance with the constitutional mandate, consequently the writ. Democracy is not only the organic concept and process of governance but is the soul of Indian Constitution. Sovereignty with the people, rule of law, the creed for ensuring freedom to all are the basic features of Indian Constitution. People govern themselves through their representatives are accountable to the people for their functioning. Indian Constitution provided for establishing a welfare State, providing social justice equality, liberty, rule of law and other objects enshrined in Preamble, Directive Principles without articulating the democracy or its fitness or niceties of the philosophy of democracy. In its letter and spirit, it was the Government of the people, by the people, for the people. Freedom of public opinion provides a democratic counterweight to the undemocratic independence of conduct of the representatives and governmental functioning. The check provided is, there being periodical elections when the representatives are held to account for their past actions and performance, and the command for future as to what they would like them to do. This is the only process and system where the elector designate and dismiss their rulers i.e., their Government, which was constituted of judiciary, executive and legislative institutions. The State was a provider from cradle to grave, through its government and governance by the above institutions.

In view of the admitted facts that the Election Commission was bound to hold elections after 31-5-1995 when the statutory period of one year has elapsed by efflux of time, the first respondent was not the Chief Minister and was not in power and as such he was under no obligation to conduct elections to the Corporation and nine municipalities. In fact, it was the petitioners' party which was in power in 1994 and which kept quiet from 1991 to 1994 for four years without holding elections to the Corporation. The entire thrust of the argument was that delay and laches, in any sense cannot be ground to decline the writ of *quo warranto*. But the inaction on the part of the public spirited persons and legislators, including the elected representatives, in approaching the High Court and especially the timing cannot be lost sight of while invoking discretionary jurisdiction. Even today the petitioners have not sought any *Mandamus* for conducting elections to the local bodies. It would be reasonable to assume that the writ petition was an attempt to use the Courts as a platform or a stage for taking political advantage at the hosting by playing the game of chess in Courts. The Courts cannot be permitted to be used as springboards for gaining political advantage in the hosting or ensuring publicity, against the public office holder. Non-performance of the Chief Minister or he being guilty of constitutional violation is well within the purview of the Governor, the President and the Union of India to take notice, though the Court may hasten to add that the judicial review cannot be ruled out. The State Election Commission was an independent institution, which cannot be removed except by impeachment proceedings and the Constitution was consciously silent with respect to the impeachment of the Prime Minister of Union. Chief Minister or Minister of the State. On a plain reading of the Constitution, the Chief Minister was holder of Public office, subject to the doctrine of pleasure, and the only mode provided for his removal was either invoking the provisions of Article 356 of the Constitution or

expressing vote of no confidence. His holding of office as elected person representing the electors, who are not before the Courts and whose rights to be represented by their elected person, cannot be denied just on an excuse and thus the democracy cannot be rendered as a mockery and the justice system cannot be brought to be ridiculed. If the Court may say so, the judicial review was not a panacea for all evils, political, executive or others. Large number of situations are left by the Constitution to be dealt with by privileges, traditions, practices, statutes enacted, powers, sovereign relationship between the elector and the voter, relationship between the State Legislature and the Center, keeping federal structure in view, the rule of judiciary, which concedingly cannot enact laws or legislate. For development of Constitution and constitutional principles, precedents and necessities or political life. It is desirable not to invoke writ jurisdiction for issuance of infructuous or futile declarations.¹⁰

8. Limitations.—The petitioner in the instant case demanded Court's intervention in environment protection and protection of the flora and fauna of the forests in Karnataka in particular and forests in general in the country as well as the world. The petitioner should be aware of the limitations of the Court imposed on themselves in order to work within the framework of the Constitution and in harmony with the either wings of the Government.¹¹

9. Suo motu action by High Court.—As the District Magistrate says so, of a mosque which was more than 400 years old, the Court fails to understand why the State of Bihar does not take appropriate steps in accordance with law to have this mosque declared as a public and protected monument. In the matter relating of Jama Mosque.¹²

10. New Paper publication that about 200 Ministers of Bihar had taken loan for purchase of motor vehicles.—High Court directed that steps be taken for recovery of loan—Public Interest Litigation, seeking necessary directions. The allegations made in this Public Interest Litigation are to the following effect. This based on a publication in a newspaper called 'Navbharat Times' wherein it was stated that about 200 Ministers of Bihar took loans/advance for the purchase of motor vehicles but even after they ceased to be ministers, they not repaid the loans/advances till date nor there is any chance of its repayment. According to the petitioner, it involves about rupees one crore. It is further alleged that the said loan is not being realised for reasons best known to the respondents. The respondents in this writ petition are the State of Bihar. Finance Commissioner and the Accountant-General. In this context reference has been made to minister's motor Car Advance Rules, 1953, and the *pro forma* agreements/ documents being enclosures thereto which are made annexures to this petition. It may be pointed out that the Advocate General appearing on behalf of the State and the Advocates appearing for all other parties have not disputed the correctness of the said Rules/documents and their applicability in the facts and circumstances of this case. After filing of the said writ petition certain orders were passed by the Court, from time to time. In this connection the court refer to orders dated 16th August, 1991, and 19th Sept. 1991, which would speak for themselves. The allegations were accepted but no satisfactory reply was given as to why no step has

10. (Dr.) Y.S. Rajsekara Reddy v. Sri Nara Chandrababu Naidu, AIR 2000 A.P. 142 at 144, 145, 154, 155: (1999)6 An LD 623: (1999)6 An LT 406 (M.S. Liberhan, C.J. and V.V.S. Rao, J.)

11. K.K. Vasant v. State, AIR 1992 Kam, 256 at pp. 257, 258, 259, 260, 261, 262, 263 : (1991) 2 Kant LJ 518 (M.P. Chandrakantaraj URs and B. Jagannatha Hegde J.).

12. West of River Gandak at Hajipur v. State of Bihar, (2001)2 BLJ 445 (Pat) (Ravi S. Dhavan C.J. and Shashank Kumar Singh J.J.)

been taken for recovery of this amount from them. High Court directed that steps be taken for recovery of loan, public interest litigation, seeking necessary directions.¹³

(i) What are the elements of public interest?—(1) Public money would be expended for the purposes of the contract; (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work—thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g. A delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.¹⁴

(ii) Whether any public interest is involved in intervening in such a commercial transaction.—A writ challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest, or the transaction is entered into *mala fide*, the Court should not intervene under Article 226 in disputes between two rival tenderers.¹⁵

(iii) Court can examine previous record.—When a petition is filed as a public interest litigation challenging the award of a contract by the State or any public body to a particular tenderer, the Court must satisfy itself that the party which has brought the litigation is litigating *bona fide* for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The Court can examine the previous record of public service rendered by the organisation bringing public interest litigation. Even when public interest litigation is entertained the Court must be careful to weigh conflicting public interests before intervening. Intervention by the Court may ultimately result in delay in the execution of the project. The obvious consequence of such delay is price escalation. If any retendering is prescribed, cost of the project can escalate substantially. What is more important, ultimately the

13. Council for Protection of Civil Rights & Welfare v. State of Bihar, (1992) 1 BLJ 696 at 697 (Pat) (B.C. Basak, C.J. and G.C. Bharuka, J.).

14 Raunaq International Ltd. v. L.V.R. Construction Ltd, AIR 1999 SC 397 at 397.

15. Ibid.

public would have to pay a much higher price in the form of delay in the commissioning of the project and the consequent delay in the contemplated public service becoming available to the public. If it is a power project, which is thus delayed, the public may lose substantially because of shortage in electric supply and the consequent obstruction in industrial development. If the project is for the construction of a road, or an irrigation canal, the delay in transportation facility becoming available or the delay in water supply for agriculture being available, can be a substantial setback to the country's economic development. Where the decision has been taken *bona fide* and a choice has been exercised on legitimate considerations and not arbitrarily, there is no reason why the Court should entertain a petition under Article 226. Hence before entertaining a writ petition and passing any interim orders in such petitions, the Court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the Court should intervene.¹⁶

(iv) Mala Tides allegation.—Where there is an allegation of *mala fides* or an allegation that the contract has been entered into for collateral purposes, and the Court is satisfied on the material before it, that the allegation needs further examination, the Court would be entitled to entertain the petition. But even here, the Court must weigh the consequences in balance before granting interim orders. Where the decision-making process has been structured and the tender conditions set out the requirements, the Court is entitled to examine whether these requirements have been considered. If any relaxation is granted for *bone fide* reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers the Court should hesitate to intervene.¹⁷

It is unfortunate that despite repeated observations of this Court in a number of cases, such petitions are being readily entertained by the High Court without weighing the consequences. In the case of *Fertiliser Corporation Kamgar Union (Regd.f Sindri v. Union of India*,¹⁸ this Court observed that if the Government acts fairly, though falters in wisdom, the Court should not interfere. "A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the Court until other ombudsman arrangement..... emerges..... The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government Company has acted fairly, even if it has faltered in its wisdom, the Court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with norms of procedure set for it by rules of public administration."

In *Tata Cellular v. Union of India*,¹⁹ this Court again examined the scope of judicial review in the case of a tender awarded by a public authority for carrying out certain work. This Court acknowledged that the principles of judicial review could apply to the exercise of contractual powers by Government bodies in order to

16. *Raunaq International Ltd. v. L.V.R. Construction Ltd*, AIR 1999 SC 397 at 397.

17. *Ibid*.

18. (1981)1 SCC 568: AIR 1981 SC 344.

19. (1994)6 SCC 651: 1994 AIR SCW 3344.

prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of that power of judicial review. The Court also observed that the right to choose cannot be considered as an arbitrary power. Of course, if this power is exercised for any collateral purpose, the exercise of that power will be struck down. "Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters and the need to remedy any unfairness. Such an unfairness is set right by judicial review." After examining a number of authorities, the Court concluded (at page 687) (of SCC): (at p. 3378 of AIR SCW) as follows:—

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by *mala fides*.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

The same view has been reiterated in *Asia Foundation & Construction Ltd. n. Trafalgar House Construction (I) Ltd.*,²⁰ the Court observing that judicial review of contractual transactions by Government bodies is permissible to prevent arbitrariness, favouritism or use of power for collateral purposes. This Court added a further dimension to the undesirability of intervention by pointing out that where the project is a high cost project for which loans from the World Bank or other international bodies have been obtained after following the specifications and procedure of such a body, it would be detrimental to public interest to interfere. The same principles have been also reaffirmed in *New Horizons Limited v. Union of India*, (1995) 1 SCC 478: (1995 AIR SCW 275), with this Court again emphasising the need to allow for certain flexibility in administrative decision-making, observing the decision can be challenged only on the Wednesbury principle of unreasonableness i.e. unless the decision is so unreasonable that no sensible person would have arrived at such a decision, it should not be upset. In *Delhi Science Forum v. Union of India*,²¹ this Court once again observed that if a reasonable procedure has been followed, the decision should not be challenged except on the Wednesbury principle of unreasonableness.

20. (1997) 1 SCC 738

21. (1996) 2 SCC 405 : (1996 AIR SCW 953).

Dealing with interim orders, this Court observed in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd.*²² that an interim order should not be granted without considering balance of convenience, the public interest involved and the financial impact of an interim order. Similarly, In *Ramaniklal N. Bhutta v. State of Maharashtra*,²³ the Court said that while granting a Stay the Court should arrive at a proper balancing of competing interests and grant a Stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused by granting a Stay. Therefore in granting an Injunction of Stay order against the award of a contract by the Government or a Government agency, the Court has to satisfy itself that the public interest in holding up the project far outweighs the public interest in carrying it out within a reasonable time. The Court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost.

When such a Stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order, which stops the project from proceeding, further, must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails. The public must be compensated both for the delay in implementation of the project and the cost escalation resulting from such delay. Unless an adequate provision is made for this in the interim order, the interim order may prove counter-productive.

In the instant case, it was submitted that the terms and conditions of the tender specified the requisite qualifying criteria before a person could offer a tender. The criteria, which were so laid down, could not have been relaxed because such a relaxation results in a denial of opportunity to others. In support, the respondents relied, upon *Ramana Dayaram Shetty v. International Airport Authority of India*,^{24 25}. In that case the Court had held judicial review as a check on the exercise of arbitrary powers by the State and as a check on its power to grant largess. The Court also observed that when the exercise of discretion is structured in terms of the tenders, which have been invited, the discretion must be exercised in accordance with the norms so laid down. The same view has been taken by this Court in *Premium Granities v. State of T.N.f* where the Court observed that where rational non-discriminatory norms have been laid down for granting of tenders, a departure from such norms can only be made on valid principles. These principles enunciated by this Court are unexceptional.²⁶

When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other *mala fide* object.²⁷

22. (1985) 2 SCR 190 at page 196: (AIR 1985 SC 330 at p.333).

23. (1997) 1 SCC 134 : (1997 AIR SCW 1281).

24. (1979) 3 SCC 489: AIR 1979 SC 1628.

25. (1994) 2 SCC 691: 1994 AIR SCW 2048)

26. See *Raunaq International Ltd. v. L.V.R. Construction Ltd.*, AIR 1999 SC 393 at 399, 400.

27. *Neetu v. State of Punjab*, AIR 2007: SC 758 at 760: 2007 (1) Supreme 70: 2007 (1) JT 452: 2007 (2) SCC 786: 2007 (2) SC J162.

If an honest person has no means to pay the debt in absence of *mala-fide* intention is arrested in Civil Prison then his arrest and detention both violates the provision of Article 11 of “Inter National Covenant on Civil and Political Rights and Article 21 of the Indian Constitution.”²⁸

11. Revealing Serious Scandal in Functioning of Some Subordinate Courts.—

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(i) Power of High Court.—The High Court in exercise of its power under extraordinary jurisdiction can interfere with a co-lateral proceeding initiated by the High Court itself in an application filed in public interest.²⁹

Where proper investigation is conducted, it may not be necessary or possible for the Magistrate to invoke the powers under Section 156(3). Cr. P.C. to monitor, supervise or interfere with the investigation. But as held in paragraph 29, when a proper investigation is not done the Magistrate has jurisdictional competence to interfere with the investigation. The power under Section 156(3). Cr. P.C., it has been clearly held, is wide enough to justify monitoring, supervision and even interference with the investigation in an appropriate case.

If High Court cannot ordinarily invoke the powers under Section 482. Cr. P.C. and Article 226 of the Constitution, it will be essential that the Magistrates consider the grievances made before them by persons like the petitioner in detail and give relief to such aggrieved persons. If High Court would not entertain applications under Section 482. Cr. P.C. and Article 226 of the Constitution ordinarily, and the Magistrates would not, in such ordinary cases, effectively invoke the powers under Section 156(3). Cr. P.C., the quality and standard of investigation is bound to go down further. That would betray the concern and anxiety which had prompted the learned Judges in Sakri Vasu to accept a dynamic and proactive role for the Magistrates at the stage of investigation.

Crime free society is the ideal which the State has to strive for and a proper investigation in every crime is certainly an incident of the fundamental right to life under Article 21. I need only mention that it is for the learned Magistrates in the light of the decision in Sakri Vasu to invoke their powers under Section 156(3), Cr. P.C. to ensure that the grievances of persons like the petitioner are redressed by issuing appropriate directions. A more proactive, dynamic and purposeful role will hereafter have to be played by the learned Magistrates to ensure that there is proper conduct of investigation.

But a note of caution has got to be added necessarily that such directions should not militate against or detract against the sublime status, position of respectability and faith of the polity in the Magistracy as an unbiased and independent adjudicator of culpability. Whether the mantle of a proactive monitor of investigation for the Magistrate shall go

28 Jolly George Varghese v. Bank of Cochin, AIR 1980 SC 470.

29. Manohar M. Galani v. Ashok N. Advani, AIR 2000 SC 202 at 203; 2000 Cri LJ 406; 2000 (1) Rec Cri. R 57; 2000 (1) Raj LW 113; 2000 (1) An LT (Cri) 229; 2000 (3) Guj LR 2655; 2000 (1)SRJ 52; (1999) 8 SCC 737; (1999) 3 Crimes 260.

well with his primary duty of unbiased adjudication of culpability is a moot question which must always be borne in mind by the Magistrates while attempting to undertake the new responsibilities imposed under Sakri Vasu. The directions to be issued under Section 156(3), Cr. P.C., must clearly reflect only the yearning and endeavour to search for truth. Such directions must eloquently declare that the Magistracy is only discharging its fundamental commitment in the pursuit for truth and justice. I shall stop short here and shall not attempt to catalogue the does and don'ts for a Magistrate while exercising the new found jurisdiction, and more importantly the burden of responsibility, under Section 156(3), Cr. P.C.

Directions should not be issued which convey the impression that the Magistrate is himself investigating. Benevolent intervention to ensure that the investigation proceeds in the right direction and to ensure that there is no omission to apply the mind on any specific aspect do appear to be possible. A direction to the superior police officer discharge his function under Section 36, Cr. P.C. also appears to be a possible and permissible direction.

The load of responsibility on the Magistracy will increase many fold if this onerous responsibility of supervising, monitoring and interfering with investigation were to be effectively discharged. The proposed amendment to the Code of Criminal Procedure introduced in Parliament by Cr. P.C. (Amendment) Bill LXXX of 20 shows that the legislature wants the Magistracy to take up a new heavy responsibility under Section 164B to record the sworn statements of all persons whose statements appear to the investigating officer to be material for proper investigation in all cases punishable with death, imprisonment for life or imprisonment for a period of ten years or more. Such statements after the proposed amendment to S. 161, Cr. P.C. cannot be recorded by the investigating officers. Increase in the burden of responsibility without a proper "judicial impact study" is likely to contribute to the already existing malady of scandalous delay in the judicial process. Infrastructure and personnel will certainly have to increase many fold to meet the existing and added responsibilities of the Magistracy.

Having said so, it has to be considered as to whether this writ petition filed by the petitioner deserves to be entertained. Even following the decision in Sakri Vasu as already noted mandate is only that this Court should not encourage the practice and should ordinarily refuse to interfere when applications are filed under Section 482, Cr. P.C. and Article 226 of the Constitution complaining about the inadequate quality of investigation. Jurisdiction is not taken away. The question is not one of lack of jurisdictional competence. The challenge is only one of identifying the fit case where notwithstanding the existence of powers for the Magistrate under Section 156(3), Cr. P.C., High Court should invoke the powers under Section 482, Cr. P.C. and Article 226 of the Constitution.³⁰

(ii) Amicus curiae in support of maintainability of writ petition.—It is now well settled that when a complaint alleging the commission of a cognizable offence is made to the officer-in-charge of a Police Station (i.e. Station House Officer), he has no option except to register a case and commence investigation, vide *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604; 1992 Cr. LJ 527; *State of Andhra Pradesh v. Punati Ramulu*, AIR 1993 SC 2644; 1993 Cr. LJ 3684; *Joseph Thomas v. Sabu George*, 1998 (1) KLT 126; 1998 Cr. LJ 1191 (DB); *Blachandran v. State of Kerala*, 2000 (2) KLT 352; 2000 Cr. LJ

30. Vasanthi Devi v. S. I. Of Police 2008 Cri LJ 2359 (Ker).

3311: *Velayudhan v. State of Kerala*, 1998 (1) KLT 364; 1998 Cr. LJ 1187; *Katteri Moideenkutty Haji v. State of Kerala*, 2002 (1) KLT 835; *Sathish Kumar Goel v. State*, 2000 Cr. LJ 2176 (Delhi); *Lallan Chaudhary v. State of Bihar*, AIR 2006 SC 3376; *Ramesh Kumari v. State (NCT of Delhi)*, 2006 (2) SCC 677; 2006 Cr. LJ 1622 and *Aleque Padamsee v. Union of India*, 2007 (3) KLT 1028 (SC); 2007 Cr. LJ 3729. Even though a different note has been struck in a two-Judge Bench decision of the Supreme Court in *Rajinder Singh Kotoch v. Chandigarh Administration*, 2007 (4) KLT 877; 2008 Cr. LJ 356 (SC) conceding to the officer-in-charge of a Police Station the freedom to conduct a preliminary enquiry before registering the crime, the said ruling runs counter to all the decisions thus far taken by the Apex Court which has conceded such a freedom to the SHO only in cases coming under the Prevention of Corruption Act, against a public servant as held in *Sirajuddin v. State of Madras*, AIR 1971 SC 520; 1971 Cr. LJ 523. It has already been settled that at the stage of registration of the crime the concerned police officer cannot embark upon an enquiry as to whether the information disclosing a cognizable offence is relevant, reliable, genuine or credible.⁷ Thus, as per the statutory mandate under S. 154(1), Cr. P.C., the officer-in-charge of a Police Station who receives a complaint alleging the commission of a cognizable offence, is bound to register a crime by entering the substance of the complaint in the prescribed book kept in that behalf. It is a statutory duty the performance of which can, in the event of refusal, be enforced by the High Court by issuing a writ in the nature of a mandamus. The power of the High Court in the matter of issuing such a high prerogative writ has been lucidly sketched by the Apex Court.^{31 32}

In all India Institute of Medical Science *Employees' Union v. Union of India* case 1996 (11) SCC 582) the writ petition filed under Art. 226 of the Constitution of India was held to be not maintainable since even without seeking the formal registration of a crime before the local police under S. 154, Cr. P.C., the petitioner therein was seeking a direction for investigation by the CBI. That was why the Apex Court held that the remedy of the petitioner therein was to lodge a complaint before the Police under S. 154 Cr. P.C. or to file a complaint before the Magistrate under S. 190, Cr. P.C. In *Hari Singh v. State of Uttar Pradesh* (2006 (5) SCC 733; 2006 Cr. LJ 3283) a writ petition was filed before the Supreme Court under Art. 32 of the Constitution of India against the refusal on the part of the Police to register a crime. The Apex Court held that the remedy of the petitioner therein was to file a complaint before the Magistrate under S. 190, Cr. P. C. In a writ petition filed under Art. 32 of the Constitution of India, the Apex Court has powers to issue direction only for the enforcement of the fundamental rights conferred by part 111 of the Constitution of India. But the power of the High Court under Art. 226 of the Constitution of India is not so restricted. The High Court has under the said provision wider powers. In *Gangadhar Janardhan Mhatre v. State of Maharashtra* (2004 (7) SCC 786); 2004 Cr. LJ 4623, even though the Apex Court held that on a refusal by the Police to take action on the information given to it by the complainant, the complainant has got the alternative remedy of filing a complaint before the Magistrate under S. 190 read with S. 200, Cr. P. C., the writ petition filed by the complainant in that case before the

31. See *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604; 1992 Cr. LJ 527; *Katteri Moideenkutty Haji v. State of Kerala*, 2002 (1) KLT 835; *Lallan Chaudhary v. State of Bihar*, AIR 2006 SC 3376; *Ramesh Kumari v. State (NCT of Delhi)*, 2006 (2) SCC 677; 2006 Cr. LJ 1622.
32. *Comptroller and Auditor-General of India v. K. S. Jagannathan*, 1986 (2) SCC 679; AIR 1987 SC 537.

High Court was not to direct the police to register a crime but was to transfer the investigation to another impartial agency.

In *Meena Kumari v. State of Bihar*, 2006 (4) SCC 359: 2006 Cr. LJ 2468] the Apex Court was considering the options available to a Magistrate upon receipt of a police report and reversed the decision of the High Court which had dismissed the petition filed by two female accused under S. 482, Cr. P. C. In *Ramesh Kumari v. State (NCT of Delhi)*, 2006 (2) SCC 677: 2006 Cr. LJ 1622 even though the Apex Court taking note of the fact that the allegation was against a member of the State Police, directed the CBI to register a case and investigate the same, the Apex Court had found fault with the High Court in dismissing the writ petition filed for a direction to the officer-in-charge of Police Station to register a case consequent on his refusal to do so. This decision is an authority for the position that a writ petition under Art. 226 of the Constitution would lie if the SHO refuses to register a case. It is true that in a three-Judges' Bench decision of the Apex Court in *Aleque Padamsee v. Union of India*, 2007 (3) KLT 1028 (SC) : 2007 Cr. LJ 3729, the Apex Court after advertg to All India Institute of Medical Science Employees' Union, Gangadhar Janardan Mahatre, Minu Kumari, Ramesh Kumari, Hari Singh, Lallan Chaudhari (supra) has ruled that if the police officer refuses to register an F. I. R., then the remedy of the aggrieved person is to file a complaint before the Magistrate under S. 190 read with S. 200, Cr. P. C. But that decision was also rendered in a writ petition filed under Art. 32 of the Constitution of India and without analyzing the verdict in *Ramesh Kumari* in the proper prospective. It is well settled that judgments of Courts are not to be construed as statutes and words in the judgments are not to be interpreted as words in a statute (*vide Ashwani Kumar Singh v. Uttar Pradesh Public Service Commission* 2003 (6) JT (SC) 184: AIR 2003 SC 2661. In *Velayudhan v. State of Kerala*, 1998 (1) KLT 364: 1998 Cr. LJ 1187, a single Judge of High Court had entertained a writ petition under Art. 226 of the Constitution of India and had directed the SHO to register the F.I.R. In *Joseph Thomas v. Sabu George*, 1998 (1) KLT 126: 1998 Cr. LJ 1191, a Division Bench of this Court upheld a similar direction given by the single Judge in a writ petition. Likewise, another Division Bench of this Court in *Katteri Moideen Kutty Haji v. State of Kerala*, 2002 (1) KLT 835 reversing the dismissal of the writ petition by a learned single Judge of this Court, directed the SHO to register an F.I.R, and commence investigation. A similar direction was issued by a learned single Judge of this Court in exercise of the inherent power under S. 482, Cr. P.C., in *Balachandran v. State of Kerala* Even if the petition is filed under Art. 226 of the Constitution of India, this Court, can, in appropriate cases treat the petition as one filed under Art. 227 of the Constitution or under S. 482, Cr. P.C.^{33 34 35}

(iii) Judicial Evaluation.—The 3-Judge Bench decision of the Apex Court in *Aleque Padamsee v. Union of India*³³ was no doubt, rendered in writ petitions filed under Art. 32 of the Constitution of India. But, a reading of paragraphs 2 and 7 of the said decision will go to show that the question posed by the Apex Court was whether a writ can be issued to the police authorities to register an F.I.R, in case they refused to register the F.I.R. Paragraphs 5 to 7 of the said decision read as follows:

“5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under S. 190 read with S. 200 of the Code lay the complaint before

33. 2000 (2) KLT 352: 2000 Cri LJ 3311.

34. See *AfZs. Pepsi Foods Ltd. v. Special Judicial Magistrate*, AIR 1998 SC 128 : 1998 Cr. LJ 1 and *Alexander v. C. B. I.* 2006 (2) KLT 240.

35. 2007 (3) KLT 1028: 2007 Cr. LJ 3729 (SC)

the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a *prima facie* case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under S. 203 of the Code. In case he finds that the complaint/evidence recorded *prima facie* discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Science Employees' Union (Reg.) through its President v. Union of India* (1996) 11 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.

The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra*³⁶

Whenever any information is received by the police about the alleged commission of offence which is cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in *All India Institute of Medical Science's case* (supra) and reiterated in *Gangadhar's case* (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in *All India Institute of Medical Science's case* (supra) and *Ramesh Kumari's case* (supra), we find that the view expressed in *Ramesh Kumari's case* (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In *Ramesh Kumari's case* (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in *All India Institute of Medical Science's case* (supra) *Gangadhar's case* (supra). *Minu Kumari's case* (supra) and *Hari Singh's case* (supra). The view expressed in *Ramesh Kumari's case* (supra) was reiterated in *Lallan Chaudhary v. State of Bihar* (AIR 2006 SC 3376), the course available, when the police does not carry out the statutory requirements under S. 154 was directly in issue in *All India Institute of Medical Science's case* (supra), *Gangadhar's case* (supra), *Hari Singh's case* (supra) and *Minu Kumari's case* (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Ss. 190 read with S. 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24-2-2003 with W. P. (C) 530/2002 and W. P. (C) 221/2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions."

The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the F.I.R, the modalities contained in S. 190 read with S. 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

36. (2004) 3 KLT SN 77 (C. No. 107) SC: (2003) 7 SCC 768: 2004 Cr. LJ 4623; *Minu Kumari v. State of Bihar* (2006) 2 KLT 588 (SC): (2006) 4 SCC 359: 2006 Cr. LJ 2468 and *Hari Singh v. State of U. P.* (2006) 3 KLT 269 SC: (2006) 5 SCC 733: 2006 Cr. LJ 3283).

the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a *prima facie* case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under S. 203 of the Code. In case he finds that the complaint/evidence recorded *prima facie* discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Science Employees' Union (Reg.) through its *President v. Union of India* (1996) 11 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.

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(3) So far as non-grant of sanction aspect is concerned, it is for the concerned Government to deal with the prayer. The concerned Government would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case.

In a judgment in *Sakri Vasu v. State of U. P.* 2008 AIR SCW 309 arising out of Cri. Appeal No. 1685 of 2007 the Apex Court has put the position beyond the pale of controversy.

In the light of the authoritative pronouncement by the Apex Court, the High Court cannot encourage or entertain the writ petition to command the officer-in-charge of the police station to register an F.I.R, and commence investigation. The position remains the same even if the writ petition were to be treated as a petition under S. 482, Criminal Procedure Code.³⁷

(iv) Inquiry.—There cannot be any dispute that the facts revealed a serious scandal in the functioning of some subordinate Court in the State of Gujarat and, therefore, the High Court took cognizance of the matter and directed inquiry to be conducted, and on the basis of the said inquiry, it was open for the High Court to issue necessary directions and at that stage the impugned order has emanated.^{37,38}

(v) FIR.—So far as the quashing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, the Apex Court also finds that the High Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 of Cr PC will be a bar. It was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled.³⁹

12. High Court is equipped to run the administration of local bodies like Municipalities and Corporations.—

(i) District Magistrate, Patna directed to carve out a corridor and time schedule for the heavy commercial vehicle to move to their destinations within the city of Patna. The restriction will not be applied to petrol or oil tankers.—It was prayed that public drains be rendered serviceable so that there was no overflow of water from the drain. Over last 14 years since the petition had been pending, today, the petitioner mentions that insofar as the drains are concerned this aspect has been taken care of by the Patna Municipal Corporation. But insofar as road was concerned, the contention was that the whole of it has not been repaired and the extent of which the road has received attention, it was so because of the “important political” or “very important persons” who reside on this road. The entire road has yet to receive attention of the Corporation. *Held* superseding a municipal corporation was an abnormality and was against the grain of the Constitution of India. Keeping local bodies supersede beyond period as mentioned in the Constitution was an *ultra vires* Act of the State. The State of Bihar was obliged to take

37. John C.V. v. State of Kerala, 2008 Cr. LJ 1305 (Ker).

38. Manohar M. Galani v. Ashok N. Advani, AIR 2000 SC 202 at 203: 2000 Cri LJ 406: 2000 (1) Rec Cri R 57: 2000 (1) Raj LW 113: 2000 (1) AN LT (Cri) 229: 2000 (3) Guj LR 2655: 2000 (1) SRJ 52: (1999) 8 SCC 737: (1999) 3 Crimes 260).

39. Ibid.

immediate steps to ensure that the municipalities and the corporation within the State function with elected representatives.⁴⁰

The petitioners contend that representations have been made to the District Magistrate on 15-9-1998 and 10-10-1998 for carving out a corridor and/or time schedule for the vehicle of the petitioners to move to their destinations within the city of Patna. Those are matters which the District Magistrate can deal with at her level having regard to the spirit of the order dated 19-5-1998 in C.W.J.C. No. 2290 of 1990, in particular paragraph No. 10 thereof. The primary objective sought to be achieved was to do away with the inconvenience caused to the members of the general public by entry of heavy commercial vehicles within the municipal limits of the city of Patna. In the case of industries a scheme has to be worked out so that the vehicles are able to reach their destinations within the city of Patna at reasonable times. It was for the District magistrate to consider the convenience of the general public as also the convenience of the industries concerned, and work out and find out a method, so that with the least inconvenience to both, the objective was achieved.

The High Court of Patna had passed an order that after 31st July, 1998 no heavy vehicle carrying goods shall be permitted within municipal limits of the city of Patna without express permission of the District magistrate or any officer authorised by the District Magistrate in this regard. The restrictions, however, was not to apply to petrol or oil tankers which necessarily have to enter the municipal limits to off-load the goods carried by them at the concerned stations. The Court had also directed the District Magistrate to carve out a corridor for vehicles traversing through municipal limits of the city of Patna on way to their destinations. This order of the Court appears to have been challenged before the Supreme Court, and by order dated 22-7-1998 in S.L.P. (Civil) No. 5288 of 1998 the Hon'ble Supreme Court directed that the order shall remain suspended till further orders. It also appears that the matter was finally disposed of on 31.7.1998 and the Special Leave Petition was dismissed, so that the order dated 19-5-1998 could have come into force. However, by Court order dated 11th Sept. 1998, the Court gave an opportunity to the transport agents and their proprietors to apply for allotment of land in the Transport Nagar, so that the scheme proposed by the P.R.D.A. may be implemented. If the response was found to be encouraging the Court had assured that the Court shall pass suitable orders on October 9, 1998 putting the State of Bihar and P.R.D.A. to terms and prescribe the time schedule for completion of the development work in the transport Nagar. The Court also recorded the assurance given by counsel for the P.R.D.A. reiterated by Additional Advocate General No.III, that the amount which shall be collected against the allotment of land in the Transport Nagar shall not be utilised for any other purpose except for the development of the transport Nagar. The Court had, therefore, directed that till then the prohibitory order dated 19-5-1998 shall not operate. When the matter has come up before Court today the Court finds that as against 216 available plots and inspite of the existence of large number of transport agents in the city of Patna only 21 such transporters have applied for allotment of land in the transport Nagar, and on one pretext or the other they have avoided to apply for land in the transport Nagar. The facts and circumstances reveal that not only the transport agencies and their proprietors, but even the P.R.D.A. and the Government of Bihar acting in collusion with them, are making an attempt to defeat the orders of the Court. The transporters make a

40. Anil Kumar Tiwari v. Patna Municipal Corporation, (2001) 3 BLJ 148 at 149 (Ravi S. Dhavan C. J. and Aftab Alam, J.).

grievance that the land being allotted at the rate of Rs.3,00,000/- per katha approximately and future development charge of about a lakh of rupees per katha was exorbitant, particularly for a land which was even today water logged, and cannot be used for the purpose of either parking a truck or off-loading goods from a truck Counsel for P.R. D.A. Submits that this land has been acquired by the Government of Bihar for this purpose, and the said land has been made over to P.R.D.A. for construction of Transport Nagar. He says that the P.R.D.A. has connected the land with an approach, road, but he was not in a position to deny the fact that the land on which the so called Transport Nagar was to be located was even today water logged. Such being the position, the Court fail to understand how the transporters and transport agents can be compelled to purchase the land and construct their depots on such land, the game was that the Transport Nagar will never come up because of the inherent deficiencies and, therefore, the order of the Court asking the transport agencies and their proprietors to shifts outside municipal limits of Patna will never be given effect to. There was a concerted effort on the part of the Government and the P.R.D.A. and transport agents to defeat the orders of the Court which had been passed in public interest. The Court, therefore, direct that Court order dt. 19th May, 1998 shall come into effect from tomorrow, the 5th December, 1998. The District Magistrate, Senior Superintendent of Police, Superintendent of Police (Traffic) and other authorities of the State were directed to act in accordance with the order. At the same time the Court permit the transport agents to establish their offices, depots etc. at any other place, apart from the s~> called Transport Nagar, beyond the Municipal limits of the city of Patna. The Court direct the District Magistrate, Senior Superintendent of Police (Traffic) to be present in Court, so that in consultation with them the Court will clearly demarcate the area prohibited for entry of trucks and for establishment of offices/godowns of transport agents. Till then the prohibitory order will remain in force, and only with the permission of the District Magistrate, as directed, and truck will be allowed to enter within the municipal limits of Patna. *Anin Kumar Mukherjee v. State Of Bihar*, (1999) 1 BLJ 232 at 233, 234 (Pat) : (1999) 1 PLJR 254 : (1999) All PLR (B.P.Singh and N.K. Sinha, JJ).

13. Scope of powers of Supreme Court.—This application raises a question whether refusal by Governor of U.P. to grant sanction for prosecution of Ms. M and N can be considered by Supreme Court.

A project known as ‘Taj Heritage Corridor Project’ was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for construction food plazas, shops and amusement activities. The said activities on the part of the Government of Uttar Pradesh was brought to the notice of Supreme Court. An exception thereto was taken. A detailed inquiry was directed to be made by the Central Bureau of Investigation (CBI). Upon consideration of the report submitted before it by CBI, Supreme Court in its order dated 18/09/2003 directed it to register a First Information Report and make further investigation in accordance with law. CBI investigated into the matter, including the roles played by Ms. M the then Chief Minister, and Mr. N the then Minister for Environment, Government of Uttar Pradesh. Investigations were also carried out against some officers.

Special Judge directed CBI to obtain sanction of the Governor of Uttar Pradesh. Governor of Uttar Pradesh has refused to accord the same.

Apex Court observe that while entertaining a public interest litigation in a given case, this Court may exercise a jurisdiction to set aside the decision of a constitutional

authority, but Court is not concerned with such a situation. That Court need not go further than what we have already said in order dated 27.11.2006 to go into the correctness or otherwise of the order of the Governor. If no sanction of the Governor was required or if he has committed an error in passing the said order, the appropriate Court, would be entitled to deal therewith, but not this Bench.^{41 42}

14. Safeguards from unjustified litigation.—

(i) Penalty.—The view taken by this court in three decisions is absolutely correct and justified. Frivolous litigation has to be regulated so that it does not become a weapon for undue harassment. Therefore, one of the safeguards is, to provide for deposit of security so that the person who is involved in the litigation unnecessarily and without justification was compensated by the Court at the end of litigation. Therefore, the Court found no justification to allow the submission of petitioners to dispense with this requirement and deal with this matter without removing defaults pointed out by the Registry. Even on merits, the petition does not disclose case for consideration and determination.

(ii) Pro Bono Publico.—The Court has to be satisfied about (a) the credentials of the applicant ; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive action. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. *D.N. Thaware v. State of Maharashtra*, AIR 2005 SC 540 at 53.

15. Land allotted to High Court Judge-quashed by Apex Court. Every human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a Judge to have ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it, because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty. With due respect to the learned Judge, Justice B. P. Banerjee, he has misused his divine Judicial duty as liveries to accomplish his personal ends. He has betrayed the trust reposed in him by the people. To say the least, this is bad. The matter could have been different if the learned Judge got allotment from the Chief Minister's quota simpliciter like any other citizen.

41. *M.C. Mehta v. Union of India & Ors.*, 2007(7) Supreme 495: 2007(12) JT 18: 2007(7) SCJ 942: 2007(4) AICLR 847.

42. *S. P. Anand v. Union of India*, AIR 2002 M. P. 51 at 53: 2002 (1) MPL, 213: 2002 (1) MPHT 520: 2002 (1) Jab LJ 163.

In the back-drop of the facts and circumstances, as recited above, the view of the Apex Court that the conduct of the learned Judge is beyond condonable limits. It is a case where a private interest is pitted against a public interest. It is now well-settled principle of law that in such cases the latter must prevail over the former. Consequently, the order dated 24-7-1987 passed by the Chief Minister and the formal allotment order dated 16-10-1987 allotting plot No. FD 429 measuring 4 Cottahs in Salt Lake City in favour of respondent No. 24—Justice B. P. Banerjee are hereby quashed and cancelled. The plot shall stand vested with the Government.⁴³

16. Tragic incident of patients-Death due to Fire.—On the basis of submission note of the Registrar Judicial to a news item published in all leading dailies about a gruesome tragedy in which more than 25 mentally challenged patients housed in a mental asylum at Ervadi in Ramanathapuram district were charred to death, the patients could not escape the blaze as they had been chained to poles or beds, this Court took *suo motu* action. In re; Death of 25 chained inmates in asylum Fire in T.N. AIR 2002 SC 979: 2002 (3) SCC 31 2002 (1) JT 549: 2002 (2) Seal 27: 2002 (1) Supreme 500: 2002 (3) SRJ 479.

17. Supervisory Jurisdiction. — By the CPC (Amendment) Act, 46 of 1999, Clause (b) to Section 115 (1) CPC was deleted. The effect of the amendment by deleting the said clause (b) is that, even the failure of justice or the irreparable injury caused to the party against whom an order was made, shall not be a ground for exercising the revisional jurisdiction under Section 115 CPC. It is, therefore, clear that the intention of the legislature is to bar the intervention in the revision against the interlocutory orders. The proposal was intended to cut the number of revisions on petitions, to bar serious of injustice resulting from interlocutory orders and to avoid the unnecessary delay in dispensation of justice on account of interference of the High Court exercising revisional jurisdiction against an order deciding an issues, passed by any Court subordinate to the High Court. In the Course of a suit or other proceedings, not finally disposed of attracting Section 115 CPC even it would occasion a failure of justice or cause irreparable injury to the party, against whom it was make. The power of the single Judge under Section 8 of the Karnataka High Court Act is traceable and subject to the revisional jurisdiction of the High Court under Section 115 CPC. Therefore, since section 8 of the Karnataka High Court Act remained unamended, the insertion of Section 9 (xii) and 10 (iv-a) of the Karnataka High Court Act as amended by Amendment Act 12 of 1973 to the Karnataka High Court Act by itself would not render Section 8 redundant in the statute book.

On a plain reading of Sections 4, 8, 9 (xii) and 10 (iv-a) of the Karnataka High Court Act, it is clear that the legislature specifically intent that the civil and criminal revision cases shall be heard and disposed of by a Judge sitting alone whose decision or order shall be final and therefore, the orders passed under Section 8 of the Act are excluded from the purview of Section 4 of the Act, even though they were under Article 227 of the Constitution of India to get over Section 115 CPC. The very same reasoning holds good to counter the argument based on Rules 2(1), 26 and 39 of the writ proceedings Rules read with Article 11 (sa) to Schedule 11 to the Karnataka Court Fees and suits Valuation Act, 1958. What was barred under Section 8 of the Karnataka High Court Act. Viz., in the case of civil revision which could be heard by a single Judge alone and whose orders Shall be final, which are traceable to Section 115 CPC as amended by CPC (Amendment) Act 46 of 1999, cannot be revived or made available by resorting to Article 227 of the Constitution of India, nor such order passed by Single Judge under Article 227 be appealed under Section 4 of the Karnataka High Court Act, in other words what was not

originally available under Section 115 CPC cannot be made available by invoking Article 227 of the Constitution, nor Section 8 of the Karnataka High Court Act be nullified merely on account of insertion of Section 9 (xii) and 10 (iv-a) of the Karnataka High Court Act, which were intended for the matters not governed under Section 8 of the Karnataka High Court Act. It is a settled law that every provision of the Act. Should be given effect to and harmoniously constructed alongwith other provisions of the act.

The supervisory power of the High Court under Act 227, with reference to the restrictions imposed to the reversionary jurisdiction of the High Court under Section 115 C.P.C. got settled is the decision of the Apex Court in the case of *Surya Dev Rai v. Ram Chander Rai and others*, (2003) 6 SCC 675 : AIR 2003 SC 3044, holding that the power of the High Court under Articles 226 and 227 of the Constitution of India is always in addition to the revisional jurisdiction of the High Court under Section 115 C.P.C. In other words, the curtailment of revisional jurisdiction of the High Court under Section 115 C.P.C. does not take away the Constitutional jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. The power of the High Court under Articles 226 and 227 of constitution thus remains untrammelled by the amendment made to Section 115 C.P.C. and the same is, therefore, available, subject to the Rules of self-discipline and practice. Thus, despite the restrictions imposed under Section 115 C.P.C. the interlocutory orders, made in the course of a suit or other proceeding which are not finally disposed of, came to be challenged, invoking the supervisory jurisdiction of the High Court under Art. 227 of the Constitution of India.

In *Kalpana Theature's* case AIR 1995 Kant 426 (supra) various provisions of the Act and the Rules as noted hereinabove, were not referred to or taken note of by a Division Bench. The Court was persuaded to hold regarding non-maintainability of appeals against judgments or order passed by the Single Judge under Art. 227 of the Constitution of India on the basis of various judgments of the Supreme Court and different High Courts. It is again worthwhile to note that in all those matters no provision and logous to the provisions as incorporated in the Act and the Rules was made. On the basis of the judgments cited before it, the Division Bench held that as orders passed in petitions filed under Art. 227 of the Constitution were not in exercise of the original jurisdiction of the Court, no appeal against such an order was maintainable. As it was noted already, writ petitions filed under Arts. 226 and 227 of the Constitution. In the sate of Karnataka are specifically held to be proceedings of the Court under Rules 2 of the rules in its original jurisdiction. The Amendment Act 12 of 1973 was enacted for a definite purpose of widening the scope of appellate powers of this Court in terms of the report of the Law Commission and in the Statement of Objects and reasons, it was stated :

At present, all applications under Cl. (1) of Art. 226 and Arts. 227 and 228 of the Constitution of India are dealt with by a Bench of two-judges. In the High Courts of Kerala Madras, Nagpur, Allahabad, Delhi, Calcutta, Andhra Pradesh and Bombay such applications are dealt with by a single Judge and a right to appeal is given to the aggrieved party and such appeals are dealt with by a bench of two-judges. The Law Minister'. Conference held in 1957 and 1960 was also of the view that such applications should be dealt with by a single judge with a right of appeal to a Bench of two-judges. The Law Commission in its Fourteenth Report vol. 11 while considering the question has stated with particular reference to Madras that such a procedure has yielded satisfactory results. As the principles governing the disposal of writ petitions and connected matters have been now sufficiently clarified by the decisions of different High Courts and the Supreme Court, it is considered desirable to empower a single judge to deal with

applications under Cl. (1) of Art.226 (except where the prayer is for the issue of a writ is the nature of habeas corpus) and applications under Arts. 227 and 228 of the Constitution of India with a right of appeal to a Bench of two-judges. It is also considered that this procedure may result in more expeditious disposal of such applications and also provide a right of appeal to the aggrieved party whose right to approach the Supreme Court is very much restricted in view of the Constitution (Thirtieth) Amendment.

In the instant case also, the writ petition was filed both under Arts. 226 and 227 of the Constitution. A perusal of the pleadings and the judgment of the learned single judge clearly indicated that in fact and substance the petition was under Art. 226 of the Constitution. After referring to the various provisions of law and judgments as noted herein above, held that the Division Bench in Kalpana Theatre's case (*supra*), was not justified in holding that no appeal against an order passed by the single judge in a proceeding arising out of a petition filed under Art. 227 of the Constitution was maintainable. The scope of S. 4 of the Act in the context of other provisions of law and particularly the amendment made by Amendment Act 12 of 1973 is admittedly wider than Letters patent or the Acts of the other States which were referred to or relied upon by the Division Bench in Kalpana Theatre's case, *supra*, being contrary to the settled position of law is liable to be overruled, held that an appeal against as order passed by a single judge in a proceeding arising out of a petition filed under Arts. 226 and 227 and 228 of the Constitution of India is maintainable. The reference is answered accordingly.

The Supreme Court in Umaji case AIR 1986 SC 1272 observed that a proceeding under Art. 226 is a original proceeding and when it concerns civil rights. It is an original civil proceeding. Consequently where a petition filed under Art. 226 of the Constitution is according to the Rules of a particular High Court heard by a single judge, an intra-Cou. t appeal will be from the judgment if such a right of appeal is provided in the charter of that High Court, whether such charter be Letters patent or a statute.

A proceeding under Art. 227 is not an original proceeding An Intra-Court Appeal does not lie against the judgment of a single Judge of the Bombay High Court given in a petition under Art. 227 by a reason of such appeal being expressly barred by Cl. 15 of the Letters patent of that High Court.

Where the facts justify a party in filing an application either under Art. 226 or 227 of the Constitution and the party chooses to file his application under both these articles. In fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Art. 226 and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Art. 226 this right of appeal under Cl. 15 of the Letters patent where the substantial part of the order sought to be appealed against is under Art. 226. In Pattendar case 2005 AIR Kant HCR 1633. It is thus held that when the right of appeal is a statutory right but not an inherent right, the same cannot be availed otherwise. According disagreeing with the decision of the Full Bench in Ritz Hotels case referred to *supra*, the full bench of five judges came to the conclusion:

(i) That going by the language used in S. 4 of the Karnataka High Court Act. An appeal has been provided against an order of the learned single judge only when it is passed in exercise of his original jurisdiction, which is dealt with under Art. 226 of the constitution of India, (ii) That the powers under Art. 227 of the Constitution of India being supervisory, no intra-court appeal is maintainable against such order because the right of appeal under S. 4 of the Karnataka High Court Act being a statutory right and the

same can be exercised only as provided under the statute, but not otherwise, (iii) — that Rule 2(1) and 26 of the writ proceedings Rule do not provide for an appeal against the order of the single judge passed in the exercise of supervisory jurisdiction and (iv) — that the law laid down in *Kalpana theatre case* AIR 1995 Kant 426 is the correct law and that the decision of Full bench in the case of *Ritz Hotels* is not correct in overruling the law laid down by the Division Bench in *Kalpana theatre's case*. The maintainability of an appeal under S. 4 of the Karnataka High Court Act against the order of the single judge passed in exercise of power under Art 227 of the Constitution again came up for consideration in *Sri Vishnu Ganapathi Naik v. Management of NWRRTC*, ILR 2006 Kar 1863 : 2006 (3) AIR Kar R. 457, for short. *Sri Vishnu Ganapathi Naik case*, wherein a workman aggrieved by an award of the industrial Tribunal. Hubli Maiden Kid No. 403 of 2003 dated 13.7.2004 filed a writ petition in No. 489999 of 2004 before the court under Arts. 226 and 227 of constitution of dated 27.7.2005 rejected the writ petition and confirmed the award passed by the Industrial tribunal. The correctness or otherwise of the order of the single judge dated 27.7.2005 was appealed by the workman under S. 4 of the Karnataka High Court Act. In *Sri Vishnu Ganapathi Naik case*, a Division bench of the court, to which one of us (Bopanna, J) is a party of course following the reasons that weighed with the full bench consisting office judges in *pattedar case* 2005 AIR Kant HCR 1633, held that (i) where the petitions are relied both under Art. 226 and 227 the Constitution of India, the court has to examine the allegations made in the petition and the relief claimed therein as to whether the petitioner wants the court to exercise its original jurisdiction under Art. 227 of the Constitution, (ii) — If the challenge is limited only to the correctness of otherwise of the award, then the petitioner is obviously invoking the powers of the court under Art. 227 of the constitution, because the cause has not been initiated for the first time in the court and (iii) — in addition the correctness of the award, the petitioner were to challenge the virus of any of the provision of the Industrial Disputes Act or any other provision or they very jurisdiction of the Labour court to pass an award on the ground that it suffered from error of law apparent on the face of the record, he is invoking the power of the High Court under Art. 226 as well, and in such cases, the decision will be deemed to have been rendered in exercise of its original jurisdiction under Art. 226 of the constitution and came to the conclusion that no appeal would lie against the said order passed in the exercise of supervisory powers, as the right of appeal is a statutory right provided against an order passed by the single judge of the court in his original jurisdiction, and therefore, no appeal would lie against the order of the single judge passed in his supervisory powers under Art. 227 of the constitution. The *Ramaswamy case* arose against the order dated 12.2.2007 of the single judge passed in writ petition Nos. 38272 — 38278 of 1998, disposed of on 12.2.2007, wherein the single judge under Art. 227 of the Constitution quashed the orders of the Deputy Commissioner and the Karnataka appellate, Tribunal in the matter of grant of 5 acres of land to the respondent therein. In view of the decision dated 1.7.2006 made in *Ramaswamy case* several writ appeals came to be filed against the order of the single judge made under Art. 227 of the Constitution and the maintainability of those appeals again came up for consideration before another Division Bench both are parties to this decision (*Bannurmath and Venugopalagowda, JJ*) and the Division bench order date 7.11.2007 made in writ appeal No. 1078 of 2007 (reported in 2008 (1) AIR Kar R. 271) and connected matters, etc viz. *Smt. Saraswathi v. Vasanth Ramachandra Dulioli*, (hereinafter referred to as 'Saraswathi Batch of cases' of or short), after referring to the point in question in earlier decisions referred to above, viz, (i) *Kalpana Theatre case* AIR 1995 SC 426. (ii) *Ritz Hotels case* (iii) *Sri Vishnu Ganapathy Naik case* 2006 (3) AIR Kar R 457. (iv) — *Ramaswamy case*, (v) — *Surya Dev Rai case* AIR 2003 SC 3044

and (vi) *Chandrakumar* case AIR1997 SC 1125) raised a serious doubt as to whether the Division Bench, while passing the order dated 1st July 2006 in *Ramaswamy* case, in spite of the binding nature of precedent laid down in *pattedar* case, could like an exception to the law laid down in *pattedar* case, in view of the ratio laid down by the Apex Court in (i) — *Central Board of Dawoodi Dohra Community v. State of Maharashtra*, AIR 2003 SC 752. (ii). *State of Bihar v. Kallika Kuer*, AIR 2003 SC 2443 : (iv) — *Pradip Chandra Parija v. Pramod Chandrra Patnaik*, AIR 2002 SC 296 : (v) — *Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha*, 2001 (4) SCC 448 : 2001 AIR SCW 1846. It is settled law that a decision delivered by a Bench or lesser or coordinate strength and if a Bench with a smaller coram or a coordinate Bench of larger strength is binding on any subordinate Bench finds that the law declared by a larger bench or a coordinate bench requires reconsideration on account of not noticing any statutory provision or amendment of the statutory provision or amendment of the statute or the law laid down by the Supreme Court under Art. 141 of the Constitution of India considered and/or explained judicial discipline demands that the matter be referred to larger bench for decision in the matter, instead of sitting in judgment or expressing any kind of dissent. It is under those circumstances, the Division Bench in *Sarawathi* batch of cases referred question (1) as hereunder “whether the finding recorded by the Division Bench in writ appeal No. 1777 of 2001. *Ramaswamy*’s case inserted by us by judgment dated 1.7.2006 holding that the intra-court appeal as maintainable. Which is contrary to the decision of another division bench in *Vishnu Ganapathi Naik*’s case ILR 2006 Kar 1863 : 2006 (3) AIR Kar R. 457, requires the reconsideration in the light of the pronouncement of the full Bench in *Gurushnath pattedar*’s case. The deletion of clause (b) in the proviso to section 115, CPC and the addition of sub section (3) to said section are intended to restrict the provisional Jurisdiction of the High Court conferred under Section 115, CPC, so that no revision would lie against interlocutory orders deciding an issue in the course of a suit not finally disposed of in order to avoid unnecessary delay in dispensation of justice by interference by the High Court exercising revision a jurisdiction against an order deciding an issue, passed by any court subordinate to the High court in the course of a suit or the proceedings not finally disposed of attracting section 115, CPC but in view of the settled proposition that there revisional jurisdiction of the High Court under Section 115, CPC, is separate and distinct from that of the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, the supervisory jurisdiction of the High Court under Article 227 is invoked to get over the restrictions brought into section 115, CPC. By the CPC (Amendment) Act, of 1999, clause (b) to Section 115 (1), CPC was deleted. The effect of the amendment by deleting the said clause (b) is that even the failure of justice or the irreparable injury caused to the party against whom an order was made, shall not be a ground for exercising the revisional jurisdiction under section 115, CPC. It is therefore, clear that the intention of the legislature is to bar the intervention in the revision against the interlocutory orders.

The proposal was intended to put the number of revisions on petitions, to bar serious injustice resulting from interlocutory orders and to avoid the unnecessary delay in dispensation of justice on account of interference of the High Court exercising revisional jurisdiction against an order deciding an issue, passed by any court subordinate to the High Court, in the course of a suit or other proceedings, not finally disposed of attracting section 115, CPC even it would occasion of failure of justice or cause irreparable injury to the party, against whom it was made. Truly, the power of the High Court under Article 227 of the Constitution of India exercised to get over the restrictions imposed in Section 115, CPC, stands settled by a decision of Apex Court in *Surya Dev Rai* case, AIR 2003

SC 3044 following decision of Constitution Bench in Chandrakumar case, AIR 1997 SC 1125 holding that the power of the High Court under Art. 226 and 227 of the Constitution of India is always in addition to the revisional jurisdiction conferred on it under Section 115, C.P.C. curtailment of the regional jurisdiction of the High Court under S. 115, CPC does not take away nor could have taken away the constitutional jurisdiction of the high court conferred under Arts. 226 and 227 of the Constitution of India. The powers under Arts. 226 and 227 of the Constitution of India. The power under Arts. 226 and 227 of the Constitution of India is therefore, untrammelled by the amendment to Section 115, CPC, but the same is available to be exercised subject to the rule of self discipline and practice, which are as well settled.⁴⁴

18. Supervisory Jurisdiction—Maintainability—of writ petition.—It has been held that the moment it is established that the writ petitioners wanted to challenge a judicial order passed by the 1 ribunal over which this High Court has power of superintendence, the appropriate provision applicable is Article 227 of the Constitution of India. Whether in view of existence of alternative remedy by way of appeal before the Appellate Tribunal, a High Court exercising jurisdiction under Article 227 of the Constitution will entertain the application in a given case, is a different question but in such a situation, there is no scope of moving an application under Article 226 of the Constitution of India for the purpose of disputing the correctness of the interlocutory judicial order of the Tribunal. The Court was conscious that administrative orders passed by any Subordinate or Tribunal *e.g.* orders taking disciplinary action against an employee of such Courts or Tribunal are amenable to its jurisdiction under Article 226 of the Constitution of India. The Court was also not unmindful of the fact that as pointed out by the Apex Court in the case of *Surya Dev Rai*, AIR 2003 SC 3044, in exceptional cases where the order of a judicial authority is without jurisdiction, the Writ Court can issue certiorari and quash the proceedings but in the instant case, His Lordship did not quash the proceedings by issuing a writ in the nature of certiorari but simply passed direction upon the Tribunal not to extend the *status quo* without disposing the application for condonation of delay. Even in the said case of *Surya Dev Rai* relied upon by Mr. Kundu. The Apex Court accepted the position that the scope of Article 226 and Article 227 are different as would appear from the following observations:

Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stand almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers leveling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements. Without entering into niceties and technicality of the Subject, we venture, to state the broad general differences between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari the record of the proceedings having been certified and sent up by the Inferior Court or Tribunal to the High Court, the High Court if inclined to exercise its jurisdiction may simply annul or quash the proceedings. In exercise of supervisory jurisdiction the High Courts may not only quash

44. Tammanna D. Battal v. Miss Renuka R. Reddy, AIR 2009 Kam. 119.

or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the Inferior Court or Tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised *suo motu* as well".⁴⁵

19. Judicial Review.—The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract have been considered in great detail by a three judge Bench in *Tata Cellular v. Union of India*, (1994) 6 SCC 651, it was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of the power of judicial review. Government is the guardian of the finances of state. It is expected to protect the financial interest of the state. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in article 14 of the constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 of the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised of that power, will be struck down. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by *mala fide*. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. *Siemens Public Communication v. Union of India*, AIR 2009 SC 1204.

20. Representation converted to PIL-Jurisdiction of the Supreme Court.—In view of the language of Article 136, Supreme Court is not expected to act as 'regular Court of appeal' settling disputes by converting into a 'Court of Error'. It interferes only when justice demands intervention by the highest Court of the country. While exercising power under Article 136 of the Constitution, Supreme Court not only acts as a Court of law but also as a Court of equality and hence the power exercised by Supreme Court under Article 136 must sub serve ultimately the cause of, 'justice. The Court must decide all issues coming before it on the considerations of justice, equity and good conscience. Legal formulations cannot be divorced from ground realities, factual situations before the

45. Bhowanipore Gujrati Education Society & Another. v. Kolkata Municipal Corporation & others etc., AIR 2009 Cal. 140.

Court and the effect of laws on the human beings for whom they are meant. Discretionary jurisdiction under Article 136, therefore, has to be tempered with equity. Supreme Court would be failing in its duty if it does not notice equitable considerations. Respondent No. 1 Company was closed down in February, 1995. It never started functioning thereafter. Financial liability continued mounting up day by day. There were several secured, unsecured creditors and dues of workers. Proceedings under SICA had been initiated, decrees and orders were passed against the Company and the property owned by the company was not sufficient to clear up all debts and liabilities. Keeping in view the entire facts and circumstances that initially, tripartite agreement was entered into between respondent No. 1 Company, Representative Union and intending purchaser on March 8, 2005, a joint meeting was held between secured and unsecured creditors, representatives of the Union, the Company and the purchaser in April, 2005 and in that meeting, One Time Settlement (OTS) had been reached, several actions were taken in pursuance of the settlement. The amount was deposited by the purchaser, dues of creditors were paid, workers and labourers were informed and they were also paid the amount. The property was sold by respondent No. 1 to respondent No. 7 on October 6, 2005, sale was confirmed on December 6, 2005, possession of the property was given to respondent No. 7 on December 14, 2005, sale certificate was issued on January 20, 2006, respondent No. 7 got the property registered in its name on January 30, 2006 by paying stamp duty of Rs. 2.25 crores, secured creditors gave discharge to respondent No. 1 Company on March 30, 2007. By May 17, 2007, 4054 workers were paid and the said figure, at the time of hearing of this appeal reached to 4105. It was also stated by the respondent No. 7 purchaser that plant and machinery were removed and sold as scrap materials.

According to the appellant, as soon as he came to know about the above agreements, sale of property by private negotiations and without taking workers in confidence, he submitted a representation to the Chief Justice of High Court of Bombay pointing out several illegalities committed by respondent No. 1 Company in not settling the dues of workmen. The representation was converted into Public Interest Litigation (PIL) and was registered as PIL Writ Petition No. 126 of 2005. The appellant herein filed an affidavit in the said petition on June 27, 2006. The writ petition came up for hearing before a Division Bench of the High Court on July 13, 2006 and after hearing the parties, the writ petition had disposed of by the Court observing that the grievance of the workers could be redressed before 'appropriate forum'. The complaint against sale of property by private treaty also could be adjudicated in 'proper proceedings' and the controversy did not deserve to be taken into PIL. Liberty, however, was granted by the Court to all aggrieved parties to pursue 'appropriate remedy' for redressal of their grievances.⁴⁶

21. Strict Scrutiny.—The development of the principle of "strict scrutiny" or "proportionality" in administrative law in England is, however, recent. Administrative action was traditionally being tested on *Wednesbury* grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of "strict scrutiny". In the case of these freedoms, *Wednesbury* principles are no longer applied. The courts in England could not expressly apply proportionality in the absence of the convention but tried to safeguard the rights zealously by testing the said rights as basic to the common law and the courts then applied the strict scrutiny test. Adverting to cases where fundamental freedom was not invoked and where administrative action was questioned, it was said that the courts were then confined only to a secondary review while the primary decision would be with the

administrator. Hence the principle of strict scrutiny has been applied accordingly.⁴⁷

22. Taj Heritage Corridor Project.—Judiciary may step in where it finds the actions on the part of the Legislature or the executive were illegal or unconstitutional but the same by itself would not mean that public interest litigation, should be converted into an adversarial litigation. The jurisdiction of the Court to issue a writ of continuous mandamus was only to see that proper investigation was carried out in Taj Heritage Corridor Project. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order, which would interfere with its judicial functions. Constitutional scheme of this country envisages disputes resolution mechanism by an independent and impartial tribunal. No authority, except Superior Court in the hierarchy of judiciary, can issue any direction which otherwise take away the discretionary jurisdiction of any Court of law. Once a final report has been filed in terms of Section 173 of Criminal Procedure Code, it was the Magistrate alone who can take appropriate decision in the matter one way or the other. Application was filed in the P.I.L. requesting the Court to decide upon legality of refusal of sanction by Governor to prosecute the Chief Minister and Minister for Environment. The court refused to go into the question on a presupposition that order would not be challenged.

A project known as Taj Heritage Corridor Project was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities. The said activities on the part of the Government of Uttar Pradesh was brought to the notice of the Court. A detailed inquiry was directed to be made by the Central Bureau of Investigation (CBI). Upon consideration of the report submitted before it by CBI, the Court in its order dated 18.9.2003 directed it to register a First Information Report and make further investigation in accordance with law. CBI investigated into the matter, including the roles played by Ms. Mayawati, the then Chief Minister, and Mr. Naseemuddin Siddiqui, the then Minister for Environment, Government of Uttar Pradesh. Investigations were also carried out against some officers.

CBI was later on asked to furnish a self-contained note as regards its findings against the erring officers and holders of public posts. A detailed report was submitted by it. A question arose as to what directions, if any, should be issued by the Court having regard to the conflict in opinions expressed by different authorities of CBI in regard to Ms. Mayawati and Mr. Naseemuddin Siddiqui.

The said question was considered by this Court in its judgment and order dated 27.11.2006 in *M.C. Mehta (Taj Corridor Scam) v. Union of India and others*, (2007) 1 SCC 110.

In exercise of its jurisdiction under Article 32 of the Constitution of India and having regard to Article 49 and clause (g) of Article 51A of the Constitution of India, the Court while entertaining the public interest litigation at the instance of the writ petitioner had been taking all steps which have been thought necessary and proper in the matter. No doubt, a First Information Report has been lodged at the instance of the Court. Yet again the Court thought it fit to issue requisite directions in its order dated 27.11.2006 directing the learned Special Judge to apply its mind on the material collected during investigation

47. Rameshwar Prasad & Others v. Union of India and another, AIR 2006 SC 980.

by CBI and pass appropriate orders thereupon. The Court has been exercising its jurisdiction in public interest. It has been exercising its jurisdiction to issue a writ of continuous mandamus in the light of the decision of the Court in Vineet Narain and Others v. Union of India⁴⁸.

The executive was charged with a duty to keep vigilance over the law and order situation. It was obliged to prevent crime. If an offence was committed allegedly. It was the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it was its duty to collect evidence for the purposes of proving the offence. Once that was completed, the investigating officer submits report to the court requesting the Court to take cognizance of the offence under Section 190 Criminal Procedure Code and his duty comes to an end. Therefore, there were well-defined and well-demarcated functions in the field of crime detection and their subsequent adjudication by the court. Lastly, the term investigation under Section 173(2) of the Criminal Procedure Code includes opinion of the Officer in charge of the police station as to whether there was sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion was not legal evidence. At the stage of Section 173 (2) the question of interpretation of legal evidence does not arise. In any event, that function was that of the courts.⁴⁹

23. Interim order Proceedings—By an interim order proceedings for acceptance of the tenders and thereafter were directed to remain stayed. The High Court soon realized that the issue of public interest raised in the writ petition required the conduct of the case not to be left in the hands of the writ petitioner alone, and therefore, by its order dated 7-12-1999 appointed amicus curiae to assist the Court. However, a little later it was brought to the notice of the High Court that the original writ petitioner was not carrying on well with the amicus curiae and to avoid the conflict the High Court chose to proceed with the hearing of the petition dispensing with the assistance of the amicus curiae. The fact remains that the litigation had assumed the character of a public interest litigation of wider scope, not necessarily confined to grievance raised by the writ petitioner and the High Court was intervening to bring under its scrutiny. On the well-settled parameters of public interest, the proceedings of CIDCO relating to attempted disposal of developable land.⁵⁰

24. Misuse of land-gifted to government—the stadium to be used for sports activities only with certain exceptions.—The submissions made by the learned counsel for the petitioner that the land should be utilized only for the purposes mentioned in the Gift Deed, merit acceptance. It is settled-law that the parties to a contract or a deed are bound by the terms and conditions mentioned in the deed. The Advocate General in his reply has submitted that there is no intention on the part of the State of Rajasthan to utilize the land in question for any other purposes other than the purposes mentioned in the Gift Deed. However, the Advocate General submits that the State Government should also be permitted to celebrate the two national events, i. e., 15th August and 26th January, the Independence Day and the Republic Day, in the land in question. Such a request, is reasonable and in public interest.

48. (1998) 1 SCC 226.

49. M.C. Mehta v. Union of India & Ors., AIR 2008 SC 180.

50. Padma v. Hiralal Motilal Disarda, AIR 2002 SC 3252 at 3256: 3257.

Under these circumstances, the State Government is at liberty to celebrate these two national events and for holding functions on these days. As already noticed, the Helipad has already been constructed and the Helipad is in a small portion of the stadium and that the same will be utilized for providing landing facilities to receive the national high dignitaries, such as the President of India, the Prime Minister of India, Governor, Chief Minister and other foreign dignitaries. Since the Helipad has already been constructed at the instance of the Government, we permit the Helipad to remain there in the same place and to be utilized for the purpose mentioned above. However, we make it clear that the land in question, including the Stadium, could not be utilized for any other purposes other than the sports purposes and allied activities.⁵¹

25. Black Money accumulation in Foreign Banks.—Scrutiny, and control, of activities, whether in the economic, social or political contexts, by the State, in the public interest as posted by modern constitutionalism, was substantially effectuated by the State “following the money”. In modern societies very little gets accomplished without transfer of money. The incidence of crime, petty and grand, like any other social phenomena was often linked to transfers of monies, small or large. Money, in that sense, can both power, and also reward, crime. As noted by many scholars, with increasing globalization, an ideological and social construct, in which transactions across borders were accomplished with little or no control over the quantum, and mode of transfer of money in exchange for various services and value rendered, both legal and illegal, nation-states also have begun to confront complex problems of cross-border crimes of all kinds. Whether this complex web of flows of funds, instantaneously, and in large sums was good or bad, from the perspective of lawful and desired transactions was not at issue in the context of the matters before this Court.

The worry of Supreme Court related not merely to the quantum of monies said to have been secreted away in foreign banks, but also the manner in which they may have been taken away from the country, and with the nature of activities that may have engendered the accumulation of such monies. The worry of Supreme Court was also with regard to the nature of activities that such monies may engender, both in terms of the concentration of economic power, and also the fact that such monies may be transferred to groups and individuals who may use them for unlawful activities that were extremely dangerous to the nation, including actions against the State. The worry of Supreme Court also relate to whether the activities of engendering such unaccounted monies, transferring them abroad, and the routing them back to India may not actually be creating a culture that extols the virtue of such cycles, and the activities that engender such cycles were viewed as desirable modes of individual and group action. The worry of Supreme Court also relate to the manner, and the extent to which such cycles were damaging to both national and international attempts to combat the extent, nature and intensity of cross-border criminal activity. Finally, the worry of Supreme Court were also with respect to the extent of incapacities, system wide, in terms of institutional resources, skills, and knowledge, as well as about incapacities of ethical nature, in keeping an account of the monies generated by various facets of social action in the country and thereby developing effective mechanisms of control.

These incapacities go to the very heart of constitutional imperatives of governance. Whether such incapacities were on account of not having devoted enough resources

51. Anil Sharma (Dr.) v. State of Rajasthan, AIR 2002 Raj 328 at 330: 2001 (4) Raj 421: 2001 (3) Raj LR 369.

towards building such capacities, or on account of a broader culture of venality in the wider spheres of social and political action, they run afoul of constitutional imperatives.

Large amounts of unaccounted monies, stashed away in banks located in jurisdictions that thrive on strong privacy laws protecting bearers of those accounts to avoid scrutiny, raise each and every worry delineated above. First and foremost, such large monies stashed abroad and unaccounted for by individuals and entities of a country, would suggest the necessity of suspecting that they have been generated in activities that have been deemed to be unlawful. In addition, such large amounts of unaccounted monies would also lead to a natural suspicion that they have been transferred out of the country in order to evade payment of taxes, thereby depleting the capacity of the nation to undertake many tasks that were in public interest.

Security of the nation, infrastructure of governance, including those that relate to law making and law keeping functions, crime prevention, detection and punishment, coordination of the economy, and ensuring minimal levels of material, and cultural goods for those who may not be in a position to fend for themselves or who have been left by the wayside by the operation of the economy and society, may all be cited as some examples of the kinds of public goods that the State was expected to provide or enable the provision of. Inasmuch as the market was primarily expected to cater to purely self centered activities of individuals and groups, markets and the domain of purely private social action significantly fail to provide such goods. Consequently, the State, and government, emerges to rectify the coordination problem, and provide the public goods.

The concept of a “soft state” was famously articulated by the Nobel Laureate, Gunnar Myrdal. It was a broad based assessment of the degree to which the State, and its machinery, was equipped to deal with its responsibilities of governance. The more soft the State was, greater the likelihood that there was an unholy nexus between the law maker, the law keeper, and the law breaker.

When a word like “crimes” was used, it was common for people, and the popular culture to assume that it was “petty crime,” or crimes of passion committed by individuals. That would be a gross mischaracterization of the seriousness of the issues involved. Far more dangerous were the crimes that threaten national security, and national interest. For instance, with globalization, nation and states were also confronted by the dark worlds of international arms dealers, drug peddlers, and various kinds of criminal networks that extend support to home-grown terror or extremist groups, or those that have been nurtured and sustained in hostile countries, depend on networks of formal and informal, lawful and unlawful mechanisms of transfer of monies across boundaries of nation and states. They work in the intricacies of the micro-structures of financial transfers across the globe, and thrive in the lacunae, the gaps in law and of effort. The loosening of control over those mechanisms of transfers, guided by an extreme neo-liberal thirst to create a global market that was free of the friction of law and its enforcement, by nation-states, may have also contributed to an increase in the volume, extent and intensity of activities by criminal and terror networks across the globe.

Increasingly, on account of “greed is good” culture that has been promoted by neo-liberal ideologues, many countries face the situation where the model of capitalism that the State was compelled to institute, and the markets it spawns, was predatory in nature. From mining mafias to political operators, all willingly bend policies of the State to suit particular individuals or groups in the social and economic sphere.

Even as the State provides violent support to those who benefit from such predatory capitalism, often violating the human rights of its citizens, particularly its poor, the market begins to function like a bureaucratic machine dominated by big business; and the State begins to function like the market, where everything was available for sale at a price.

If the State was soft to a large extent, especially in terms of the unholy nexus between the law makers, the law keepers, and the law breakers, the moral authority, and also the moral incentives, to exercise suitable control over the economy and the society would vanish. Large unaccounted monies were generally an indication of that. In a recent book, Prof. Rotberg states, after evaluating many failed and collapsed states over the past few decades :

“Failed states offer unparalleled economic opportunity - but only for a privileged few. Those around the ruler or ruling oligarchy grow richer while their less fortunate brethren starve. Immense profits were available from an awareness of regulatory advantages and currency speculation and arbitrage. But the privilege of making real money when everything else is deteriorating is confined to clients of the ruling elite. The nation-state’s responsibility to maximize the well-being and prosperity of all its citizens is conspicuously absent, if it ever existed.... Corruption flourishes in many states, but in failed states it often does so on an unusually destructive scale. There is widespread petty or lubricating corruption as a matter of course, but escalating levels of venal corruption mark failed states”. Breakdown, Prevention and Repair” in ‘WHEN STATES FAIL; CAUSES AND CONSEQUENCES’, Rotberg, Robert I., Ed. Princeton University Press (2004)).

India finds itself in a peculiar situation. Often celebrated, in popular culture, as an emerging economy that was rapidly growing, and expected to be a future economic and political giant on the global stage, it was also popularly perceived, and apparently even in some responsible and scholarly circles, and official quarters, that some of its nationals and other legal entities have stashed the largest quantum of unaccounted monies in foreign banks, especially in tax havens, and in other jurisdictions with strong laws of secrecy. There were also apparently reports, and analyses, generated by Government of India itself, which place the amounts of such unaccounted monies at astronomical levels.

The Petitioners contend: (i) that the sheer volume of such monies points to grave weaknesses in the governance of the nation, because they indicate a significant lack of control over unlawful activities through which such monies were generated, evasion of taxes, and use of unlawful means of transfer of funds; (ii) that these funds were then laundered and brought back into India, to be used in both legal and illegal activities; (iii) that the use of various unlawful modes of transfer of funds across borders, gives support to such unlawful networks of international finance; and (iv) that in as much as such unlawful networks were widely acknowledged to also effectuate transfer of funds across border in aid of various crimes committed against persons and the State, including but not limited to activities that may be classifiable as terrorist, extremist, or unlawful narcotic trade, the prevailing situation also has very serious connotations for the security and integrity of India.

Specifically, it was alleged that Hassan Ali Khan was served with an income tax demand for Rs.40,000.00 Crores (Rupees Forty Thousand Crores), and that the Tapurias were served an income tax demand notice of Rs.20,580.00 Crores (Rupees Twenty Thousand and Five Hundred and Eighty Crores). The Enforcement Directorate, in 2007,

disclosed that Hassan Ali Khan and “dealings amounting to 1.6 billion US dollars” in the period 2001-2005. In January 2007, upon raiding Hassan Ali’s residence in Pune, certain documents and evidence had been discovered regarding deposits of 8.04 billion dollars with UBS bank in Zurich. It was the contention of the Petitioners that, even though such evidence was secured nearly four and half years ago, (i) a proper investigation had not been launched to obtain the right facts from abroad; (ii) the individuals concerned, though present in India, and subject to its jurisdiction, and easily available for its various departments, had even been refusing to divulge the details and information that would reveal the actual status of the investigation, whether in fact it was being conducted at all, or with any degree of seriousness; (iv) given the magnitude of amounts in question, especially of the demand notice of income tax, the laxity of investigation indicates multiple problems of serious non-governance, and weaknesses in the system, including pressure from political quarters to hinder, or scuttle, the investigation, prosecution, and ultimately securing the return of such monies; and (v) given the broadly accepted fact that within the political class corruption was rampant, ill-begotten wealth has begun to be amassed in massive quantities by many members in that class, it may be reasonable to suspect, or even conclude, that investigation was being deliberately hindered because Hassan Ali Khan, and the Tapurias, had or/Were continuing to handle the monies of such a class.

While it would appear, from the Status Reports submitted to the Supreme Court, that the Enforcement Directorate has moved in some small measure, the actual facts were not comforting to an appropriate extent. In fact the court was not convinced that the situation has changed to the extent that it ought to so as to accept that the investigation would now be conducted with the degree of seriousness that was warranted. According to the Union of India the HLC was formed in order to take charge of and direct the entire investigation, and subsequently, the prosecution. In the meanwhile a charge sheet has been filed against Hassan Ali Khan. Upon inquiry by the court as to whether the charge-sheet had been vetted by the HLC, and its inputs secured, the counsel for Union of India were flummoxed. The fact was that the charge sheet had not been given even for the perusal of the HLC, let alone securing its inputs, guidance and direction. The Court was not satisfied by the explanation offered by the Directorate of Enforcement by way of affidavit after the orders were reserved. Be it noted that a nodal agency was set up, pursuant to directions of the Court in Vineet Narain case given many years ago. Yet the same was not involved and these matters were never placed before it. Why ?

From the status, reports, it was clear that the problem was extremely complex, and many agencies and departments spread across the country have not responded with the alacrity, and urgency, that one would desire. Moreover, the Union of India has been unable to answer any of the questions regarding its past actions, and their implications, such as the slowness of the investigation, or about grant of license to conduct retail banking by UBS, by reversing the decision taken earlier to withhold such a license on the grounds that the said bank’s credentials were suspect. To this latter query, the stance of the Union of India has been that entry of UBS would facilitate flow of foreign investments into India. The question that arises was whether the task of bringing foreign funds into India override all other constitutional concerns and obligations?

The predominant theme in the responses of Union of India before this court has been that is doing all that it can to bring back the unaccounted monies stashed in various banks abroad. To this is added the qualifier that it is an extremely complex problem, requiring the cooperation of many different jurisdictions, and an internationally: coordinated effort.

Indeed they are complex, the Court did not wish to go into the details of arguments about whether the Union of India is, or is not, doing necessary things to achieve such goals. That is not necessary for the matters at hand.

What is important is that the Union of India has obtained knowledge, documents and information that indicated possible connection between Hassan Ali Khan, and his alleged co-conspirators and known international arms dealers. Further, the Union of India was also in possession of information that suggested that because the international arms dealing network and a very prominent dealer in it, could not open a bank account even in jurisdiction that is generally acknowledged to lay great emphasis on not asking sources of money being deposited into its banks, Hassan Ali Khan may have played a crucial role in opening an account with the branch of the same bank in another jurisdiction. The volume of alleged income taxes owed to the country, as demanded by the Union of India itself, and the volume of monies, by some accounts US \$8.04 billion, and some other accounts in excess of Rs. 70,000 crores, that are said to have been routed through various bank accounts of Hassan Ali Khan, and Tapurias. Further, from all accounts it has been acknowledged that none of the named individually have any known and lawful sources for such huge quantities of monies. All of these factors, either individually or combined, ought to have immediately raised questions regarding the sources being unlawful activities, national security, and transfer of funds into India for other illegal activities, including act against the State. It was only at the repeated insistence that such matter equal if not even greater importance than issue of tax collection, has the Union of India belatedly concluded that such aspects also ought to be investigated with thoroughness. However, there is still no evidence of really serious investigation into these other matters from the national security perspective.

Supreme Court was of the opinion that in these matters fragmentation of government, and expertise and knowledge, across many department, agencies and knowledge, across many departments, agencies and across various jurisdictions, both within the country, and across the globe, is a serious impediment to the conduct of a proper investigation. We hold that it is in fact necessary to create body that coordinates, directs, and where necessary orders timely and urgent action by various institutions of the State. We also hold that the continued involvement of this Court in these matters, in a broad oversight capacity, is necessary for upholding the rule of law, and achievement of constitutional values. However, it would be impossible for this Court to be involved in day to day investigation, or to constantly monitor each and every aspect of the investigation.

(i) Following orders passed by the Supreme Court. —

- (i) That the High Level Committee constituted by the Union of India, comprising of (i) Secretary, Department of Revenue; (ii) Deputy Governor, Reserve Bank of India; (iii) Director, IB; (iv) Director, Enforcement; (v) Director, CBI; (vi) Chairman, CBDT; (vii) DG, Narcotics Control Bureau; (viii) DG, Revenue Intelligence; (ix) Director, Financial Intelligence Unit; and (x) JS (FT & TR-1), CBDT be forthwith appointed with immediate effect as a special investigation Team (SIT);
- (ii) That the Special Investigation Team, so constituted, also include Director, Research and Analysis Wing;

- (iii) That the above Special Investigation Team, constituted, be headed by and include the following former eminent judges of this Court: (a) Hon'ble Mr. Justice B.P Jeevan Reddy as Chairman; and (b) Hon'ble Mr. Justice M.B Shah as Vice-Chairman; and that the Special Investigation Team function under their guidance and direction;
- (iv) That the Special Investigation Team, so constituted, shall be charged with the responsibilities and duties of investigation, initiation of proceedings, and prosecution, whether in the context of appropriate criminal or civil proceeding of: (a) all issues relating to the matters concerning and arising from unaccounted monies of Hassan Ali Khan and Tapurias; (b) all other investigation already commenced and are pending, or awaiting to be initiated, with respect to any other known instances of the stashing of unaccounted monies in foreign bank accounts by Indians or other entities operating in India; and (c) all other matters with respect to unaccounted monies being stashed in foreign banks by Indians or other entities operating in India that may arise in the course of such investigations and proceedings. It is clarified here that within the ambit of responsibilities described above, also lie the responsibilities to ensure that the matters are also investigated, proceeding initiated and prosecutions conducted with regard to criminality and/or unlawfulness of activities that may have been the source for such monies, as well as the criminal and/or unlawful means that are used to take such unaccounted monies out of and/or bring such monies back into the country, and use of such monies in India or abroad. The Special Investigation Team shall also be charged with the responsibility of preparing a comprehensive action plan, including the creation of necessary institutional structures that can enable and strengthen the country's battle against generation of unaccounted monies, and their stashing away in foreign banks or in various forms domestically.
- (v) That the Special Investigation Team so constituted report and be responsible to this Court, and that it shall be charged with the duty to keep this Court informed of all major developments by the filing of periodic status reports, and following of any special orders that this Court may issue from time to time;
- (vi) That all organs, agencies, departments and agents of the State, whether at the level of the Union of India, or the State Government, including but not limited to all statutorily formed individual bodies, and other constitutional bodies, extend all the cooperation necessary for the Special Investigation Team so constituted and functioning;
- (vii) That the Union of India, and where needed even the State Government, are directed to facilitate the conduct of the investigations, in their fullest measure, by the Special Investigation Team so constituted and functioning, by extending all the necessary financial, material, legal, diplomatic and intelligence resources, whether such investigations or portions of such investigations occur inside the country or abroad.
- (viii) That the Special Investigation Team also be empowered to further investigate even where charge sheets have been previously filed; and that the Special Investigation Team may register further cases, and conduct appropriate investigations and initiate proceedings, for the purpose of bringing back unaccounted, monies unlawfully kept in bank accounts abroad.

(ii) Power to order this SIT derived from.—

The basic structure of the constitution cannot be amended even by the amending power of the legislature. Our constitution guarantees the right, pursuant to Clause (1) of Article 32, petition this court on the ground that the rights guaranteed under part III of the Constitution have been violated. This provision is a part of the basic structure of the Constitution. Clause (2) of Article 32 empowers this court to issue “directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by part III”. This is also a part of the basic structure of the Constitution.

In order that the right guaranteed by Clause (1) of Article 32 be meaningful, and particularly because such petitions seek the protection of fundamental rights, it is imperative that in such proceeding the petitioners are not denied the information necessary for them to properly articulate the case and be heard, especially where such information is in the possession of the State. To deny access to such information, without citing any constitutional principle or enumerated grounds of constitutional prohibition, would be to thwart the right granted by Clause (1) of Article 32.

It is indeed true that the information shared by Germany, with regard to certain bank accounts in Liechtenstein, also contains names of individuals who appear to be Indians. The petitioners have also claimed that names of all the individuals have been made public by certain segments of the media. However, while some of the accounts, and individuals holding those accounts, are claimed to have been investigated, others have not been. No conclusion can be drawn as to whether those who have not been investigated, or only partially investigated and proceedings not initiated have committed any wrong doing. There is no presumption that every account holder in banks Liechtenstein has acted unlawfully. In these circumstances, it would be inappropriate for this Court to order the disclosure of such names, even in the context of proceedings under Clause (1) of Article 32.

ULTIMATELY SUPREME COURT HELD AS UNDER:

- (I) The Union of India shall forthwith disclose to the petitioners all those documents and information which they have secured from Germany, in connection with the matters discussed above, subject to the conditions specified in (ii) below;
- (II) That the Union of India is exempted from revealing the names of those individuals who have accounts in banks of Liechtenstein, and revealed to it by Germany, with respect of the investigations/enquires are still in progress and no information or evidence of wrongdoing is yet available;
- (III) That the names of those individuals with bank accounts in Liechtenstein, as revealed by Germany, with respect of whom investigations have been concluded, either partially or wholly, and show cause notices issued and proceedings initiated may be disclosed; and

That the Special Investigation Team, constituted pursuant to the orders of today by this Court, shall take over the matter of investigation of the individuals whose names have been disclosed by Germany as having accounts in banks in Liechtenstein, and expeditiously conduct the same. The Special Investigation Team shall review the concluded matters also in this regard to assess whether investigations have been thoroughly and properly conducted or not, and on coming to the conclusion that there is a

need for further investigation shall proceed further in the matter. After conclusion of such investigations by the Special Investigation Team, the Respondents may disclose the names with regard to whom show cause notices have been issued and proceedings initiated.⁵²

26. Non-utilisation of grants by the Government of Bihar, allocated by the Government of India. Cases as the present one relate to the state of affairs on which, the media has reported from time to time and the Government of India has also expressed concern that the Government of Bihar was not utilising the grants, which have been allocated nor was generating grants for planning. It was already on record that allocations which would normally come to local bodies have not been made and Bihar has lost out on receiving grants from the Government of India. The Government of India has made it clear to the Government of Bihar, in no uncertain terms, that unless grass root democracy is restored and local bodies are made functional, Bihar will not be given funds as grants meant for local bodies.

At the present the Court was not concerned as to which project was to be taken up first or executed or completed. Presently, the question was of a impending situation of lapsed grants because of non-utilisation with all the risks of funds not being allocated for the next plan. There was a danger of projects being abandoned. This should not happen. As the period of adjournment was taken lightly by the State respondents in not showing concern to grants which may lapse at end of the financial year, leaves the Court with no option but to spell out its concern.

Thus, it would be appropriate that the fund allocations as are referred to in the recommendations of the 10th Finance Commission at Page 41 being a sum of Rs. 31 crores, Rs. 21 crores, Rs. 5.50 crores ammounting to Rs. 57.50 crores, be deposited in a separate account with the Reserve Bank of India, Patna in the head under which it was allocated. Hereinafter, it will be entirely up to the State of Bihar to make out a plan allocation for the utilisation of these grants. In the circumstances, let this amount be deposited as suggested by the Court and, thereafter (a) the Government of Bihar may make out a plan allocation for the utilisation of grant, (b) request the Government of India for appropriation of the grant, and (c) a further request for funding under the same heading for the next plan period. The Court cannot ignore the situation that the people of Bihar will lose their funding because some where within the Government does not have the time for priorities for utilisation of grants for public projects.

The Court now was requiring Registrar General of the Court that all these public interest litigations which relate to complaints on non-utilisation of grants, lapse of grants or the apprehension of losing grants be made as one group and placed before the Court.⁵³

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52. Ram Jethmalani and other petitioners v. Union of India, 2011(3) RCR Civil (SC).

53. Krishna Chandra Prasad Singh, M.L.A. v. State of Bihar, (2001) BLJ 571 at 572, 573 (Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.).

Chapter 5

Fundamental Rights to Trade & Business



Synopsis

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1. Public Interest Litigation—Bar on.—What would be the consequences if a litigation is treated as a public interest litigation where all the ingredients thereof are present, has never been treated as a bar to entertain a public interest litigation although it is required to be seen that the ingredients of the public interest litigation are present and care has to be taken that in the name of public interest litigation someone does not come to Court to achieve his own interest or for political gain or for a blaze of publicity and he is not a busybody or interloper. But for reasons best known to the Reserve Bank of India and Union of India no provision either in the Act or in the aforesaid 1987 Directions was made to deal with a situation where because of violation of the provisions of the 1987 Direction by making unsafe or unsecured investment and by diversion of funds to the directors and subsidiaries companies, the R.N.B. Cs. are unable to meet their deposit liability and the small depositors would be deprived of their life's savings. There has been diversion of huge amount of money worth crores of rupees to the directors and to subsidiary and group companies. Under such a situation, therefore, immediate action, for protecting and safeguarding the interest of large number of small depositors of the concerned respondents R.N.B. Cs. and for rescuing them from the impending financial disaster and from deprivation of their life's savings is imperative. It is also important to remember the interest of the underprivileged and weaker section of the community is as much important as the interest of the affluent and the privileged class, if not more important and needs serious attention of the Court and therefore, if they are sought to be rescued through public interest litigation, which is a judicial innovation, for giving them easy access to justice and for rendering social and economic justice to them, the same cannot be opposed on the ground of encroachment on Court's time.¹

1. State v. Union of India, AIR 1996 Cal 181 at 223, 224, 225 (Samaresh Banerjee, J.): (1996) 1 Com LJ 258.

In *Sachidanand Pandey v. State of West Bengal*,² in para 39 of the judgment this is what their Lordships of the Supreme Court have held:

“On a consideration of the relevant cases cited at the bar the following propositions may be taken as well as established State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

The concept of social justice is included in Article 38 of the Constitution. The social justice is the integral part of justice in generic sense. It is dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals, etc.³

It is thus well settled by the decisions of this Court that the provisions of Part III and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal inducted in Part IV. It is also held that the fundamental rights must be construed in the light of the directive principles.⁴

Fundamental rights and directive principles are meant to supplement one another. They are complementary to each other and the provisions in Part III should be interpreted having regard to the preamble and directive principles of the society.

Employment of children in match factories is hazardous fire works cannot be allowed for them.⁵

Articles 38 and 39 of the Constitution embodied the doctrine of distributive justice. The concept of distributive justice removes the economic inequalities.

Equal pay for equal work though not a fundamental right but it is a Constitutional goal.⁶

Though the directive principles of State Policy are can not override the fundamental rights but they are necessary to determine the scope and ambit of fundamental rights. The Court may not ignore entirely the directive principles of State Policy. *Re: Kerala Education Bill*, AIR 1957 SC 352.

However, so long as there is no infringement of any fundamental right to the State conferred by the provision in Part III, there can be no objection the State acting in accordance with the directive principles set out in Part IV but subject again to the

2. AIR 1987 SC 1109 quoted in AIR 1996 Bom 314 at 330.

3. AIR India Statutory Corporation v. United Labour Union, AIR 1997 SC 645: 1997 (1) LLN 75: 1996 (11) JT 109: 1996 (9) Scale 70: 1997 (1) LLJ1113:1997 (2)Supreme 165.

4. Unni Krishnan v. State of A.P., 1993 (1) SCC 645 : AIR1993 SC 2178: 1993 (1)SCR 594: 1993 (1) JT 474: 1993 (1) Scale 290: 1993 (1) LJ 721.

5. M.C. Mehta v. State of T.N., 1991 (1) SCC 283.

6. Randhir Singh v. Union of India, AIR 1982 SC 879.

legislative and executive powers and limitations conferred on the State under different provisions.⁷

The State must encourage and support the participation of voluntary organisation in operating legal aid programme. It should be free from any control. *Centre of Legal Research v. State of Kerala*, AIR 1986 SC 1322.

Free legal aid and equal justice is guaranteed by the Constitution of India under Article 21 of the Constitution.⁸

Right to education up to the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution but it is subject to economic capacity of State. "The right to education flows directly from right to life."⁹

Free legal aid and speedy trial is the fundamental right of a poor person. This is the duty of State to provide lawyers to a poor person. *H.M. Hoskot v. Home Secretary State of Bihar*, AIR 1979 SC 1322.

2. Right to invoke the Jurisdiction of the Court.—Public interest litigation which has now come to occupy an important field in the administration of law should not be public interest litigation or private interest litigation. There must be real and genuine public interest involved in the litigation, and it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy him or his personal grudge and enmity, the Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by the Apex Court in *The Janta Dal v. H. S. Chowdhury*.¹⁰ A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner, but also with a clean hand, clean mind and a clean objective.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest any ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of 'public interest litigation' should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

The council for Public Interest Law set up by the For Foundation in U.S.A., defined the Public Interest Litigation in its report of Public Interest Law, U.S.A., 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such

7. State of Madras v. Champakan Darai Rajan, AIR 1951 SC 228.
8. State of Maharashtra v. Manubhai Pragoti Vashi, 1995 (5) SCC 730: 1995 (3) SCJ 610: AIR 1996 SC 1: 1995 (6) JT 119: 1995 (4) Scale 797: 1996 (4) SLJ 1.
9. Unm Krishnan v. State of A.P., 1993 (1) SCC 645: AIR 1993 SC 2178: 1993 (1) SCR 594: 1993 (1) JT 474: 1993 (1) Scale 290: 1993 (1) LJ 721.
10. AIR 1993 SC 892 : 1993 AIR SCW 248.

efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper, environmentalities, consumers, racial and ethnic minorities, and others.”

The Court has to be satisfied about: (a) the credentials of the applicant ; (b) the *prima fade* correctness of nature of information given by him; (c) the intention being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests:

- (a) Nobody should be allowed to indulge in wild and reckless allegations be smirching the character of others; and
- (b) avoidance of public mischief and to avoid publicly mischievous executive actions. In such cases, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to an Executive and the Legislature. The Court has to act ruthlessly while dealing with impostors and busybodies, of meddlesome interlopers impersonating as public spirited holymen. They masquerades as crusaders of justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect.

In ‘public Interest Law’ edited by Jeromy Cooper and Rajeev Chavan (Page 56) about the jurisdiction of the Court what was said was:

“Moreover, the judiciary have fairly limited powers at common law to extend the areas of public interest generally and in legal proceedings in particular. The responsibility for such extension and expansion has become a matter of political argument and debate and has fallen on the legislative branch of Government, so that what social, economic, financial or other activities should be regarded as coming within the parameters of the public interest, and if so to what extent and the method of their regulation, are largely matters that have to be enacted by Parliament and statutory instruments.”

Test litigation, representative actions, *pro bono publico*, and like broadened forms of legal proceedings are in keeping with the current ascent on justice to common man and a necessary disincentive to those who wish to by-pass the real issues on merits by suspect reliance on peripheral, procedural shortcomings.

The writ application by the villagers (OJC No. 10871 of 1996) is frivolous and is dismissed.

Coming to the writ application filed by ‘B’ few facts which were relevant were indicated. On 17-9- 1996 ‘R’ filed an application for permission before the Collector. Khurda to shift his ship room as the existing shop room was badly damaged due to heavy rain. ‘B’ filed an objection petition on 17-10-1996 stating that if such shifting is allowed, there will be a clash in business causing great financial loss to him. The Collector allowed the shifting under intimation to the Excise Commissioner. Accordingly, the Superintendent Excise issued an order which is impugned in the writ application, forwarding a copy to the Excise Commissioner seeking his approval. Objection of some persons was forwarded by the Minister of Excise on 27-11-1996. It was indicated in the

endorsement of the Excise Minister that he had discussed the matter with residents of Khurda N.A.C. who wanted shifting not to be allowed. He desired that no final decision should be taken without discussion with him. But by that time, the Collector had already allowed the shifting. Superintendent of Excise on the basis of report of S.I. in charge noted that on 26-11-1996 shifting had been done.

Orissa Excise Manual, Volume III contains the instructions issued by Board of Revenue (Revenue Commissioner), and deals with settlement of licences, Para 92 deals with settlement of licence Para 92 deals with the sites of the shops, and reads as follows:

“92. When an excise shop is settled, what is settled is the right of vend of a certain intoxicant in a certain locality. As a general rule it is not desirable that the sites of shops should be absolutely fixed in the sale proceedings, as the persons who takes settlement may find difficulty in coming to terms with the owner of specified premises. On the other hand, vagueness, which may mislead as to locality, is to be avoided. Ordinarily it will be sufficient to specify as the locality of vend, a village or certain tolas of a village, or in towns a street certain streets.

“Where this is insufficient, the Collector should specify in a particular distance from some fixed spot as the limit which the shop may be opened or some particular tract, the boundaries of which should be so described as to leave no possible room for misapprehension. The locality must be fixed and notified in the sale notification published before the settlement is made. The sites of all shops are subjected to the approval of the Collector. After the Commissioner of Excise has sanctioned settlement proposals, his approval must be obtained before any change of site is sanctioned or required.”

These instructions have been issued by the Member, Board of Revenue by exercise of powers conferred under Section 90 of the Bihar and Orissa Excise Act. 1915 (in short, ‘the Act’). The Government of Orissa in Revenue and Excise Department has issued instructions vide No. IEX-20/90 (Pt. II) 671/Ex. dt. 23-4-1990 wherein the details of sale notice have been indicated. Clause 2(vi) makes a provision for removal to any other approved site subject to approval of the Excise Commissioner.

Stand of the State Government is that approval of the Excise Commissioner was sought for and the matter was under consideration when the writ application came to be filed and the process of consideration came to be stalled.

In view of requirement of approval of the Commissioner of Excise the change of site is to be effective only with the approval of the Excise Commissioner. In the instant case, change has been permitted and a copy of office order allowing shifting was sent to the Commissioner of Excise for favour of information. However, his approval was sought for. The Commissioner has not passed final order in the matter. Before approval the shifting should not have been permitted to be effected. From the impugned office order it appeared that the Superintendent of Excise has not only directed shifting, but also has indicated that shifting was to be done under the supervision of local charge officer and compliance report was to be submitted for records so far as the actual date of shifting is concerned. The learned counsel for ‘R ’ submitted that in view of the order passed by the Superintendent of Excise physical shifting has been done. The situation is certainly piquant. In the peculiar circumstances, Court directed the Commissioner of Excise to take a decision whether shifting is to be allowed. He shall pass necessary orders within ten

days from today. In view of undisputed position that the shop has been shifted, *status quo* way ordered to be maintained till disposal of the matter by the Commissioner.¹¹

The present writ petition was one of the glaring examples as to how each and every problem of life is brought to the Court to find its solution. The writ petitioners have prayed, *inter alia*, for issuing a writ of *mandamus* calling upon the respondents and each one of them and their agents to show cause as to why the respondents should not be directed to act in accordance with law and also a writ of *certiorari* calling upon respondents to certify and to transmit all the records and/or proceedings and papers relating to the proposed agreement of “Darjeeling Gurkha Hill Council” to the Court so that the members of the public may get information of the said proposed agreement and for an interim order directing the respondents and other officers to take immediate steps for not to use the word “Gurkha” in the proposed agreement of Darjeeling Hill Council and to take such other necessary steps which would be for the interest of the public at large.

It was stated in the writ petition that the petitioners not for their individual interest, but for the sake of the country at large have filed the writ petition by way of a public interest litigation, stating that the respondents, being Union of India and the Secretary, Ministry of Home Affairs, and the respondents being the Government of West Bengal and its Secretary, Home Department, were taking steps contrary to and in-consistent with the spirit of the Constitution of India and/or the act a causes to have been done by the said respondents which would result in spreading communal feeling and the word specially used in the proposed agreement being ‘Gorkha’ should be avoided otherwise by conceding to such demand, the steps have been taken in the way of dividing the country and the entire interest of the State is jeopardy. These facts have been elaborated by making various averments by giving examples of Jharkhand activities and other political activities within the State. It was also stated that by conceding the demand of a section of people, who have no *locus standi* to inter into such agreement and/or accord, the spirit of the Constitution is being violated and the people at large have been kept in dark to know as to the whereabouts of the proposed agreement and by suppressing all facts and by keeping in darkness such steps have been taken prejudicing the interest of the people of the State and in particular the interest a large section of the people is affected.

This Court has further found out that the Memorandum of Settlement *per se* has got no legal entity. Mr. Somnath Chatterjee has very fairly submitted that there is nothing in the Memorandum of Settlement itself and there is no machinery to enforce the same in any forum by any of the parties who have signed the same. There must be proper legislation to that effect. Without an appropriate legislation, the settlement and/or accord, is nothing but an empty rhetoric. Before legislation it has *per se* no legal effect. It is true that peace is required but peace cannot be purchased. Peace is a gift of God which is seldom given to the people. The people have to secure the same by sorrows and sufferings. To have peace, there must be prudence and toleration. In the life of a nation a statement has a preference to a politician. With regard to the historical background and/or political background, the Court has nothing to do in this respect. This Court is to see what is the legal validity and/or the Constitutional validity of the accord. The petitioners amongst others have apprehension and/or anxiety as to the proposed step to enter into the accord and/or implementation of the same, but those apprehensions and/or the anxieties are not enough. This Court has to examine as to any step taken by the executive is

11. Villagers of Jajar Singh Basanti Nath Dutta v. State, AIR 1997 Orissa 163 at pp. 164, 165, 166, 167.

contrary to law. A matter cannot be questioned in a Court unless such steps are *mala fide* indeed. But if an accord has been reached or a step has been taken which is to be considered by the appropriate legislature will have to go into details as to the memorandum of settlement and/or accord and if the wisdom of the legislature finds it sufficient then it has to pass an appropriate legislation. The petitioners may question the said law before the Court as to its Constitutional or legal validity if any infirmity is found in such law. So there were two more safety valves to consider as to whether the accord which is alleged to have been signed would be implemented by the appropriate legislation or not and even after the legislation it can be considered in an appropriate case if challenge is made. It is true thgt every person and/or section of people have got right to come to Court and the Court will try to solve the problem by enlarging the horizon. But in this case his Court finds that the petition is a premature one at this stage. The legislature will examine in details the accord and the petitioners or any person or persons have liberty to file an appropriate case if the situation so demands. Considering this aspect of the matter this Court finds that at this stage it would be futile to entertain this writ petition and to cause further enquiry as to the background, be it political or historical as to the outcome of the Memorandum of Settlement. All these questions as raised by the petitioners may be canvassed at a later stage, if any appropriate case is made out by the petitioners.¹²

3. Legal support to the poor and disadvantaged sections of the community.—

This writ petition was filed by the Bihar Legal Support Society which is a registered Society having as its main aim and objective provision of legal support to the poor and disadvantaged sections of the community with a view to assisting them to fight for their constitutional and legal rights through the process of law. The occasion for filing the writ petition is set out in para 2 where it has been stated that a Bench of this Court sat late at night on 5-9-1986 for considering the bail application of 'L' and 'S' and that the same anxiety which was shown by this Court in taking up the bill application of these two gentlemen must "permeate the attitude and inclination of this Hon'ble Court in all matters where questions relating to the liberty of citizens, high or low, arise" and that the bail applications of "small men" must receive the same importance as the bail applications of "big industrialists". The petitioner, therefore, prays that special leave petitions against orders refusing bail or anticipatory bail should be taken up by this Court immediately in the same manner in which the special leave petition of these two "big industrialists" was taken up by the Court.

It may be pointed out thafso far as this Court is concerned, the special leave petitions of "small men" are as much entitled to consideration as special leave petition of "big industrialists". In fact, this Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice. The majority of the people of our country are subjected to this denial of access to justice and overtaken by despair and

12. Sunil Kumar v. Union of India, AIR 1989 Cal 197 at pp. 198, 199, 201, 202 : (1989) 2 Cal LT 31 (Susanta Chatterji, J.).

helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings. This Court has always, therefore, regarded it as its duty to come to the rescue of those deprived and vulnerable sections of Indian humanity in order to help them realise their economics and social entitlements and to bring to an end their oppression and exploitation. The strategy for of public interests litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the community. This Court has always shown the greatest concern and anxiety for the welfare of the large masses of people in the country who are living life a of want and destitution, misery and suffering and has become a symbol of the hopes and aspirations of millions of people in the country. It is therefore not correct to say that this Court is not giving to the “small men” the same treatment as it is giving to the “big industrialists”. In fact, the concern shown to the poor and the disadvantaged is much greater than that shown to the rich and the well-to-do because the latter can on account of their dominant social and economic position and large material resources, resist aggression on their rights where the poor and the deprived just do not have the capacity or the will to resist and fight.¹³

4. Cancellation of registration of traders.—Instant petition was filed by the petitioner for an appropriate writ, direction and or order examining the legality of orders of cancellation of registration passed against certain traders and dealers and directing the respondent authorities to place before this Court records and proceedings showing as to what actions have been taken by them for recovery of sales tax dues from traders and dealers whose names appeared at Annexure-A and B to the petition.

The petitioner who claimed himself to be a vigilant citizen and social worker had approached the Court by filing this petition as a *pro bono publico*. According to him, many irregularities and illegalities have been committed by traders whose registration came to be cancelled by the development. In para 15, it is, *inter alia* stated:

“It is submitted that since the registrations are cancelled, their tax liability will cease and, therefore, they will go away scot free without payment of any sales tax dues and, therefore, the orders passed by the authorities at Annexure-A and B are unconstitutional, illegal, against the provisions of the said Act and, therefore, the same are liable to be quashed and set aside and the government is required to be saved from loss of revenue running into crores of rupees.

Held, ‘The petition is liable to be dismissed on more than one ground. Firstly, the present proceedings cannot be said to be in the nature of public interest litigation. As stated in affidavit-in-reply, it is averred that on account of cancellation of bogus registrations a dealer in the name of *M/s. Suresh Kumar & Brothers* has been assessed to a sum of Rs. 48,127/-. The proprietor of the said firm ‘J’ is the son of the petitioner. It is also alleged that in an appeal filed by the aggrieved party, the petitioner appears before the appellate authority. The deponent is, therefore, right in contending that “the petitioner is vitally affected by the impugned action”. He cannot be said to be *pro bono publico* actuated in the larger public interest and, hence, at his instance, the petition is not maintainable.

13. Bihar Legal Support Society, New Delhi v. C.J. of India, AIR 1987 sc 38 at p. 39 : 1987 Cri. LJ 313 : (1986) 4 SCC 767 : 1987 SCC (Cri) 537 P.N. Bhagwati, C.J.; Ranganath Misra v. Khalid, C.L. Oza and M.M. Dutt, JJ.).

Secondly, this Court does not find any substance in the contention of the petitioner that with the cancellation of registration and/or licence, the liability of dealers or traders to pay tax extinguishes or comes to an end. 'J' could not point out any provision of law from which it can be said that a liability to pay tax once accrued in accordance with law ceases to exist on an action being taken against such dealer or trader for breach of law. From the reply, it becomes clear that actions have been taken for recovery of tax dues and considerable amount has been recovered. Hence, this contention has also no force and is negative.

Finally, the petitioner has invoked extraordinary jurisdiction of this Court under Art. 226 of the Constitution. It is well-settled law that the powers under Art. 226 of the Constitution can be exercised by this Court *ex debito justitiae* in the interest of justice. They are discretionary in nature of and even if this Court finds some irregularity in the exercise of statutory power by the authority, this Court may refuse to interfere with the action if it has not resulted in miscarriage of justice. In the instant case, the deponent has stated that as a result of cancellation of bogus registrations, the authorities have been able to assess sales tax to the extent of Rs. 1,55,29,439/-. Out of the said amount, Rs. 52,61,249/- has already been recovered. The action of the respondent authorities has indeed served public interest and no grievance can be made against such steps being taken by the authorities."¹⁴

5. Safeguarding the interest of small depositors.—The objection of the respondents in granting the reliefs asked for on the ground that the same will operate harshly against them as practically the same would amount to liquidation of their business on winding up the company is not tenable. It has already been pointed out hereinbefore the 1987 directions were issued by the Reserve Bank of India in public interest as a social piece of legislation for the avowed purpose of securing and safeguarding the interest of the countless small depositors who belonged to weaker section of the community and for ensuring return of their deposits and therefore, R. N. B. Cs. including the present respondent R.N.B.Cs. have been invested with the public duty and owed a positive obligation to the small depositors to strictly follow the aforesaid 1987 directions for safeguarding and securing the interest of the small depositors. But the concerned respondents R.N.B.Cs. having violated such directions and having made unsecured investments in violations of the aforesaid 1987 Directions and even diverting and siphoning funds to its subsidiaries and directors now cannot complain that the reliefs asked for if granted would operate against them harshly and amount to practically liquidation of business. The direction introduced by the Reserve Bank of India was with the object of safeguarding and protecting the interest of the small depositors.¹⁵

6. Levy of Fees.—It could not be said that the medicinal and toilet preparations are subjected to taxes and duties under the Medicinal Act and therefore these very products could not be subjected to double taxation. The fees levied under the impugned notification were regulatory in nature. It was held that by levy under the impugned notification was no freedom of inter state trade and commerce.¹⁶

7. Environmental disturbance.—When the application of science and technology are increasingly employed in producing goods and services to improve the quality of life

14. Prahladbhai Manordas Patel v. State, AIR 1996 Guj 49 at 49, 50, 51 (C.K. Thakker and Rajesh Balia, JJ.).

15. State v. Union of India, AIR 1996 Cal 181 at 203: (1996) 1 Com LJ 258.

16. State of Bihar v. Baidyanath Ayurved Bhavan (P) Ltd., AIR 2005 SC 932.

under this circumstance there would be certain element or hazard or risk inherent in the very use of such science and technology.¹⁷

Right to clean environment is an ingredient of right to life. It is directly recognised as the part of right to live.¹⁸

The Magistrate under Section 133 of the Cr.P.C, is empowered to remove a business enterprise from a residential locality which has become serious health hazard to the residents and the whole atmosphere.¹⁹

Public Interest Litigation is a weapon. It is to be used with great care and caution. Its purpose should be to redress the public grievance.²⁰

Article 226 of the Constitution of India enables the High Courts to issue a writ for any purpose. It is not confined to enforcement of fundamental rights.²¹

Where the petitioner was not a riparian owner filed a writ petition for the prevention of pollution caused to the holy river Ganga. It was held by the Apex Court that the person who filed the writ petition was interested person protecting the lives of people.²²

Where the applications for licences to establish new industries are made in future, such application should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories.²³

Life, public health and ecology have priority over unemployment and loss of revenue problem.²⁴

Air pollution adversely affects human being as well as their atmosphere. Air pollutants cause serious health diseases like eye irritation, vegetation damage. They cause respiratory diseases and other harmful effects to human being and vegetation.²⁵

High Powered authority should be set up by the Government in consultation with the Central Board for inspecting the functions of hazardous industries, structure or quality etc.²⁶

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17. M.C. Mehta v. Union of India, (1986) 2 SCC 176: AIR 1987 SC 965: 1986 SCC (Cri) 722: 1986 (1) Scale 199.
18. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1985 SC 652: 1985 (2) SCC 431: 1985 (1) Scale 408: 1985 (3) SCR 169.
19. Ajeet Mehta v. State of Rajasthan, 1990 Cr LJ 1596.
20. State of H.P. v. A. Parent of Student of Medical College, Shimla, AIR 1985 SC 910: 1985 (3) SCC 169: 1985 (3) SCR 676: 1985 (1) Scale 758.
21. R.R. Delavai v. The Indian Overseas Bank, AIR 1991 Mad 61.
22. M.C. Mehta v. Union of India, AIR 1988 SC 1115: 1988 (1) SCC 471: 1988 SCC (Cri) 141: 1988 (1) JT69 : 1988 (1) Scale 54.
23. M.C. Mehta v. Union of India, AIR 1996 SC 2715.
24. M.C. Mehta v. Union of India, AIR 1988 SC 1037: 1987 (4) SCC 463: 1987 (3) JT 630.
25. V.S. Damodaran v. State, AIR 1996 Ker 8.
26. M.C. Mehta v. Union of India, (1986) 2 SCC 176: AIR 1987 SC 965: 1986 SCC (Cri) 122: 1986 (1) Scale 199.

Chapter 6

Violation of Fundamental Rights

Synopsis

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1. Enforcement of fundamental right.—The case of a person or class of persons whose fundamental right is violated but who cannot have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position, in such a case, the Court can and must allow any member of the public acting *bona fide* to espouse the cause of such person or class of persons and move the Court.¹ Enforcement of Fundamental Rights on behalf of a person can approach the Court for relief, even by just writing a letter, because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular Writ Petition.²

2. Apprehension of violation of fundamental right.—It is a well-known fact that over a considerable period of time foreign newspapers and journals have been freely sold and circulated in this country and it is not suggested that such circulation of foreign newspapers and journals has caused any harm to the citizens of India, or has endangered the security and sovereignty of the State. Enough safeguards exist in law against seditious, obscene writings, or writings which promote enmity between different groups on grounds of religion, place of birth, language, etc., or doing acts prejudicial to

1. State v. Union of India, AIR 1996 Cal 181 at 215.

2. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

maintenance of harmony. Then there is a Press Council Act, 1978, which establishes a Press Council for the purpose of observing the freedom of Press and of the maintained and improving the standards of newspapers and news agencies in India. Press Council has power to consume if it has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct. Much has been said by the petitioners about the PRB Act and the Trade Marks Act that they are in conflict with each other in that it is the PRB Act which is a special enactment which would prevail when it comes to registration of newspapers. As and when conflict arises between the two Acts Court can always resolve it based on well-settled principles of interpretation of statutes. Since no such conflict has been shown to arise in any particular case, it is, therefore, unnecessary for us to consider this argument in abstract. Court does not answer an academic question howsoever tempting that may be. Remedies have been provided in both the Act, if there is infringement of the provisions of any of them. Moreover, the orders passed under these two Acts are quasi-judicial orders against which judicial review and appeals are maintainable. As a matter of fact, in some cases. It has already been held that where order passed are quasi-judicial public interest litigation would not be maintainable.^{3,4}

It is argued that the executive must stick to its policy of the year 1955 laid under the Cabinet decision that no foreign owned newspaper or periodical can be permitted to be published in India, and no foreign newspapers and periodicals which deal mainly with news and current affairs be allowed to bring out Indian editions. That is a policy and policy can change with change of times. It is a political decision and the Courts have no role to play therein. Constitution itself has been amended number of times since 1950. Judiciary is not a policy making body. A policy decision when taken may be subject-matter of judicial review. Power of judicial review itself has limitations. It cannot be absolute. In *Kumari Shrelekha Vidhyarthi v. State of U.P.*, the Court said that the scope of judicial review may vary with reference to the type of matter involved, but the fact the action is reviewable, irrespective of the sphere in which it is exercised, cannot be doubted. Then the Court observed as under (at p. 551 of AIR):—

“It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, however conferred, are possessed ‘solely in order that it may use them for the public good’. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy.”

In the writ petition filed by M/s. Bandhu Associates (CWP 43/94) there is a prayer that the Registrar of Newspapers and the Registrar of Trade Marks be restrained from registering any foreign newspaper with the title which is same or similar to the title “SUN”, a publication of the petitioner. This petitioner has not stated if any foreign company has applied to either of these two authorities for registration of its publication “The Sun”. There was no reason as to why the authorities under the PRB Act and the Trade Marks Act would not act according to the provisions contained in these two Acts. The authorities cannot be prevented from exercising their discretion in accordance with

3. Common Cause v. The Commissioner of Municipal Corporation of Delhi, (1991) 3 DL 118.

4. AIR 1991 SC 537.

law particularly when the orders passed by them are quasi judicial orders which are subject to judicial review and appeal.

In *State of Madhya Pradesh v. Bhailal Bai*,^{5 6} the Court was concerned with the question of refund of tax which was not validly levied by the State Government. The question was about the power of the High Court to order refund in such a case. In this connection the Court made the following observations (para 15):—

“We see no reason to think that the High Courts have not got this power. If a right has been infringed whether a fundamental rights or a statutory right.....and the aggrieved party comes to the Court for enforcement of the right it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. Where there has been only a threat to infringe the right, an order commanding the authority not to take the action contemplated would be sufficient. It has been held by this Court that where there has been held by this Court that where there has been a threat only and the right has not been actually infringed an application under Article 226 would lie and the Courts would give necessary relief by making an order in the nature of injunction. It will, hardly be reasonable to say that while the Court will grant relief by such command in the nature of an order of injunction where the invasion of a right has been merely threatened the Court must still refuse, where the right has been actually invaded, to give the consequential relief and content itself with merely a declaration that the right exists and has been invaded or with merely quashing the illegal order made.”

There has to be some basis for apprehension. Here there are two Acts—PRB and Trade Marks, operating in the field and there is Government decision of 1955. It is submitted that Government might change its decision. How can the Court stop the executive from arriving at a different decision? As observed earlier the Court can interfere only in exercise of power of its judicial review if the change of policy is unconstitutional or against the provisions of the law. Petitioners failed on their principal ground of attack, namely, the registration of common names of newspapers; granting approval of joint venture with foreign newspaper; and allowing publication of foreign newspapers as per the existing policy.

Some fear psychosis has gripped the newspaper industry which led to filing of these petitions. In the view of the existence of the policy of the year 1955 and of the PRB Act and the Trade Marks Act there cannot be any threat as perceived by the petitioners. If the executive wants to change the policy Court cannot help the petitioners. It is for the petitioners to approach the executive to reconsider and, if necessary, to amend, vary or rescind its order or policy altogether, if there is any change in the policy of the year 1955. Court's powers are not unlimited. The petitioners have unnecessarily rushed to the Court. All these petitions are, therefore, dismissed and interim orders vacated. Applications seeking implement are also dismissed. In the case of *C W.P. 5770/93* we find the petitioners have no locus standi and as the prayer would show they were put as front men by some third person. Both these petitioners in this petitioner are, respectively, a Chartered Accountant and an Advocate, and they would be well aware of the decision of the Supreme Court laying criteria as to who can file a public interest litigation. In *Janata Dal v. H. S. Chowdhary*,⁶ the Court said that only a

5. AIR 1964 S.C. 1006.

6. (1992) 4 SCC 305 AIR 1993 SC 892.

person acting bona fide and having sufficient interest in the proceeding of PIL would alone have a locus standi and could approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration, and that a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserved rejection at the threshold. Court not satisfied about the bona fide of these two petitioners in filing this petition. This petition was, therefore, dismissed with costs.⁷

3. Deprivation of right of life and liberty under Article 21 of Constitution:—

Article 21 of the Constitution contains one of the most valuable fundamental rights which is available to every person in the country. The mandate of Article 21 of the Constitution is that no person shall be deprived of his life and personal liberty except according to the procedure established by law, the distinction between Article 21 and Article 20(3) of the Constitution is real and substantial, fundamental right conferred by Article 21 of the Constitution is available to every person whether he is or is not person accused of any offence but, the fundamental right conferred by Article 20(3) of the Constitution is available to those persons only who are persons accused of any offence. Because of, this distinction a person may be disentitled to the protection of Article 20(3) of the Constitution if he is not accused of any offence but, the protection of Article 21 of the Constitution cannot be denied on the aforesaid ground. Court, therefore, hold that every person including a person accused of an offence is entitled to protection of Article 21 of the Constitution. So far as, the acts which are punishable under the Indian Penal Code or any other law for the time being in force are concerned penal provisions which prescribe punishment for offences by necessary implication, prohibit the doing of that act which is charged as an offence made punishable according to law. The prohibition of those acts which are charged as offences is obvious from the mandate of Article 20(3) of the Constitution which provides that no person shall be convicted of any offence except for the violation any law charging that act as an offence. The penal provisions prescribing punishment for the offences thus, necessarily prohibit the doing of those acts which are charged as offences and therefore, they are calculated to protect those act which are charged as offences. Besides, there are several rights of the citizens which fall within the definition (civil rights) and are, therefore, covered by Section 9 of the Civil Procedure Code and for the enforcement of such, civil rights a person can approach a Civil Court, if he apprehends invasion on civil rights. In view, of the aforesaid reasons, the protection which is available to the common people against torture and coercion, which is not permitted by law, may be found in Article 21 of the Constitution, the penal provisions contained in Indian Penal code and other laws and the civil laws conferring/recognising civil rights and prescribing remedies for the enforcement. This shows, that persons who are not formally accused of any offence are not without legal remedy against unlawful torture or coercion which may be applied to them by any private person or the officers of the State either during investigation or otherwise. It is true that Article 20(3) of the Constitution expressly provides that no person accused of an offence shall be compelled to be a witness against himself and that this fundamental right is available only to those persons who are accused of an offence but, it does not mean that persons who are not formally accused of any offence can be compelled to be witnesses against themselves by use of torture or coercion which is not legally permissible. Held, it must be said that non-

7. M. K. Agarwal v. Union of India, AIR 1994 Del. 242 at 243, 249, 250, 251, 252, 254, 255 (D. P. Wadhwa and D. K. Jain, JJ.).

petitioner No. 1, was entitled to protection of his life and personal liberty if, the same was threatened by any act or omission of the investigating officer and the learned special Judge was not wanting in jurisdiction in giving a direction to the effect that during interrogation his counsel should be permitted to remain present. *Union of India v. Pannalal*,⁸ In *D.K. Basu v. State of West Bengal*,⁹ Hon'ble Supreme Court observed (Para 9 of Cri LJ):—

“The importance of affirmed rights of every human being need no emphasis and therefore to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. 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 violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protector of the citizens. It is committed under the shields of uniform and authority in the four walls of a Police Station or Lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the Police and other law enforcing officers is a matter of deep concern in a free society.”

The Hon'ble Supreme Court further observed (Paras 13,14 and 16 of Cri LJ):—

"Custodial violence" and abuse of Police Power is not only peculiar to this country, but, it is widespread. It has been the concern of international community because, the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite the pious declaration, the crime continues unabated, though, every civilised nation shows its concern and takes steps for its eradication."

In England torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but, with the development of common law and more radical ideas imbibing human practices were initially discouraged and eventually almost done away with, certain aberrations here and there notwithstanding. The Police Powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Phillips Committee Report of Royal Commission on Criminal Procedure (Command Papers 8092 of 1981). The report of the Royal Commission is, instructive..... The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to as very great extent.

Regarding the fundamental rights particularly Article 21 of the Constitution the Hon'ble Supreme Court observed (Para 27 of Cri LJ):—

"Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides 'no person shall be deprived of his life or personal liberty

8. 1998 Cri LJ 3746 at 3748, 3749, 3754 (Raj.)

9. 1997(1) JT (SC); 1997 Cri LJ 743.

except according to procedure established by law.' Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression 'life or personal liberty' has been held to include the right to live with human dignity and thus, it would also include within itself a guarantee against torture and assault by the State or its functionaries."

Regarding growing incidence of torture the Hon'ble Supreme Court observed (Para 18 of CriLJ):—

"However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in Police Custody has been a disturbing factor. Experience shows, that worst violations of human rights take place during the course of investigation, when the Police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of Police or other Governmental Agencies, is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder."

Regarding importance of fundamental rights guaranteed by Articles 21 and 22(1) of the Constitution the Hon'ble Supreme Court observed (para 22 of Cri LJ):—

"The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. 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. If, the functionaries of the Government become law breakers, it is found to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law up to himself thereby leading to anarchism. No civilised nation permits that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence, the answer indeed has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, other detenues and undertrials prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law."

Regarding methods adopted by investigation agencies the Hon'ble Supreme Court observed at 16 (of JT): at 750,751 of Cri LJ, of the report:—

"Instances have come to our notice where the Police has arrested a person without warrant in connection with the investigation of an offences, without recording the arrest and the arrested persons has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case of property or for extracting confession, etc. The torture and injury caused on the body of the arrestee has sometimes resulted into his death. Death in custody is not generally shown in the records of the lock-up and every

effort is made by the Police to dispose of the body or to make out a case, that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the Police officers because of ties of brotherhood. No first information Report at the instance of the victim or his kin is generally entertained and even the higher Police Officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death as the Police Lock-up where generally torture of injury is caused is away from the public gaze and the witnesses are either Police men or co-prisoners who are highly reluctant to appear as prosecution witnesses due to fear of retaliation by the Superior Officers of the Police. It is often seen that when a complaint is made against torture, death or injury, in Police custody, it is difficult to secure evidence against the Policemen responsible for resorting to third degree methods since they are in charge of Police Station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal. *State of Madhya Pradesh v. Shyamsunder Trivedi*,¹⁰ is an apt case, illustrative of the observations made by us above." At page 18 (of JT): at page 752 of Cri LJ, of the report Hon'ble Supreme Court reproduced the observation made by Hon'ble Justice Anand. His Lordships observed:—

"The Courts are also required to have a change in their outlook and attitude particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majority of Law has prevailed." In what manner the abuse of the power by investigating agencies can be checked was also considered by the Hon'ble Supreme Court and at Page 19 (of JT): at page 753 of Cri LJ; of the report the Hon'ble Supreme court observed:—

"How do we check the abuse of Police powers? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the Police Force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with the basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the Police personnel handling investigation so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the Police from using third degree methods during interrogation.

Apart from the Police, there are several other Governmental Authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, Raw Central Bureau of Investigation (CBI), CID,

Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, etc. There are instance of torture and death in custody of these authorities as well.”

At Page 22(of JT) : At page 754, 755 of Cri LJ, of the report the Hon’ble Supreme Court moved as many as 11 directions which are reproduced as below:—

- “(1) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such Police personnel who handle interrogation of the arrestee must be recorded in a register.
- (2) That the Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a Police Station or interrogation center or other Lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the Police, where the next friend or relative of the arrestee lives outside the district or town in through, the Legal Aid Organisation in the District and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person who shall also disclose the name of the next friend or the person who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so request be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the Police Officer effecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours of his detention in custody by a Doctor on the penal of approved Doctors appointed by Director, Health Services of the concerned State or union Territory Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the *Illaq* Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation though, not throughout the interrogation.
- (11) A Police control-room should be provided at all Districts and State headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the Police Control-room it should be displayed on a conspicuous notice-board."

In para 37 of the report Hon'ble Supreme Court pointed out that failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for Contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the contrary, having territorial jurisdiction over the matter.

In Paras 38 and 39 of the report Hon'ble Supreme Court gave further directions in following words:—

"The requirements, referred to above flow from Article 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other Governmental Agencies also to which a reference has been made earlier. These requirements are in addition to the constitutional and statutory safeguards do not detract from various other directions given by the Courts from time to time in connection w/ith the safeguarding of the rights and dignity of the arrestee."

In view of the law laid down by the Hon'ble Supreme Court in *D.K. Basu v. State of West Bengal*, 1997 Cri LJ 743., and the directions given by the Hon'ble Supreme Court in that case, even those persons who are arrested are entitled to meet their lawyer during the interrogation of a person is to create transparency in the manner and methods of interrogation and to enable the person who is being interrogated to take appropriate steps according to law for the purpose of protecting himself from any torture or other act which may be performed by the interrogating officer for the purpose of extracting any information against the volition of that person. The counsel may not only be a witness of the manner and method of interrogation and the treatment which is meted out to the person who is interrogated, may he take appropriate steps for the purpose of protecting the person if, the right to life and personal liberty of that person is imperiled by any act or omission of the investigating officer or of any other person acting under the direction of investigating officer. When even the persons who have committed offences are entitled to abovementioned right by virtue of fundamental right conferred by Article 21 of the Constitution, there is no reason why a person who has not been formally accused of any offence should not be entitled to the same protection of his right to life and personal liberty. The Court, therefore, hold that in view of the judgment of the Hon'ble Supreme Court in *D.K. Basu v. State of West Bengal*, 1997 (1) JT (SC): 1997 Cri LJ 743, the petitioner is entitled to protection of his life and personal liberty and therefore, he is entitled to the direction that during his interrogation his counsel may remain present for a reasonable time so that if any torture is used by the Investigating Officer against the petitioner,

appropriate action for protecting the life and personnel liberty of the petitioner may be taken.¹¹

4. No violation of fundamental right.—These writ petitions were filed as Public Interest Litigation the reliefs prayed for are as follows:—

- (a) To declare Muslim Personal Law which allows polygamy as void as offending Articles 14 and 15 of the Constitution;
- (b) to declare Muslim Personal Law which enables a Muslim male to give unilateral Talaq to his wife without her consent and without resort to judicial process of Courts, as void, offending Articles 13, 14 and 15 of the Constitution;
- (c) to declare that the mere fact that a Muslim husband takes more than one wife is an act of cruelty within the meaning of Clause VIII (I) of Section 2 of the Dissolution of Muslim Marriage Act, 1939.

In another writ petition the reliefs prayed for are the following:—

- (a) to declare Section 2(2), 5(ii) & (iii), 6 and Explanation to Section 30 of Hindu Succession Act, 1956, as void offending Articles 14 and 15 read with Article 13 of the Constitution of India;
- (b) to declare Section 2 of Hindu Marriage Act, 1955, as void offending Articles 14 and 15 of the Constitution of India;
- (c) to declare Sections 3(2), 6 and 9 of Hindu Minority and Guardianship Act read with Section 6 of the Guardians and Wards Act void;
- (d) to declare the unfettered and absolute discretion allowed to a Hindu spouse to make testamentary disposition without providing for an ascertained share of his or her spouse and dependent, void.

In third Writ Petition prayed for are following:—

“to declare Sections 10 and 24 of Indian Divorce Act void and also to declare Sections 42 to 46 of the Indian Succession Act void.”

At the outset this Court would like to state that these writ petitions do not deserve disposal on merits inasmuch as the arguments advanced by the Senior Advocate before us wholly involve issues of State policies with which the Court will not originally have any concern. Further, this Court finds that when similar attempts were made, of course, by others, on earlier occasions this Court held that the remedy lies somewhere else and not by knocking at the doors of the Courts.

Held, that is because there was no occasion to consider whether Part III of the Constitution of India had any application to personal laws or not. Suffice it to say that this Court is satisfied that the arguments advanced pointed out at the outset involve issues, to be dealt with by the legislature.

So far as the challenge to the Muslim Women (Protection of Rights Divorce) Act, 1986 is concerned, The said issue was pending before the Constitution Bench. This Court therefore, does not see any reason to multiply proceedings in that behalf.

In the result and having regard to the earlier decisions of this Court noticed founding

11. *Union of India v. Pannal*, 1998 Cr. LJ 3746 at 3749, 3750, 3751, 3752, 3753(Raj.).

this Court decline to entertain these writ petitions.¹² Though these issues have been sorted out later in further decisions.

In *Maharshi Avadhesh v. Union of India*,¹³ this Court while dismissing a petition under Article 32 of the Constitution held as follows:

‘This is a petition by a party in person under Article 32 of the Constitution. The prayers are two-fold. The first prayer is to issue a writ of mandamus to the respondents to consider the question of enacting a common Civil Code for all citizen of India. The second prayer is to declare Muslim Women (Protection of Right on Divorce) Act, 1986 as void being arbitrary and discriminatory and in violation of Articles 14 and 15 Fundamental Rights and Articles 44, 38, 39 and 39-A of the Constitution of India. The third prayer is to direct the respondents not to enact Shariat Act in respect of these adversely affecting the dignity and right of Muslim women and against their protection. These are all matters for legislature. The Court cannot legislate in these matters. The writ petition is dismissed.

In *Reynold Rajamani v. Union of India*,¹⁴ this Court while dealing with the scope of Sections 7 and 10 of the Indian Divorce Act, 1969 held as follows (at pp. 1263, 1264 of 1982 AIR):—

“It cannot be denied that society is generally interested in maintaining the marriage bond and preserving the matrimonial stage with a view to protecting societal stability, the family home and the proper growth and happiness of children of the marriage. Legislation for the purpose of dissolving the marriage constitutes a departure from that primary principle, and the legislature is extremely circumspect in setting forth the grounds on which a marriage may be dissolved. The history of all matrimonial legislation will show that at the outset conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal attitude has been adopted, fostered by a recognition of the need for the individual happiness of the adult parties directly involved. But although the grounds for divorce have been liberalised, they nevertheless continue to form an exception to the general principle favouring the continuation of the marital tie. When a Legislative provision specifies the grounds on which divorce may be granted they constitute the only condition on which the Court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set forth in the legislation, that is the business of the legislature and not of the Courts. It is another matter that in construing the language in which the grounds are incorporated the Courts should give a liberal construction to it. Indeed, the Courts must give the fullest amplitude of meaning to such a provision. But it must be a meaning which the language of the section is capable of holding. It cannot be extended by adding new grounds not enumerated in the section.”

XnPannalal Bansilal v. State of A.P.,¹⁵ validity of Sections 15, 16, 17, 29(5) and 144 of the A. P. Charitable Hindu Religious and Endowments Act, 1987 were challenged.

12. Ahmedabad Women Action Group (AWAG) v. Union of India, AIR 1997 SC 3614 at 3614, 3620.
13. (1994) 1 Supp SCC 713.
14. AIR 1982 SC 1261 : (1982) 2 SCC 474.
15. (1996) 2 SCC 498: 1996 AIR SCW 507.

Inter alia this Court held^{16 17}:—

“The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their offshoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different languages and dialects in different regions and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactments thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief of defect which is most acute can be remedied by process of law at stages.”

In *State of Bombay v. Narasu Appa Mali*,¹⁷ Chagla, C.J., while considering the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 observed as follows (at p. 86 of AIR 1982):—

“A question has been raised as to whether it is for the Legislature to decide what constitutes social reform. It must not be forgotten that in democracy the Legislature is constituted by the chosen representatives of the people. They are responsible for the welfare of the State and it is for them to lay down the policy that the State should pursue. Therefore, it is for them to determine what legislation to put up on the statute book in order to advance the welfare of the State.”

It was further observed that (at p. 87 of AIR 1982):—

“There can be no doubt that the Muslims have been excluded from the operation of the Act in question. Even Section 494, Penal Code, which makes bigamy an offence applies to Parsis, Christians and others, but not to Muslims because polygamy is recognised as a valid institution when a Muslim male marries more than one wife. The question that should be considered is whether there is any reasonable basis for creating the Muslims as a separate class to which the laws prohibiting polygamy should not apply. Now, it is an historic fact that both the Muslims and the Hindus in this country have their own personal laws which are based upon the respective religious texts and which embody their own personal laws which are based upon their respective religious texts and which embody their own distinctive evolution and which are coloured by their own distinctive backgrounds. Article 44 itself recognises separate and distinctive personal laws because it lays down as a directive to be achieved that within a measurable time India should enjoy the privilege of a common uniform Civil Code applicable

16. at p. 515 of 1996 AIR SCW.

17. AIR 1952 Bom 84.

to all its citizens irrespective of race or religion. Therefore, what the Legislature has attempted to do by the Hindu Bigamous Marriages Act is to introduce social reform in respect of a particular community having its own personal law. The institution of marriage is differently looked upon by the Hindus and the Muslims. Whereas to the former it is a sacrament, to the latter it is a matter of contract. That is also the reason why the question of the dissolution of marriage is differently tackled by the two religions, while the Muslims law admits of easy divorce, Hindu marriage is considered indissoluble and it is only recently that the State passed legislation permitting divorce among Hindus. The State was also entitled to consider the educational development of the two communities. One community might be prepared to accept and work social reform; another may not yet be prepared for it; and Art. 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all embracing character. The state may rightly decide to bring about social reform by stages and the stages may be territorial or they may be communitywise. From these considerations it follows that if there is a discrimination against the Hindu in the applicability of the Hindu Bigamous Marriages Act, that discrimination is not based only upon ground of religion. Equally so if the law with regard to bigamous marriages is not uniform, the difference and distinction is not arbitrary or capricious, but is based upon reasonable grounds."

Gajendragadkar, J., in his concurrent but separate opinion expressed the same view by observing as follows (at p. 93, 94 of AIR 1952 Bombay):—

"The next question is whether this Act discriminates against the Hindus in reference to the Christian and the Parsi citizens of this State, in so far as it subjects the Hindus alone to the specially severe provisions as to punishment and procedure. It is true that whereas under the general criminal law the offence of bigamy is cognisable only on the complaint of the wife, the impugned Act makes it cognisable so that the complaint of the wife, is unnecessary to start the proceedings against the offending husband. The offence of bigamy is compoundable under the general criminal law; but not under the impugned Act; and the word "abettor" under the impugned Act is also wider than under the Indian Penal Code. These provisions in fact are alleged to constitute discrimination against the Hindus. In dealing with this question, however, it must be remembered that the Legislature may have thought that the evil of bigamy prevailing amongst the Hindus could not be effectively put down unless the offence was made cognisable and unless amongst the abettors were included even the priests who officiate at Hindu Marriages. As Hindu marriage is a love and devotion of the Hindu wife for her husband is well-known. Legislature may well have thought that it would be futile to make the offence of Hindu bigamy punishable at the instance of the wife because Hindu wives may not come forward with any complaint at all. Among the Christians and the Parsis, monogamy has been practised for several years and marriages amongst them is a matter of contract. Amongst them divorce is permissible, whereas amongst the Hindus it was not permissible for so many years. If the Legislature acting on these considerations wanted to provide for a special procedure in dealing with bigamous marriages amongst the Hindus it cannot be said that the Legislature was discriminating against the Hindus only on the ground of religion. It was for the Legislature to take into account the social customs and beliefs of the Hindus and other relevant considerations before deciding whether it was necessary to provide for special provisions in dealing with bigamous

marriages amongst them. That clearly is the province of the Legislature and with the propriety of their views or their wisdom Courts are not concerned, it was held that there is no substance in the argument that the penal provisions of the impugned Act constitute discrimination against the Hindus only on the ground of religion.

The Union of India is a secular State and the State Legislature was wrong in making a distinction between its citizens on the ground of religious differences and in applying the provisions of the impugned Act only to Hindus. In part this argument is political and as such Court was not concerned with it. But part of the argument is based upon the provisions of Article 14 of the Constitution of India and it is necessary to deal with this aspect of the argument."

The Judge further observed as follows (at p. 95 of AIR 1952 Bombay):—

"But it is argued that even as to this social reform, the State Legislature should have made it all pervasive and should not have left the Mahomedans outside its ambit. That, as I have already said, is partly a political, and partly a legal argument. Whether it was expedient to make this Act applicable to the Mahomedans as well as to the Hindus would be a matter for the legislature to consider. It is now well-settled that the equality before the law which is guaranteed by Article 14 of the Constitution is not offended by the impugned Act if the classification which the Act makes it based on reasonable and rational considerations. It is not obligatory for the State Legislature always and in every case to provide for social welfare and reform by one step. So long as the State Legislature in taking gradual steps for social welfare and reform does not introduce distinctions or classifications which are unreasonable, irrational or oppressive, it cannot be said that the equality before law is offended. The State Legislature may have thought that the Hindu community was more ripe for the reform in question. Social reformers amongst the Hindus have agitated for this reform vehemently for many years past and the social conscience of the Hindus, according to the Legislatures, may have been more in tune with the spirit of the proposed reform. Besides, amongst the Mahomedans divorce has always been permissible and marriage amongst them is a matter of contract. If the State Legislature acting on such considerations decided to enforce this reform in the first instance amongst the Hindus, it would be impossible in my opinion to hold that in confining the impugned Act to Hindus as defined by the Act, it has violated the equality before law as guaranteed by Article 14, therefore, the argument that Article 14 is violated by the impugned Act must fail."

Gajendragadkar J. also expressed his opinion on the question whether Part III of the Constitution applies to personal laws. The Judge observed that the Constitution of India itself recognises the existence of these personal laws in terms when it deals with the topic falling under personal law in item 5 in the Concurrent List - List III. This item deals with the topics of marriage and divorce; infants and minors; adoption; Wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law. Thus, it is competent either to the State or the Union^T legislature to legislate on topics falling within the purview of the personal law and yet the expression "personal law" is not used in Art. 13, because the framers of the Constitution wanted to leave the personal laws outside the ambit of Part III of the Constitution. They must have

been aware that these personal laws needed to be reformed in many material particulars and in fact they wanted to abolish these different personal laws and to evolve one common code. Yet they did not wish that the provisions of the personal laws should be challenged by reason of the fundamental rights guaranteed in Part III of the Constitution and so they did not intend to include these personal laws within the definition of the expression “laws in force”. The personal laws do not fall within Article 13 (i) at all.

In *Krishna Singh v. Maihura Ahirf*¹⁸ this Court while considering the question whether a Sudra could be ordained to a religious order and become a Sanyasi or Yati and, therefore, installed as a mahant of the Garwaghat Math according to the tenets of the Sant Mat Sampradaya *inter alia*, held as follows (at page 712 of AIR):—

“It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. The learned judges failed to appreciate that Part II of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he could not introduce his own concepts of the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgment of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute.”

In *Sarla Mudgal v. Union of India*,^{18 19} this Court observed (at p. 2335 AIR SCW 1995):—

“Article 33 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26, and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments on the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a “common civil code” for the whole of India.”

In *Mahdu Kishwar n. State of Bihar*,²⁰ this Court while considering the challenge made to certain provisions of the Chotanagpur Tenancy Act, 1908, observed as follows Paras 47, 48 and 49):—

“It is worthwhile to account some legislation on the subject. The Hindu Succession Act governs and prescribes rules of succession applicable to a large majority of Indians being Hindus, Sikhs, Buddhists, Jains etc. whereunder since 1956, if not earlier, the female heir is put on a par with a male heir, Next in the line of numbers is the Shariat law, applicable to Muslims, whereunder the female heir

18. AIR 1980 SC 707.

19. (1995) 3 SCC 635: 1995 AIR SCW 2326.

20. (1996)5 SCC 125: 1996 AIR SCW 2178.

has an unequal share in the inheritance, by and large half of what a male gets. Then comes the Indian Succession Act which applies to Christians and by and large to people not covered under the aforesaid two laws, conferring in certain manner heirship on females as also males. Certain chapters thereof are not made applicable to certain communities. Sub-section (2) of Section 2 of the Hindu Succession Act significantly provides that nothing contained in the Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution, unless otherwise directed by the Central Government by means of a notification in the Official Gazette. Section 3(2) further provides that in the Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females. General rule of legislative practice is that unless there is anything repugnant in the subject or context, words importing the masculine gender used in statutes are to be taken to include females. Attention, be drawn to Section 13 of the General Clauses Act. But in matters of succession the general rule of plurality would have to be applied with circumspection. Therefore provision thus appears to have been inserted *ex abundanter cautela*. Even under Section 3 of the Indian Succession Act, the State Government is empowered to exempt any race, sect or tribe from the operation of the Act and tribes of Mundas, Oraons, Santhals etc. in the State of Bihar, who are included in our concern, have been so exempted. Thus neither the Hindu Succession Act, nor the Indian Succession Act, nor even the Shariat Law is applicable to the custom-governed tribals. And custom, as is well recognised, varies from people to people and region to region.

In the face of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal laws applicable to others, on an elitist approach or on equality principle, by judicial activism, is a difficult and mind-boggling effort. Brother K. Ramaswamy J. seems to have taken the view that Indian Legislatures (and Governments too) would not prompt themselves to activate in this direction because of political reasons and in this situation, an activist Court, a political as it avowedly is, could get into action and legislate broadly on the lines as suggested by the petitioners in their written submissions. However, laudable, desirable and attractive the result may seem, it has happily been viewed by learned judge that an activist Court is not fully equipped to cope with the details and intricacies of the legislative subject and can at best advise and focus attention on the State policy on the problem and shake it from its slumber, goading it to awaken, march and reach the goal, for, in whatever measure be the concern of the Court, it compulsively needs to apply, somewhere and at sometime, brakes to its self-motion, described in judicial parlance as self-restraint. Court we regarded to the statutory provisions of the Act, he has proposed to the reading down of Sections 7 and 8 in order to preserve their constitutionality. This approach is available from p. 36 (Paras 47, 48) onwards of his judgment. The words 'male descendant' wherever occurring, would include "female descendants". It is also proposed that even though the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 in terms would not apply to the Scheduled Tribes, their general principles composing of justice, equity and fair play would apply to them. On this basis it has been proposed to take the view that the Scheduled Tribe workmen would succeed to the estate of paternal parent, brother or husband as heirs by intestate succession and inherit the property in equal shares with the male heir with absolute rights as per the principles of the Hindu Succession Act as also the Indian Succession Act. However,

much Court may like the law to be so Court regretted its inability to subscribe to the means in achieving such objective. If this be the route of return on the Court's entering the thicket, it would follow a beeline for similar claims in diverse situations, not stopping at tribal definitions, and a deafening uproar to bring other systems of law in line with the Hindu Succession Act and the Indian Succession Act as models. Rules of Succession are, indeed susceptible of providing differential treatment, not necessarily equal. Non-uniformities would not in all events violate of Article 14 of the Constitution. Judge-made amendments to provisions, over and above the available legislation, should normally be avoided. Court was constrained to take this view, even though it may appear to be conservative for adopting a cautious approach, and the one proposed by our learned brother is, regretfully not acceptable.

As a matter of fact the constitutionality of Section 10 of the Indian Divorce Act was challenged by an aggrieved husband and this Court in *Anil Kumar Mahsi v. Union of India*,²¹ held as follows:—

“Taking into consideration the muscularly weaker physique of the woman, her general vulnerable physical and social condition and her defensive and non-aggressive nature and role particularly in this country, the legislature can hardly be faulted if the said two grounds are made available to the wife and not to the husband for seeking dissolution of the marriage. For the same reasons, it can hardly be said that on that account the provisions of Section 10 of the said Act are discriminatory as against the husband.

There was no substance in the challenge by the petitioner husband to the vires of the provisions of Section 10 as being discriminatory against the husband and, therefore, violative of Article 14 of the Constitution.”

5. Constitution of India and Public Interest Litigation—Fundamental rights.—

Fundamental rights weave a “pattern of guarantee” on the basic structure of human rights. They impose negative obligations on the State not to encroach on individual liberty.²²

The word other authorities include Rajasthan Electricity Board.²³

The Chief Justice of a High Court is included in the expression of other authorities because he has power to appoint the officials of the Court.²⁴

If a body is an agency or instrumentality of Government it is considered to be the authority within the meaning of Article 12.²⁵

The Co-operative Bank registered under the A.P. Co-operative Societies Act is not State within the meaning of Article 12 of the Constitution.²⁶

U.P. Ware Housing Corporation which was constituted under a statute and it is controlled by the Government fell within the meaning of State and Article 12.²⁷

21 (1994) 5 SCC 704.

22 .Menaka Gandhi v. Union of India, AIR 1978 SC 597.

23. Rajasthan Electricity Board v. Mohan Lal, AIR 1967 SC 1857.

24. Parmatma Saran v. Chief Justice, AIR 1964 Raj 131.

25. Sakhddev v. Bhagat Ram, AIR 1975 SC 1331.

26 Sri Kona Seema Co-operative Central Bank Ltd. v. N. Seetharamma Raju, AIR 1990 AP 171.

27 U.P. Warehousing Corporation v. Vijaya Narayan, 1980 (3) SCC 459.

A Government Company (Bharat Petroleum Corporation) comes within the meaning of 'State'.²⁸

6. Constitution of India, Article 12.—Article 12 of the Constitution defines the term State. According to this Article following are included in the definition of State—The Government and the Parliament of India. The Government and the Legislature of each of the States. All local or other authorities within the territory of India. All local and other authorities within the territory of India. Other authorities is wide enough it includes all the authorities created by the Constitution.²⁹

Cochin Devasom Board is an other authority, it comes under the definition of State.³⁰

Co-operative Society is included in the expression of other authorities.³¹

A society registered under the Societies Registration Act, 1898 is the State within the meaning of Article 12.³²

'Institute of Constitutional and Parliamentary Studies' Society registered under Societies Registration Act 1860 is not a State within the meaning of Article 12.³³

Indian Statistical Society registered under the Societies Registration Act 1860 is an instrumentality of Central Government and therefore an authority within the meaning of Article 12 of the Constitution.³⁴

Indian Council of Agricultural Research as registered under Societies Registration Act. It is an instrumentality of the Central Government therefore it is an authority within the meaning of Article 12.³⁵

Food Corporation of India is the State within the meaning of Article 12 of the Constitution.³⁶

Steel Authority of India is the State within the meaning of "other authorities" under Article 12.³⁷

Bihar State Electricity Board is the State within the meaning of "other authorities" under Article 12.³⁸

Indian Oil Corporation is the State within the meaning of other authorities under Article 12. This is an instrumentality of the State.³⁹

28. Som Prakash v. Union of India, AIR 1981 SC 212.

29. Electricity Board Rajasthan v. Mohan Lal, AIR 1967 SC 1857.

30. P.B.M. Namboodiripad v. Cochin Devasam Board, AIR 1956 TC 19.

31. Dukhoram v. Co-operative Agricultural Association, AIR 1961 MP 219.

32. Ajay Hasia v. Khalid Muzib, AIR 1981 SC 487.

33. Tekraj Vasandi v. Union of India, 1988 (1) SCC 236.

34. B.S. Minhas v. Indian Statistical Institute, 1983 (4) SCC 582.

35. P.K. Ramchandra Avar v. Union of India, 1984 (2) SCC 142.

36. Workmen Food Corporation of India v. M/s Food Corporation of India, AIR 1985 SC 670.

37. Bihar State Harizan Kalyan Parishad v. Union of India, 1985 SCC 644.

38. Surya Narayan Yadav v. B.S.P. Board, AIR 1985 SC 941.

39. Mahabir Auto Stores v. Indian Oil Corporation, 1990 (3) SCC 752.

Central Inland Water Transport Corporation a Government company it is wholly owned by the Central Government therefore it was State within the meaning of Article 12.⁴⁰

Indian Council of Agricultural Research is a State within the meaning of Article 12 of the Constitution.⁴¹

7. **Benefit of personal right.**—If the litigation is between the members of the family to settle their own scores it cannot be a Public Interest Litigation. It was not *pro bono publico*, for the benefit of the public, but for the benefit of a particular section of people for their personal rights. Hence, the assertion that this dispute is public interest dispute, is wrong. The petitioner has asserted that there is violation of Art. 21 of the Constitution, which enshrines protection of life and personal liberty and states that no person shall be deprived of his life or personal liberty save according to the procedure established by law. It is true that life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Art. 21 of the Constitution. Yet, when one seeks relief for breach of Art. 21, one must confine oneself to some direct, overt and tangible act which threatens the fullness of his life or the lives of others in the community.

In the instant case the allegations are too vague too indirect and too tenuous to threaten the quality of life of people at large or any section of the people. The acts complained of resulting in the threats alleged are too remote and, to be amenable under Art. 32 of the Constitution. The petitioners further assert that there has been violation of Art. 5 1 A(f) of the Constitution as a duty has been cast on every citizen to value and preserve the rich heritage of our composite culture. Indeed, it is our duty but the enforcement of that duty by means of a writ under Art. 32 of the Constitution, in the facts and circumstances of this case, is not warranted, In this case there was no evidence evidencing that any attempt had been made to ask the State to protect any monument or any application had been made to the State seeking intervention and action.^{42 43}

In that view of the matter, resort to Art. 49 was not just. Invocation of the jurisdiction of this Court as a public interest litigation, in the background of the allegations made in the petition and in the context of this case, was wholly unjustified. Public interest litigation is an instrument for the administration of justice to be used properly in proper cases. Public interest litigation does not mean settling disputes between individual parties. This Court in *Bandhua Mukti Morcha v. Union of India*,⁴³ dealt with this question and Justice Bhagwati, as the Chief Justice then was, observed that Public interest litigation is not in the nature of adversary litigation but it is 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, economic and political justice which is the signature tune of our Constitution. He reiterated that the Court entertains public interest litigation, not in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to

40. *Central Inland Water Transport Corporation v. Brajonath Ganguly*, 1986 (3) SCC 156.

41. *S.M. Ilyas v. I.C.A.R.*, 1993 (1) SCC 182.

42. *Ramsharan Autyanuprasi v. Union of India*, AIR 1989 SC 549 at pp. 550, 552 and *Sabyasachi Mukharji and S. Ranganathan, JJ.*.

43. (1984)2 SCR 67.

usurp it, but its attempt is only to ensure observance of social and economic rescue programmes legislative as well executive, framed for the benefit of the notes and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. In the same decision it was observed by Justice Pathak, as the Chief Justice then was, that public interest litigation in its present form constitutes a new chapter in judicial system, acquiring a significant degree of importance in the jurisprudence practised by our Courts. The learned Judge depreciated individual communications and suggested that all communications and petitions invoking the jurisdictions of the Court must be addressed to the entire Court that is to say, the Chief Justice and his companion Judges, Judged by that standard, this petition does not seek to advance any public right. It seeks to exploit private grievances. Indeed, in a situation of this nature it is well to bear in mind the observations of the tailpieces in the decision in *Sachidanand Pandey v. State of West Bengal*,⁴⁴ where the learned Judge highlighted the necessity to delineate the parameters of public interest litigation. The learned Judge noted that today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must, however, inspire confidence in Courts and among the public, and must be above suspicion. Hence, it is imperative to lay down clear guidelines and outline the correct parameters for entertaining such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation alongwith justice will suffer. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.^{44 45}

In *Subhash Kumar n. State of Bihar*,^{46 47 48 49} quoted in *Lalithamma v. State?* the Court held that the person invoking the jurisdiction of the Supreme Court under Article 32 of the Constitution must approach for vindication of the fundamental rights of the affected persons and not for the purpose of vindication of his personal grudge or enmity and that it was the duty of the Court to discourage such petitions and the ensure that the course of justice is not obstructed or polluted by unscrupulous litigants for personal ends in the garb of the public interest litigation.

In *S. P. Gupta v. Union of India?*⁹ quoted In *Lalithamma v. State?* the Supreme Court observed thus :—

“But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and other to delay legitimate administrative action or to gain a political objective.”

44. (1987)2 SCC 295 atp. 331 : AIR 1987 SC 1109 at p. 1134.

45. *Ramsharan Autynuprasi v. Union of India*, AIR 1989 SC 549 at p. 552, 553 (Sabyasachi Mukharji and S. Ranganathan, JJ.).

46. AIR 1991 SC 420.

47. AIR 1996 Kant 112 at 119: (1996) 1 Kant LJ 1.

48. AIR 1982 SC 149.

49. AIR 1996 Kant 112 at 119: (1996) 1 Kant LJ 1.

It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violations of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to Court due to some disadvantage. In those cases also it is the legal rights which are secured by the Courts. This Court may, however, add that Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions which were taken by the Government in 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, a Public Interest Litigation at the behest of a stranger ought not to be entertained. Such a litigation could not per se be on behalf of the poor and the downtrodden, unless the Court was satisfied that there has been violation of Article 21 of the Constitution and the persons adversely affected are unable to approach the Court. The decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of busy-body cannot fall within the parameters of Public Interest Litigation?⁰

8. Cause of action for Public Litigation.—The writ petition not disclosed any cause of action to move the instant writ petition by way of public interest litigation or the controversies involved in the petition cannot form the subject-matter of a public interest litigation. As pointed out hereinbefore the very case made out in the writ petition is that although admittedly the 1987. Directions were introduced by the Reserve Bank of India after the observations made by the Supreme Court in the different case, for protecting and safeguarding the interest of small depositors and for public interest, such directions have been violated by the R.N.B.Cs. with impunity and the deposits of the small depositors have been diverted to the subsidiary companies and to the directors and have been invested in unsecured securities jeopardizing the interest of the small depositors and a situation has arisen where the R.N.B. Cs. are in the brink of financial disaster and are unable to pay back the money taken from the small depositors. The right and interest of the small depositors thus not only are seriously jeopardized for such violation of said statutory provision by the said R.N.B. Cs. which were enacted in public interest, the right to life which includes right to livelihood and to live with human dignity guaranteed under Article 21 of the Constitution of the small depositors have also been violated as they were being deprived of their life's savings. Accordingly the State come forward by way of public interest litigation for vindication and protection of such legal and constitutional right of the small depositors and for rescues of such small depositors from the impending financial disaster and to ensure return of the money. The interest of such large number of small depositors as also their legal and fundamental right being in jeopardy because of such action of the R.N.B. Cs. the same itself therefore is the cause of action for moving the instant public interest litigation by the State. The contention of the respondents therefore that there was no cause of action for moving the writ petition by way of public interest litigation was rejected?¹

9. Non-advocate whether habitually represent and conduct litigation.—Writ petition was filed by one 'N' in his own name as petitioner, but as a friend of 'H' and his brother 'M'. It is stated in the petition that 'M' was arrested by the army authority on 18-

5 BALCO Employees Union (Regd.) v. Union of India, AIR 2002 SC 350 at 381.

5 State v. Union of India, AIR 1996 Cal 181 at 206: (1996) 1 Com LJ 258 (Samaresh Banerjee, J.).

1-1991 in exercise of the powers under Section 4 of the Armed Forces (Special Powers) Act, 1958 and that he has not made ever to the officer in charge of the nearest Police Station as provided under Section 5 of the said Act. The affidavit sworn by 'H', brother of 'M', indicates that he authorised 'N', a public activist, as his friend to file petition and represent him and his brother 'M' in the case.

A question has been raised whether the petitioner 'N' has right of audience on behalf of 'H' and/or 'M'. 'A', learned Advocate General As-sam has submitted that he has raised this question as some of the members of the Bar at Guwahati have requested him to raise the question for in the name of "Public Interest Litigation", traditional litigation has been suffering and if the High Court does not restrict the free flow of such cases, instead of dispensing justice, it may have serious consequences.

The main contention of the learned Advocate General is that under the Advocates Act, 1961, for short, the Act', 'N' shall have no right of audience on behalf of 'H' or his brother 'M'. There are series of cases which have been habitually tiled in this Court by 'N' in his name, or in the name of others; and, arguing these cases. Such habitual acts of similar kinds are prohibited by the Act.

As regards "Public Interest Litigation", today this Court finds that the public spirited litigants rush to Courts and file cases in a large quantity or numbers under the name of "Public Interest Litigation". Sometime this Court finds that most of the cases are filed without any rhyme or reasons, or proper sense, and, now time has come to check free flow of such cases. Otherwise, instead of dispensing justice, it would destroy the justice. But it does not mean that the High Court should not hear a petition in which Court is apprised of gross violation of fundamental rights or basis human rights, or rights, or such acts which shock the judicial conscience, in exercise of the powers available under the relevant provisions of law for remedying hardship and miseries of the needy and neglected persons by avoiding practice and procedure, or rules of the Court.

Under Section 29 of the Advocates Act, advocates are the only recognised class of persons entitled to practice law. Advocate is defined under Section 2 of the Act to mean an advocate entered in any roll under the provisions of the Act. Section 33 of the Advocates Act provides that except as otherwise provided in the Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any Court or before any authority or persons unless he is enrolled as an advocate under the Act. Under Section 32 of the Advocates Act, any Court may permit any person, not enrolled as an advocate under the Act, to appear before it in any particular case.

It may be mentioned here that at the time of hearing of the case, 'P', mother of 'M', appeared and, stated that she had no objection if her name was substituted as the petitioner for 'N' but she and her sons had no means to engage a lawyer.

The question then was—Is it not open to a person who is unable to engage a counsel to seek the help of a friend? In view of the provisions of Section 22, the Court may allow the representation by a friend, other than the party himself, where an advocate is not representing the party in any particular case. If the Court denies such a representation, the denial may be to deny justice in certain cases. But, on the other hand, if the Court allows such a representation, the party himself may suffer if his friend deceives him and destroys his case by meaningless submissions in irresponsible manner, and the chosen friend can become a fatal friend. Therefore, the answer to question depends on the facts and cir

cumstances of any particular case. Mere this Court should not also unmindful of the existence of Legal Aid Committee, or appointment of *amicus curiae*.

On a reading of Sections 29 and 33 of the Advocates Act together, it shows that only advocates can practice law. The meaning of the word “Practice” is “represented action; habitual performance; a succession of acts of a similar kind”. Therefore, a person habitually representing the parties in the Court would amount to practicing the profession of law and it will be violation of the provisions of the Act. In other words, it is absolutely clear that anyone who is not an advocate cannot, as of right, claim to plead for another. Nevertheless, it is open to a person, who is a party to a proceeding, to get himself represented by a non-advocate in a particular case as is provided under Section 32 of the Advocates Act. Permission may, however, be granted by the Court in the interest of justice considering the varieties of factors for such non-professional representation.^{52 53 53}

10. Jurisdiction of Court.—In *Bandhua Mukti Morcha v. Union of India*,⁵³ the Supreme Court *inter alia* held thus: —

“It is not at all obligatory that an adversarial procedure, where each party produces his own evidence tested by cross-examination by the other side and the Judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 of the Constitution of India for enforcement of a fundamental right. In fact, there is no such constitutional compulsion enacted in clause (2) of Article 32 of the Constitution or in any other part of the Constitution. It is only because we have been following the adversarial procedure for over a century owing to the introduction of the Anglo-Saxon system of jurisprudence under the British Rule that it has become a part of our conscious as well as subconscious thinking that every judicial proceeding must be cast in the mould of adversarial procedure and that justice cannot be done unless the adversarial procedure is adopted. But it may be noted that there is nothing sacrosanct about the adversarial procedure and in fact it is not followed in many other countries where the civil system of law prevails. The adversarial procedure with evidence led by the either party and tested by cross-examination by the other party and the judge playing a passive role has become a part of our legal system because it is embodied in the Code of Civil Procedure and the Indian Evidence Act. But these statutes obviously have no application where a new jurisdiction is created in the Supreme Court for enforcement of a fundamental right. We do not think we would be justified in imposing any restriction in the power of the Supreme Court to adopt such procedure as it thinks fit in exercise of its new jurisdiction, by engrafting adversarial procedure on it, when the Constitution makers have deliberately chosen not to insist on any such requirement and instead, left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred, namely enforcement of a fundamental right.

We may point out that what a have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 of the Constitution of India

52. Nibaran Bora v. Union of India, AIR 1992 Cau 54 at 54, 55: (1991) 1 Gau LR 411.

53. AIR 1984 SC 802 quoted in State v. Union of India, AIR 1996 Cal 181 at 220, 221 (1996) 1 Com L.J 258 Samaresh Banerjee, J..

must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 of the Constitution and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226 of the Constitution. In farce, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.”

11. Inter-caste marriages.—The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face new challenges. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. It’s a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the partners of the boy or girl do not approve of such inter-caste or inter religious marriage. Therefore, Court directed that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. In the circumstances, the writ petition is allowed. The proceedings in Sessions Trial No. 1201/2001 titled *State of U.P. v. Sangita Gupta and Others*, arising out of FIR No. 336/2000 registered at police station Sarojini Nagar, Lucknow and pending in the *Fast Track Court v. Lucknow* are quashed. The warrants against the accused are also quashed. The police at all the concerned places should ensure that neither the petitioner nor her husband nor any relatives of the petitioner’s husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned.⁵⁴

12. Liberty of Individual.—Normally this court does not interfere with the order of the High Court relating to grant or rejection of bail but in the instant case having carefully gone through the impugned order, Court was constrained to observe that the High Court has completely ignored the basic principles which are to be kept in view

54. *Lata Singh v. State of U.P. & Another*, AIR 2006 SC 2522; 2006 CriLJ 3309; 2006 (5) ALJ 357; 2006 (3) Andh LT(Cri) 148 SC; 2006 (3) Crimes 41; 2006 (4) EastCriC 63; 2006 (2) HinduLR 443; ILR(KANT) 2006 SC 3643; 2006 (3) KerLT 375; 2006 (2) Mad LJ(Cri) 648; 2006 (2) MarriLJ 401; 2006 (34) OCR 791; 2006 (2) OrissaLR 502; 2006 (3) PatLJR 329; 2006 (3) PunLR 218; 2006 (3) RajCriC 502; 2006 (4) RajLW 2735; 2006 (3) RecCivR 738; 2006 (3) RecCriR 870; 2006 (5) SCC 475; 2006 (7) SCJ 55; 2006 (8) SRJ 77; 2006 (6) Scale 583; 2006 Scc(Cri) 478; 2006 (5) Supreme 266.

while dealing with an application filed under Section 439 of the code for grant of bail and has thus, committed a manifest error in the matter of grant of bail to the second respondent, warranting in reference by the court. It is trite to state that the court granting bail has to exercise its discretion in judicious manner with care and caution and not as matter of course. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused should be avoided but there is a need to indicate in such order reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged for having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances the following factors also before granting bail they are;

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension threat to the complainant.

(c) *Prima facie* satisfaction of the court in support of the charge (See Ram Govind Upadhyay v. Sudarshan Singh⁵⁷)

There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of the court in *Shahzad Hasam Khan v. Ishtiaq Hasan Khan*⁵⁶, are quite apposite; "Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution".^{55 56 57}

13. Keeping a major woman who had married with a boy of different religion is not legal.—Nothing more need to be recorded to verify the age of T. *Prima facie* her age was over 23 years and notwithstanding that she may have done a five years course of Ayurvedic Medicines she does not seem to be a minor, the Court has no reason to doubt the original certificate High Court which reveals that at twenty three years she was not a minor. She was at liberty and need not go to the command home and she was further at liberty to go wherever she desires without any hindrance.

55. 2002 (2) RCR (Criminal) 250 (2000) 3 SCC 598 *Puran v. Rambilas*, 2001 (2) RCR (Criminal) 801 : (2001) 6 SCC 338 and *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.*, 2004 (2) RCR (Criminal) 254; 2004 (2): (2004) 7 SCC.

56. (1987) 2 SCC 684; AIR 1987 SC 1613; 1987 Cri LJ 1872; 1987(1) Supreme 587; 1987(2) SCC 684; 1987(3) JT 323; 1987 East Cri C 388; 1987(2) Crimes 438; 1987 SCC (Cri) 415; 1987 All Cri R 494; 1987 All AC (Cri) 204; 1987 Cri App R (SC) 216; 1987(3) SCJ 1; 1987 All WC 1082; 1987(2) Guj LH 183; 1987 Cri LR (SC) 430; 1987 All Cri C 425:

57. *Masroor v. State of U.P.* (SC), SLP (Cri) No. 3572 of 2008.

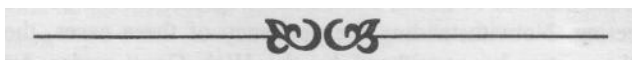
According to law any major female or male has a right to marry with their choice within the legal framework as provided by the Constitution of India. Hence, marrying a female of different religion who is a major, no illegality had committed ⁵⁸

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58. *Jully Sinha v. State of Bihar*, (2001) 3 BLJ 267 at 269 (Pat) (Ravi S. Dhavan, C.J. and Shashank Kumar Singh., J.)

Chapter 7

Compensation For Breach Of Fundamental Rights



Synopsis

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1. Compensation for illegal detention.—In the instant case picking up the threads, what is intrinsically established in this case is:

- (1) Petitioner was deprived of her liberty under a wholly without jurisdiction arrest by the fifth respondent and the order for the detention passed by the fourth respondent;
- (2) Respondents 8 and 9 had not received delivery of possession of the house in which the petitioner lived, as alleged by them at the execution of the sale-deed and it was not one room of the house which was in the occupation of the petitioner but the whole of it as envisaged in the agreement between the 7th respondent on the one hand and respondents 8 & 9 on the other; and
- (3) Petitioner was dispossessed of the house sometimes during the period she was put under detention after her arrest by the fifth respondent and thereafter was not allowed to enter into the house.

For the reasons as above, to Conclude, respondents 8 and 9 where directed, in view if their undertaking before this Court, to make available the accommodation as indicated above (in paragraph 35) to the petitioner within a fortnight from today with intimation to the counsel for the petitioner in Court; the first respondent was directed to pay a compensation of Rs. 50,000 (Rupees fifty thousand) to the petitioner for the loss of liberty as aforesaid, subject to its sanction to realise the said amount from respondents 4 and 5 and also directed the first respondent State to institute a high-level inquiry into the conduct of fourth and fifth respondents within a period of one month from today with a time schedule to complete the inquiry within a period of six months with notice to the petitioner to bring such evidence as she may deem fit and proper in connection with their

conduct confined to her arrest by the fifth respondent and remand to the mental asylum by the fourth respondent only.^{1 2}

2. Compensation to victim of police atrocities.—The Supreme Court, dealing with the public interest litigation, thought it proper that the allegations against the police, in that case, should be examined by the High Court exercising jurisdiction under Article 226 of the Constitution. Another similarity with the present case is that the police had, relating to the said incident of firing, started cases against several persons, who took part in the said meeting. Notwithstanding the pendency of these cases, the Supreme Court directed that the matter be considered by the High Court under Article 226 of the Constitution. In the present case also merely because FIRs have been lodged against some of the members of the alleged unlawful assembly, cannot be a ground for the Court not to exercise its jurisdiction under Article 226 of the Constitution.

From the aforesaid discussion Court came to the conclusion that with regard to the inhuman manner in which deceased “D” was handled after he had been wounded, compensation should be awarded. Compensation is also payable on account of the death of ‘A’ because of the police firing. Unlike “D”, “A” was not a member of the unlawful assembly. He was only 15 years old and was a school student having three younger sisters.

In *Radul Sah v. State of Bihar*,³ the petitioner had been detained illegally in the prison for over 14 years after his acquittal in a full dress trial. When he was not released, he filed a writ of *habeas corpus* for his release from illegal detention. A contention was raised as to whether for the wrong done to the petitioner the Court should, in exercise of its jurisdiction under Article 32, direct compensation to be paid. On behalf of the State it had been contended that Article 32 could not be used as a substitute for the enforcement of rights and obligations which could be enforced efficaciously through the ordinary processes of Courts Civil and Criminal. While noting that a money claim was ordinarily to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it, the Court nevertheless held that where it comes to the conclusion that the detention was illegal then to refuse to pass an order of compensation in favour of the petitioner:

“Will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated.”

Elaborating the powers of the Court in granting relief in cases involving violation of Article 21, the Supreme Court further observed in *Rudul Sah’s* case at page 1089 or,⁴ as follows:

“Article 21 which guarantees the right to life and liberty will be denuded 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 compliance with the mandate of Article 21 secured, is to mullet its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights

1. Meera Nireshwalia v. State of Tamil Nadu, 1991 Cri LJ 2395 at pp. 2410 (Mad.)

2. P.V. Kappor v. Union of India, 1992 Cri LJ 128 at pp. 146, 149, 151, (Del).

3 AIR 1983 SC 1086: 1983 Cri LJ 1644.

4. Ibid.

cannot be corrected by any other method open to the judiciary to adopt. The right, to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present which present for their protection the powers of the State as a shelf. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting, that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

Another case which came up before the Supreme Court where compensation was awarded was that of *PUDR v. State of Bihar*,⁵. In that case, about 600 to 700 poor peasants and landless people had collected to hold a peacefully meeting within the compound of a liberty. Without any previous warning by the police, the said people were surrounded and the police opened firing as a result of which several people were injured and at least 21 persons, including children died. The police interestingly enough started a case implicating several innocent people including even some other people, who had been killed in the firing. PUDR filed a writ petition under Art. 32 *inter alia*, wanting that orders be issued directing the payment of full and proper compensation to the victims. One of the other directions which was sought was that the police should withdraw the case filed by it against the people. In the affidavit filed in opposition, the factual assertions raised in the petition were disputed. But it was brought to the notice of the Supreme Court that a writ petition had been filed in the Patna High Court, prior to the filing of the aforesaid petition under Article 32, and the same was pending. The Supreme Court did not transfer to itself the petition under Article 226 from the High Court but came to the conclusion that:

"We are of the view that it would be appropriate that the matter is examined by the High Court."

The Supreme Court nevertheless awarded compensation of Rs. 20,000/- in case of every death and Rs. 5,000/- to each of the injured.

In *People Union for Democratic Rights v. Police Commissioner*,^{6 7} was another case where, in exercise of its jurisdiction under Article 32 of the Constitution, compensation to victims of police atrocities was awarded. In that case the police had collected some people and taken them to the Police Station for doing work. When the workers demanded wages, they were beaten up by the police and one person succumbed to his injuries. Though the case was being examined for criminal prosecution of the police officers concerned, nevertheless the family of the deceased was directed to be paid Rs. 50,000/- as compensation. The other labourers were also directed to be paid different sums of money.

An important decision on the question with regard to award of compensation in such cases is that of *Saheli v. Commr. of Police*.¹ The question of grant of compensation, in this case, arose because of the action of police officers who, at the behest of the landlord, beat a tenant Al' and her son 'N'. Son subsequently succumbed to his injuries. Thereupon

5. AIR 1987 SC 355: 1987 Cri LJ 528.

6. (1989) 4 SCC 730.

7. (1990) 1 SCC 422: AIR 1990 SC 513.

a news item about the incident appeared in his Hindu newspaper and a petition under Article 32 of the Constitution was filed wherein besides the landlord, two police officers

were also impleaded as respondents. The Supreme Court held that the son of the tenant had been done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the powers vested in such agency. The mother of the child 'K' is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration.

It was further observed that an action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. The son of 'K' aged 9 years died due to beating and assault by the SHO, and as such she was held entitled to get the damages for the death of her son. It is well-settled now that the State is responsible for the tortious acts of its employees. Respondent 2 Delhi Administration is liable for payment of compensation to 'K' for the death of her son due to beating by the Police. The Court ultimately awarded a sum of Rs. 75,000/- by way of compensation and further observed that the Delhi Administration may take appropriate steps for the recovery of the amount paid as compensation from the officers who were found responsible.

From *Saheli's* case⁸ it is clear that even when public interest litigation is commenced challenging the police action, like in the present case, and where there is loss life and the action of the police is wholly unjustified and in excess of the power, then adequate and reasonable compensation can be awarded.

3. Compensation—Liability to pay.—The instant writ petition was essentially one to advance the cause of public, were adversely affected by the collapse of a bridge in Beloor Village of Kundapura taluk. It was stated that there were about 50 to 60 houses and there was a river called Hire Hole flowing between the said village and Achalady village. Though the river dries up during summer. It overflows during rainy and winter seasons. According to the petitioner he had put up a wooden bridge across the aforesaid river which was more than 150 feet in length and 4 feet in width. The bridge was being used for carrying head loads, men and cattle during rainy and winter seasons. This bridge was resting on wooden props which were being replaced as and when required. This bridge was the lifeline for the residents of the village Beloor in Kundapura taluk; similarly it formed the lifeline of for the residents of the village situated on the other side of the river. The vegetation on the banks of the river were so thick that it prevented the soil erosion during rainy season. According to the petitioner, any soil excavation in the river would cause soil erosion and damage the bridge.

5th respondent obtained no objection certificate ('NOC' for short) from the Tehsildar (2nd respondent) for the removal of the sand from the river bed. NOC was issued without any enquiry and when it came to the knowledge of the petitioner's family, his brother filed a petition before the Assistant Commissioner and the Tahsildar, pointing out that the removal of the sand would adversely affect the bridge and the bridge was likely to collapse. A copy of the petition is found as Annexure-A to the writ petition. In the petition it was pointed out that 5th respondent was removing sand from the riverbed with several lorries and objections of the petitioner also filed an appeal before the Assistant Commissioner under Section 49 of the Karnataka Land Revenue Act, 1964, against the

grant of NOC to 5th respondent explaining the damage that would be caused to the bridge by the removal of the sand from the riverbed. The grant of NOC was also attacked as illegal. The danger to the bridge was also brought to the notice of the Taluka Magistrate, Kundrapura by one Anandaram Somayaji. Similar petitions were sent to 4th respondent— Senior Geologist, Department of Mines and Geology, Mangalore, but no action was taken. The villagers, along with the petitioner, observes a dharana near the bridge on 14-5-1991, which was intimated to the Taluka Magistrate by Anandaram Somayaji (referred earlier). A copy of the said letter was also sent to the local M.L.As. The Kannada daily called '*Hosa Digantha*', which is being published regularly from Mangalore, reported the dharana and the danger to the bridge. The need to have a permanent bridge for which the consumers have been agitating, it also highlighted in the said news item, 4th respondent sent an order only on 20-5-91 to the Circle Inspector of Police, Kundapura, pointing out that the permit issued to the 5th respondent was a temporary permit operative from 11-5-91 to 17-5-91 and requested the Circle Inspector of Police to stop further removal of the sand. According to the petitioner, 5th respondent had been removing the sand far earlier to 11-5-91 as is clear from the petition dated 8-5-1991 itself and that the authorities failed to act on the complaints lodged before them by the petitioner and others. The petitioner further avers that the Assistant Engineer at the behest of the third respondent (Chief Secretary of the Zila Parishad) made a spot inspection and sent a report and that the spot inspection was made 27-5-1991. In this report the danger to the bridge was clearly pointed out by the Assistant Engineer due to the removal of the sand by 5th respondent. The estimated repair charges in case the bridge collapses was Rs. 35,000/- to 40,000/- according to the Assistant Engineer. A further representation was also made to the first respondent on 21-5-1991 which was also not take note of by the first respondent. In the result the bridge collapsed on 27-6-1991. This fact was also brought to the notice of respondents-2 to 4. By the collapse of the bridge the villagers are undergoing great inconvenience, and their line of communication with the outside world has vanished. Similar news items were published in *Udaya Vani* and *Kannada Prabha* newspapers. These highlight that the damage caused to the bridge by the removal of the sand and the negligence of the authorities in not preventing the removal of the sand. It is in these circumstances the petitioner seeks a direction to the respondents to construct a permanent bridge across the river Hire Hole before the ensuing rainy season.

The fifth respondent has stated that the representations made to the authorities were with the sole intention to harass the said respondent and that the removal of the sand from the riverbed in no way affected the bridge and that the fifth respondent was not responsible for the collapse of the bridge.

In absence of any statement of objection by the respondents 1 to 4, the averments of the petitioner that there was a report by the Assistant Engineer pointing out the danger to the bridge by the removal of the sand will have to be accepted. Several representations made by the petitioner and others show that the danger to the bridge was anticipated far in advance by the villagers and the villagers were agitating to safeguard the bridge. Therefore Court was of the view that the collapse of the bridge was due to the removal of the sand from the riverbed and that the villagers were agitating against the same. It is inevitable to conclude that in the circumstances of the case that the respondents 1 and 2 grossly erred in permitting the removal of the sand and they were entirely negligent in not considering the representations made to them by the petitioner and the villagers. The third respondent also has not shown as to what happened to the report of the Assistant Engineer and what action was taken by the Zilla Parishad to prevent the collapse of the bridge.

The petitioner has asserted that the bridge was put up by him for the benefit of the villagers and the said assertion stands un rebutted. Obviously the bridge stood dedicated to the villagers and the authorities owed a duty to the public to maintain the bridge and see that no damage resulted to the bridge by anyone due to the action permitted by the authorities. In the instant case the permission given to the fifth respondent to remove the said resulted in the collapse of the bridge. Whether the fifth respondent went beyond the permission given to him was entirely a different matter and it was for the authorities to find out after due enquiry and if for any reason the said unauthorised action of the fifth respondent caused damage to the bridge the authorities may have to take different action against the fifth respondent. Court was concerned here with the rights of the villagers and the loss of the bridge which the petitioner described as the lifeline of the villagers.

In the *State of Himachal Pradesh v. Umed Ram Sharma*,⁹ the question pertained to the need of proper roads to the residents in a hilly state. At page 851, the Supreme Court observed thus:

“The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19 (1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 of his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well-settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.”

Thereafter Supreme Court observed that the High Court was justified in directing the State Government to carry out the construction of roads as quickly as possible within the sanction limits i.e., within the budget allocations. As to the scope of the High Court’s powers exercisable under Article 226, in this regard the Supreme Court observed at page 854 thus:

“In the instant case there has been at the highest a slow application of energy in the action by the executive. By the process of judicial review, if the High Court activates or energises executive action, it should do so cautiously. Remedial action in public interest must be with caution and within limits. Reading down the order in the manner we have indicated, in our opinion, the High Court has not transgressed the limits of its power.

“So far as the first and second questions are concerned. In *Bandhua Mukti Morcha v. Union of India*,¹⁰ this Court has given guidance. Pathak, J. speaking about the nature and extent of relief which has to be given in litigation where public interest was concerned, observed at page 161 of the report that there were certain fundamental constitutional concepts which need to be recalled, namely, the

9. AIR 1986 SC 847.

10. (1984) 2 SCR 67; AIR 1984 SC 802; 1984 Lab IC 560.

Constitution envisaged a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely

demarcated, there is general acknowledgement of its limits, there is certain time-overlapping. It is for the legislature to legislate the executive to implement and carry out that legislation and the judiciary to supervise. Affirmative actions are sometimes necessary to keep the judiciary in tune with the legislative intention. Having regard to the observations made in this case at page 161 to 163 of the report in the light order, Court not thought that the learned Judges of the Himachal Pradesh High Court have transgressed this jurisdiction of supervising executive action in view of the time taken to construct this roads.”

No doubt, that was a case where the construction of the road was sanctioned but there was slow progress in its implementation. In the instant case the question of sanction of the legislature as such not arose because functions of the Zilla Parishad includes a duty to take up developmental works which further includes putting up of roads and bridges as per Chapter IX of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayat Act, 1983 (‘the Zilla Parishad Act’ for short). Under Section 182-V it shall be the duty of every Zilla Parishad to make reasonable provisions for the construction, maintenance and repairs of district roads and bridges. The relief against the respondents- 1 to 3 was essentially a compensatory relief sought by the petitioner on behalf of the villagers. In other words, the villagers were to be compensated for the loss of bridge by directing respondents 1 to 3 to put up a new bridge. Either this Court may permit the villagers to put up their own bridge and direct respondents-1 to 3 to compensate the villagers and the petitioners, or direct respondents-1 to 3 themselves to put up the bridge. Having regard to the obligations of the Zilla Parishad as well as the nature of the construction involved in putting up of the bridge, it is more reasonable that the bridge in question should be put by the Zilla Parishad requires any funds in this regard the same shall have to be reimbursed or paid by the State Government since the earlier bridge collapsed due to the negligence of respondents-1, 2 and 4. This was not a case where a bridge is sought the put up for the first time. In a situation where the public seeks putting up of a bridge for the first time, in all probability the Court may not be in a position to direct the authorities to put up the bridge straightway. That involves several administrative and other considerations. The present situation, as already stated is altogether different. The benefit of the existing bridge is lost to the public altogether and this loss was mainly due to the negligent attitude and the inaction of the authorities.

In view of the above, this writ petition allowed. Respondents- 1 to 4 were directed to take immediate steps to restore the requisite bridge by putting up, a new bridge across the river Hire Hole in between Beloor Village of Kundapura Taluk and Achalady village of Udupi Taluk expeditiously. The petitioner held entitled to his costs computed at Rs. 1,500/-payable by the first respondent.¹¹

4. Case beneficial to a Particular individual.—In *Raghavan Naif v. Union of India*,^{*12} dismissed a public interest litigation with costs observing as below:

11 B. Sakarama Somayaji v. Assistant Commr., Kundapura, D. K., AIR 1992 Kam. 364 at pp. 365, 366, 367, 368 (K. Sahivashankar Bhat, J.). See also S. P. Anand v. Union of India, AIR 2002 M.P. 51 (DB) (one of the safeguards is, to provide for deposit of security so that the person who is involved in the litigation unnecessarily and without justification is compensated by the Court at the end of litigation).

12. (1994) 2 Ker LT 23 (SN) No. 30 quoted in AIR 1996 Ker 193 at 194.

“We may add saying that if we have a feeling that the petitioner is not fighting a case beneficial to the public at large, but a case which is intended to be beneficial to a particular individual/ individuals not before us and who do not want to come as petitioners, then also we need not entertain the writ petition. Having regard to the fact that the precious time of this Court, both before the learned single Judge and before us, has been wasted by the filing of such a case, we think that we should award costs against the petitioner which can go to the Legal Aid Board.”

5. Compensation.—When can be escaped from paying for wrongful confinement and bearing of detinue, his wife, brothers and children ?—

The respondent—State of Maharashtra, cannot escape its liability from payment of compensation to the wife for the death of her husband in Police Custody / Police lock-up and such liability rightly has not been disputed by the Assistant Government Pleader.

After holding that the State is liable to pay compensation to the petitioner No. 2, for custodial death of her husband and that in exercise of jurisdiction under Article 226 of the Constitution of India, such compensation can be awarded against the State of Maharashtra and in favour of the petitioner No. 2, the only question that remains to be considered is the quantum of compensation. Admittedly, deceased was employed in the Railways and was drawing salary of Rs. 1,600/- per month. This fact is not disputed by the Assistant Government Pleader. Though, there is some dispute about the age of the deceased because according to the petitioners, the deceased was 32 years' old and the evidence and material collected during the investigation shows the age of deceased 34-35 years, but according to the Assistant Government Pleader, he was 42 years' old at the time of his custodial death. The dispute of age in the facts and circumstances of the present case, is not very material because the High Court not examining the award of compensation under the Law of Tort. Even if for the sake of arguments that deceased was 42 years' old at the time of his death, he being a permanent employee in the Railways of the Central Government and the young age of wife and minor children and in the view of the matter, applying the Principles laid down by the Apex Court in *Nilabati Behera's* case, [AIR 1993 SC 1960 : 1993 (2) SCC 69 : 1996 (4) JT 457], the Apex Court deem it just and proper that total amount of Rs. 15,000/- would be appropriate as compensation to be awarded to the wife in the present case. If the wife or the minor children take any other proceedings for recovery of compensation on the same ground or any other ground, the amount of Rs. 1,50,000/- which is awarded to the wife would be adjusted. It is, however, made clear that this award of compensation to the tune of Rs. 1,50,000/- in favour of the wife and against the State of Maharashtra will not affect any other liability of the respondents or any other person following from the custodial death of the wife's husband. It will be open to the State of Maharashtra to recover the amount of compensation awarded from the earning police officials proportionately.

Now, a word about the petitioner's prayer for handing over the investigation of the case to the Central Bureau of Investigation. The High Court has looked into the complete material of investigation conducted the evidence and material collected by him and the fact that now, the charge-sheet has already been submitted by him before the Chief Judicial Magistrate, Nagpur and the case has already been committed for trial to the Court of Sessions Judge by the Chief Judicial Magistrate, in the facts and circumstances of the case, the High Court does not feel that now any purpose would be served by ordering investigation of the case by the Central Bureau of Investigation. Of Course, from the material placed on record it does seem that the accused Police officials avoided their arrest for few days. Though G in his affidavit has stated that he has made all out

efforts for the arrest of all the accused persons immediately, but, was not successful since he did not have sufficient staff. This explanation is not satisfactory and Court direct the State Government to enquire into the question whether there was any lapse on the part of the Investigating Officer in the arrest of the ten accused police officials and if so proper action be taken.¹¹

6. Contributing Computation.—According to the petitioner, there is a doubt with regard to the manner in which the death of Veerapan has occurred. While the Tamil Nadu STF would state that it was a death in an encounters, the Karnataka STF would state that it might be a suicide. Therefore, till this controversy is resolved, the State Government should not be allowed to felicitate and give largesse and awards to the STF personnel, which will be a bad precedent. In any event, it is stated that till the compensation is to be distributed to the victims, who lost their lives, at the hands of Veerappan and the ST personnel, such a function, conferring awards to the STF personnel, has to be restrained.

As indicated above, the main objection raised by the learned Additional Advocate General is, that the petitioner has no *locus standi* to file this petition and this petition should not be entertained, especially when the petitioner has not come with clean hands. He would further state that the Government has assured that compensation would be given to the victims at the hands of Veerappan and arrangements have already been made by the Government of Tamil Nadu and, as such, there are no merits as well in the writ petition. Before dealing with the merits of the petition, it would be better to deal with the maintainability of the petition, filed by the petitioner, that too as a party-in person.

Even according to the petitioner there are affected parties available in Dharmapuri District, who are said to have been tortured at the hands of Veerappan and the STF. When the affected parties are available to approach the appropriate forum, seeking for compensation by placing the relevant materials, the petitioner has not taken any endeavour to show, that he, as a party-in-person, alone is the saviour of those affected parties and that the affected parties are not in a position to approach the Courts for seeking compensation. When it has not been shown as to how and in what manner the affected parties are handicapped in not seeking relief, the Public Interest Litigation cannot be entertained.

Even though his prayer in the main petition is for a mandamus, directing the respondents to give compensation to the victims, his anxiety, as shown in the affidavit filed by him along with the main petition, is to prevent the function, arranged by the Government of Tamil Nadu with benign purpose, for giving away awards to the STF personnel, who are said to be responsible for the death of the Forest Brigand Veerappan, who is, admittedly, a menace to the society. From this, it is clear, that it is not a Public Interest Litigation and is only Publicity Interest Litigation, in order to gain some publicity.

Writ petition was filed, just one day prior to the function. Along with the writ petition, seeking for a mandamus, the petitioner filed a W.P.M.P. seeking for an interim injunction, restraining the Government of Tamil Nadu from holding the said function, to be held on 30-12-2004. The I Bench, at the time of admission, was not inclined to grant injunction and simply directed the matter to be posted for final disposal, after giving time to the counsel for the Government to file counter. As there was no interim injunction, the

13. Christian Community Welfare Council of India (Regd.) v. Government of Maharashtra, 1996 (1)Bom. CR 70 at 86.

function, as scheduled, was held and the STF personnel were given awards by the Chief Minister of Tamil Nadu. Thus, the object of the petitioner, to restrain the function, has not been achieved.¹⁴

7. Absence of Medical or other Evidence-only self statement available-effect ?-
-Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human right violation, by persons having criminal records for awarding compensation. That may open the floodgates for false claims, either to collect money from the State or as to prevent or thwart further investigation. Courts should, therefore, while zealously protecting the fundamental rights of those who are illegality, detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable police to discharge their duties fearlessly and effectively. Before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroboration evidence, or where there are clear indication that the allegations are false or exaggerated fully or in part, Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.¹⁵

8. Customs—Religious freedom.—In this petition¹⁶ contention was that archaic customs must be struck down as law contrary to the fundamental right of equality guaranteed by the Article 14 and that custom relating to election of the Dolois to the extent it violates Article 14, must be treated as void and Supreme Court should grant relief to the women members of Bordeories families and also to the Deories by ordering for inclusion of their names in the electoral college. Held, religious believes, customs and practices based upon religious faith and scriptures cannot be treated to be void, religious freedoms protected by Articles 25 and 26 can be curtailed only by law, made by a competent legislature to the permissible extent, whereas court can surely examine and strike down a State action or law on the grounds of Articles 14 and 15.

Preparation of Electoral Roll for election of Dolois, exclusion of Deories from the list was not discriminatory. Held, Bordeori families enjoy a distinct status and monopoly in matters connected with the religious as well as secular management of the temple of Sri Sri Maa Kamakhya and hence, claim of equality on behalf of Deoris associated with the Nanan Devalayas or even with Maa Kamakhya Temple does not have any merit, challenge to Rules on ground of Article 14 was rejected.

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14. M.S. Sivakumar v. State of Tamil Nadu, AIR 2005 Mad 202 at 207: 2005 (2) Mad LJ 71: 2005 Mad LJ (Cri) 218.

15. Sube Singh v. State of Haryana & Ors., AIR 2006 SC 1117.

16. Riju Prasad Sarnia v. State of Assam, 2015(9) SCC 461 : 2015(7) Scale 602 : 2015(6) JT 555 : 2015(4) SCC (Civil) 644.

Chapter 8

Committee for Protection of Democratic Rights



Every party is entitled to a fair investigation, which is the mandate of Article 21 of the Constitution. In the present case, the allegation that all the assailants were said to be member of the ruling party and the manner in which the investigation has been undertaken, the Court are not hopeful that the State Investigating Agency will be able to do proper justice with investigation.

Suffice it to say that whenever the Court was satisfied that investigation was not conducted impartially, fairly or in objective manner or it was likely to be tainted by irrelevant considerations and the Court reaches to the conclusion that in a given situation investigation by an independent Investigating Agency is imperative to do justice to the parties is can always order investigation by an independent agency.

In the present case, that the incident took place on 4th January, 2001 at 10.30 p.m. and an FIR was filed next morning, that is an 5th January, 2001 at 10.30 p.m. by 'A' who was an eye-witness of the incident and named eight persons as assailant and eleven persons are as assailant and eleven persons are said to have died on the spot but up till this date it has not been able to identify whether the persons namely in the FIR as deceased have really died or not. No arrest has been made except the one out of the eight assailants. The investigation has proceeded in a most dilly-dally fashion. More than three months have elapsed of the incident of such grave nature which has shaken the country, but the Investigating Agency has not been able to make any breakthrough. In the face of these facts and in the background that all the assailants are supporters of the party in power, therefore, deliberately the investigation is not proceeding with a speed which it ought to have been. In this background the Court have a strong reservation about the impartiality and fairness in the investigation by the State Police because of the political implications. Therefore, that no useful purpose would be served in continuing the investigation by the State Investigating Agency. This is also for the reason that even if the State Investigating Agency conduct the investigation and come to some conclusion that too would be looked upon with the reservation because of the allegation that all the assailants are members of the ruling party. Therefore, it is all the more necessary that in order to do justice in this case and in order to maintain impartiality and fairness in the investigation and to uphold the Rule of Law let this inquiry be conducted by an independent agency that is, CBI.

In these circumstances the Court direct the Director, Bureau of Central Investigation to depute some of his officials not below the rank of Superintendent of Police to take up this investigation and expeditiously complete the investigation as far

as possible within three months from the date of receipt of this order and bring all the culprits to the book.

1. Committee for Protection of Democratic Rights v. State of West Bengal, 1 (Ashok Kumar Mathur C.J. and Girish Chandra Gupta, J.). See also *Vineet Narain v. Union of India*, 1998 Cri LJ 1208: AIR 1998 SC 889; *Shyamal Kumar Dhar v. State*, 1998 Cri LJ 3140: 1998 Cal WN 154; *R.S. Sodhi v. State of U.P.*, 1994 Cri LJ 111: AIR 1994 SC 38: 1993 ALJ 1357.

Chapter 9

Human Rights



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1. History of Human Rights.—For centuries past, women all over the world have not only, been denied full justice, social, economic and political but, as a “weaker sex” they have been used, exploited and then discarded to lead immoral, street vagrant and destitute life till their death. Although, they constitute about half the total population and have contributed and sacrificed not less than men in the national freedom struggles at any point of time but they have been deprived of their due shares in various areas of activities and have been subjected to inhuman and humiliating wrongs from birth to death for no sin. The general though unfortunate impression has over since, been that women are sub-human species, an object of contempt and ridicule, a com. for barter, an expendable asset and plaything for mere sexual enjoyment. The ancient jude-Christian Society regarded women as “a scorpion ever ready to sting”, and pagan Arab saw in her the devil’s whip. The Indian regarded women social evil to be burnt at pyre of her husband. Nowadays, however, women have broken their ill-social shackles and are ready to face the contemporary challenges without any help and hesitation and consequently March 8, is formally observed and celebrated in several countries, including India, as a mark of integrated achievements towards the equality of rights, status and dignity of women and their equal participation in economic, social and cultural development in contemporary world scenario. (See 1999 Criminal Law Journal (Journal Section) at p. 17).

Women constitute about one-half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. Ours is a tradition-bound society where women have been socially, economically, physically, psychologically and sexually exploited from time immemorial, sometimes in the name of religion, sometimes on the pretext of writings, in the scriptures and sometimes by the social sanctions. The concept of equality between male and female was almost unknown to us before the enactment of the Constitution of India. Of course, the Preamble of the Constitution, which is the Supreme law of the land, seeks to secure to its citizens including women folkjustice -social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, and promote fraternity assuring the dignity of the individual. (See 1999 Cri LJ (Journal Section) at p.l).

History is a mute witness to the most inhuman suffering that man has inflicted on man. (See 1999(1) (Journal section) ALT at 11).

A man’s right to his liberty is the most sacred right for him and therefore, it should not be restrained without the sanction of law. A fruitful and meaningful life presupposes full of dignity, honour, health and welfare, in the modern philosophy. The treatment of human being which offends human dignity, imposes avoidable torture and reduces the

man to the level of beast would certainly be arbitrary and is impossible as a code of human conduct, in all religions. (See 1999 (1) ALT (Journal Section) at 11). Justice P.N. Bhagwati, Supreme Court of India, in the “Seminar on Human Rights” organised by I.L.A. Allahabad submitted in his inaugural address, that protection of rights of man was deeply inserted in the Babylonian Laws, Assyrian Laws, Hittite Laws and Dharm of Vedic Time in India. Description of protection right was widely and wisely discussed by Plato, Greek and Roman Philosophers. Their discussion were based on religious foundation. Right to Vote, Right to Trade, Right of access to Justice to their citizen etc., were given by city of State of Greece.

King John of England granted Magna Carta to the English baron on June 15, 1215 that their privileges will not be encroached and hampered. The Importance of Magna Carta's resulted into confirmation by Parliament in the year 1216-17 during the period of John's son, Henry III, the confirmation was done in the year 1297 and was modified by Edward I. Parliamentary superiority was formed in 1689 by the petition of Rights and Bill of Rights over the Crown and rule of law, in England were controlled by documentary authority. Declarations and constitutional branches of many states are supported by the expression “fundamental right”. The declaration of Independence of Thirteen United States of America in 1776. The Virginia Bill of Rights, 1776, the Constitution in United States of 1787 with amendments in 1789, 1865, 1869 and 1919 incorporated with right of man. In 1789 the French declaration of the Rights of Man of 1789 enlighten other country and accelerated to add provisions in their laws for the Protection of Human Rights.

It was the golden rays of sun enlightening the world of Nineteenth Century to human being to know about Human Right they possess. Worth of Human personality began to be realized.

The resultant of Human Right Movement was experienced by Human being after the World War II. During the war whole humanity was shocked due to heinous crimes committed against the humanity and human rights was perished. The History witnessed silently tyranny and complete lawlessness of Nazi leaders of Germany. Human values and dignities and morality were barbarously negated. Rights to the people became the need of hour to be established for international peace and security. President Franklin D. Roosevelt on January 6, 1941 reflected in the Proclamation of Four Freedom and mentioned as (1) Freedom of speech, (2) Freedom of religion, (3) Freedom from want, (4) Freedom from Fear. Declaration of President carries weight he said—“Freedom means the Supremacy of human rights everywhere our support goes who struggle to gain those rights or keep them.”

The growth and evolution of Human Rights and International Law had achieved a remarkable progress since, the year 1945. Several charters, treaties, etc., came into existence for effective enforcement of Human Rights like. General Assembly Official Records, 3rd Session, Supp. No. 13 at p. 71-77. Relevant provisions in the Constitutions of USA, Japan and West Germany. At this stage the Apex Court may also note relevant provisions in the Constitutions of U.S.A., Japan and West Germany and also the Universal Declaration of Human Rights and Covenants on Civil and Political Rights.

U.S.A.:

- “1. Neither slavery nor involuntary servitude, except as a punishment for crime where of the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Japan:

“Article 18 of the Japanese Constitution, 1946. Provides— No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.”

West Germany:

“2. No one may be compelled to perform a particular kind of work except within the frame work of an established general compulsory public service equally applicable to everybody.

3. Forced labour shall be admissible only in the event of imprisonment ordered by Court.”

Universal Declaration:

(A) Article 4 of the Universal Declaration of Human Rights says—“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

Covenant On Civil And Political Rights:

(B) Article 8 of the Covenant on Civil and Political Rights, 1966 says,—“1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

“2. No one shall be held in servitude.”

“3. (a) No one shall be required to perform forced, or compulsory labour.

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a Competent Court;

(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a Court, or of a person during conditional release from such detention;

(ii) Any service of a military character and in countries where conscientious objection is recognized, any national service required by law of conscientious objections;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well being of the community;

(iv) Any work or service which forms part of normal civil obligations.

The Apex Court has also noticed somewhat, similar provisions in the Constitutions of Burma, Cyprus, Jordan, Kenya, Korea, Malaysia, Mauritius, Nepal, Pakistan and

Philippines where forced or compulsory labour is valid while undergoing imprisonment as a punishment for offences committed by the prisoners.¹

2. “Human rights”—Meaning of.—“Human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. See Protection of Human Rights Act, 1993, Section 2(d).

Meaning of Human Rights could not be extended to include right to property also. Moreover that Legislature had explicitly omitted right to property within the said meaning.²

3. “Beggar”—Meaning of.—The word “beggar” is of Indian origin and is well understood in ordinary parlance. It is compulsory or involuntary labour with or without payment. This Court has approved the meaning of bar as accepted by the Bombay High Court in *S. Vasudevan v. S.D. Mittal*,³ In *S. Vasudevan’s* case, (*supra*) there was challenge to the constitutional validity of the Essential Services Maintenance Ordinance, 1960 prohibiting Bank strikes, and one of the contentions raised was that the Ordinance made the petitioners work against their will at the threat of penal consequences and that amounted to a form of forced labour which clause (1) of Article 23 of the Constitution prohibited and that thus, the Ordinance was bad in law as it contravened the provisions of Article 23(1). High Court did not agree and said: “This contention is also without any force. It omits to notice the force of the word “similar” occurring in the clause. That clause prohibits (i) traffic in human beings; (ii) beggar; and (iii) other similar forms of forced labour. It would be seen that every form of forced labour is not prohibited by the clause. In fact, Clause (2) of Articles 23 permits the State to impose on the citizen’s compulsory service for public purposes. What is prohibited by the clause is imposing on the citizens forced labour which is similar in form to beggar. It is true that beggar is not defined but it is a well-understood term which means making a person work against his will and without paying any remuneration therefor. Moles-worth at Page 580 gives the meaning of beggar as “Labour or service exacted by a Government or a person in power without giving remuneration for it”. In Wilsons Glossary the meaning of the word is given as “Forced labour”, one pressed to carry burden for individuals or to public; under old system when passed for public service, no pay was given.” In our opinion therefore, to bring the case within the mischief which Clause (1) of Article 23 provides against, it must be established that a person is forced to work against his will and without payment. Such is not the case here. Even assuming that the threat of penal consequences provided in the ordinance would have the effect of making the petitioners work against their will, it is beyond doubt, that it was not intended to make them work without any payment on the other hand, they would be getting their full remuneration for the work they would be doing.⁴

1. *State of Gujarat v. Hon’ble High Court of Gujarat*, AIR 1998 SC 3164 at 3187: 1998 Cri LJ 4561 at 4583, 4584 : (1998) 7 SCC 392: 1999 (1) Guj CD 127 (SC)
2. *T. Vellaiyor v. Registrar State Human Right Commission*, AIR 2005 Mad 80.
3. AIR 1962 Bom. 53
4. *People’s Union for Democratic Rights v. Union of India* (1982)3 SCC 235: AIR 1982 SC 1473; vide *State of Gujarat v. Hon’ble High Court of Gujarat*, AIR 1998 SC 3164 at 3181-85 : 1998 Cri LJ 4561 at 4577, 4578, 4579, 4580, 4581, 4582: 1998 (7) SCC 392: 1999 (1) Guj. CD 137 (SC).

Since, a great deal of reliance has been placed on the decision of this Court in *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235: AIR 1982 SC 1473. In this case, the Court said that many of the fundamental rights enacted in Part III of the Constitution operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found *inter alia* in Article 17, 23 and 24. Article 23 with which the Apex Court concerned is clearly designed to protect the individual not only against the State but, also against other private citizens. Article 23 is not limited in its application against the State but, it prohibits "traffic in human being and beggar and other similar forms of forced labour" practised by anyone else and the Article strikes at such practices whenever they are found as its sweep is wide and unlimited. The Court said that the reason for enactment of this provision in the chapter on fundamental rights is to be found in the socio-economic conditions of the people at the time when the constitution came to be enacted. The Court went into the question as to why the Constitution makers thought it prudent to include a provision like Article 23 in the Chapter of fundamental rights. There is good deal of discussion in Paras 12, 13 and 14 of the judgment as to the true scope and meaning of the expression "traffic in human being and beggar and other similar forms of forced labour". It is thus, clear that this Court in unmistakable terms has said that every form of forced labour beggar or otherwise is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remuneration or not. Even, if remuneration is paid, this Article would hit labour supplied by a person if it is forced labour, i.e., labour supplied not willingly but, as a result of force or compulsion. This Court was considering the argument on behalf of the Union of India which laid some emphasis on the word "similar" and contended that it was not every form of forced labour which was prohibited by Article 23 but only such form of forced labour as was similar to "beggar" and since "beggar" means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words "other similar forms of forced labour". The Court said that this contention sought to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and was in its opinion, not well-founded. Thus, this Court has held that under Article 23 no one shall be forced to provide labour or service against his will even though, it be under a contract or service. Payment of full wages when labour exacted is forced will attract the prohibition contained in Article 23. It will not, therefore, be correct to say that this judgment merely holds that where a person provides labour or service to another on remuneration, which is less than the minimum wages, the labour or service provided by him falls within the scope and ambit of the words "forced labour" under Article 23. As a matter of fact, what the judgment holds is where labour is forced on a person then irrespective of the fact, that he is paid minimum remuneration as may be fixed or even higher than that, Article 23 will nevertheless be violated. Any amount of remuneration paid to a person will be immaterial if labour is forced upon him. Can it, therefore, be said that sentence of rigorous imprisonment is unconstitutional being violative of Clause (1) of Article because prisoner is forced to do hard labour and is saved only because of Clause (2) of this Article? Can it be said that when a prisoner is made to do hard labour being part of this sentence, it is in the nature of compulsory service imposed by the State for public purpose? My answer to both these questions are in negative. Article 23 has no role to

play. Here, a prisoner is forced to do hard labour as part of his punishment for the crime committed by him and a Court of competent jurisdiction in accordance with law imposes this punishment upon him.

If the Apex Court further analyse the discussions of the Constituent Assembly on Article 23, it is significant that it was aimed at prohibiting abuses from forced labour which ryots were compelled to render to big zamindars or to royalty of erst-while Indian States. In this connection, a part of speech of Shri Raj Bahadur in the Constituent Assembly may be of some relevance:—

“Mr. Vice-President, Sir beggar like slavery has a dark and dismal history behind it. As a man coming from an Indian State. I know what this beggar, this extortion of forced labour, has meant to the downtrodden and dumb people of the Indian States. If the whole story of this beggar is written, it will be replete, with human, misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure.” (*See State of Gujarat v. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164 at 3185-87: 1998 Cri LJ 4561 at 4582, 4583: (1998) 7 SCC 392: (1999) 1 Guj. CD 137 (SC).

4. “Life”—Meaning of.—The word “Life” in Article 21 of the Constitution includes “livelihood” has only to be stated to be rejected. *Sant Ram In re*, AIR 1960 SC 932: 1960 (3) SCR 499; *Begulla Bapi Raju v. State of A.P.*, AIR 1983 SC 1023 at 1080.

The word life has the same meaning which is given in Article 21 of the Constitution of India. *Sant Ram In re*, AIR 1960 SC 932: 1960 (3) SCR 499: 1961 (1) SCJ98.

5. “Procedure”—Meaning of.—The word “procedure” in Article 21 of the Constitution of India is wide enough to cover the entire process by which deprivation is effected and that would include not only the adjectival but, also the substantive part of the law. Take for example, a law of preventive detention sets out the grounds on which a person may be preventively detained. If a person is preventively detained on a ground other than those set out in the law, the preventive detention would obviously not be according to the procedure prescribed by the law, the preventive detention would obviously not be according to the procedure prescribed by the law, because the procedure set out in the law for preventive detaining a person prescribes certain specific grounds on which alone a person can be preventively detained, and if he is detained on any other ground, it would be violative of Article 21 of the Constitution. Every facet of the law which deprives a person of his life or personal liberty would, therefore, have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21 of the Constitution.³

6. Basic human rights.—It is not a mere pedantic legal text but, it embodies certain human values cherished Principles and spiritual norms and recognises and upholds the dignity of man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as a chief concern of its various provisions. It does not treat the individual as a cog in the mighty all powerful machine of the State but, places him at the centre of the constitutional scheme and focuses on the fullest development of his personality. The preamble makes it clear that the Constitution is intended to secure to every citizen social, economic and ⁵

5. *Bachan Singh v. State of Punjab*, AIR 1982 SC 1325 at 1340.

political justice and equality of status and opportunity and to promote fraternity assuring the dignity of the Legislature and the Executive with a view to protecting the citizen and confer certain basic human rights, which are enforceable against and State in a Court of law. The Directive Principles of State Policy also emphasise the dignity of the individual and the worth of the human person by obligating the State to take various measures for the purpose of securing and protecting a social order in which justice social, economic and political shall inform all the institutions of national life. What is the concept of social and economic justice which the founding fathers had in mind is also elaborated in the various Articles setting out the Directive Principles of State Policy But, all these provisions enacted for the purpose of ensuring the dignity of the individual and providing for his material moral and spiritual development would be meaningless and ineffectual unless, there is rule of law to invest them with life and force.⁶

Public Interest Litigation is not in the nature of adversary in nature in regard of litigation but it is a challenge and also an opportunity to the Government and its officers for the purpose of making the basic human rights meaningful.⁷

7. Citizen person—Liberty of.—A perusal of the material on record will indicate that the Special Judge has failed to apply his mind to one singular aspect of the case. It is not the generality the charge, namely, the question as to whether a fraud had been played on the Department through the assistance of document which are admittedly fabricated that is the issue as far as the petitioner is concerned, but the most important aspect as to whether there is anything to show, that he was aware of this or that he was concerned in any activities. An examination of the material will indicate that precisely this crucial nexus is missing and in these circumstances the framing of the charge against the present petitioner is a worthless exercise as there is virtually no case, against him. The end result of the whole operation would, therefore, be virtual zero insofar as the trial would have to end in an acquittal where he is concerned. Where there is no case against an accused person that he must be discharged and to this extent the special Judge was clearly in error in having refused to discharge this petitioner. Neither from his individual acts nor from the allegations in support of the charge that he was a part of the conspiracy can any culpability be established against this petitioner and he would, therefore, have to be discharged. The defence put forward by prosecution that they are not at fault in so far they were always willing to proceed with the trial but, that the non-availability of the forum, namely, the Court is something for which the CBI or the police who are the prosecuting authority in the real sense of the term, for they are only the agents of the State. The setting up of sufficient number of Courts of is entirely the responsibility of the State and if it has failed miserably to live up to its responsibility on the High Court, these Government. The present case, happens to be one where, no useful purpose will be served by keeping the prosecution pending against the present petitioner and therefore, quashing of the prosecution would not be unfortunately but, on the contrary, is necessary to meet the ends of justice. The same cannot, however, be said with regard to several other instances where the offences are serious, where the accused, in fact, ought to be put on trial and punished and where they virtually get away by default only because abnormal delay, has occurred due to the fact that there are too few Courts, too many cases pending

6. Bachan Singh v. State of Punjab, AIR 1982 SC 1325: 1982 Cri LJ (NOC) 195

7. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802: 1984 (3) SCC 161: 1984 (2) SCR 67: 1984 Cr LR (SC) 517: 1983 (2) Scale 1151.

and too long a waiting period. This last aspect of the matter is one of seriousness because it is not in the public interest that grave offences should go unpunished and it is hoped that the Government at least at late stage will take immediate corrective action by forthwith taking steps to ensure that the number of Courts and Judges along with the requisite infrastructure is increased sufficiently to deal with the volume of cases, that are put up for hearing.⁸

In the case of *Narayan Sambhaji Shinde n. State of Maharashtra*,^{9 10} a single Judge of this (Deshmukh, J.) quashed a prosecution pending before Magistrate for fifteen years, where only the charge had been framed during this long period of time. In a Full Bench of decision of the Patna High Court in the case of the *State v. Maksudan Singh* the court after a careful consideration of the entire law, on the subject quashed a criminal proceeding that had been pending for over ten years due to the fault of the prosecution in that case. An argument was advanced in that case, that the rights to a speedy trial which is not deemed to be implicit in Article 21 of the Constitution by virtue of various precedents, though an enforceable right in India must be treated to be lesser to content and effect from what it would be in America, where it was a part of the Constitution in express terms. Relying on the language of the Sixth Amendment to the America Constitution, in fact, forms the basis of the Principle laid down by the Apex Court of this country while enforcing Article of the Constitution. There can be no question of lesser or greater application of a right or a Principle which is either enforceable or not and where it has been held, time and again that such, a right is implicit, that it flows from Article 21 and that it can be insisted upon. There is no longer any scope for debate. After the decision of the Supreme Court in Ramdaras Ahre's case. (1985) Cri LJ 585, it is unnecessary to launch upon a fresh discretion upon the enlarged and expanded concept of Article 21 of the Constitution.

8. Every person is entitled to life as enjoined in Article of the Constitution.—

Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1) (d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1) (d) to freely throughout the territory of India and he has also the right under Article 21 of the Constitution to his life and that right under Article 21 of the Constitution embraces not only physical existence of life but the equality of life and for residents of hilly areas, access to road is access to life itself. The Apex Court accept the proposition that there should be road for communication in reasonable conditions in view of Indian constitutional imperatives and denial of that right would be denial of the life understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.¹¹

9. Free legal aid.—It is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from

8. Shyam Narayan Singh v. State of Maharashtra, 1994 (3) Bom CR 287 at 290, 293.

9. 1989MahLJ844

10. AIR 1986 Pat.38

11. State of H.P. v. Umed Rani, AIR 1986 SC 847 at 851).

which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy they cannot become self-reliant; they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service. Legal aid would become merely a paper promise and it would fail of its purpose.¹²

10. Human rights of victims of crime.—Human rights ensure that the victims are

- (i) to be free from intimidation;
- (ii) to be informed about the availability of financial assistance and legal assistance;
- (iii) to get back stolen or other personal property which is no longer as evidence; and
- (iv) speedy investigation and trial of the case. See 1999 (1) ALT (Journal Section) at p. 15,

11. Involvement of liberty.—It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers. In matters where the Liberty of the citizens is involved, it is necessary for the officers to act with utmost expedition and in strict compliance with the mandatory provisions of law. Expeditionary action is insisted upon a safeguard against the manipulation.¹²¹³

12. National Human Rights Commission—Recommendation of.— Basing its study of the recommendations of Mulla Committee National Human Rights Commission (NHRC) circulated Indian Prisons Bill, 1996. Clause 11.21 of the Bill is relevant for our purpose and it is as follows:—

“1.21. The question of fixing rates of wages in prisons is, no doubt, a complex job. For obvious reasons, prisoners cannot be given the same rates of wages as are given in the private sector or in a public undertaking. Linking rates of wages of prisoners with commercial wages rates present many practical difficulties. We are of the view that prisoners should be paid fair, adequate and equitable wages in proportion to the skills required for the product or job or service and the satisfactory performance of the prescribed tasks. While fixing such fair, adequate and equitable wages, rate, the minimum wage rate for agriculture, industry, etc., as may be prevalent in each state and Union Territory should be taken into account.

12. Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991 at 993, 994.

13. Hem Lail Bhandari v. State of Sikkim, AIR 1987 SC 762 at 766.

Units of work prescribed for such minimum wage should also be taken into consideration. The average per capita cost of food and clothing on an inmate should be deducted from the minimum wage and remainder should be paid to the prisoners. We consider that this would be a fair and equitable basis for fixing wage rates in prisons.”

13. Procedure established by law.—Article 21 of the Constitution of India mandates thus:—

“No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

The Supreme Court in a catena of decisions has held that the expression “procedure established by law” envisages of an expeditious procedure. In the instant case, it is per se clear that there has been an infraction of the fundamental right of the petitioner conferred by Article 21 of the Constitution of India. A Procedure in which the trial of the petitioner could not be disposed of, for no fault of his, for a period of nearly nine years is the very antithesis of an expeditious procedure. It is a blatantly dilatory procedure shocks judicial conscience and casts a very sad reflection on the judicial system.¹⁴

14. Participation of v'ctim in the criminal justice process.—The primary interest of the criminal justice system is to enforce society's rights to sanction activities harmful to the public order and thereby j unish offenders to prevent future misconducts. Because, the criminal justice system's primary goals are societal in nature, victims do not have the right to insist on arrest and prosecution to offenders. The decision as to investigate or not to investigate the reported crimes and if investigated whether or not to arrest the offender, is solely within the purview of Police discretion. Also, the prosecutorial decision as to pursue charges, which charges to advance and which charges to later dismiss, alter or withdraw, all do not require victim's consent. When a convicted person is punished he is punished by the State in the name of the people, as crimes are conceived of public wrong, and in Criminal law the people are the victims. The real injury to the real victim of a crime is ignored when it comes to punishment. The state prosecutes the State adjudicates and the State determines the possible penalties. Thus, people who have been assaulted robbed, murdered, raped and abused by their spouses do not have any voice in the criminal justice process. Although, many articles have been published by victim rights advocates and law report editors that strongly supported for victims' rights but, all these attempts have not captured the attention of the public and State Legislature. It is obvious that the police, prosecution and Courts are all concerned with the rights of the criminal and largely unaffected with the plight of victim. See 1998 Cri LJ, Journal Section at 74.

15. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law, in force at the time of the commission of the act charged as an offence, not be subjected to a penalty grater than that which might have been inflicted under the law, in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself. See Constitution of India, Article 20.

16. Protection of life and liberty.—The questions whether security is to be provided to the individual or not by the State is dependent upon the threat perception with regard to that individual and what is the amount of threat and whether the threat is real or imaginary, and in case there threat, what is the degree of the threat to an individual's life, cannot be considered either by this Court or by any other agency other than the Police force itself. Police is the competent authority and it is equipped with facilities like intelligence services to come to a conclusion about threat perception of an individual. Therefore, whenever an application is made before a District Superintendent of Police by an individual for providing personal security to him, while disposing of such an application the District Superintendent of Police should invariably record his finding with regard to the threat perception. Once such a finding is recorded, it will be open for such an individual to agitate the matter further, if the concerned Superintendent of Police does not come to correct finding with regard to threat perception. This will also enable the District Superintendent of Police to decide as to how much personal security is needed by an individual. Otherwise, unless he knows the level of the threat he is unable to decide the matter. It is also well-known that, sometimes threat to one's life can remain life-long depending upon the circumstances and the incidents which are relatable with respect to such an individual, but sometimes threat to one's life may be temporary and in such, a case continuous security may not be needed. Therefore, whenever personal security is provided to a person it must be constantly reviewed by the concerned Superintendent of Police and when on the basis of information available with him he genuinely feels that the threat has vanished, he may recall the security.¹⁵

17. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law. See Constitution of India, Article 21.

18. Equal Protection of Law.—It was held that the equality before law is guaranteed to all without regard to race, colour or nationality.¹⁶

The Court rightly observed that the second expression *i.e.* equal protection of laws is corollary of the first *i.e.* equality before law, therefore, it would be difficult to imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law.¹⁷

The idea of both expressions—equality before law and equal protection of laws is related to the concept of equal justice.¹⁸

Equal protection of the laws is the corollary of the first expression—equality before law. The concept of both expressions mean one.¹⁹

No person shall be subjected to harsh and discriminatory treatment. This is the requirement of Rules of case.²⁰

15. *Katasani Rami Reddy v. Govt. of A.P.*, 1998 Cri LJ 3897 at 3899, 3900 (AP).

16. *Indira Gandhi Nehru v. Raj Narain*, AIR 1975 SC 2299; 1976 (2) SCR 347; 1975 Supp. SCC 1.

17. *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; 1952 SCR 284; 1952 CRLJ 510.

18. *Sheo Shanker v. State of M.P.*, AIR 1951 Nag 53 (FB).

19. *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; 1952 SCR 284; 1952 CRLJ 510.

20. *Rubinder Singh v. Union of India*, AIR 1983 SC 65.

The principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right but it is of course a Constitutional goal under Article 14.²¹

Equality must be among equals unequals can not claim equality. *Meva Ram v. All Medical Science*,²²

Where the Government makes its policy in regard of industrial units in backward areas to provide them special treatment not *per se* illegal and arbitrary.²³

If the policy of promotion is based on written test, interview and assessment of ACR weightage etc. it can not be said arbitrary or violative of Article 14.²⁴

Women and children are required special treatment. Nothing in Article 15 shall prevent the State from making any special treatment on account of their very nature. It is also an object of public interest. *Muller v. Oregon* 52 L.Ed. 551.

Classification of Newspapers into small, medium and big newspapers on ground of their circulation for the purpose of imposing custom duty on newsprint is not violative of Article 14.²⁵

If a tax for the sales of Virginia tobacco imposed but not on country tobacco has been held to be valid and violative of Article 14.²⁶

Where the validity of A.P. Entertainment Tax Act 1939 as amended by the Act of 1984 was challenged on the ground of violation of the provisions of Article 14 of the Constitution. The Court held that classification made by the amended Act is not violative of Article 14, because there was relation between the differentia and the object sought to be achieved by the Act. Therefore classification made by the Act is justified.²⁷

Where a higher tax imposed on Cinema House containing large seating accommodation which was situated in busy locality where the number of visitors are more numerous than the tax imposed on smaller Cinema House containing less accommodation and situated in a locality where visitors are poor and less numerous was held not to be arbitrary and violative of Article 14. *Western India Theater v. Cantonment Board*,²⁸

Where a monopoly was created by the State in its favour it is not violative of Article 14. *Sagir Ahmad v. State of U.P.*,²⁹

21. Randhir Singh v. Union of India, AIR 1975 SC 3014.
22. AIR 1989 SC 1256; Harbans Lal v. State of H.P., 1989 SC 459:1989 (1) JT 512: 1989 (2) SCC 235: 1989 (1) SCR 957: 1989 (1) Scale 580.
23. M.P. Oil Extraction v. State of M.P., AIR 1998 SC 145: 1997 (7) SCC 592: 1997 (4) Scale 515: 1997 (6) JT 97: 1997 (7) Supreme 127.
24. Union of India v. N. Chandrashekhara, AIR 1998 SC 795; 1998 (3) SCC 694; 1998 (1) IT 295; 1998(1) Scale 264; 1998 (1) Supreme 457.
25. Indian Express Newspapers v. Union of India, 1985 (1) SCC 641: AIR 1986 SC 515: 1985 (2) SCR 287: 1984 (2) Scale 853.
26. E.I. Tobacco Co. v. State of A.P., AIR 1962 SC 1733: 1963 (1) SCR 404.
27. Venkateshwara Theater v. State of A.P., AIR 1993 SC 1947: 1993 (3) SCR 616: 1993 (3) SCC 677: 1993 (3) JT 270: 1993 (2) Scale 825.
28. AIR 1962 SC 1733.
29. AIR 1955 SC 728: 1955 (1) SCR 707: 1954 SCJ 819.

Different pay scales can be fixed for government servants performing similar works on the basis of difference in responsibility etc. is not violative of Article 14 of the Constitution. *F.A.I.C. and C.E.S v. Union of India*,³⁰

19. Constitution of India, Article 15.—Article 15 of the Constitution provides a particular application of general principle embodied in Article 14. When a law comes in existence but it is prohibited by Article 15 it can not be validated by recourse to Article 14 by the application of the principle of reasonable classification.³¹

If any law provides separate electorates for the members of different religious communities it was held to be unconstitutional.³²

But a law which discriminates on the ground of residence is not violative of Article 15(1) of the Constitution.³³

The rule of natural justice owed their origin to ethical and moral Code. Is there any doubt that they have become the integral and inseparable parts of rule of law which any civilised society is proud of? Can any body be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio-economic justice, stems from the concept of social morality coupled with abhorrence for economic exploitation and the advancing society converts in course of time moral and ethical code into enforceable legal formulations.³⁴

If there is reservation of seats for women in the Educational Institutes, does not violative of the provision of Article 15 of the Constitution.³⁵

Section 497 of the Indian Penal Code punishes only for the offence of adultery. It exempts woman from punishment while she is equally guilty as an abettor was held to be valid.³⁶

Classification of Backward Classes on basis of castes comes within the preview of Article 15 (4). It is for those who are socially and educationally Backward.³⁷

Class means socially and educationally Backward Class the inclusion of this caste in the list of Backward Class is not violative of Article 15 (4) of the Constitution.³⁸

Where the Government of U.P. made reservation for the admission to Medical Colleges in favour of those candidates who came from Rural Areas, Hill and Uttarakhand Areas. The Court held that the reservation for the candidates coming from Hill and

30. 1988 (3) SCC 91.

31. *Kathi Ranning v. State of Saurashtra*, AIR 1952 SC 123; 1952 SCR 435; 1952 CRLJ 805.

32. *Nainsukhdas v. State of U.P.*, AIR 1953 SC 384; 1953 SCR 1184; 1953 SCJ 546.

33. *D.P. Joshi v. State of M.P.*, AIR 1960 SC 1208.

34. *D.S.Nakara v. Union of India*, AIR 1983 SC 130; 1983 (1) SCC 305; 1982 (2) Scale 1213; 1983 (2) SCR 246.

35. *Dattatraya v. State*, AIR 1953 Bom 311.

36. *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321; 1954 SCR 930; 1954 CRLJ 886; 1954 SCJ 385.

37. *A. Perikaruppan v. State of Tamil Nadu*, AIR 1971 SC 2303; 1971 (1) SCC 38; 1971 (2) SCR 430.

38. *State of A.P. v. V.S.V. Balram*, AIR 1972 SC 1375; 1972 (3) SCR 247; 1972 (1) SCC 660.

Uttarakhand areas was valid while for the candidates coming from Rural Area held invalid.³⁹

If a high caste girl marrying with Scheduled Tribe she would not be entitled to get the benefit of the reservation.⁴⁰

Equal protection of the laws mean subjection to equal law. It is applied to all in the some circumstances.⁴¹

Equal law is applied equally in the same situation. There is no place for discrimination between one person and another.⁴²

This is the duty of State to take special measure to prevent and punish brutality by police methodology. This duty is imposed on the State by the Rule of law.⁴³

There is difference between the substantive and procedural law. Article 14 of the Constitution applies to procedural as well as substantive law. *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75: 1952 SCR 284: 1952 CRLJ 510.

Basic feature of the Constitution can not be destroyed by the Constitutional amendment under Article 368.⁴⁴

The equality before law is guaranteed to all without any discrimination the ground of race colour oi nationality. Even corporations which are the persons are also entitled to the benefit of Article 14.⁴⁵

According to the nature of society there should be different laws in different places some persons often require separate treatment.⁴⁶

Identical treatment in unequal circumstances would amount to inequality.⁴⁷

C lassification must be based on reasonable grounds or some real and substantial distinction I earing a just and reasonable cause.⁴⁸

Concept of equality applies where equals are treated differently without any reasonable basis. But if equals and unequals are treated differently Article 14 does not apply.⁴⁹

39. State of U.P. v. Pradeep Tandon, AIR 1975 SC 563: 1975 (2) SCR 761: 1975 (1) SCC 267.

40. Dr. Neelima v. Dean P.G. Studies A.P. Agriculture University, Hyderabad, AIR 1993 SC 229.

41. Lindsley v. Natural Carbonic Gas Co., 1910 (220) US 61.

42. State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75: 1952 SCR 284: 1952 CRLJ 510.

43. Raghubir Singh v. State of Haryana, AIR 1980 SC 1087: 1980 (3) SCR 277: 1980 (3) SCC 70: 1980 CRLJ 801: 1980 SCC (Cri) 526.

44. Indira Gandhi Nehru v. Rajnarayan, AIR 1975 SC 2299: 1976 (2) SCR 347: 1975 supp SCC 1.

45. Chiranjitlal v. Union of India, AIR 1951 SC 41: 1950 SCR 869: 1951 SCJ 29.

46. State of Bombay v. F.N. Balsara. AIR 1951 SC 318: 1951 SCR 682: 1951 SCJ 478: 1951 CRLJ 1361.

47. Abdul Rahman v. Pinto, AIR 1951 Hyd 11.

48. R.K.. Garg v. Union of India, AIR 1981 SC 2138: Air India v. Nargesh Mirza, AIR 1981 SC 1829 : LC. Cooper v. Union of India, AIR 1970 SC 564: Ameronisa v. Mahbood, AIR 1953 SC 91: 1981 (4) SCC 676: 1982 (1) SCR 947: 1981 (3) Scale 1601.

49. Monoponier Co. v. City of Los Angeles, 33 Cal App 675.

Classification must not be arbitrary there must be a proper nexus between the basis of classification and the object of the Act which makes the classification.⁵⁰

Equality is a dynamic concept with many aspects and dimensions and it can not be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as Philosophically is an essential elements of equality on non arbitrariness, pervades Article 14 like a brooding omnipresence.^{51 52}

20. Relief for breach of Article 21 of the Constitution.—When one seeks relief for breach of Article 21 of the Constitution, one must confine oneself to some direct, overt and tangible act which threatens the fullness of his life or the lives of others in the community.⁵²

21. Restraints on personal liberty.—No one is entitled to barricade a highway so as to prevent members of the public from using it while they are on lawful business in the pursuit of normal avocations of life. But, the Police, whose duty it is to enforce law and order in the wake of threatened mass agitations which are reasonably likely to lead to breach of public peace, are entitled in the discharge of that duty to impose reasonable restraints on the physical movement of members of the public in order to the n'lection of public property and the avoidance of needless inconvenience to other citi:: ■ their lawful pursuit. But, all such restraints on personal liberty, if at all, hav .? be commensurate with the object which furnishes their jurisdiction. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, persecution, harassment or the like. The sanctity of person and of privacy has to be maintained at all costs and that cannot ever be violated under the guise of maintenance of law and order.⁵³

22. Right to life.—The grievance of the petitioners were that in Kerala, short distance passengers without sleeper class tickets and season ticket holders were not permitted to travel in sleeper class of long distance trains during day time without paying sleeper class fares and the minimum fare for 200 kilometres. To realise the gravity of this grievance, one has to take note of the fact that in Kerala unlike many other States there are no sufficient suburban trains, short distance fast trains and electric trains to cater to the needs of short distance travellers and season ticket holders. In the absence of such parallel trains, these commuters were forced to travel by sleeper coaches in long distance trains by paying a nominal fee. In fact they have been enjoying this facility for the last many years. By the introduction of the new sleeper class scheme with effect from 1-4-1993 railway short distance commuters (mostly daytime passengers) are prohibited from travelling in sleeper coaches in long distance trains that pass through the State unless they pay sleeper class fares which is shockingly prohibitive (fare to always which is less than 20 kms. from Emakulam junction is Rs. 58/-) as can be seen from the table of rates furnished by the petitioner in spite of the fact that they possess a sleeper class ticket. The petitioner was also aggrieved by the collection of the minimum fare of 200 kiometres from passengers travelling without sleeper tickets in the sleeper compartments of long distance trains during day time in Kerala. In vindication of the grievance, the petitioners

50. State v. Anwar Ali Sarkar, AIR 1952 SC 75.

51. Menaka Gandhi v. Union of India, AIR 1978 SC 597.

52. Ramsharan Autyanuprasi v. Union of India, AIR 1989 SC 549 at 552.

53. Rupinder Singh Sodhi v. Union of India, AIR 1983 SC 65 at 66.

have cited relevant portions of the Indian Railways Act, decisions of the Supreme Court touching on the subject and some facts and figures which will go to show the differential increase in the fares as a result of the introduction of the new scheme.

However, having regard to the importance of the question raised which has a definite bearing on public interest. The Court treated the petitions as an action *pro bono publico* and after hearing both sides, directed the Railways to make appropriate arrangements to alleviate the misery and suffering caused to the travelling public namely, short distance passengers and season ticket holders by relaxing the new scheme' or by providing sufficient additional bogies or by any other satisfactory method to suit the convenience of the commuters. The respondent was given a period of one week from the date of order to take all necessary steps in the matter to mitigate the suffering of the commuters as aforesaid, failing which, on the expiry of the said period of one week, *status quo* which obtained before the promulgation of the impugned rule/ scheme was ordered to be continued and the impugned scheme/rule was stayed as far as State of Kerala is concerned.

As noticed above, the commuters (short distance travellers and season ticket holders) in Kerala have been using sleeper coach facility for a long number of years.

Viewed in the above light, Court was inclined to hold that the right of short distance passengers and season ticket holders who travel by sleeper coaches during daytime in long distance trains by paying a nominal fee cannot but be characterised as the fundamental right to life, the denial of which can be effected only by law which is just, fair and reasonable. By enforcing the impugned scheme in question by the respondent, the commuter has been subjected to untold misery and hardship, which is avoidable by compelling him to travel in trains packed like sardines at the behest of the respondent. Railways which is a public utility service having a monopoly in the field amounting to violation of the constitutional right to for life guaranteed under Article 21 of the Constitution of India.

Since the facility of travelling in the sleeper coaches in long distance trains had been enjoyed by the public for several years without any let or hindrance, they are entitled to "legitimate expectation" of following "consistent past practice" in the matter of enjoying the sleeper class facility in the absence of any compelling the "consistent past practice" affecting thousands of members of travelling public is to be proceeded by public notice enabling the affected parties to make effective representation against the change of "consistent past practice". It was held that the impugned scheme is hit by that principle also.⁵⁴

In the instant case the petitioner who claimed himself to be a 'small human right activist and fighting for the good causes for the general public interest' filed this application under Article 32 of the Constitution asking for a direction to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent dealt and in the event of breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should be admissible. He appended to the writ petition a report entitled 'Law helps the injured to die' published in the Hindustan Times. In the said publication it was alleged that a

54. J. William John v. Chairman Railway Board, New Delhi, AIR 1997 Kerala 178 at pp. 179, 180.

scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometres away authorised to handle medico-legal cases. The Samaritan carried the victim, lost no time to approach the other hospital but before he could reach, the victim succumbed to his injuries.

There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the *status quo ante* cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.

Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for the protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. On this basis, Court has not issued notices to the States and Union Territories for affording them an opportunity of being heard before we accepted the statement made in the affidavit of the Union of India that there is no impediment in the law. The matter is extremely urgent and in our view, brooks no delay to remind every doctor of his total obligation and assure him of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others. Zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated in the 1985 decision of the Committee, is to become operative.

A high-power committee by the Government of India was appointed at a high level and this was long before and the proceedings of 29th May, 1986 have been filed and have also quoted. The Medical Council of India along with their affidavit have filed Code of Medical Ethics which everyone in the medical profession is expected to follow but still the news item which is the starting point of this petition is of 1988. The Code of Medical Ethics framed by the Medical Council was approved on 23rd Oct., 1970. This only reveals an unfortunate state of affairs where the decisions are taken at the higher level good intentioned and for public good but unfortunately do not reach the common man and it only remains text good to read and attractive to quote.

Some apprehensions were expressed because of some misunderstanding about the law of procedure and the police regulations and the priorities in such situations. On the basis of the affidavit filed by the Union of India and considering the matter it is clear that there is no legal impediment for a medical professional when he is called upon or re-

quested to attend to an injured person needing his medical assistance immediately. There is also no doubt that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. But on behalf of the medical profession there is one more apprehension which sometimes prevents a medical professional in spite of his desire to help the person, as he apprehends that he will be a witness and may have to face the police interrogation which sometimes may need going to the police station repeatedly and waiting and also to be a witness in a Court of law where also he apprehends that he may have to go on number of days and may have to wait for a long time and may have to face sometimes long unnecessary cross-examination which sometimes may even be humiliating for a man in the medical profession and it is this apprehension which prevents a medical professional who is not entrusted with the duty of handling medico-legal cases to do the needful, he always tries to avoid and even if approached directs the person concerned to go to a State hospital and particularly to the person who is in-charge of the medico-legal cases. Supreme Court had no hesitation in assuring the persons in the medical profession that these apprehensions, even if have some foundation, should not prevent them from discharging their duty as a medical professional to save a human life and to do all that is necessary but at the same time it was hoped and trusted that with this expectation from the members of the medical profession, the police, the members of the legal profession, our law Courts and everyone concerned will also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formalities and should not be dragged during investigations at the police station and it should be avoided as far as possible. It was also hoped and trusted that our law Courts will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made not to wait and waste time unnecessarily and it is known that our law Courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are made so that they may not have to wait for long. It is expected of the members of the legal profession which is the other honourable profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary. It is also expected that where the facts are so clear it is expected that unnecessary harassment of the members of the medical profession either by way of request for adjournments or by cross-examination should be avoided so that the apprehension that the man in the medical profession have which prevents them from discharging their duty to a suffering persons who needs their assistance utmost, is removed and a citizen needing the assistance of a man in the medical profession receives it.⁵⁵

In *Madhu Kishwar v. State of Bihar*⁵⁶ this Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (C.E.D.A.W.) and held the same to be integral scheme of the Fundamental Rights and the Directive Principles, Article 2 (e) of C.E.D.A.W. enjoins the State Parties to breathe life into the dry bones of the Constitution, International Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14 and 15 of the C.E.D.A.W. embodies concomitant right to development as

55. *Parmanand Katara v. Union of India*, 1990 Cr LJ 671 at pp. 672, 675, 676, 677 AIR 1989 SC 2039; 1989 All LJ 1111 (1989) 3 Crimes 156.

56. (1996) 5 SCC 125; 1996 AIR SCW2178 quoted in AIR 1997 SC 3021.

an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms.⁵⁷

A person can be deprived from his personal liberty. The expression personal liberty in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19.⁵⁸

Expression life is not limited to bodily restraint but it is something more than merely an existence of animal.⁵⁹

If a regulation imposes unreasonable restriction on fundamental rights it would be unconstitutional because they violate the right of petitioner guaranteed under Article 21 of the Constitution.⁶⁰

Right to life includes within its ambit the right to live with human dignity. *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

It does not mean merely that life cannot be extinguished or taken away as for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him means of livelihood. In view of the fact that Article 39 (a) and 41 requires the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pendency to exclude the right to livelihood from the content of the right to life.⁶¹

Telephone tapping is a serious invasion of individual's right to privacy guaranteed in Article 21 of the constitutional right to privacy is the part of the right to life and personal liberty enshrined in Article 21 of the Constitution.⁶²

Right to health and medical care is a fundamental right under Article 21 of the Constitution. *Consumer Education and Research Centre v. Union of India*,⁶³

In a Public Interest Litigation it was held that 'Right to get pollution free air and water is included in right to life under Article 21 of the Constitution.'⁶⁴

The protection of Article 21 of the Constitution is also available to convicts in jail. They can not be deprived of all fundamental rights which they otherwise possess. No

57. *Gaurav Jain v. Union of India*, AIR 1997 SC 3021 at 3031.

58. *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

59. *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295: 1964 (1) SCR 332: 1963 (2) Cri LJ 329

60. *Govind Singh v. State of M.P.*, AIR 1975 SC 1379.

61. *Olga Tellis v. Bombay Municipal Committee*, AIR 1989 SC 1988.

62. *P.V.C.L.v. Union of India*, AIR 1997 SC 568.

63. (1995) 3 SCC 42: AIR 1995 SC 922: 1995 (1) JT 636: 1995 (1) Scale 354.

64. *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420: 1991 (1) JT 77: 1991 (1) Scale 8: 1991 (1) SCC 598: 1991 (1) SCR 5

person can be deprived of his life and personal liberty except according to procedure established by law.⁶⁵

If a worker is terminated from his service without providing him reasonable opportunity of hearing is unjust and illegal.⁶⁶

The right of life is not confined merely to physical existence it includes human dignity also within its ambit.⁶⁷

It is not restricted to mere animal existence it includes the right to live with human dignity.⁶⁸

It was held that failure of Government hospital in respect to provide medical treatment timely is the denial of right to life guaranteed by Article 21 of the Constitution.⁶⁹

In the welfare state this is the primary duty of the state to secure the welfare of people. This is the obligation of Government to provide Medical assistance to people of state. Article 21 of the Constitution imposes an obligation on the state to safeguard the right to life of every person living in the state. *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, 1996 (4) SCC 37: AIR 1996 SC 2426: 1996 (6) JT 43: 1996 (4) Scale 282: 1996 (4) Supreme 260: 1996 (6) SLR 346.

23. Right to life of Prisoners.—Apart from torture, various other physical ill-treatment like putting of fetters, iron bars are generally taken recourse to in jails. Some of these are under the colour of provisions in Jail Manuals. The permissible limits of these methods has been spelt out well in many decisions of this Court. What Court would rather state is that if what is being done to prisoners in the above regard is to enforce prison discipline mentioned in various Jail Manuals, there exists a strong need for a new All India Jail Manual to serve as a model for the country, which manual would take note of what has been said about various punishments by this Court in its aforesaid decisions. Not only this, the century-old Indian Prison Act, 1894, needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of independent India and of Indian constitutional mores and mandates. The National Human Rights Commission has also felt that need for such exercise. A reading of the Chapter IX on “Prison Discipline” in R.N. Datt’s book on Prison as a Social System, shows that in some Jail Manuals even flogging/whipping has been retained as a punishment, which would not be permissible in view of the right enshrined in Article 21 of the Constitution. Court has mentioned about this only to highlight the need for a new model All India Jail Manual.⁷⁰

65. D.B.M. Patnayale v. State of A.P., AIR 1974 SC 2092: 1975(2) SCR 24: 1975 (3) SCC185: 1975 CRLJ 556: 1974 SCC (Cri) 803.

66. P.K. Yadav v. J.M. A. Industries, 1993 (3) SCC 258.

67. Menaka Gandhi v. Union of India, AIR 1981 SC 746.

68. Francis Coralie v. Union Territory, Delhi, AIR 1981 SC 746: 1981 (1) SCC 608: 1981 (2) SCR 516: 1981 CRLJ 306: 1981 (1) Scale 9: 1981 SCC (Cri.) 212.

69. Pashim Banga Khet Mazdoor Samity v. State of West Bengal, AIR 1996 SC 2426: 1996 (4) SCC 37: 1996 (6) JT 43: 1996 (4) Scale 282: 1996 (4) Supreme 260: 1996 (6) SLR 346.

70. Rama Murthy v. State of Karnataka, (1997) 3 SCC 386: (1997) 3 Bom CR 634 at 645; See also Charles Sobraj v. Supdt. Central Jail, Tihar, (1979) 1 SCR 512; Sunil Batra (I) v. Delhi

Torture and physical ill treatment causing to the prisoners like putting of iron bars etc. is not permissible in view of Article 21 of the Constitution.^{71 72}

Refusal of grant bail in a murder case is not deprivation of personal liberty.

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

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

Thus considering the substratum of the judgment prepared by my learned brother relating to children of the prostitutes and establishment of the juvenile homes Supreme Court would concur with the directions being issued by him in his order. Supreme Court recorded its respectful dissent on the question of prostitution and the directions proposed to be issued on that account and also. In the circumstance of the case, what my learned

Admin, (1979) 1 S.CR 392; Sunil Batra (II) v. Delhi Admn., (1980) 2 SCR 557; State of Maharashtra v. Prabhakar Pandurang Sanzgiri, (1966) 1 SCR 702; Suresh Chandra v. State of Gujarat, (1976) 1 SCC 654.

71. Rama Murthyv. State of Karnataka, 1997 (3) SCC 386; AIR 1997 SC 1739; 1997 (1) Scale 95; 1997f I) Supreme 157; 1997 Cri LJ 1508.

72. Babu Singh v. State of U.P., AIR 1978 SC 527. 1978 (2) SCR 777; 1978(1) SCC 579' 1978 Cri LJ 651; 1978 SCC (Cri) 133

brother has to say on the directions proposed to be issued referring to the provisions of Articles 142 and 145(5) of the Constitution.⁷³

25. Child Prostitution—Rescuing of.—The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely, Department of Women and child Development under Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the JJ Act. They should not be left to themselves, but should be rehabilitated through self-employment schemes or such measures as are indicated hereinbefore. The juvenile homes should be used only for a short stay to relieve the child prostitutes and neglected juveniles from the trauma they would have suffered; they need to be rehabilitated in the appropriate manner. The details are required to be worked out by meaningful procedure and programmes. In the light of the directions already given by Supreme Court from time to time to the Central Government, State Governments and Union Territory Administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juveniles as indicated hereinabove; they should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government concerned. A nodal Committee with the public spirited NGOs, in particular women organisations/woman members should be involved in the management. Adequate to encouragement may be given to them; the needed funds should be provided and timely payments⁷⁴ disbursed so that the scheme would be implemented effectively and fruitfully.

The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women and Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above.

In that view of the matter, it was believed and hoped that the above law and directions would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution; their children would be brought into the mainstream of the social order; these directions would enable them to avail the equally equality of opportunity and of status, with dignity of person which were the arch of the Constitution.⁷⁴

26. Arrest of volunteers of political party.—The law relating to *locus standi* the matters of filing writ petitions has been well established by now. The traditional rule was that judicial redress is available only to persons who have suffered certain legal injury as result of violation of his legal rights by the State or any Public Department or to obtain relief in cases of threatened violation to such rights. The earlier approach was that the basis requirement was personal injury to the property or to person of the petitioner coming to Court. The Supreme Court took note of the changed circumstances and it was held that the principles that were applicable at a time when public law was not in vogue are no longer applicable for the present day when our constitutional law has given most

73. Gaurav Jain v. Union of India, AIR 1997 Supreme Court 3021 at p. 3052, 3054.

74. Ibid.

importance to the, personal liberties and rights of the citizens. The Supreme Court evolved a principle by which where a legal wrong or a legal injury is caused to a person or to a determinate class of person 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 disadvantageous position unable to approach the Court for relief, any member of the public can maintain an application for appropriate order under Article 226 of the Constitution of India. This principle was highlighted in the famous case *S.P. Gupta v. President of India*,¹⁵ the Supreme Court has indicated that where the weaker sections of the community are concerned such as undertrial prisoners languishing in jails without trial, inmates of the protection home, harijan workers etc., are entitled to a special treatment. In such cases, the Courts will not insist on a regular writ petition to be filed by public spirited individuals espousing their cause and seeking relief for them. The Courts will readily respond even to a letter addressed by such individual acting *pro bona publico*. The basic principle that is followed is that the procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities as observed by the Supreme Court. However, the Supreme Court has given a word of caution in entailing such petitioners in the following words:—

“But the individual who moves the Court judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. As a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of judicial redress. This rule in regard to *locus standi* thus postulates a right duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years. (Case-law discussed).

Again the Supreme Court dealt with this question in *People's Union for Democratic Rights v. Union of India*¹⁶ wherein it was held as follows (at pp. 1476-77 of AIR 1982):—

“Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any

75. AIR 1986 SC 149.

76. AIR 1982 SC 1473.

Democratic form of Government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding and *status quo* under the guise of enforcement of their civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.”

In *Bandhua Mukti Morcha v. Union of India*,⁷¹ the Supreme Court again said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them justice. Further, the Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements. The Supreme Court pointed out that when the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of rule of law and protect the people against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional justice. In *M.C. Mehta v. Union of India*,^{72*} the Supreme Court observed that while dealing with such applications the Court should not adopt a hypertechnical approach which would defeat the ends of the justice and The Court while dealing with an application for enforcement of fundamental right must look at the substance and not the form. Even in the decision cited by learned Advocate-General in *Rihar Legal Support Society, New Delhi v. C.J. of India*,^{77 78 79} the said principles have been endorsed. Applying the above said principles to the facts of the present case Court found that hundreds of volunteers of a political party have been arrested and remanded to custody and it is not possible to hold that all those volunteers are rich and influential people in the society. After all every political party is fighting for certain principles of their own purporting to be for the benefit of common people. It is not for High Court to decide whether the cause for which they had Courted arrest is good or not. It cannot be denied that points the raised in this writ petition are common to all those innumerable persons who are in jail custody now. It may be many of them may not be able to go to Court individually and defend their rights. The basic question is, whether they are handicapped in any matter either physically economically or socially in approaching the Courts for speedy and effective remedy. As all of them are confined in prison, there was no impropriety on the part of the seven named petitioners in this writ petition filing this writ petition as a public interest litigation in order to redress the grievance of an alleged 20,000 people. It is significant to note that the seven named petitioners herein were also arrested alongwith others and, therefore, it cannot be stated that there is no *bona fide* in their approaching this Court by way of public interest litigation for their own benefit and for the benefit of the other arrested persons. The main objection was-that the vast majority of the people are not identifiable and, therefore, no relief can be granted in their favour. It is not a case wherein the case of each individual has to be considered separately. The main questions that are raised in this writ petition are common to all. Once the questions are decided, it will be

77. AIR 1984 SC 802.

78. (1987) 1 SCC 395 : AIR 1987 SC 1086.

79. (1986) 4 SCC 767 : 1987 Cri LJ 313.

possible to mould the relief in respect of all the affected persons. The writ petition filed as a public interest litigation held maintainable.⁸⁰

27. Bonded Labour.—In the case of *Bandhua Mukti Morcha v. Union of India*,⁸¹ the Supreme Court was concerned with a writ petition which had been filed by a public spirited organisation, complaining about the violation of human rights of persons, who were serving as bonded labourers. An objection had been raised on behalf of the State Government that the petition under Article 32 of the Constitution was not maintainable because no fundamental right of the petitioner or of the workmen on whose behalf the writ petition was filed, could be said to have been infringed. The Supreme Court deprecated the action of the State Government in seeking to raise such preliminary objection by observing as follows (at page 811 of AIR):—

“This contention is, in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine lessees to resist the writ petition on any ground available to them, be it hyper-technical or even frivolous, but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshold an enquiry by the Court as to whether the workmen are living in bondage and under inhuman conditions. We should have thought that if any citizen brings before the Court as a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is under our constitutional scheme, charged with the mission of bringing about a new socio-economic order where there will be social and economic justice for everyone and equality of status and opportunity for all, would welcome an enquiry by the Court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act, 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own enquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the State Government should not bulk an enquiry by the Court when a complaint is brought by a citizen, but it should be anxious to satisfy the Court and through the Court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice.”⁸²

28. Public Interest Litigation—Object of.—The State Government by moving the instant public interest litigation asked the Court to legislate or seeking a direction upon the Reserve Bank of India or Union of India to initiate suitable legislation to obviate the grave situation which has arisen for violation of the various provisions of the 1987 Directions by the R.N.B.Cs. and for diversion of funds. It appears by moving public interest litigation the State is really seeking directions for rescuing a large number of

80. G.K.. Moopanar, M.L.A. v. State of Tamil Nadu, 1990 Cri LJ 2685 at p. 2694, 2695; 2696, (Mad): 1990 Mad LW (Cri) 113. '

81. (1984) 3 SCC 161: AIR 1984 SC 802. ;

82. P.V. Kapoor v. Union of India, 1992 Cri LJ 128 at pp. 134, 135 (Del).

small depositors of the R.N.B.Cs. from financial ruination by ensuring return of their money with interest for the obvious purpose of rendering social and economic justice to such underprivileged in absence of suitable provision in the 1987 Directions or in any other legislation in this regard and in absence of its power to make necessary legislation in that regard, being the repository of public interest.⁸³ The task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation essentially a co-operative or collaborative effort on the part of the petitioner the State of Public Authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. Public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of Government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be abused and misused by the vested interests for protecting and upholding the status *quo* under the guise of enforcement of their civil and political rights.⁸⁴

On the face of vast revolution that takes place in the judicial process, the theatre of the law is fast changing and the problems of the poor are coming to the forefront.⁸⁵ And to face such a challenge the Court is required to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and two whom freedom and liberty have no meaning. The public interest litigation is one of such judicial innovations to meet such challenge. In public interest litigation the concept of *locus standi* and "person aggrieved" is relaxed and petitions even at the instance of the third parties are accepted championing the cause for the determinate class of people socially or economically oppressed and who are unable to approach the Court for protection of their fundamental or other legal right.

83. See *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

84. *State v. Union of India*, AIR 1996 Cal 181 at 218: (1996) 1 Com LJ 258 (Samaresh Banerjee, J).

85. See *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

Under such circumstances, there cannot be a rigid form, invariable structure or unalterable field and fact situation of a public interest litigation.^{86 87}

In *S.P. Gupta v. Union of India*?¹ the Supreme Court observed thus:—

“Today a vast revolution is taking place in the judicial process; the theatre of law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal rights have been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.”

29. Right of personal liberty.—The apparent inordinate delay in completing the prosecution will deprive the right enshrined under Article 21 of the Constitution of India to the petitioners or it can be held that the prosecution launched against the petitioners is in violation of Article 15 of the Constitution of India. In the Court’s opinion the petitioners are entitled to succeed on the point that the inordinate delay in completing the prosecution. There is, in fact, a delay of 18 years. In the instant case, the said delay would amount to deprivation of fundamental right guaranteed under Article 21 of the Constitution of India. It is true that as held by the Supreme Court, there is no time limit for speedy trial. But, reasonable time for fair and just trial is further guaranteed to a citizen, so that no mischief would be played or misuse of power would be done with some ulterior motive. A citizen cannot be kept on hanging for an would loose all faith and hope in the administration of justice, thus it will be breach of right of free and fair justice. “Delay in justice is denial of justice “the theory no doubt it is golden guideline for the administration of free and fair justice to a citizen. Thus, onus of proof of delay is susceptible physiognomy, it should not be allowed to use or interpreted always in favour of the prosecution. Therefore, in court’s view, the prosecution launched against the petitioner, which could not be completed even after 18 years under one pretext or the other, at this stage, is liable to be quashed and set aside.⁸⁸

It was held that right to life is not merely confined to physical but it includes within its ambit the right to live with human dignity. Therefore, it can be said that in this case the Court has given the highest possible interpretation of the word “personal liberty”. *Meneka Gandhi v. Union of India*, AIR 1978 SC 597.

No person can live without the means of livelihood. It would make the life impossible to live. Any person who is deprived of his right to life except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21 of the Constitution.⁸⁹

86. *State v. Union of India*, AIR 1996 Cal 181 at 197: (1996) 1 Corn LJ 258.

87. AIR 1982 SC 149 quoted in *Lalithamma v. State*, AIR 1996 Kant 112 at 112 (1996) 1 Kant LJ 1.

88. *Shri Mehmeed Mirza v. The Assistant of Custom (Preventive) Bombay*, 1996 All MR 343 (Bom.).

89. *OlgaTelis v. Municipal Corporation of Bombay*, AIR 1986 SC 180: 1985 (3) SCC 545: 1985 (2) Scale 5.

30. Right to livelihood.—The sweep of the right to life conferred by Article 21 of the Constitution of India is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important face of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such, deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because, they have no means of livelihood in the villages. The motive force which peoples their desertion of their hearth and homes in the village is the struggle for survival, that is the struggle for life. So, unimpeachable is the evidence of the nexus life and the means of livelihood. They have to eat to live. Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive principle, provides *inter alia*, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 of the Constitution provides that the Directive principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The principles contained in Articles 39(1) and 41, must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens and adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21 of the Constitution.⁹⁰⁹¹

31. Right to move freely throughout the territory of India.—In *Bhuvan Mohan Patnaik v. State of Andhra Pradesh* quoted in *State of Gujarat v. Hon'ble High Court of Gujarat*,⁹² the Apex Court has observed:—

“Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms-like the right to move freely throughout the territory of India or the right to “practise” a profession. A man of profession would thus, stand stripped of his

90. *Olga Telis v. Bombay Municipal Corporation*, AIR 1986 SC 180 at 193, 194.

91. 1975 3 SCC 185; AIR 1974 SC 2092 at 2094

92. 1998 Sri LJ 4561 at 4569, 4570; (1998) 7 SCC 392; (1999) 1 Guj. CD 137(SC).

right to hold consultations while serving out his sentence, but the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment likewise even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

32. Right to Shelter.—In any organised society, right to life as a human being is not ensured by meeting only the animal needs man. It is secured only when he assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political social and cultural rights enshrined in the Universal Declaration of Human Rights and convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water electricity sanitation and other civic 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. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course, subject to its economic budgeting. In democratic society as a member of the organised Civil community one should have permanent shelter so as to physically mentally and intellectually equip-oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, 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.⁹³

Right to shelter is a fundamental right guaranteed under Article 21 of the Constitution of India.⁹⁴

33. Right to speedy criminal trial.—Charge-sheet against the petitioner and some other accused, some of whom not available. After lapse of 16 years since, filing of FIR and more than 12 years since filing of charge-sheet no progress made by prosecution even to commence trial petitioner already applied for separating her trial prosecution not bothered. Case lingering for years. Delay not a tributable to petitioner, while prosecution was largely responsible for delay. Held, petitioner’s right to speedy trial infringed proceedings as far as petitioner was concerned to be quashed.⁹⁵

93. Chameli Singh v. State of U.P., 1996 (2) SCC 549: AIR 1996 SC 1051: 1995 (9) JT 380 1996(1) Scale 101.

94. Ibid.

95. Smita Ambalal Patel, Miss v. Asstt. Director of Enforcement Directorate, 1992 Cri LJ 961 (Bom.).

Undoubtedly, the proceedings have been lingering on for 10 years and now again proceedings would commence de novo because, the presiding officer has been transferred. On number of dates the witnesses were not present and the case did not make progress. The accused has a right for speedy trial and delay in trial as infringement of his fundamental right. In suitable cases, this court must exercise its inherent powers to quash the proceeding to meet the ends of justice.

Violation of right speedy trial High Court be justified in exercising its powers under Section 482 of Cr PC, 1973 prosecution to be quashed.^{96 97 98}

In *Kartar Singh v. State of Punjab*,⁹⁵ quoted in *Raj Deo Sharma v. State of Bihar*, AIR 1998 SC 3281 at 3286-87: 1998 Cri LJ 4596 at 4601 (SC), another Constitution Bench to which one of us (M.M.Punchi, J. as he than was) party observed thus, (Paras 91 and 98 of Cri LJ):—

“The concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the commission of the offence till it consummates into a finality, can be averred. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in section 309 of the Code of Criminal Procedure..... of course, no length of time is par as too long to pass scrutiny under this Principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the Court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors,—(1) length of delay; (2) the justification for the delay; (3) the accused’s assertion of his right to speedy trial; and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reason for delay will vary, such as delay in investigation on account of widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the Court, etc.”

In *Abdul Rahman Antulay v. R.S. Nayak*⁹⁶ quoted in *Raj Deo Sharma v. State of Bihar*, AIR 1998 SC 3281 at 3284-86, the Constitution Bench of this Court dealt with this aspect of the matter and laid down certain guidelines. The relevant passage in the judgment is as follows (Paras 53 and 54 of AIR) :—

“Another question seriously canvassed before us related to the consequence flowing from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observations in *Sheela Barse’s* case, AIR 1986 SC 1773, and *Struck’s* case, 1973 (37) Law Ed. 2nd 56), that the only consequence is quashing of charges and/or conviction, as the case may be. Normally, it may be so. But, we

96. K. Mahadeven Iyer v. State of Maharashtra, 1992 Cri LJ 1388 (Bom.).

97. (1994)3 SCC 569: 1994 Cri LJ 3139.

98. (1992)1 SCC 25: 1992 AIR SCW 1872.

do not think that is the only order open to Court. In a given case the facts—including the nature of offence may be such that quashing of charges may not be in the interest of justice. After all, every offence—more so economic offences those relating to public officials and food adulteration is an offence against society. It is really the society—the State—that prosecutes the offender. We may in this connection recall the observations of this Court in Champalal Punjaj Shah's case, (AIR 1981 SC 1675). In cases where quashing of charges/convictions may not be in the interest of justice, it shall be open to the Court to pass such appropriate orders as may be deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period, reduction of sentence when the matter comes up after conclusion of trial and conviction, and so on."

"In view of the above discussions, the following propositions emerge meant to serve as guidelines. We must forward that these propositions are not exhaustive. It is difficult to foresee all situations. Nor it is possible to lay down any hard and fast rules. These propositions are:—

- (1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.
- (2) Right to speedy trial flowing from Article 21, encompasses all the stages, namely, the stage of investigation, inquiry, trial appeal, revision and retrial. That is how, this has understood this right there is no reason to take a restricted view.
- (3) The concerns underlying the right to speedy trial from the point of view of the accused are :—
 - (a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or long incarceration prior to his conviction;
 - (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
 - (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.
- (4) at the same time one cannot ignore the fact that is usually the accused who is interested in delaying the proceedings. As is often pointed out, 'delay a known defence tactic'. Since, the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases, where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have

been infringed, the first question to be put and answered is—who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a Superior Court is by itself is not frivolous. Very often these stays are obtained on *ex parte* representation.

- (5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on—what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.
- (6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell J. in *Barker's case*, (1972 (33) Law Ed. 2nd 101). it cannot be said how long delay is too long in a system where justice is supposed to be swift but deliberate. The same idea has been stated by Whitel, J in *U.S. v. Ewell*, (1996(15) Law Ed. 2nd 627) in the following words:—

“..... the sixth Amendment Right to a speedy Trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances;”

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But, when does the prosecution become persecution, again depends upon the facts of a given case.

- (7) We cannot recognise or give effect to, what is called the ‘demand’ rule. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused’s plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but his mere non-asking for speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in *Barker* and other succeeding cases.
- (8) Ultimately, the Court has to balance and weigh the several relevant factors—‘balancing process’—and determine in each case whether the right to speedy trial has been denied in a given case.

- (9) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such, that quashing or proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order—including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded—as may be deemed just and equitable in the circumstances of the case.
- (10) It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA has repeatedly refused to fix any such time-limit in spite of the Sixth Amendment. Nor we do think not fixing *n.* such outer limit ineffectuates.
- (11) An objection based on denial of right to speedy trial and for relief on that amount should first be addressed to the High Court. Even if the High Court entertains such a plea, Ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such, proceedings in High Court must, however, be disposed of on a priority basis.

There should be no unreasonable delay in regard of speedy criminal trial. If there is violation of right of speedy trial the High Court would be justified in exercising its powers under Section 482 of the Criminal Procedure Code to quash the Criminal Proceeding against the accused person."

An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."^{99 100}

34. Right to work.—The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. The closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1) (g) of the constitution.¹⁰¹

35. Special treatment to Scheduled Castes.—They are human beings like all other human beings the only difference being that for centuries a large number of their countrymen have not treated them as human beings but, as sub-human creatures beyond

99. K.Mahadevan Iyer v. State of Maharashtra, 1992 Cr LJ 1388 (Bom).

100. A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225; 1992 AIR SCW 187;1991 (6) JT 479 1992 SCC (Cri) 147.

101. Fertilizer Corporation Kamagar Union v. Union of India, AIR 1981 SC 344 at 348.

the pale of society and even of humanity “William Blake” in his poem “Auguries of Innocence” Said:—

“Every Night and Every Mom
Some to Misery are Bom
Every Mom and every Night
Some are Bom to sweet delight
Some are Born to sweet delight
Some are Bom Endless Night.”

The members of the Scheduled Castes were the Children of the “Endless Night”. Their birth-right was the badge of shame; their inheritance, the overflowing cup of humiliation; their constant and closest companion, degradation the bride of their marriage; lifelong poverty; and their only fault, to be born to their parents. They were denied education. They were denied jobs except the lowest menial tasks. They were denied contact with persons not belonging to their castes for their touch polluted and even their shadow defiled, though the touch and the shadow of the animals did not, for men rode on horses and elephants and on mules and camels and milked cows, goats and buffaloes. They were denied worship and the doors of the temples were shut in their faces for their very presence was supposed to offend the gods. All these wrongs were done to them by those who fancied themselves therein superiors. As the anonymous satirist said:—

“We are the precious chosen for few:
Let all the rest be damned,
There’s only room for one or two:
We cannot have Heaven crammed.”

The treatment meted out to the members of the Scheduled Castes throughout the ages was an affront to Human Rights. It was in a spirit of atonement for the wrongs done to them and to make restitution for the injury and injustice inflicted upon them, that the framers of the Constitution enacted Article 16(4) of the Constitution, placing them in a separate class in matters relating to employment or appointment to any office under the State, formulated the Directive Principle embodied in Article 46, and proclaimed the great Constitutional mandate set out in Article 335 of the Constitution of India.

It is equally not possible to equate the members of the Scheduled Tribes with goods imported from abroad. They too are human beings like other human beings with this difference that for centuries they have preferred to follow the primitive ways of their forefathers. Remote and almost inaccessible in their hilly vastness and secluded forests, civilization has passed them by. The benefits of high sophisticated technology is as unknown to them as its hazards of noxious fumes and poisonous gases. Simple and native, they have become a rich mine for exploitation by the human products of civilization. Their lands have been stolen from them by skulduggery and they have been tricked into selling the products of their craft and skill for a song. It was to protect them from such exploitation and to enable them to participate in the mainstream of the nation’s

life that they have been given special treatment by Article 16(4), 46 and 335 of the Constitution of India.¹⁰²

In a public interest litigation in respect of the reservation policy the court observed that the blind/low vision and the other visually disabled persons belonging to the SC/ST categories are in any case enjoying the benefit of 5% relaxation in marks obtained at the master's, level for appearing in the N.E.T. examination conducting by the UGC by extending the same relaxation to particularly blind/low vision and in general all disabled at par with SC/ ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories.¹⁰³

36. Factories responsible for slavery.—Slavery is a blot on humanity while it has been in practice throughout the ages in some form or the other. The economic factor is mainly responsible for slavery. The feudal lords enjoyed the economic powers besides other privileges being concomitant with it and the compulsive economic circumstances of the others pushing them into slavery. The remnants of feudalism and the off shoots thereof are still perceptible in the society. With the decline of feudalism, the industrial concerns grew tremendously and the concentration of money became a big factor changing the form of slavery. The slavery which in ancient days was the total dominance and personal control by the master has now almost limited to the economic bondage. Those who have concentration of money in their hands economically rule the others. The intellectuals are also prey to it. The economic factor besides other has been the main cause of social stratification in the society.

Slavery has been deprecated worldwide. The fight against the colonial rule is the fight against the slavery and racial discrimination. The Universal Declaration of Human Rights, 1948 vide Article 1 declare: All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood". Article 4 declares: "No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms". Article 26 of the International Covenant of Civil and Political Rights, 1966 declares: "All persons are equal before the law and are entitled without any discrimination to equal protection of the law". In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. See AIR 1999 Journal Section, p. 43.

37. Violation of Fundamental Freedoms and Human Rights—Writ for compensation.—Nowadays it has become a regular phenomenon on the part of the Government to invade the fundamental and human rights of citizens in the guise of maintaining law and order, prevention of crime etc. The problem will arise only when the administrative power is being used indiscriminately and arbitrarily to affect the fundamental and human rights of citizen. In some cases the fundamental rights which are infringed may be restored but, it is not possible in all cases and such circumstances, the infringement may be suitably compensated by awarding monetary compensation by the Courts. See AIR 1997 Journal Section at 160.

Article 9(5) of the International Covenant of Civil and Political Rights, 1966 states "anyone who has been the victim of unlawful arrest or detention shall have an

102. Comptroller and Auditor General of India v. K.S. Jagannathan, AIR 1987 SC 537 at 551 552.

103. A.I. Confederation of the Blind and Anr. v. U.O.I & Anr., 2002 (2) JCR 287.

enforceable right to compensation”. The content of this Article 9(5) is that the victim will have an enforceable right to compensation. See AIR 1997 Journal Section 170.

If the Constitutional right of a citizen is violated the Supreme Court has power to award monetary compensation.¹⁰⁴

The Supreme Court agreed with the view of the Bombay High Court that right to life includes right to die. The Apex Court held that “Right to live” includes “right not to live”. The Court said that the provision of Section 309 of the Indian Penal Code is violation of Article 21 of the Constitution. The Court further said that the provision of Section 309 of the Indian Penal Code is —“cruel and irrational”.^{104 105}

Where the judgment debtor was an honest person but has no means to pay the debt in absence of *mala fide* under this circumstances his arrest and detention is the violation of Article 11 of the International Covenant on civil and political rights.¹⁰⁶

38. Right to privacy and Article 21.—Right to privacy is guaranteed by Article 21 of the Constitution. Every citizen has right to safeguard his privacy.

The Supreme Court said that telephone tapping is the violation of right to privacy. It is a serious invasion of an individual’s right to privacy.¹⁰⁷

39. Scope of Human Right and Article 21 of the Constitution.—These fundamental rights represent the basic values cherished by the people of our country (India) since vedic period. These rights protect the dignity of individual. These rights create conditions in which every human being can develop his personality.¹⁰⁸

Where Sikhs were killed in riots following assassination of Indira Gandhi. The direction issued by Delhi High Court to pay compensation of Rs. 2 lakhs to the victims with interest. The Supreme Court held that allowing this petition without examining circumstances would not be proper.¹⁰⁹

The Supreme Court said that for the depriving a person of his life or personal liberty it is necessary that the procedure must be—just fair and reasonable it should be in accordance with the principles of natural justice. *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

A procedure to be fair and just must embody the principle of Natural justice.

The Supreme Court said that the word ‘law’ used in Article of the Constitution does not mean merely an enacted piece of law but it must be just fair and reasonable. The law must be in accordance with the principle of natural justice. *Menaka Gandhi v. Union of India*, AIR 1978 SC 594.

104. *Andal Shah v. State of Bihar*, AIR 1983 SC 1086.

105. *P. Rathinam v. Union of India*, 1994 (3) SCC 394: 1994 (3) JT 392: 1994 CRLJ 1605:1994 (2) Scale 674: 1994 SCC (Cri) 740:1994 AIR SC 1844.

106. *Jolly George v. Bank of Cochin*, AIR 1980 SC 470:1980 (2) SCC 360: 1980 SCR 913:1980 (1)379.

107. *People’s Union for Civil Liberties v. Union of India*, AIR 1997 SC 568: 1997 (1) JT 288:1997(1) SCC 301:1996 (9) Scale 318:1996(8) Supreme 673.

108. *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

109. *S.S. Ahluwalia v. Union of India*, AIR 2001 SC 1309: 2001 (3) JT 523: 2001 (4) SSC 452: 2001 (4) SRJ 685.

The right to carry on any trade or business is not included within the meaning of life and personal liberty.¹¹⁰

Right to health and Medical Assistance is a fundamental right guaranteed under Article 21 of the Constitution. The Doctor must extend medical assistance to the injured person as soon as possible to preserve the life waiting any legal formality. Article 21 of the Constitution casts this obligation on the Doctors to Preserve the life.¹¹¹

An injured person whether he is an innocent person or be a criminal liable to punishment under the law but he is entitled to get medical assistance therefore this is the duty of doctor to assist him.

Right to health is a fundamental right.¹¹²

Denial of medical assistance by Government hospital to an injured person is the violation of right to life guaranteed under Article 21 of the Constitution of India.¹¹³

Right to health and medical assistance is the fundamental right guaranteed under Article 21 of the Constitution of India. It is also essential for the dignity of person.^{114 115 116}

The right to live with human dignity is the fundamental right the state must safeguard the dignity of human being living in the state.¹¹³

Is right to die a fundamental right? This question was raised for consideration at first time before the Bombay High Court.^{1,6}

The Court held that Section 309 of the Indian Penal Code is not unconstitutional because right to die is not fundamental right within the meaning of Article 21 of the Constitution.¹¹⁷

Right to education is fundamental right under Article 21 of the Constitution. It can not be denied on the ground of charging higher fee. Right to education flows directly from right to life.¹¹⁸

Article 21 of the Constitution casts an obligation on the state to preserve the life of the people. A doctor serving in Government hospital is presumed to be duty bound to extend medical assistance for preserving the life of human being.¹¹⁹

110. *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988: 1989 (3) IT 553: 1989 (2) Scale 430: 1989(4) SCC 155: 1989(3) SCR 1038.

111. *Pannananda Katara v. Union of India*, 1989 (4) SCC 286: 1989 (3) JT 496: AIR 1989 SC 2039: 1989 (3) Crimes 156: 1989 SCC (Cri) 721: 1989 (2) Scale 380.Ibid

112. *Vineet v. Union of India*, 1987 (2) SCC 165.

113. *Paschim Bang Khet Mazdoor Samiti v. State of West Bengal*, 1996 (4) SCC 37: 1996 (4) Scale 282: AIR 1996 SC 2426: 1996(6) JT43: 1996 (4) Supreme 260: 1996 (6) SCR 346.

114. *Consumer Education and Research Centre v. Union of India*, 1995 (3) SCC 42: 1995 AIR SC 922: 1995 (1) JT 636: 1995 (1) Scale 354.

115. *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782; 1988 Supp SCC 734: 1988 Supp (1) SCR 755: 1988 (3) JT 186: 1989 SCC (Cri) 66: 1988 (2) Scale 325.

116. *State of Maharashtra v. Maruti Sri Pati Dubai*, 1987 Cr LJ 549.

117. *Chenna Jagadishwara v. State of A.P.*, 1988 Cr LJ 549.

118. *Mohini Jain v. State of Karnataka*, 1992 (3) SCC 666: 1992 AIR SC 1858: 1992 (4) JT 292' 1992 (2) Scale 90: 1992 (3) SCR 658.

119. *J.William John v. Chairman Railway Board, New Delhi*, AIR 1997 Ker 178.

One Government should consider properly the problems of rehabilitation of fallen women and their children. The Government should try to bring them into the main stream of social order. This is the duty of Government to provide them equality of opportunity and of status with dignity.¹²⁰

The Public Interest Litigation is a judicial innovation it is for the determinate class of people specially socially or economically poor and oppressed and also not able to approach the Court for protection of their fundamental rights.¹²¹

A person is presumed to be aggrieved whose legal right has been infringed or he has suffered a legal wrong or injury in the sense that his interest recognised by law has been prejudicially affected by the act or omission of concerning authority.¹²²

The petition was filed under Article 32 by way of Public Interest Litigation to improve the conditions of fallen women / prostitutes. In this case the judgment was delivered by the Hon'ble Justice R.Ramaswami and D.P. Wadhawa. The Court issued directions to prevent the various form of the prostitution /flesh trade. The Court also gave direction for their rehabilitation through various welfare measures to provide them the dignity of persons.¹²³

It was held that—there is no right to call or enforce 'bandh' because it seriously infers the fundamental freedom of citizens. It also causes national loss in many ways.¹²⁴

The petition was filed to interfere with the policy matter of Government by way of public interest litigation. In this case the Supreme Court held that —generally Courts do not interfere in policy matters of Government but it can exercise power of judicial review if the policy so formulated violates the mandate of Constitution or any statutory provision.¹²⁵

In the interest of justice as well as public interest a land can be acquired for public purpose. The Court should keep this aspect in mind while granting injunction or stay order.¹²⁶

It was held that detention of under trial prisoner more than the sentence period is illegal it is violative of human dignity as well as the fundamental rights guaranteed under Article 21 of the Constitution of India.¹²⁷

It was held that death sentence is not violative of Article 21 of the Constitution.¹²⁸

120. Gaurav Jain v. Union of India, AIR 1993 SC 3021.

121. G.K Moopanar v. State of T.N., 1990 Cr LJ 2694.

122. D. Gopalan v. Union of India, 1991 Cr LJ 2249.

123. Gaurav Jain v. Union of India, AIR 1993 SC 3021.

124. Communist Party of India (M) v. Bharat Kumar, AIR 1998 SC 184: 1998 (1) SCC 201: 1997 (9) JT 101: 1997 (7) Scale 21 (1): 1997(9) Supreme 415: 1998 (6) SLT 378

125. Kanhaiya Lal Sethia v. Union of India, 1997 (6) SCC 573: 1998 AIR SC 365: 1997 (7) JT 289: 1997 (9) Scale 341: 1997 (7) Supreme 127.

126. Ramnikal Bhatia v. State of Maharashtra, 1997 (1) SCC 134: AIR 1997 SC 1236: 1996 (10) JT 452: 1996 (8) Scale 417.

127. Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1819: 1979 (3) SCR 1276: 1980(1) SCC 115: 1979-Cri LJ 1134: 1980 SCC (Cri) 57.

128. Bachan Singh v. State of Punjab, AIR 1982 SC 1325: 1982 (3) SCC 24: 1982 Cr LR (SC) 332: 1982 SCC (Cri) 535: 1982 (1) Scale 713. -

The Supreme Court held that —the Death sentence is not violative of Article 21 of the Constitution but it should be given in the rarest of rare cases.¹²⁹

The object of inclusion of Part III of the Constitution is to establish a Government of law and not of man. In other words the purpose of inclusion of Part III in the Constitution of India is to establish the rule of law. These rights are very essential for the perfection of man.¹³⁰

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129. *Jumman Khan v. State of U.P.*, AIR 1991 SC 345; 1990 (2) Scale 1167; 1991 (1) JT 31-1991 (1) SCC 52; 1991 CRLJ 439; 1991 (1) Crimes 151.

130. *Motilal v. State of U.P.*, AIR 1951 All 257.

Chapter 10

Custodial Violence



Synopsis

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1. Human Right.—There was a gross negligence even assuming the case of the police authorities was correct in not detecting severe injury in the middle of the head and in that case, it was not recorded in the records of the police that he has been brought in the lock-up with severe injuries. He was not given any medical assistance; on the contrary, he was taken to a primary health centre's and the primary health centre's role is very alarming and suspicious, who simply recommended transfer to the Sadar Hospital for better treatment. Even assuming that he was injured, the police authorities were fully responsible for not making available to the accused timely medical assistance. Every person has a right to get medical assistance timely and effectively while he was in police custody and by not making available all this medical assistance, if according to the police authorities, he was arrested alive, there was gross dereliction of duty. In this case, according to the finding made by the Human Rights Commission, the police authorities are guilty of killing him in police custody and accordingly, in the limited scope of this writ application, the widows of the deceased accused should be compensated for gross

negligence and overt acts that have been committed by the police authorities. Public policy demands that the police authorities who are guilty of such gross negligence and responsibility for death in police custody, should be asked to pay due and proper compensation. The widows have been helpless because of such death. Accordingly, the State should pay compensation of Rs. 1 lakh in total to both the widows, because of the negligence or otherwise on the part of the police officials, they have been made widows and become helpless. Unless this course of action is taken as a matter of public policy, people's confidence on the judicial system of this country would be completely nugatory. If the right under Article 21 of the Constitution is violated,, the same could not be taken by the Courts so lightly. The affidavits filed by the police authorities including the officer-in-charge of the police station, the superintendent of Police and the Director General of Police could not be relied upon by this Court as the same is contrary to then-own records and that it is admitted that the disciplinary proceeding has been initiated. The disciplinary proceeding is for the purpose of maintaining discipline in the police administration. But, by simply maintaining discipline in the police administration, the widows who have a right to compensation, could not be denied and deprived for such loss.

Further, the State Government is also directed to cause an enquiry to find out who is the person has issued certificate from the primary health centre and take action against the said Medical Officer of that primary health centre in accordance with the law so that in the future, the they do not issue such a misleading note. It also appeared that correct things have not been recorded in the said ticket. Further, the State Government should also investigate and take steps why on the basis of the post-mortem report, steps were not taken by the authorities concerned.¹

In this connection, it is profitable refer to the observation of Lord Denning *Mr. In Hyde v. Tameside Area Health Authority*,^{2 3} wherein the principle of violent *non fit injuria* was considered. The observations were as follows:

“But it is still unlawful. It is contrary to ecclesiastical law, which was and is still, part of the general law of England: *See Mackonochie v. Lord Penance*.^ The suicide's body was not buried in the church-yard with Christian rites. You will remember the gravediggers' scene in *Hamlet Act*; “is she to be buried in Christian burial that wilfully seeks her own salvation?” This all sounds very 'out of date, but it has a useful lesson in modern times. It is most unfitting that the personal representatives of a suicide should be able to claim damages in respect of his death. At any rate, when he succeeds in killing himself. By his act, in self-inflicting this grievous injury, he has made himself a burden on the community. Hospital services and social welfare services have done, and will do, all they can to help him and his family in the grievous injury that he has inflicted on himself and on them. But there is no justification whatever in his being awarded, in addition, the huge sum of £200,000, because he failed in his attempt. Such a sum will have to be raised, in the long run, by society itself, a sum which it cannot well afford, the policy of law should be to discourage these actions. Court

1. Lawyer's Forum for Humn Rights v. State of W.B., 1997 Cri LJ 1762 at p. 1767, 1768 (Cal) (Bhagabati Prasad Banerjee and Asok Kumar Chakravarty, JJ.).
2. (1981) Times, 16th April, 1981, (CA).
3. (1881) 6 App Cas 424 at 446 per Lord Blackbum.

disallowed them altogether, at the outset, rather than burden the community with them. Especially when, as this experience shows, that all fail in the end. At any rate, all failed before the trial judges until this one, and this one, and this one now falls”.

In *Kirkham v. Chief Constable of Greater Manchester Police Station** the question of suicide by a prisoner had suicidal tendencies, was considered. In that case, the prisoner was an alcoholic with suicidal tendencies. After a suicide attempt, he was admitted to hospital, but was allowed to discharge himself on the next day. The day after following a domestic argument, he was arrested on the charge of criminal offence. The plaintiff, namely the widow of the deceased prisoner, told the police that the deceased had recently tried to commit suicide. At his appearance before the Magistrate the next day, the police objected to bail and he was remanded to his custody for his own protection. However, the procedure for informing the prison authorities of the prisoner's suicidal tendencies by completing the form of exceptional risk prisoners stating that the prisoners had suicidal tendencies giving the relevant details and handing that form to the Magistrate's Court a goaler for transmission to the prison authorities, if the prisoner was remanded in custody was not carried out in cases of the deceased. At the remand centre the deceased was treated like a normal prisom. r and placed in a cell along, where he committed suicide by hanging. The widow brought an cction against the Chief Constable claiming damages for negligence by the police in faillii. g to pass on the remand centre information relating to the deceased's suicidal tendencies. It was held by the Court below that when the police took the deceased into a custody they assumed certain responsibilities towards him, in particular, the responsibility to pass on information which might affect his well being when he was transferred from their custody to the prison authorities and that assumption of responsibility impose on the police a duty to speak. By filing to complete the form for exceptionally risky prisoners and thereby pass on the remand centre information relating to the deceased's suicidal tendencies, the police had been in reach of that duty, and it was further held that having regard to the change in public attitude to suicide as evidenced by the abolition of the Crime of Suicide by Suicide Act, 1961, the widow's claim was not an affront to the public conscience, nor would it shake the minor citizens, it was accepted that the deceased would have worked fairly consistently. Nevertheless, it was regarded £30 a week, a £1000 a year, making £5,00 in all, and this finding made by the Court below, was not interfered with by the Court of Appeal.

The Supreme Court in the case *Charles Shobraj v. Superintendent of Central Jail, Tihar, New Delhi*,^{4 5} held that the Court can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner, but it declines to interfere where lesser matters are alone involved.

In *Bandhua Mukti Morcha v. Union of India*,⁶ the Supreme Court have held that right to live with human dignity, free from exploitation, enshrined in Article 21, derives its life breath from directive principles of State, Police and particularly clauses (e), (f) of Article 39 and Articles 41 and 42. Therefore, it must include protection of health and protection against abuse and that there is a right to alive with basis human dignity. It is

4. (1990)3 All ER 246.

5. AIR 1978 SC 1514: 1978 Cri LJ 1534: 1978(4) SCC 104: 1978 SCC (Cri) 542: 1978 SC Cri R416.

6. (1984) 3 SCC 161: AIR 1984 SC 802: 1984 Lab IC 560: 1984 SCC (Lab) 389: 1984(2) Lab LN 60.

needless to point out that every citizen has a right against torture, cruel, unusual and degraded treatment.

In *Raymond v. Honey*,¹ and in *Leech v. Parkhurst Prison Deputy Government*? it was held that a person who by virtue of any enactment detained in prison or elsewhere, retains all his rights as citizen excepting those taken away expressly or by implication.

In *Chameli Singh v. State of U.P.*? the Supreme Court *inter alia* held that in an organised society, the right to live as human being is not ensured by meeting only animal needs of man. It assures only when he is assured of all facilities to develop himself and is freed from restriction which inhibits his growth. Right to life guaranteed in a civilized society implies right to food and right to decent environment, medical care and shelter. These are said to be the basic human rights known to any civilized society.

2. Arrest—Requirements of.—In *D.K. Basu v. State of West Bengal*,⁷⁸⁹¹⁰ this Court laid down certain basic “requirements” to be ‘blowed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence. The requirements read as follows (para 36)

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

That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.¹¹

3. Arrest—Legal duty of Police.—Police is, no doubt, under legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during intefrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.¹²

The police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and a long others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug

7. (1983) 1 AC 1.

8. (1988)2 WLR 270.

9. (1996)2 SCC 549: AIR 1996 SC 1051: 1996 AIR SCW 542: 1996 (2) Civ LJ 148: 1996(1) LJR 428: 1996 (2) Land LR 485: 1996 (1) Rent LR 255: 1996 (2) SCC 549.

10. (1997) 1 SCC 416: 1997 AIR SCW 233.

11. *D.K. Basu v. State of West Bengal*, AIR 1997 SC 3017 at p. 3018.

12. *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 at 620: (1997) 1 scc 416: 1997 AIR SCW 233: 1997 Cri LJ 743: (1997) 1 Cur Cri R 81: (1997) JT(SC) 1.

peddlers, smugglers who have organised, gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if Court lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself.¹³

4. Custodial death-Compensation.—At the time of death deceased was 28 years old and maintaining family of his wife and two minor children. It was held that his wife and two minor children were entitled to compensation. State could recover amount from officers who abused their power or were found to be negligent.¹⁴

5. Judicious approach of the Judiciary.—Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exist more sensitivity and adopt a realistic rather than a narrow technical approach, while waiting with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victims of the crime has the satisfaction that ultimately the majesty of law has prevailed.¹⁵

6. Custodial violence and abuse of Police Officers:—“Custodial violence” and abuse of Police Power is not only peculiar to this country, but, it is widespread. It has been concern of international community because, the problem is universal and the challenge is almost global. The universal Declaration of Human Rights in 1948, which marked emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that “No one shall be subjected to torture or to cruel, in human or degradation treatment or punishment. “Despite the pious declaration, the crime continues unabated, though, every civilised nation shows, its concern and takes steps for its eradication.¹⁶

Even according to the provisions of Criminal Manual when an allegation of ill-treatment is made by a prisoner, the Magistrate is then and there required to examine the prisoner’s body, if, the prisoner consents, to see, if there are any marks of injuries as alleged, and shall place on record the result of his examination and reasons therefor. The Manual further requires the Magistrate that if, he finds that there is reason to suspect that the allegation is well founded, he shall at once, record the complaint and cause the

13. D.K.. Basu v. State of West Bengal, AIR 1997 SC 610 at 622: (1997) 1 SCC 416: (1997) AIR SCW 233: 1997 Cri LJ 743: (1997) 1 Cuyr Cri R 81: (1997) 1 JT(SC) 1.

14. Priti Thapar v. State of Punjab, 2004 Cri LJ 3722 (PH).

15. Munshi Singh Gautam v. State of M.P., 2005 Cri LJ 320.

16. D.K. Basu v. State of West Bengal, 1997 Cri LJ 743 at 747: AIR 1997 SC 610: AIR 1997 SCW 233: 1997 (2) Bom CR 666: 1997 (2) Guj LR 1631: 1997 (2) East Cri Cas 391: 1997 (1) SCC 416: 1997 (1) JT (SC) 1: 1997 SCC (Cri) 92: 1997 SC Cri R 371: 1996 (4) Crimes 233.

prisoner to be examined by the Medical Officer as provided in section 54 of CPC, and shall, thereafter, make a report to the Sessions Judge. However, he has no power to take up the necessary enquiry upon himself, he should forward the prisoner with the record to the Judicial Magistrate having jurisdiction to investigate the case, the examination of such prisoner's body is required to be carried out by the Medical Practitioner in case of his allegation that such examination of his body will afford evidence which will disprove the commission of any offence by him or any evidence which will establish commission of any offence committed by any other person against his body. It is obvious that in the present case, the Magistrate did not follow the provisions of the Criminal Manual issued by the High Court and straightaway preceded to take cognizance of offence allegedly committed by the petitioners. The Court does not mean to say, that the Magistrate has no jurisdiction to take cognizance of the matter, but, in the facts and circumstances narrated in detail in the paragraph (s), it was absolutely necessary to have some enquiry or investigation into the allegations. The Magistrate with his vast experience should have taken into consideration that such allegations are made by such type of persons in order to avail of the facility of bail which is normally misused for avoiding not only their arrest but, their further prosecution and hereby they get themselves released from the rigour of law as has happened in the present case.^{17 18}

7. Custodial death Worst kind of crimes:—It need not be stressed that death in Police Custody is one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. In the present case the death of the deceased occurred due to excesses and maltreatment meted out at the hands of the Police Officers. But, what is more disturbing is that there is an attempt to suppress the evidence of torture caused to the deceased by creation of false and fabricated evidence. It is a matter of serious concern that the Officer of the rank of the Tehsildar and two Medical Officers have assisted the Police in creating false evidence. The charge-sheet has been filed by Dy. S.P. under Sections 330, 306, 323 read with 34, IPC. The accused have secured anticipatory bail from the Magistrate. However, the State Government has not taken any departmental action against the concerned officers despite registration of such a serious offence against the erring officials. They are not yet suspended from service. High Court observed that the authorities have acted in totally casual and cavalier manner in dealing with the present case which involves not only a custodial death but, also a serious offence of fabrication of evidence by Government officials. In the circumstances of the case, it is expected from the Government to take strict action against the erring officials.

Now, coming to the prayer made by the petitioner for compensation it may be straightaway mentioned that award of compensation in a proceeding under Article 226 by the High Court is a remedy available in public law, based on strict liability for contravention of fundamental right to which the Principle of sovereign immunity does not apply, even though, it may be available as a defence in private law in an action based on tort. In *Nilabati Behera v. State of Orissa*,¹⁸ the Supreme Court observed that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such, restrictions, as are permitted by law, which can be imposed on the

17. A.K. Sahdev v. Ramesh Nanji Shah, 1998 Cri. LJ 2645 at 2650, 2651 (Bom.).

18. 1993 (2) SCC 746: 1993 Cri LJ 2899: 1993 (2) SCR 581: 1993 ScCriR 338: 1993 SCC(Cri) 527.

enjoyment of the fundamental right by such prisons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by law, while the citizen is in its custody, whether he be a suspect, under trial or convict. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore, his interest in the limited liberty left to him is rather precious. The duty of care on the part of the state is strict and admits of no exceptions. The wrongdoer is accountable and the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if, the person in custody of the police is deprived of his life except according to the procedure established by law. The defence of "sovereign immunity" in such, cases is not available to the State. Therefore, award of compensation would be a remedy available in a proceeding under Article 32 or Article 226 of the Constitution of India based on a strict liability or violation of fundamental right.

In the light of Principle laid down by the Supreme Court, this is a clear case for award of compensation to the petitioner for the custodial death of her husband. The question now is of quantum of compensation. The deceased was aged only 21 years. He has left behind his widow i.e. the petitioner and two children, agenda 2 years and 11 months, respectively. The petitioner's father-in-law aged 70 years and is unable to work. Held, t' at total amount of Rs. 1,50,000/- would be appropriate as compensation to be awarded to the petitioner in the present case. It is clear that, award of compensation in these proceedings would be taken into account for adjustment, in the event of the any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent in not recovered by the petitioner twice over.

A 'cordingly, Court directed the respondents State Government to pay a sum of Rs. 1,50,000/- to the petitioner and further sum of Rs. 10,000/- i.e., cost to be paid to the petitioner. The mode of payment of Rs. 1,50,000/- to the petitioner would be by making a term deposit of Rs. 50,000/- each in a scheduled Bank in three names i.e., the petitioner and her children. The deposit made in the name of the children shall not be withdrawn till they attain majority. As far as, the deposit in the name of the petitioner is concerned, it shall be made for a period of three years during which period she would receive only interest payable thereon, the principal amount being payable to her on expiry of the term. It is clarified that the petitioner will be entitled to draw interest on all the three deposits. The Collector of District Thane will take the necessary steps in this behalf and report compliance to the Registrar of the Court within two months. The award of this compensation apart from the direction for adjustment of the amount as indicated, will not affect the liability of the erring officials flowing from the custodial death of the petitioner's husband. Court directed the State Government to take necessary further action to recover the amount of compensation from the concerned officials and also to take immediate steps to put them under suspension pending the criminal trial and/or the departmental enquiry that may be instituted against them.¹⁹

8 Burden of Proof to be on Police for non-torture-per Law Commission's Report on Evidence Act.—Custodial violence torture and abuse of police power has been a concern. This problem is universal and the challenge is almost global. The universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in

19. Solgabay Sunil Pawar v. State of Maharashtra, 1998 Cri LJ 1505 at 1507, 1508 (Bom.).

Article 5: "No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment". Despite this pious declaration the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication, but it is assuming alarming proportions now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples rights and yet do not hesitate to condescend behind to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights. Article 21 which is one of the luminary provisions in the Constitution of India, 1950 in short the Constitution and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an in built guarantee against torture or assault by the state or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short the code) deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20 (3) and 22 of the constitution extended to every citizen and the guarantees held out for making life meaningful and not a mere animal • ice. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody, which have assumed alarming proportions, raise serious questions about the credibility and administration of criminal justice system.

Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone that can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent to save their colleagues. Though Sections 330 and 331 of the Indian Penal Code 1860 (for short the IPC) make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment but the convictions as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces of any ocular or other direct evidence to prove as to who the offenders are disturbed by this situation the Law Commission in its 113 the Report recommended amendments to the Indian Evidence Act 1872 (in short the Evidence Act) so as to provide that in the prosecution of a police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook, approach, appreciation and attitude particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach while dealing with the cases of custodial crime so

that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of crime has the satisfaction that ultimately the Majesty of law has prevailed.²⁰

9. Detention in Jail to labourer for no reason, liable for compensation.—In the performance of its obligations the State cannot, but acquire a humanitarian approach, because in a democracy, the State cannot act in an inhuman manner in breach of human rights. Rather than providing prompt medical attention to an under trial prisoner who was suffering from mental unsoundness, the State chose to keep him in Jail, where no medical attention could be given to him for ailment from which he was suffering. At the same time, being of unsound mind, his trial could not commence. Even after the petitioner was cured of his ailment his story was no different, and the attitude of the State also remained the same. Despite several reminders by the Superintendent of Ranchi Mental Asylum, the petitioner was not brought to the Jail and not put up for trial from 29-5-1991 to 4-12-1993, when he was ultimately shifted to the Beur Central Jail. For almost two and a half years the petitioner continued to stay, in the mental asylum, even though, that was not necessary since, he was cured of his ailment. One can well imagine the trauma and misery of a person of sound mind compelled to live in the environment of a mental asylum. The petitioner was lucky that there was no relapse of his ailment which he has suffered. For this period as well no satisfactory explanation is forthcoming from the State. The Court thus, finds that from 23-7-1987 to 11-9-1990 and again from 29-5-1991 to 4-12-1993, the petitioner was kept confined in Jail and Ranchi Mental Asylum, respectively for no good reason with the result that the case pending against him could make no progress. The State is, therefore responsible for causing the delay of about five years and eight months and in Court's opinion, is obliged to compensate the petitioner for the trauma and mental agony suffered by the petitioner. Court is told that the petitioner is a poor person and manages to make his ends meet by working on daily wage basis. The minimum wages payable today to an unskilled labour is over Rs. 60/- per day. But, during the relevant period of the minimum wages might have been less. Even if, Court take an average of Rs. 50/- per day, only on account of loss of wages, the petitioner has suffered a loss of about Rs. 81,600/- during the period of five years and nine months when he was unnecessarily kept in Jail and the Ranchi Mental Asylum. The petitioner must also be compensated for the trauma suffered by him which Court quantify at Rs.20,000/-. On a careful consideration of all aspects of the matter the petitioner should be compensated by the State which shall pay to the petitioner a sum of Rs. 1,00,000/- (Rupees One Lakh Only) by way of compensation for his unnecessary detention in Jail from 23-7-1987 to 11-9-1990 and for his unnecessary detention in the Ranchi Mental Asylum from 27-5-1991 to 4-12-1993. The Court directs the State to pay the said compensation to the petitioner within a period of three weeks from today. To avoid any dispute in future with regard to the payment, Court directed Mrs. Anjana Prakash to write to the petitioner and request him to come to Court so that on her identification the payment may be made to him by the State. She will keep the Govt. Advocate informed so that he may instruct the competent authority

20. Munshi Singh Gautam (D) and Others v. State of M.P., Respondent, AIR 2005 SC 402: 2005 Cri LJ 320: 2004 AIR SCW 6537: 2006 (2) ACJ 1002: 2004 (4) Crimes 294: 2004 (10) JT 547: 2005 (2) Jab LJ 433: 2005 (9) SCC 631: 2004 (7) SLT 38: 2004 (9) Scale 390: 2005 SCC(Cri) 1269: 2004 (8) Supreme 42.

in the Government to come to this court with the amount which may be paid in presence of the Counsel for the petitioner.²¹

10. Encounter by Police not illegal.—Very often within the precinct of the Metropolis of Mumbai, the encounters between the underworld dons and the Police are being taken place and in which either of the parties, is being killed. However, it can be taken a note that several gangs are functioning in different areas and parts of the Mumbai Metropolis and continuing their underworld activities. However, it was and whatsoever high or serious it may be, it is the responsibility of the police concerned to take such of the adequate and appropriate steps to book them under the law. It does not mean that Police Organisation have to resort to a third degree method of action and the law to be taken in their own hands to deal with them unlawfully. While saying so, Court is also conscious of the fact, that a few charges may be levelled against some members of the police organisation in a given particular case, but it cannot be proper to generalise the same against all keeping in view of the fact that no profession demands a sacrifice of the life to uphold the rule of law and that if, the police organisation has done such a meritorious sacrifice, it would be properly honoured, of Course, court has to say, that the duty of the police organisation in the eountry has become much more onerous tl .; the other organisations or the departments, highly accountable to the society for the reason that whole of the society, by and large, in the country would depend upon the risky job done by the police Department. Keeping in view of the above and applying the same to the facts of the instant case, Court is fully satisfied that the activities of the Police in dealing with the three dreaded gangsters are within the legal ambit and that they have not done anything beyond, for Section 100 of the Indian Penal Code and Section 46 of the Code of Criminal Procedure and Section 189 of the Bombay Police Manual, Vol. VIII, provides proper guidance to the police party.

While accepting the case of the Police, Court finds that there is no reason to discard what has stated but the three Police Officers on oath and the Police Officers resisted that case of the petitioners, particularly when the deceased were involved in number of serious crimes. There is no basis for ordering the enquiry by any other agency, and if so, it is bound to demoralise the Police Force and dissuade them from doing their lawful duty. Therefore, in Court's view, it would be against the public interest to order the judicial enquiry or other enquiries as asked for unless there is good reason to hold *prima facie* that the case of encounter made out was false.

There is evidence to show, that the Police Party had selected three teams which must be conversant with the retaliation work with all accurate aim, adequately too and that above all, the police personnel decided to lay the trap and secured the accused as fully trained personnel used the firearms and it was thus, while they retaliated against the untrained persons, the injuries found on them could have been caused by the bullets fired by the trained persons, may reach the vulnerable parts of the body. If, this being so, there is nothing strange for severe injuries found on the important parts of the human anatomy and the three dreaded persons and it is not possible for the Policemen to sustain any injuries on their part.²²

21. Serajuddin Ansari v. The Home Secretary, 1992 (2) BLJ 256 at 259 (Pat.).

22. Vandana Vikas Waghmare v. State of Maharashtra, 1998 Cri LJ 4295 at 4306, 4307 (Bom.).

In a case held between people's *Union for Civil Liberties v. Union of India*,²³ the Apex Court had the occasion to observe in Para 5 as under:—

“It may also be that under these conditions, certain additional and unusual powers have to be given to the Police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the Police Officers or other Paramilitary Forces engaged in fighting them. If, the versions of the police with respect to the incident in question were true there could have been no question of any interference by court. Nobody can say, that the Police should wait till they are shot at. It is for the force on the spot to decide when to act, how to act and where to act. It is not for the Court to say, how the terrorists should be fought. Court cannot be blind to the fact, that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be dealt with by force is a matter of policy for the government to determine. The Court may not be the appropriate forum to determine those questions. All this is beyond dispute.”

In an encounter if police officer causes death of a person even in self-defence, it is culpable homicide, but whether it would constitute an offence or not, that would depend on the investigation and the trial, if any. But the police officer who caused the death, may be in self-defence, cannot himself be the judge of his own cause. The provision of S 154 of Cr. P.C. is mandatory and the police officer concerned was duty bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.²⁴

Under Sub-section (1) of S. 176 of Cr. P.C. when a person dies while in police custody, a Magistrate may hold an inquiry into the cause of death which will be either instead of, or in addition to, the investigation held by the police officer. Since there were a rising number of cases in police custody. S. 176 was incorporated in order to ensure the right to life of those persons who are in the custody of police. S. 176 nowhere controls S. 154 and even the Supreme Court in terms has not taken note of even this section because this section operates for different purposes. It cannot be said that when a person is killed in an encounter or in police custody or in exchange of fire, only an inquiry by Magistrate has to be conducted in terms of S. 176 because it applies to the deaths of persons in police custody, but not to deaths caused in exchange of fire or in encounter when the persons who dies was not in the custody of police.

The provisions under S. 129 to S. 132, Cr. P.C. Would not be attracted in a case of killing of person in encounter by police or in police custody. Further self-defence known as private defence u/S. 100 of IPC is a defence at trial and not a pre-investigative stage. Therefore, it cannot be said that there cannot be any investigation when a police man kills a citizen and submits that he killed him in self-defence. If the power of the police to kill

23. AIR 1997 SC 1203.

24. Lallan Chaudhary v. State of Bihar, 2006 AIR SCW 5172; 2006 Cr. LJ 1622 SC (Foil.); AIR 2006 SC 3376; 2006 (2) ALD(CRL) 785; 2006 ALLMR(CRI) 3561; 2006 (4) Crimes 164; 2006 (8) MANU SC 4524; 2007 (1) MPHT 8; 2006 (8) SCJ 329; 2006 (10) Scale 202; 2006 (7) Supreme 700.

anybody and attribute it to self-defence is accepted, then Article 21 of the Constitution of India would become meaningless.

In case of any death of a citizen occurring during the course of encounter or a shoot out of exchange of fire or in police custody, it has to be registered as a case of culpable homicide.²⁵

11. Failure to show illegal detention not entitled for compensation.—The alleged detenu filed a reply-affidavit stating, *inter alia*, that on the night of occurrence, the police people arrested him at his house, Chirala Town, and had taken him away, in the Police Van to Vijayawada, that he was confined in a room at the Police Officer's Club and was beaten by three Policemen and that his left leg was severely injured. He was asked to procure gold jewellery from the jewellery shop on the plea, that he sold the said jewellery to that shop which he denied. On 12-7-1996, he was taken by the Police, in the same Van/Car to Nuzivid and kept in Police Lock-up at Police Station for three days. On 15-7-1996, he was again brought to Vijayawada and kept in the Police Officer's Club. On the night on 15th July, 1996, he was taken to Guntur and left at Guntur bus-stand. The Sub-Inspector of Nuzivid gave him Rs. 100/- and asked him to go home at Chirala to inform the Police about Criminal at Sturtapuram. In his reply affidavit the detenu denied the allegation that he is habitual offender in property cases. He finally claimed a sum of Rs. 10,000/- by way of compensation from the Police of Vijayawada and Nuzivid for his illegal detention for five days.

The case of the petitioner and the detenu rests solely on their oral assertions and there is no independent corroboration. Likewise the version of the respondents that detenu is a Police informer is not borne out by any record excepting the oral statements of the two Sub-Inspectors of Police concerned. Thus, the evidence on both sides is not clinching and it is evenly balanced. In situation like this, the court has to go by the probabilities and also circumstantial evidence. Personal liberty is undoubtedly the most cherished right among the fundamental rights guaranteed by the Constitution. As such, the Court attaches utmost importance for safeguarding this right. At the same time, the Court cannot grant relief merely on the basis of sympathy, sentiment or suspicion in the absence of proof. Of course, in proceeding like this proof beyond reasonable doubt is not required as in a criminal case.

The Magistrate who held enquiry as per our directions has, no doubt, come to the conclusion in his first report dated 12-9-1996 that detenu was detained in Nuzivid Rural Police Station for three days but, he reached the said conclusion merely on the basis of the *ipsi dixit* of the detenu. The fact remains that the learned Magistrate submitted the said report without notice to the Sub-Inspectors of the concerned Police Stations and without recording their statements. It can, therefore, be said to be one sided. That is why Court called for a further report from the Magistrate. Even in the second report the learned Magistrate failed to properly analyse the evidence or the probabilities. As directed by the Court and he rejected the version of the respondents on the sole ground that it is not borne out by any other evidence except the oral statements of the Police personnel. It is true that the respondents have not placed any record to show, that detenu was their informer and they did not also mention the details of any other instances when he acted as their informer in the past. But, there is some circumstantial evidence in the case, which lends credence to the version of the respondents in this behalf. The detenu was not involved in any crime registered either

25. Andhra Pradesh Civil Liberties Committee v. State of A.P., 2008 Cri LJ 402 (AP).

in Nuzivid Rural Police Station or Gudiwadaa II Town Police Station. If, that be so, there is no reason for the personnel of these two Police Stations either to arrest him or to detain him in illegal custody. Moreover, the admission of detenu that he was paid Rs. 100/- by the SI of Police and he was also given a chit containing the telephone number of the Police Station and he was asked to contact the said telephone number, if necessary, lends further support to the version of the respondents that detenu was their informer. The claim of the detenu that his leg was severely injured due to the torture inflicted by the Police is belied by his own admission that he did not go to any doctor or undergo any treatment. His claim that the Police demanded from him one bucket of gold, on the face of it, appears to be highly improbable and exaggerated. The fact, that he was a former Police Constable also makes, it probable that the Police have developed him as their informer. Further, his antecedents do not inspire confidence making it difficult for the Court to accept his real assertions without any independent corroboration. The learned Magistrate failed to advert to any of the above facts and circumstances. The Court are, therefore, unable to share his view. The Court are satisfied that the petitioner and the detenu failed to satisfactorily discharge the burden of the proof which undoubtedly lies on them. The Court held that the detenu failed to make out his plea that he has been illegally detained by the respondents. As such the question of awarding any compensation to him does not arise.²⁶

12. Fundamental rights of detenu.—It is now well-settled that even where a person is convicted and imprisoned under sentence of Court, he does not lose all the fundamental rights belonging to any person under the Constitution including the right under Article 21, not to be deprived of his life or personal liberty except according to procedure established by law; See cases of *D.B. M. Patnaik v. State of A.P.*,²⁷ and *Sunil Batra v. Delhi Administration*.²⁸

Dealing with the question of custodial death. The Supreme Court in *Nilabati Behera v. State of Orissa*²⁹ has observed (para 30):—

“It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Art. 221 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is “not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong-doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.”

26. *M Kunja Sampathamma v. Station House Officer, Chairala P.S.*, 1998 Cri. LJ 584 at 621-623 (AP).

27. AIR 1974 SC 2092: 1975 Cri LJ 556.

28. AIR 1978 SC 1675: 1978 Cri LJ 1741.

29. AIR 1993 SC 1960: 1993 Cri LJ 2899.

It is, therefore, immaterial and not relevant at this stage, to determine as to who whether Jail guards or the detenu were responsible for the injuries and ultimate death of Laloo Singh. What this Court is required to determine in this petition is only this, whether fundamental right to life of the deceased has been violated and the obvious answer is Yes. A custodial death, observed the Apex Court in the case of Nilabati,³⁰ “is perhaps one of the worst crimes in the civilised society governed by the rule of law. The liability of the State Government to pay compensation cannot be, therefore, doubted.

As regards quantum of compensation, the deceased at the time of his death was aged about 55 years and earning wages Rs. 1,860/- per month. Having regards to the totality of the facts and circumstances an amount of Rs. 50,000 would be proper compensation to be awarded to the petitioner and other heirs of the deceased.

Accordingly, Court allow the petition and direct the state of Madhya Pradesh to pay sum of Rs. 50,000/- as compensation to the petitioner and other heirs if any of the deceased. The respondents are further directed to pay sum of Rs. 2,000/- to the petitioner as costs of this petition. The Collector, Indore will take necessary steps to ascertain as to who are the heirs of the deceased besides the petitioner. The amount of compensation shall thereafter, be distributed amongst them within 3 months under intimation to the Registrar of this Court. Award of this compensation will not, however, affect the right of the petitioner or any other heir of the deceased to resort to such other remedies as may be available to them in law on account of the said custodial death except that the amount awarded herein shall be taken into consideration for adjustment in the event of any of other proceeding taken by any such heir for compensation on the same ground.

The State is also expected to take necessary action to ascertain and fix the responsibility of the individuals accountable for the riot that broke out in the Jail and which resulted into the custodial death of Laloo Singh and causing injuries to many others. Appropriate actions against erring officers shall thereafter be taken.

The petition thus stands disposed of as aforesaid. The security amount if any shall be refunded to the petitioner after verification.³¹

13. Illegal detention-claim of compensation.—Juvenile accused not presented before court on various dates of hearing including date when he was granted bail. Court thereafter declared him juvenile and directed to shift him to observation Board. But copy of order misplaced by jail authority and petitioner was not shifted. Hence because of dereliction of duties and negligence of jail Authorities of boy of 15 years was compelled to remain in prison for 25 months with adult and hardened criminals. Causes Section of Rupees 1 Lac granted as claim for compensation was justified.³²

14. Interrogation—Method of.—Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the Police Force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the

30. 1993 Cri LJ 2899.

31. Chandabai Yadav v. State of M.P., 1997 Cri LJ 3844 at pp. 3844, 3845, 3846 (MP) (Indore Bench) (N.K. Jain, J.).

32. Salim Ikramuddin Ansari v. Office in Charge Borivali Police Station, 2005 Cri LJ 799 (Bom).

constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.³³

There can be no gain saying that freedom of an individual must yield to be security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenues, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The latin maxim *salus populi est suprema lex* (the safety of the peoples is the supreme law) and *salus reipublicae est suprema lex* (safety of the State is the Supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 of the Constitution. Such a crime-suspect must be interrogated indeed subjected to sustained and scientific interrogation..... determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third degree methods or elemenated with a view to elicit information, extract confession or drive knowledge about his accomplices, weapons etc. His Constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism, State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of Law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.³⁴

15. Inquiry.—In the instant case the injury was caused to Murugan by the illegal detention and not in any manner the allegations against the respondent and his men that they tortured Murugan, removed his nails, applied chilli powder over his eyes and made him to consume ganja, arrack and human-waste diluted in water. This shall also not meet the circumstance how the interpolation was made in the surrender petition filed in the Court of the Judicial Magistrate IV, Dindigul and who manipulated the so-called surrender although Murugan was produced before the Magistrate in Police custody. This, shall require some disciplinary action against the respondent and any other person found involved in it as well as action by the Court of the Judicial Magistrate, Dindigul for interpolation in his records. The Director General of Police, Tamil Nadu, directed to issue

33. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at 621: (1997) 1 SCC 416:1997 AIR SCW 233:1997 Cri LJ743: (1997) 1 Cur Cri R 81: (1997) 1 JT(SC) 1.

34. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at 622, 623 : (1997) 1 SCC416 1997 AIR SCW 233: 1997 Cri LJ 743: (1997) 1 Cur Cri R 81: (1997) 1 JT(SC) 1.

necessary orders to the disciplinary authority to hold a preliminary inquiry and if such facts are revealed in the preliminary inquiry warranting disciplinary proceedings, to initiate disciplinary proceedings against the respondent or any other person involved in the matter, within a reasonable time so as to complete the preliminary inquiry within a period of one month and the disciplinary inquiry, if any, within period of three months thereafter.³⁵

16. Punitive measures: *Ubi jus ibi remedium*.—There is no wrong without a remedy. The law intends that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lockup, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.³⁶

17. Torture.—“Torture” has not been defined in the Constitution or in other penal laws. Torture’ of a human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the weak’ by suffering. The word torture today has become synonymous with the darker side of human civilisation.

“Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it.

“Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.” (*Adriana P. Bartow*).

No violation of anyone of the human right has been the subject of so many conventions and declarations as ‘torture—all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. “Custodial torture” is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward—flag of humanity must on each such occasion fly half-mast.³⁷

In all custodial crimes what is a real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

Custodial violence’ and abuse of police power is not only peculiar to this country, but it is widespread. It has been concern of international community because the problem is universal and the challenge is almost global The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Articles 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

35. Lakshmi v. Sub-Inspector, N. P. Police Station, 1991 Cri LJ 2269 at p. 70 (Mad).

36. D. K.. Basu v. State of West Bengal, AIR 1997 SC 610 at 624: (1997) 1 SCC 416: 1997 AIR SCW 233: 1997 Cri LJ 743: (1997) 1 Cur Cri R 81: (1997) 1 JT (SC) 1.

37. D.K. Basu v. State of West Bengal, AIR 1997 SC 610 at 615: (1997) 1 SCC 416: 1997 AIR SCW 233.

In England, torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common laws and more radical ideas imbining human thought and approach, such inhuman practices were initially discouraged and eventually almost done away with, certain aberrations here and there notwithstanding. The Police powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Philips Committee—Report of a Royal Commission on Criminal Procedure’ (Command—appears 8092 of 1981). The report of the Royal Commission is, instructive. In regard to the power of arrest, the Report recommended that the power to arrest without a warrant must be related to and limited by the object to be served by the arrest, namely, to prevent the suspect from destroying evidence or interfering with witnesses or warning accomplices who have not yet been arrested or where there is a good reason to suspect the repetition of the offence and not to every case irrespective of the object sought to be achieved.³⁸

The Royal Commission suggested certain restrictions on the power of arrest on the basis of the ‘“necessary principle”’. The Royal Commission said:

“...We recommend that detention upon arrest for an offence should continue only on one or more to the following criteria:—

- (a) the person’s unwillingness to identify himself so that a summons may be served upon him;
- (b) the need to prevent the continuation or repetition of that offence;
- (c) the need to protect the arrested person himself or other persons or property;
- (d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and
- (e) the likelihood of the person failing to appear at Court to answer any charge made against him.’

The Royal Commission also suggested:—

‘To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the Police Station without resorting to arrest provided a power to arrest exists, for example to be finger printed or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case.....”

The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidents of custodial violence has been minimised there to a very great extent.³⁹

38. See *Ibid*

39. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at 616: (1997) 1 SCC 416 1997 AIR SCW 233: 1997 Cri LJ 743: (1997) 1 Cur Cri K 81: (1997) 1 JT(SC) 1.

The need of amendment requires no emphasis, sharp rise in custodial violence, torture and death in custody, justifies the urgency for the amendment and we invite Parliament's attention to it.

Amendment of the relevant provisions of law to protect the interest of arrested persons in such cases too is a genuine need.⁴⁰

18. Grant of Compensation for violation of Fundamental Right.—The case of the petitioner was that her husband Natarajan Chettiar was a pawn broker dealing with buying and selling of artificial diamonds and jewels on commission basis and in the month of August, 1993, one Kullah Acharya alias Subraipani, who was also in the same business, had given some jewels to her husband for selling and on 11.9.1993, the 5th respondent with a police party came to vaniyambadi and enquired her husband and others about the jewels and only at that point of time, her husband came to know that the jewels were stolen ones; that the 5th respondent required her husband and others to come with him to Tiruvannamalai Police Station and demanded huge amount as bribe; that on receiving the information about the arrest of her husband, she sent her elder son and thereafter her another son Anandhan to Tiruvannamalai Police Station and at last she came to know that her husband died on 11.9.1993 because of the police excesses and the dead body was thrown in Thachambattu Reserve Forest. She further submitted that she is a poor widow having a large family consisting of three daughters and three sons.

During the pendency of the writ petition, the Government issued G.O. Ms. No. 741 Public (Law and Order-A) Department, dated 8.7.1996, ordering to launch criminal prosecution against the Police Officers. From the materials placed on record it is seen that a case in C.D. No. 1514 of 2000 was pending before the Judicial Magistrate, Tiruvannamalai as against the 5th respondent and others. Considering all these aspects and further such a criminal case is pending against the 5th respondent and others for the alleged custodial death of the deceased, the learned single Judge, has correctly restrained himself from as follows:

“Rarely in cases of police torture of custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues and the present case is an apt illustration as to how one after the other police witnesses feigned ignorance about the whole matter.” “Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lock up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners suspects tarnishes the image of any civilized nation and encourages them men in ‘Khaki’ to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of

40. Ibid.

the criminal justice entering into the discussion regarding the factual matrix of the case and further held that from the G.O. Ms. No. 741 Public (Law and Order-A) Department, dated 8.7.1996, steps were taken for prosecuting the police personnel, and thus from the said G.O. it is clear that the husband of the petitioner died due to the torture by the police personnel of Veraiyur Police Station and the said conclusion of the Government is sufficient for awarding compensation. Thereupon, the learned single Judge assessing the case of the petitioner regarding compensation, has ordered the respondents to pay a sum of Rs. 3 lakhs as compensation.

It is now a well settled law that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, a public Servant. But as has already been adverted to the finding rendered by the learned single Judge, holding the respondents liable to pay the compensation to the petitioner reached the finality and therefore, it is not necessary for the court again to go into such aspects. Furthermore as has been correctly observed and held by the learned single judge, since a criminal case is pending regarding the death of the deceased, any opinion expressed in these proceedings regarding the cause of death is unwarranted.⁴¹

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen.⁴² There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.⁴³

Section 330 of IPC, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen.

41. Rajammal v. State of Tamil Nadu, 2008 Cr..LJ 2280.

42. See Rudal Shah v. State of Bihar, (1984) 4 SCC 141 : AIR 1983 SC 1086; Sebastian M. Hongrey v. Union of India, AIR 1984 SC 956 : (1984) 3 SCC 339; Rajendra Singh v. Smt. Usha Rani, AIR 1984 SC 1026: (1984) 3 SCC 82; Bhim Singh v. State of J&K, AIR 1986 SC 494: (1985) 4 SCC 677; Saheli v. Commissioner of Police, Delhi, AIR 1990 SC 513' (1990) 1 SCC 422.

43. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at 624, 625 : (1997) 1 SCC 416 : 1997 AIR SCW 233 : 1997 Cri LJ 743 : (1997) 1 Cur Cri R 81: (1997) 1 JT (SC) 1. See also Neelabati Behera v. State, 1993 AIR SCW 2366.

To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.⁴⁴

In the instant case Special Criminal Application under Article 226 of the Constitution has been registered under Rule 31 of the High Court Amended Rules, 1995 on an application received through post from 'D'.

In her application, she has stated that, on 1-11-1995, at about 1.00 hrs at midnight. 'M' Joshi, PSI, LCB Godhra, 'D', Police constable and other members of his staff came and took her husband with them in the jeep. Her husband was taken to CID officer and later on, to Government Guest House, at Lunavala and then, in the morning, to Godhra. At about 7.15 a.m. her husband had gone for urinal police constable 'D' also accompanied him, at that time, 'D' came to PSI 'J' and told him that head constable 'R' had shot himself. Hearing this, 'J' went to the spot and found 'R' lying at the door of urinal. Police constable 7 " removed the revolver from the spot.

The say of the petitioner is that she suspects foul play in the death of her husband. She has also expressed her suspicion that PSI 'J' and police constable T have murdered her husband and S.D.P.O. D ' has helped them. In view of this, she has sought a high level enquiry on the investigation of the incident.

It is pointed out that, on 1-11-1995, at about 9.00 his. PSI, LCB, 'J' lodged the FIR of the incident, at 'G' police station against 'N' for the offence under Section 309 of IPC which was registered as the Cr. R. No. 1-293/95 and the investigation was conducted by P.I. Godhra town H.G. Damor. The investigation was supervised by Sub-Divisional Police Officer Godhra and Additional Superintendent of Police, Godhra. The investigation continued up to 29-11-1995 by 'D' and the same was handed over to P.I. 'B', as 'D' was transferred out of Godhra town police station and 'B' was posted vice him. 'B' continued investigation up to 25th March, 1996. A grievance was made with respect to the delay in investigation and also *mala fide* investigation. 'M' counsel, therefore made a request to this Court to give a direction to entrust the investigation to the District Magistrate or Additional D.G.P., CID (Crimes). The investigation was then being conducted by R', P.I. CID., (Crimes), Godhra. The Public Prosecution on 2-7-1986, made a statement before this Court, keeping in view the suspicion pointed out at the police officers, the investigation hereinafter shall be made under the direct supervision of either S.P. or DIG, CID Crimes and ultimate report of the investigation shall be submitted to the Court. In view of it, this Court, by order dated 2nd July, 1996, directed that the investigation shall be completed and a report shall be submitted on or before 31st August, 1996 and the investigation shall be under the direct supervision of the DIG, CID Crimes.

'G' LG. Police, Crimes, under his report dated 16-9-1996 submitted that the allegations against the police officers of committing murder of petitioner's husband is unfounded. He also submitted the report of the investigation conducted by P.I., CID Crimes, Panchmahals, at Godhra.

'H', DIG CID Crimes has also filed an affidavit dated 17th Oct. 1996. After giving the details of the investigation, it is submitted that the investigation was done not to cover up the acts of omissions of any officer. It was also submitted that the conclusion of the

44. D. K. Basu v. State of West Bengal, AIR 1997 SC 610 at 624 : (1997) 1 SCC 416 : 1997 AIR SCW 233 : 1997 Cri LJ 743 : (1997) 1 Cur Cri R 81: (1997) 1 JT(SC) 1.

investigation is that it was a case of suicidal death. According to him, the reasons for committing suicide is not very clear, but it may be due to the treatment meted out to the deceased by the police, who did not treat the deceased with respect as an informant or member of the police force.

A detailed report dated 13-10-1996 has also been placed on record. 'G' in the report has submitted that the investigation was later on given to 'B', Dy. S. P., CID Crime dated 27-9-1996. 'G' has also stated that he himself supervised the investigation and examined the witnesses and verified their statements.

It is contended by K, *amicus curiae* that the investigating officer has deliberately overlooked some of very important aspects of the case, which shows that the local police officers, are trying to convert the case of murder into a case of suicide. 'B' has emphasized that the important evidence in the case is the weapon of the offence viz, the revolver. At the first instance, there is nothing to show that the deceased 'N' was carrying the pistol with him. Secondly, the pistol was removed from the place of incident by Police constable 'D' By doing so, the important evidence of fingerprints on the pistol has been removed. It is also submitted that there is nothing to show that why the deceased 'N' was called at the odd hours at night at the Guest House. Even the FIR with respect to the information given by 'A' for which he was also called, was registered as late as on 5-11-1995. He also submits that the statements of the doctor on its face is false and it appears that he has given a false statement under the pressure of the local police. 'B' has further emphasised that the deceased 'N' was a postgraduate in commerce and young energetic police officer of 29 years and it is impossible to believe that he would have committed suicide for the reason that he was not being well treated by the police officers.

Counsel has also invited attention of Court towards one letter dated 9th Oct. 1995 written by the deceased 'N', Assistant Intelligence Officer, CID addressed to the Director General of Police, CID Intelligence in which it was pointed out that he was learnt that 'H' and his family members are indulging in the activities of Charas, Ganja and Opium etc. It was further pointed out that these persons belonging to Lunavada are having excessive wealth. In view of this, the contention is that the deceased 'N', an honest police officer has been murdered by the said criminals with the help of local officers i.e. 'J' and constable 'D' so that their misdeeds may not be exposed.

It was submitted that High Court under Art. 226 of the Constitution has ample power to direct investigation by independent agency viz. C.B.I, and also direct the State Government to pay compensation as interim measure.

Held that, the custodial death being a serious crime, as soon as such incidents are reported, the higher authorities should promptly act and must ensure that the investigation is conducted with promptitude by an independent investigating agency so that all concerned including the relatives of the deceased may feel assured that the independent agency is looking into the matter without the influence of the local police. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. If the higher police authority does not act promptly, it may form a reasonable ground for the members of the family of victim to suspect a foul play therein and this may be a ground for the Courts to consider for transfer of the investigation to an independent investigating agency. Though once High Court orders that the case should be investigated by CBI, no consent of the State Government under Section 6 of the Delhi Special Police Establishment Act is necessary, but the High Court would not exercise such powers just for asking. The power is to be

exercised with great care, caution and circumspection. The C.B.I. is a premier investigating agency of the country and unless there are compelling reasons and there is no option available, it should not be unnecessarily overloaded, otherwise this may affect its efficiency. There are number of others agencies in the State itself which can investigate without being influenced by the local police.

With respect of the award of monetary compensation against the State in case of a custodial death, in addition to the traditional remedy, compensation can be awarded as an interim measure in writ jurisdiction in a fit and suitable case. It depends upon each facts of the case. If the Court finds *prima facie* that death is traceable to act or omission of concerned authorities, it would be just and proper to award a suitable compensation as an interim measure.

Reverting to the facts of the present case, it is evident that though the incident took place on 1-11-1995, the investigation was conducted by P.I., Godhra up to 29-11-1995. Thereafter, the investigation was taken up by another P.I. who conducted the same up to 25th March, 1996. Thus, the investigation was with the local police for almost five months. Even thereafter, no promptness is shown in the investigation.

What causes to Court considerable distress is that though two Senior Police Officers who were immediately available in Godhra, they did not act promptly and made any efforts for the investigation being conducted by an independent agency, which could provide credit to the investigation. Nor only this, even when this Court directed the investigation to be conducted under the direct supervision of the D.I.G. Crime Branch, it was not done till the Court reminded him to do so. This conduct of the higher police authorities has provided a reasonable ground to the family members of the deceased to suspect of foul play in the incident. Court deprecated this sort of indolent attitude of the higher police authorities. They were expected to act as a more matured and seasoned officers.

However, having read the report submitted by Deputy Inspector General Police, C.I.D. Crime Branch, Gujarat State, Court was satisfied that no *mala fides* can be attributed to the investigating agency on part of the C.I.D. Crimes, State of Gujarat. It is neither proper nor advisable for me to say more with respect to the merits of the case, as to whether it is a case of murder or of a suicide, as it may otherwise prejudice the further investigation, enquiry or trial.

Dealing with the question of interim compensation, Court was of the view that the petitioner is entitled to the same. Even if the case of the police is accepted on its face value, a tentative reasonable inference can be drawn that deceased was subjected to a mental and psychological torture, which led to the unfortunate incident of alleged suicide. The deceased was a young man of 29 years with a qualification of M. Com. He was posted as Assistant Intelligence Officer, C.I.D. Intelligence, at Lunavada. An officer of this rank was called by the local police at an awkward time *i.e.*, about 1.00 to 2.00 a.m. (Mid-night) He was asked to accompany the Police Inspector to the Guest House where Senior Police Officers were camping. It appears that deceased was agitated of this behaviour and, therefore, he approached to the D.S.P., but he was turned out without hearing. Not only this, the D.S.P. asked other police officers arrogantly as to how the said police man could enter in his room. He was asked to sit in the room of the peon for the whole night and in the morning, he was not even allowed to go to his residence and was directed to accompany them for going to Godhra He was insulted and humiliated, for no cause. Though it may not strictly construe an offence

abetting the suicide but such sort of arrogant behaviour of the police officers definitely lead to mental and psychological torture. There was no doubt that if the police officers definitely lead to mental and psychological torture. There was no doubt that if the police officers would have acted with tact and would have shown a little respect to deceased who was not an accused in the case and was a member of Police Force, the unfortunate incident could have been avoided. In view of this, the young widow is entitled to an interim compensation.

The deceased was 29 years old. He was qualified as M. Com. and was holding the office of the Assistant Intelligence Office C.I.D. Intelligence, this indicates that he had a promising career. Court was informed that petitioner was being paid family pension at the rate of Rs. 432/- per month. She has also been paid due provided fund, Gratuity etc. and some amount from Police Welfare Fund. Considering the facts of the case, some justice can be done if the young widow is paid Rs. 2.00 lakhs as compensation by way of interim measure. It is, however, clarified that the compensation awarded would be taken into account for adjustment in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground. This will not affect any other liability of the respondents or any other persons flowing from unnatural death of deceased.

Before parting with, Court place on record “word of appreciation” for counsel who has appeared as an *amicus curiae* and has rendered best legal assistance to this Court.

Special Criminal Application was partly allowed. While prayer with respect to the transfer of investigation is declined, it is directed that the petitioner shall be paid a sum of -Rs. 2,00,000/- (Rupees two lakhs only) as a measure of interim compensation within a period of two months from the date of receipt of the writ. This amount shall be deposited in the office of the Registrar of the High Court of Gujarat, at Ahmedabad. On depositing of this amount, the Registrar shall invest the said amount of Rs. 2,00,000/- in any Scheduled Bank in the petitioner’s name initially for a period of three years, during which she would receive only the interest payable thereon. After three years, the further orders shall be obtained from the Court either for the reinvestment of the principal amount or for being paid to the petitioner.⁴⁵

In (Smt.) *Charanjit Kaur v. Union of India*,⁴⁶ the Apex Court, on appreciation of the facts, arrived at the conclusion that the deceased who was officer in the Army died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. The Court also found that the responsibility of his death is *prima facie* traceable to the act of criminal omissions and commissions on the part of the concerned authorities. In view of this finding, the Court held that the widow of the deceased was entitled to suitable compensation which was assessed at Rs. 6.00 lakhs and also the family pension. It may be stated that in this case, the deceased a Major in the Army was posted at Kargil on 10-6-1978. He complained of chest pain and was removed to Leh on 16-6-1978. The diagnosis made was of Ischemic heart disease. His wife was living at Meerut along with her children. On receiving the information of illness of her husband, she with her children, rushed to Leh. After a great deal of persuasion, she and her children were allowed to meet deceased. She found that her husband was lying in a makeshift hospital which was devoid of life

45. Dharmishtaben Narendra Singh Zala v. State of Gujarat, 1997 Cri LJ 3866 at 3867, 3868 3872, 3873 (Guj.) (N. N. Mathur, J.). •

46. AIR 1994 SC 1491.

saving treatment at the relevant time. The condition of her husband was precarious. She requested the Army authorities to airlift him to Ambala or Srinagar Military Hospital for proper treatment. This request was turned down. After a great deal of persuasion, the Army officials agreed to shift her husband from Leh to Ambala and told her that her husband would be airlifted to Ambala on 21-6-1978. The petitioner and her husband pleaded with the authorities that she and her children be allowed to accompany him but that request was not acceded to. She was asked to move with her children independently from Leh, and reach Ambala to receive her husband there. On 22-6-1978, she along with her children reached Srinagar and from there, they reached Udhampur on 23-6-1978. On that day at the Udhampur check post, she was informed that her husband was not 'well' and she should return to Leh. The petitioner rushed back to Leh the next day i.e., 24-6-1978. There she received rude shock when she was shown the burnt body of her husband. The authorities did not disclose to her the circumstances under which her husband had received the burns. Latter on, she was only given a report of the post-mortem examination conducted by the Army Medical Authorities at Leh which attributed the death to 'extensive burns'. The only say of the Army authority was that deceased, on his own, did not board the plane on 23-1-1978. On that day, he had gone to attend some private business in the cook house and later his charred body was found with 98 per cent burns due to kerosene oil. Under these circumstances, the Court found that the matter was required to be investigated at the highest level i.e., to be personally looked into by the Chief of the Army staff.

In (*Smt.*) *Nilabati Behera v. State of Orissa*?¹ a petition was registered under Article 32 of the Constitution by Supreme Court on a letter of mother of the deceased, wherein she complained the death of her young son aged about 22 years in the police custody. Deceased was alleged to have been taken from his home by the police at about 8.00 a.m. on 1st Dec. 1987 in connection with the investigation of an offence of theft. At about 2.00 p.m. on the next day, on 2nd Dec. 1987, the dead body of deceased was found on the railway tracks". There were multiple injuries on his body. The police pleaded that deceased managed to escape from the police custody at about 3.00 a.m. on the night between 1st and 2nd days of Dec. 1987 and he could not be apprehended thereafter in spite of search and his dead body was found on the railway track the next day with multiple injuries which indicated that he was run over by passing train after he had escaped from police custody.

The Apex Court directed to the District Judge, Sundargadh in the State of Orissa to hold an enquiry into the matter and submit a report. The District Judge, in his report, found that deceased died on account of multiple injuries inflicted to him while he was in police custody. 'The Apex Court significantly noticed that there was no cogent independent evidence of any search made by the police to apprehend deceased, if the defence of the escape from police custody be true. The medical evidence revealed that the injuries were caused by hard and blunt objects. The medical evidence excluded the possibility of all the injuries to deceased being caused in a train accident, while indicating that all of them could result from merciless beating given to him.

The Apex Court, on appreciation of the evidence adduced during the enquiry by the District Judge arrived at the conclusion that it was a case of custodial death and deceased

47. (1993) 2 SCC 746 : 1993 Cri LJ 2899: 1993 (2) ACJ 787: 1997 (1) ComLJ SC 13: 1993 (50) DLT 303: 1995 (2) EastCriC 281: 1993 (2) JT 503: 1993 (2) Orissa LR 50: 1993 (2) SCR 581: 1993 SCC(Cri) 527.

died as a result of injuries inflicted upon him while he was in police custody. Considering the number of cases, it was held that the Court under Articles 32 and 226 of the Constitution, has a power to award compensation in such proceedings instead of directing the claimants to resort to ordinary process of recovery of damages by action in tort. On the facts of the case, the Court awarded a compensation to a sum of Rs. 1,50,000/- with the clarification that the award of the compensation in the proceedings would be taken into account for adjustment in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. In the view of the Court, there is a statutory recognition of the principle of adjustment under Section 357(5) of the Code of Criminal Procedure and under Section 141(3) of the Motor Vehicles Act.

In *Arvinder Singh Bagga v. State of UP*,ⁿ a married woman was alleged to have been raped, was subjected to physical, mental and psychological torture with a view to give a false statement implicating her husband and family members in a case of abduction and forcible marriage thereafter. Her husband and family members were also tortured and humiliated. The Apex Court directed to launch prosecution against the erring police officers and to pay a compensation of Rs. 10,000/- to the victim woman and her husband and Rs. 5,000/- to each of the other victims.

In *Death of Sander Singh Grover*,^{48 49} on the report submitted by the Additional District Judge, Delhi, it was found that the story given by the police indicating the circumstances, leading to the death of *Sainder Singh* on account of suicidal jump was not truthful. There was a strong suspicion of misfeasance torture. On these facts, the Apex Court directed the CBI to ensure that the FIR is registered on the facts as emanating from the order and report of the Additional District Judge and further direction was given to pay a sum of Rs. 2.00 lakhs as *ex gratia* payment to the widow of the deceased. It was made clear that in the event of a decree to be passed, the sum of Rs. 2.00 lakhs to be paid as *ex gratia*, shall not be taken into account.

In *R. S. Sodhi, Advocate v. State of t.P.*⁵⁰ 10 persons were reported to have been killed in what were described as 'encounters' between the Punjab Militants and the local police. It was prayed that investigation may be directed to be carried out by the Central Bureau of Investigation, having regard to the fact that the accusations are levelled against the local police. This prayer was opposed by the State Government on the ground that a prompt action was taken by appointing a high level officer to enquire into the incident and was promptly transferring the concerned local police so that there may be no possibility of any tampering or interference by them. It was also contended that the investigation in a criminal case is within the exclusive domain of the State Government.

Further, Apex Court considered both advisable and desirable as well as in the interest of justice to entrust the investigation to Central Bureau of Investigation forthwith. The Court made it clear that the order would have no reflection on the credibility of either the local police or the State Government as they have guided by the larger requirement of justice.

48. (1994) 6 SCC 565: AIR 1995 SC 117.

49. 1994 SCC (Cri) 1464.

50. 1994 (Suppl) (1) SCC 142, 143.

However, an attempt was made by filing a writ petition before the Apex Court by the Inspector of Police thwarting the implementation of the said order of the Court. It was argued that the order directing the CBI to investigate into the Pilibhit incident is destructive of the exclusive powers of the State of U.P. and is in flagrant disregard of the mandatory provisions of the Code of Criminal Procedure. The attention of the Court was invited to the order dated 10th March, 1989 in the Writ Petition No. 531-36 of 1988 titled as. *Haryana Mahila Sanghathan v. Union of India*, where in the Division Bench referred to question whether the Court can order the CBI to investigate an alleged offence without the consent and orders of the concerned State Government to a larger Bench. The contention that since this issue was awaiting decision by the larger Bench of this Court could not have passed the order, directing the CBI to investigate, was rejected in the case of *Mohammad Anis*.⁵¹

In *Inder Singh v. State of Punjab*,^{52 53} It was alleged that the Deputy Superintendent of Police, on suspicion that there were in all seven persons in the abduction of his younger brother, forcibly removed them from their farm house and they were subsequently killed. In spite of the fact that this was reported to Sr. Superintendent of Police and the D.I.G. no serious action was taken. The matter was directed to be investigated by the CBI. Having perused the report of the CBI, the Apex Court noticing the indolent attitude high ranking police officers, deprecated the conduct of the Punjab Police as a whole. The Court also directed the disciplinary action against concerned officers who were responsible for delaying registration of the complaint and enquiry thereon. The Court further directed the State of Punjab to pay to the legal representatives of the said seven persons an amount of Rs. 1.50 lakhs. The costs of the petition was quantified at Rs. 25,000/-.

The Apex Court recently in *D.S. Basu v. State of West Bengal*,⁵² examined the question of custodial death and the torturing by the police in great depth and detail. The Court said that custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent under Articles 21 and 22 (1) of the Constitution of India required to be jealously and scrupulously protected. The Court laid down requirements to be followed in cases of arrest and detention. Dealing with the question of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of a citizen, the Court said, thus (Para 55 of AIR)

“Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of the strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong-doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wound and not to punish the transgressor or the offender as awarding appropriate

51. 1994 (Suppl) 1 SCC 145.

52. (1995) 3 SCC 702: 1955 Cri LJ 3235.

53. (1997) 1 JT (SC) 1: 1997 AIR SCW 233.

punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straight jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the States of redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

In *State of Bihar v. Ranchi Zila Samta Party*,⁵⁴ the question came up before the Apex Court whether the High Court in exercise of its powers under Article 226 of the Constitution could take the investigation away from the State police and entrust it to C.B.I.. The Court held that the direction given by the High Court entrusting the investigation to C.B.I., was just and proper and calls for no interference. With respect to the parameters of the powers of High Court under Article 226 to direct an investigation to C.B.I., without the consent of the concerned State, the same being a subject-matter of reference pending consideration of the Constitution Bench of five Judges, the question was left to be considered and dealt with by the Constitution Bench.

A Division Bench of Rajasthan Court in *The State of Rajasthan v. Fool Chand Garg*,⁵⁵ held that in case the High Court orders that the case should be investigated by C.B.I., no consent of the State Government is necessary. The Court relied on a decision of the Apex Court in the case of *State of West Bengal v. Sampat Lal*⁵⁶ However, the Court held that, unless there is material on record for the Court to be satisfied that the investigation is not being conducted properly, it should not order the transfers of it. The Court further observed that emotions and surmises can hardly form the proper material to come to the conclusion and there must be specific allegations and material that the investigation is not proceeding on proper lines and that the Investigating Officer is acting in a partisan manner, ignoring the important facts and evidence and only then, the Court should order the transfer of investigation from the local police to the C.B.I.. In para 4 of the said judgment, the Court framed the following guidelines:

- (i) If an application for transfer of investigation from local police to C.B.I., is given in this Court, notice must be given to the State, the investigation file must be called for perusal and it is not necessary to give any notice to the accused person because the object of investigation to collect evidence.

54. (1996)3 JT (SC) 751: 1996 Cri LJ 2168: AIR 1996 SC 1515: 1996 (2) BLJ 217: 1996 (2) BLJR992: 1996 (3) JT 751: 1997 (1) Mad LJ 31: 1996 (1) Pat LJ 97: 1996(3) SCC 682: 1996 (3) SCR 663.

55. 1991 Cri LJ 125.

56. AIR 1985 SC 195 : 1985 Cri LJ 516: 1985(1) SCC 317: 1985 Cri LR (SC) 7: 1985 SC Cri R 182: 1985 EastCriC 176: 1985 SCC(Cri)62: 1985(1) Rec Cri R 202: 1985 CriAppR(SC) 74: 1985(1) SCWR 182: 1985(1) Crimes 86: 1985(2) SCR 256.

- (ii) Generally, the starting investigating agency i.e., the officer of the police where the FIR is lodged should be allowed to continue the investigation and on being satisfied on material on record that the investigating officer is not conducting investigation on proper lines and is trying to save the real accused, this Court should transfer the investigation from the local police to C.B.I..
- (iii) The transfer of the investigation from local police to the C.B.I, should not be made merely on asking.
- (iv) In case the charge-sheet is filed and cognizance is taken by the Magistrate, then proper course for the Court will be to direct the concerned Magistrate, if necessary to proceed under Section 173(8), Cr. P.C.. But in the case the Court is satisfied that there is *prima facie* proof against the person against whom neither charge-sheet has been filed nor cognizance has been taken, the case is of serious nature, the Court after giving notice to the aforesaid person may make the appropriate order and any order in respect of further investigation shall be considered to be an order made under Section 173(8), Cr. P.C..

Held, The petitioner's son was taken in police custody, without being involved as an accused in criminal case and that he was in police custody for beyond twenty four hours are proved by the-enquiry report of the Director General of Police. It is also proved by the averments in the counter-affidavit of the State. Thus there was an inroad into the human rights of deceased Gopi. His fundamental rights have been nakedly violated by the police of the State. Therefore the State shall compensate the petitioner was 24 years at the time of his death. He was a skilled worker doing mosaic flooring. In such case a compensation of Rs. 3,00,000/- would necessarily be justified in the situation, also taking note of time lag from 1988 to 1997. The 2nd and 3rd respondents should pay the said amount within three months from today.

The enquiry report of the Director General of Police filed in this Court on 6-6-1996 revealed commission of heinous crime by the Police i.e., detention of a citizen in illegal and unlawful custody for more than twenty-four hours, from 9 a.m. on 5-10-1988 to at least 1.30 p.m. on 6-10-1988, when he succumbed to injuries. This crime had been committed by the police themselves, when commission of crime is thus evident, none can close his eyes towards it. So far no crime is registered.

The Court directed the District Superintendent of Police, Alappuzha to register a crime regarding unlawful detention of deceased Gopi on 5-10-1988 and 6-10-1988 by the Police, as revealed in the report of the Director General of Police, filed in this Court on 6-6-1996. The Director General of Police shall send a copy of the said report duly signed in his hand along with all the evidence and statements collected to the District Superintendent of Police, Alappuzha within two weeks of receipt of copy of this judgment. The District Superintendent of Police, Alappuzha shall immediately register a crime and conduct an investigation as to who all committed the crime and file a report in the concerned Magistrate Court expeditiously. Send copies of these Judgments to the respondents and the District Superintendent of Police, Alappuzha.⁵⁷

57. Thankappan v. Union of India, 1997 Cri LJ 1538 at pp. 1539, 1540, 1541 1542 1543 (Ker) (K. A. Abdul Gafoor, J.).

In this context the pronouncement of Supreme Court in *Nilabati Be-hera v. State of Orissa*,⁵⁸ supports the claim for compensation.⁵⁹ are worth extracting.

In view of the decisions of this Court in *Rudul Sah v. State of Bihar*,⁶⁰ ⁶¹ the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation an action on tort. It may be mentioned straightway that award of compensation in proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings:—

“It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from and in addition to the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by resource to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah v. State of Bihar* ⁶¹and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights”.

58. (1993) 2 SCC 746 : 1993 Cri LJ 2899: 1993 (2) ACJ 787: 1997 (1) ComLJ SC 13: 1993 (50) DLT 303: 1995 (2) EastCriC 281: 1993 (2) JT 503: 1993 (2) Orissa LR 50: 1993 (2) SCR 581: 1993 SCC(Cri) 527.

59. Paras 10 and 17 (of SCC); Paras 9 and 16 of Cri LJ.

60. 1983 Cri LJ 1644, Sebastian M. Hongray v. Union of India, 1984 Cri LJ 830, Bhim Singh v. State of J&K, 1984 (Supp) SCC 504, Bhim Singh v. State of J&K, 1986 Cri LJ 192, Saheli A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters, AIR 1990 SC 513, and State of Maharashtra v. Ravikant S. Patil, 1991 AIR SCW 871.

61. *Ibid.*

19. Delay in speedy trial caused mental anguish liable for compensation.—In the matter of *Hissainara Khatoon v. State of Bihar*,⁶² the Apex Court while dealing with the question as regard right to speedy trial of an accused observed as under :—

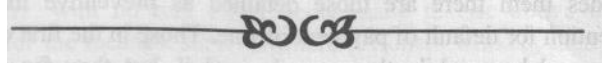
“Para 5—Where undertrial prisoners have been in Jail for periods longer than the maximum term from which they would have been sentenced, if, convicted, their detention in Jail is totally unjustified and in violation of the fundamental right to personal liberty under Article 21 of the constitution. Their detention in Jail being illegal they should be released forthwith.

“Dicta.—”It is indeed difficult for us to understand how, the State Government could possibly remain oblivious to the continued incarceration of those undertrial prisoners for years without even their trial having commenced. The judiciary in the State of Bihar also cannot escape its share of blame because, it could not have been of fact, that thousands of undertrial prisoners are languishing in Jail awaiting trial which never seems to commence. We fail to see how the continued detention of these undertrial prisoners mentioned in the list of Mrs. Hingorani can be justified when we find that they have already been in Jail for a period longer than what they would have been sentenced to suffer, if convicted.” See *Om Prakash v. State of Rajasthan*, 1999 (1) Raj LR 214 at 216.

62. 1983 Cri LJ 1644: AIR 1979 SC 1369: 1979 Pat LJR 410: 1979(3) SCR 532: 1980(1) SCC 98: 1980 SCC (Cri) 40.

Chapter 11

Prisoner's Right



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1. General.—Indian prisons are now crammed with prisoners. In many jails they are over-crowded that the amenities designed for a far less number of inmates are now being

shared by disproportionately large number of internees therein, *e.g.*, in Bihar Jails, as against a prison capacity of 26,300 the actual number of internees during first half of 1996 was 36,700. In Madhya Pradesh the figure is 27,300 as against a prison capacity of 17,720. Even in Delhi it has crossed 8,300 as against a prison capacity of 2,400. There are principally two categories of prisoners: (1) under-trial prisoners, and (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine. Those in the first category cannot be required to do any labour while they remain in Jail, but they far outnumber all the remaining categories put together. Statistics show that in most of the states, the under-trial prisoners have overwhelming majority when compared with the number of convicted prisoners *e.g.*, under-trial prisoners, in Bihar Jails are 84.04% of the total inmates of the Jails. In U.P., the percentage is 85.17. In Madhya Pradesh, it is 64.22% and in most other states the percentage of under-trial prisoners is above 50.

Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. Section 53 of the Indian Penal Code which falls under the Chapter entitled "of Punishments" vivisects punishments into five categories, of which the category "imprisonment" has been further subdivided into two sub-categories as "rigorous" and "simple" Rigorous imprisonment is explained as "imprisonment with hard labour". Section 60 of the Indian Penal Code confers powers on a sentencing Court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple." The sentence of "imprisonment for life" tagged along with a number of offences delineated in the Indian Penal Code so interpreted as "rigorous imprisonment for life" and not simple imprisonment.¹ See also Constitution Bench decisions in *G.V. Godse v. State*, AIR 1961 SC 600 and *Naib Singh v. State of Punjab*, AIR 1983 SC 855.

A visit to criminal court gives us a series of proceedings including remanding of accused to the Prison Cells by the said Court. The accused will be produced in handcuffs by the law enforcing authorities. In some cases the under-trials will be bundled out from the Police Trucks in handcuffs before the remand court. The applications for their remand to custody by the Courts will be disposed of in a matter of bare seconds. The accused do not understand the nature of the proceedings to be held in the Court. See 1999 (1) Andhra Law Times, Journal Section at 11. In 1994-95 Annual Report of National Human Rights Commission in this regard at page 13 in Para 4.17, quoted in AIR 1997 SC 1739 at 1742: 1997 Cri LJ 1508: 1997 (2) SCC 642: 1997 SCC Cri 386, the same is as below:—

"The situation in the prisons visited was varied and complex. Many such as Tihar Jail in Delhi were over-crowded; yet others, like the open Jail in Hyderabad were under-utilised. Often, within a Single State, conditions varied from one Jail to another in this respect, pointing to the need for a more rational state wide use of facilities. The Commission saw a few Jails which were notably clean and where the diet was reasonable such, as the Central Jail in Vellore. Unfortunately, it saw many others which are squalid, such as newly constructed Central Jail in Patna. In yet others, the diet inferior, and the management was denounced by the inmates as brutal and corrupt. In some, care was being taken to separate juveniles from others,

1. *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998 Cri LJ 4561 at 4565, 4566 : 1998 (7) SCC 392 : 1999 (1) GCD 137 (SC).

petty offenders from hardened criminals. In others, no such care was being taken and the atmosphere appeared to nurture violence and criminality. In a few, major efforts were being made to reform conditions, to generate employment in a worthwhile and remunerative way, to encourage education and restore dignity. In others, callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates regardless of whether they were criminal or otherwise, were incarcerated with others, with no real effort being made to rise above the very minimum required for the meanest survival where prisoners worked, their remuneration was often a pittance, offering scant hope of savings being generated for future rehabilitation in society. By and large, the positive experiences were the exceptions rather than the rules, dependent more upon the energy and commitment of individual officials rather than upon the capacity of the system to function appropriately on its own."

In *Rama Murthy v. State of Karnataka*,² judgment delivered on December 23, 1996. In the case of Rama Murthy this Court while considering various earlier decisions dealt with the problems of overcrowding, torture and ill treatment, neglect of health and hygiene in substantial food and inadequate clothing, deficiency in communication streamlining of Jail visits, management of open air prisons and delay in trials of inmates in the prisons. After listing all these causes, this Court issued directions to the states, the Union Territories and to the Central Government as to why they should not act on the causes detailed in the judgment. Notices were issued to show, cause within three months and the matter has been kept for further proceedings. The case of Rama Murthy has been tagged with the cases, now before Court, which deal with the question of wages payable to the prisoners sentenced to hard labour.³

In England a recent enactment has been made called the Prisoners' Earnings Act, 1996. It empowers the prison administration to make deduction from the earnings of the prisoners of an amount not exceeding the prescribed limit. This deduction does not include certain statutory deductions like income tax and payments required to be made by an order of a Court. The amount so deducted shall be applied for:—

- (a) the making of payments (directly or indirectly) to such voluntary organisations concerned with victim support or crime prevention or both as may be prescribed;
- (b) the making of payments into the Consolidated Fund with a view to contributing towards the cost of the prisoner's upkeep;
- (c) the making of Payments to or in respect of such persons (if any) as may be determined by the Governor to the dependants of the prisoners in such proportions as may be so determined; and
- (d) the making of payments into an investment account of a prescribed description with a view to capital and interest being held for the behalf of the prisoner on such terms as may be prescribed.

The question arises for consideration is, if Article 300-A bars payment of any compensation to the victim or his family out of the earnings of the prisoners. To bar such

2. 1997 (2) SCC 642: 1997 AIR SCW 929

3. *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998 Cri LJ 4561 at 4588: 1998 (7) SCC 392: 1999(1) Guj CD 137 (SC). Ibid

objection to the validity of deduction rules can be framed under the Prisons Act, or otherwise. When a body is set up to consider the amount of equitable wages for the prisoners, a Prison Fund can be created in which a certain amount from the wages of the prisoners be credited and out of that an amount be paid to the victim or for the upkeep of his family, as the rules may provide for the purpose. Creation of fund, is necessary as any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in this country.

In France, two centuries ago, a world famous slogan, Liberty, Equality and Fraternity, was given. The enraged people, with an injured sense of justice, pulled down the walls of Bastille Prison, and started a new era of human freedom in the history of the world, Victor Hug celebrated this new sense of human freedom in his immortal classic, *Les Miserable* the story of a convict, who became a great man here in Paris. He wrote on the cover page of the novel, "so long as by the effect of laws and customs, social degradation continues in the midst of civilisation, making artificial hells, and subjecting to the complication of chance the divine destiny of man, the debasement of man would continue". These remarks are as true today of human predicament, as when these were written. *Road to Freedom*, as shown by Jean Paul Sartre in his trilogy, see *Rhe Age of Reason, Iron in the Soul, The Reprove*, quoted in 1997 Cri LJ Journal Section 45, has not reached its logical destination i.e., humanism and Rules of Law. Human struggle and suffering continues everywhere, and is becoming the sensitive souls together under the banner of a party, whose names in Will Durant's Words is, Civilisation. See 1997 Cri L.J., Journal Section 45). Personal liberty of the petitioner as guaranteed under Article 21 of the Constitution of India is not in any way infringed.⁴

The higher judiciary, with Judges took special interest in the subject of prisons during the last two decades. The results, though not very encouraging at the level of implementation, but, it has given the prisoners a sense of satisfaction that some institution is there to take notice of their sufferings and making efforts to minimise the same. Due to this continuous judicial process, the brooding sense of injustice in the mind of the prisoners, finds an effective judicial outlet and keeps them much below the boiling point; avoiding many ugly and dangerous situations, which in itself is good for the health of the nation. See 1997 Cri LJ, Journal Section 45 at 46.

India became a Republic on 26th January, 1950 and the Construction of India, with a new spirit, was promulgated; but, unfortunately, most of pre-independence Laws. Indian Penal Code, 1860, Prison Act, 1894, Prisoners Act, 1900, Identification of Prisoners Act, 1920, and The Punjab Jail Manual, 1898, though at variance with the spirit of the Construction of India, continued in operations. An anomalous situation was created, which continues even till now. The leaders of Freedom Movement of India had suffered the imprisonment in their struggle for independence and they knew the inhuman prison conditions. Immediately after independence, they were enthusiastic to change the Penal Laws and improve the prison conditions. In 1952, Walter C. Reicless, an American expert on prison administration, was invited from UNO Drafts on Model Prison Laws and Manuals were prepared in 1954, but, unfortunately, by that time the Political Leaders had lost interest in the subject of prisons and these Manuals and Prison Laws could not get the approval of the Parliament and State Legislatures and could not become the law of the land. Thereafter many Commissions and inquiry Committees, See Reports of Probation

4. C. Natesan V. State of Tamil Nadu, 1999 Cri LJ 1382 at 1385 R. Balasubramanian J. Mad.

and Aftercare Association, Reports of Prisoner Welfare Society, Reports of Working Group of Prisons, 1972-73, A.N. Mulans Report, 1980-1988. were appointed for the purpose of amending the Prison Laws but, none of those reports were ever implemented in India. Court had the opportunity to see the impact of all those inquiry reports and the judgments of the Supreme Court of India in 1986, while preparing Doctoral thesis on functioning of prisons in the State of Punjab. Recently, the Government of India, under the serve criticism of violation of Human Rights, has appointed a National Human Rights Commission. This Commission as per news items in The Times of India, 11th October, 1996, had stated an investigation for revamping the prison administration of the country for systematic reforms. It is alleged in the report that a copy of the Model Prison Bill has been prepared by the Commission and circulated among all the states in India to enlist their co-operation for enactment of a new Prison Act to replace the century old Prison Act of 1894, it is not known when the story of recycling the same ideas in the new reports would come to end, and when a new Prison Act, would come into operation in India. See 1997 Criminal Law Journal Section 45 at 46, 47.

In the United States of America, stress has now been laid on victim impact evidence. In *Payne v. Tennessee*, III SCT 2597, the Supreme Court of United States by majority of 6:3 upheld the admission during capital sentencing of evidence relating to the victim's personal characteristic and the emotional impact of crime on the victim of his family or friends. Whether such an approach is correct or otherwise is not the question Court considering here. It merely shows, that victim is an important factor in a criminal trial.⁵

2. "Handcuffing"—Meaning of.—The word "handcuff" means a pair of lockable linked metal rings for securing prisoners wrist. The concise Oxford Dictionary, 1990 Ed. at 535. According to Law Dictionary, compiled by P.H. Collin, published by Universal Book Stall at 124, the expression "handcuff means two metal rings chained together which are locked round the wrists of someone who is being arrested. The term "handcuff" means fetters for hands, whereas "handcuffing" would mean to put fetter on hands. Bhargava's Concise Dictionary 11th Ed. at p. 250. According to *Encyclopedia of Britannica, Encyclopedia of Britannica*, Vol. v. at 678, the handcuffs are the devices for shackling the hands and they are used by Police on prisoners under arrest. Until modern times 'handcuffs' were of two kinds—(1) the figure '8' which confined the hands close together either in front of or behind the body; (2) rings that fitted around the Wrists and were connected by a short chain, those being somewhat like those used by modern Police Forces. The old names for handcuffs were manacles shack bolts or shackles, givies, and swivels. Most modern handcuffs are made of steel, adjustable to the wrist size and equipped with an automatic locking device. Disposal handcuffs of nylon are now available. The advantage is that a Policeman can easily, carry several pairs for example, at the scene of a riot. In simple words handcuffing person means chaining a person to control movements of his body of limbs. See 1991 (1) ALT, Journal Section at 11,12.

3. "Life"—Meaning of.—"Life" In Article 21 of the Constitution has the extended meaning given to word and those citizens who are detained in prisons either as under-trials or as convicts are also entitled to the benefit of the guarantees subject to reasonable a restrictions.⁶

4. "Prison"—Meaning of.—"Prison", includes,—

5. State of Gujarat v. Hon'ble High Court of Gujarat, 1998 Cri LJ 4561 at 4586 : 1998 (7) SCC 393: 1999 (1) Guj. CD 137 (SC).
6. Sheela Barse v. State of Maharashtra, 988 (1) Bom CR 58 at 64.

- (i) Any place which has been declared by the state Government, by general or special order, to be a subsidiary jail; or
- (ii) Any reformatory, borstal institution or other institution of a like nature. (See Prisoners (Attendance in Courts) Act, 1955, Section 2(b).

The Mother Teresa “the prisoner is Jesus to me.” The world renowned philanthropist, as she was, would have been very much inspired by the scriptural words pronounced by Lord Jesus as quoted in gospel according to Matthew (Chapter 25, verse 36):-

“Naked and you clothed Me; Sick, and you looked after Me; in prison, and you visited Me.” *State of Gujarat v. Hon’ble High Court of Gujarat*, 1998 Cri 4561 at 4568, 4569: 1998 (7) SCC 392: 1999 (1) Guj CD 137 (SC).

‘Prison’ includes any place which has been declared by the State Government, by General or special order, to be a subsidiary Jail. See Prisoners Act, 1990 Section 2(b).

5. “Reparation”—Meaning of.—*The Black’s Law Dictionary* defines “reparation” as “payment for an injury or damage, redress for a wrong done. Several States have adopted the Uniform Crime Victims Reparation Act. Certain federal statutes also provide for reparation for violation of Act; e.g., persons suffering losses because of violations of Commodity Futures Trading Act, may seek reparation under the Act, against violator; Payment made by one country to another for damages during war”. Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property (restitution), these being types of reparation which might be described as practical or material. They can also be used to describe more intangible outcomes, as where an offender makes an apology to victim and provides some reassurance that the offence will not be repeated, thus, repairing the psychological harm suffered by the victim as a result of the crime.⁷

6. Blanket ban on letter writing by prisoner.—As far as Rule 17(ix) of the Maharashtra Prison (Facilities to Prisoners) Rules, 1962, is concerned, it is curious that a prisoner is permitted to send welfare letters to his near relatives in other prison, but, he is not permitted to send welfare letters to prisoners in other prisons, who are not related to him. The Rule is on the fact of it discriminatory and violative of Article 14 of the Constitution and must, therefore, be struck down. Therefore, the prisoner is entitled to send welfare letters to prisoners in the prisons whether such prisoners are his relatives or not.

It is well-settled that the prisoner does not lose his rights guaranteed under the Constitution, except to the extent necessitated by reason of his incarceration and the sentence imposed. The restrictions imposed on the prisoner to be valid must have relevance either to the maintenance of internal order and discipline in the precincts of the Jail or prevention of escape of the prisoner or prevention of transmission of coded message or messages which have the potentiality or tendency to give rise to disturbance of public order or inspiring commission of any illegal activity or offence or reasons of a like nature.

Rule 23 of the Maharashtra Prison (Facilities to Prisoners) Rules, 1962 is wide enough, and provides sufficient safeguards even in such cases of abuse, prohibition in

7. *State of Gujarat v. Hon’ble High Court of Gujarat*, 1998 Cri LJ 4561 at 4587’ 1998 (7) SCC 392: 1999(1) Guj CD 137 (SC).

relation to the reference to other prisoners confined in the same Jail is clearly unjust, arbitrary and unreasonable and is liable to be struck down as violative of Articles 14 and 19(1)(a) of the Constitution.

Then, the prisoner is prohibited from writing any material in his letter which would amount to structures on the administration of the prison. Court fail to see why the prisoner should not give vent to his grievances against the prison administration to the outside world through, his letter. It is to be noted that the prisoner is not prevented from making these grievance make complaints to in the interviews which are permitted under the Rules. He is also permitted to make complaints various authorities and is entitled to approach the Court by way of writ petition. It is quite possible that in a given situation he may not be in a position to complain about the administration directly to the prison authorities or even to other authorities, such as District Judge who visits the prison, but, he may desire his relatives or friends to raise the issue before the appropriate Court in order to get his grievances redressed. Therefore, the prohibition on any matter likely to become the subject of Political propaganda is clearly unwarranted, unjust and unreasonable and must be struck down as violative of Articles 14 and 19(1)(a) of the Constitution.

The Rules which put blanket ban on the prisoner writing in his letters material mentioned in the said Rule is also violative of Article 21 of the Constitution.⁸

7. Compliance of non-bailable warrant in custodial death against Police personnel.—The perusal of the diary would disclose that there are *prima facie* materials in the form of circumstantial evidence to enable the Magistrate to take cognizance of the offences as against the petitioner and issue, the non-bailable warrant.

In the facts and circumstances of the case, there is nothing wrong on the part of the Magistrate in having issued to the non-bailable warrants after taking the case on file, which contains serious allegations.

Moreover, it is seen from the records that they filed an application for anticipatory bail before the sessions Court and the same was dismissed, even during the course of investigation by the Police. After dismissal, the petitioners did not surrender either to Police or before the Court, in the above case. Furthermore, the application filed before this Court also was dismissed thereafter. Despite this, neither they were arrested by the Police nor they surrendered for the judicial custody.

The occurrence had taken place on 31-1-1992. The motive for the occurrence as alleged by the prosecution is that the deceased questioned on the accused in this case regarding his act of eye-teasing the daughter of the brother of the deceased and that in order to take revenge upon him, the deceased was taken to the Police station twice and he was brutally beaten there.

Moreover, the deceased himself told one of the witnesses that he was forcibly administered poison by some of the petitioners. Therefore, the petitioners the members of the law enforcing agency, instead of protecting the law have taken the law enforcing agency, instead of protecting the law have taken the law into their own hands and are said to have committed the high-handed act of causing death of a person, who questioned the unlawful act of one of the petitioners.

8. Madhukar Bhagwan Jambhale v. State of Maharashtra, 1984 (2) Bom CR 709 at 715-718 (Bom.).

The murky features, which Court could see in this case, is that during the course of investigation there was no attempt by the respondent-Police to arrest the petitioners. Even, after the issuance of non-bailable warrant, this court is of the view that no genuine attempts have been made by the respondent-police to arrest the petitioners, probably because, the respondent would have thought that the petitioners need not be arrested, as they belong to Police Force.

This is case, where a villagers, who belongs to Scheduled Caste, is alleged to have been done death by the Police. Only at the initiation of VAO, the case has been registered under Section 174, Cr.P.C. In the further enquiry conducted by the RDO, the other materials came to light, resulting in the filing of the private complaint sufficient by the said RDO, when, the RDO has taken sufficient steps of proceed against the petitioners, though they belong to the Police Force and the Magistrate also, though initially was reluctant to entertain the complaint by returning the same on several occasions and ultimately conducted enquiry section 202, CrPC, and issued non-bailable warrant to the petitioners the respondent-Police, in court's view, have given scant respect to the orders of the Magistrate issuing non-bailable warrant against the Police Force for the reasons known to them.

If, this is the attitude of the Police, then there would be a situation where the public would lose confidence in the Police Force. In Court's view, Tamil Nadu Police Force, is known for its integrity, courage and efficiency. But, in this case, the recalcitrant attitude shown by the Police by not taking effective steps to arrest the petitioners from 1992 to 1995 pending investigation and from 1995 till date after issuance of warrant, has caused considerable concern in the mind of this Court.⁹

8. Criminal Justice requires Justice to victim due to loss of life.—In Court's efforts to look after and protect the human rights of convict the court cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if, justice is not done to the victim of the crime, subject of victimology is gaining ground while courts are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but; then monetary compensation will at least provide some solace.¹⁰

9. Deduction of expenses from prisoner by State.—It is true that State Government has the obligation to bear the expenses needed for providing food and clothes and other amenities to every prisoner, whether his detention is during post-conviction period or pre-conviction period as under-trial prisoner or has been preventively detained or is interned as a consequence of defaulting payment of fine imposed as punishment. If, that is the only angle through, which this question has to be looked at there is, perhaps, a point to castigate deduction of the amount spent on food and clothes of a prisoner from the minimum wages rate. But, the issue has to be looked at from three other angles also.

9. Jayaprakash v. State, 1998 Cri LJ 4369 at p. 4370 Mad.

10. State of Gujarat v. Hon'ble High Court of Gujarat, 1998 Cri LJ 4561 at 4587: AIR 1998 SC 3164: 1998 (7) SCC 392:1999 (1) Guj CD 137 (SC).

First is this, if wages at the rates fixed under MW Act, are paid to a prisoner without making any such deduction its net effect would be that he gets wages apparently more than the emoluments of a workman who does not same type of work outside the Jail. This is because, the latter has to meet his expenses for food and clothes from the minimum wages paid to him.

Second angle is, the Government which was to pay wages to the prisoner has the additional liability to supply clothes and food to him because, Government has the duty, willy nilly, to keep a convicted person in prison during such term as the court sentences him to imprisonment. It is tax-prayer's money which Government is expending for keeping the prisoner inside the Jail by providing him food and clothes and other amenities. It is not because, Government is happy to do it or is looking forward to do it. It is a legal compulsion on the Government. But, its incidence is on the common man's coffer.

The third angle, and it is very important for this purpose, is that even MW Act, permits the employer to make deductions of certain kinds from the wages of an employed person. Section 12 of the Act, permits him to make such deductions as may be authorised and subject to such conditions as may be authorised and subject to such conditions as may be prescribed by rules. Minimum Wages (Central) Rules, contain the items of such deductions which are permissible. Among such items the following two are pertinent: (1) deductions for house accommodation supplied by the employer, (2) deductions for such amenities and services supplied by the employer as the Government may authorise. Thus, deduction of cost of clothes and food supplied to an employee from his wages is not inconsistent with legislative policy.

When all aspects are considered, Courts is inclined to think that the request of the Government to permit them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. There is nothing uncivilised nor unsociable in it. But, Government cannot deduct any substantial portion from the wages on that account. The Government can arrive at the reasonable percentage to be deducted from Minimum Wages taking into account the average amount which the Government is spending per prisoner for providing food, clothes and other amenities to him."

10. Deduction not permissible.—In *Gurudev Singh v. State of Himachal Pradesh*, (1992 Cri LJ 2542: AIR 1992 Him Pra 76. the Division Bench of the Himachal Pradesh High Court held that prisoners were entitled to minimum wages as prescribed under the Minimum Wages Act, 1948 and no deduction is permissible from the wages on account of maintenance of the prisoners in Jails. It is not clear if, State of Himachal Pradesh filed any appeal against the judgment but, the State has certainly opposed grant of minimum wages to prisoners in the affidavit filed in pursuance to notices issued by the Court in the present case.¹²

11. Denying speedy trial on the ground that the UT prisoners could not be produced before the Courts for want of adequate.—Denying speedy trial on the ground that the UT prisoners could not be produced before the Courts for want of adequate and sufficient police escort, violates the fundamental rights and human rights of **

11. *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998 Cri LJ 4561 at 4571: 1998 (7) SCC 392: 1999 (1) Guj CD 137 (SC).

12. *Ibid.*

UT prisoners under Article 14 and 21 of the Constitution of India. A convicted person or an unconvicted remandee was deprived of liberty by the State's action. Therefore, it was duty of the State to justify such deprivation because pretrial "prison inmates depend upon the States for all aspects of their life". In the case of a convict, there is justification if the prisoner was detained for the required length of sentence period, but in the case of an unconvicted under trial detention, which was of unfairly a longer period, satisfy the 'reasonable and rational procedure established by law'. Therefore, it is the duty of the State to see that UT prisoners are brought to trial. Overcrowded Courts, inadequate human resources to run the justice delivery system and fiscal deficiency cannot be justifiable reasons when a person was deprived of the liberty. Larger societal interest was involved in the speedy trial, for the UT prisoner was deprived of his job, his family ties, emotional well-being, and his right to effectively defend the charge.¹³

12. Determination of compensation depends on capacity of accused.—In *Sarwan Singh v. State of Punjab*, (1978 (4) SCC 111: AIR 1978 SC 1525, the Supreme Court said that in awarding compensation it was necessary for the Court to decide whether the case was a fit one in which compensation has to be awarded. If, it is found that compensation should be paid then the capacity of the accused to pay compensation has to be determined. The Court said that the purpose would not be served if, the accused was not able to pay; the fine or compensation for imposing a default sentence for non-payment of fine would not achieve the object. The court referred to its earlier decision in *Palanippa Gounder v. State of Tamil Nadu*, (1977(2) SCC 634: AIR 1977 SC 1323), and said that it was the duty of the Court to take into account the nature of the crime, injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation.¹⁴

13. Double-ceiling in prison.—The Court was concerned with a convicted prisoner and examined the question whether overcrowding constituted cruel and unusual punishment. It did not read any violation of the English Amendment as there was no evidence that double ceiling had inflicted "unnecessary or wanton pain or was grossly disproportionate to the severity of the crimes warranting imprisonment".¹⁵

14. Prisoners Detained In Lunatic Asylum.—48 persons having now been found to be medically fit and deserving to be discharged from the Lunatic Asylum should be taken over by the concerned Jails but due to the apparent culpable apathy and illegal neglect on the part of the concerned Jail Superintendents/Police Officers/ Courts, this is not being

13. *Mir Mohammed Ali v. State of A.P.*, 2000 Cri LJ 4058 at 4066 (A.P.). (M.S. Liberhan, C.J.V.S. Rao, J.). See also *Raj Deo Shanna(2) v. State of Bihar*, 1999 Cri LJ 4541: AIR 1999 SC 3524: (1997)7 SCC 604; *Raj Deo Sharma (1) v. State of Bihar*, 1998 Cri LJ 4596: AIR 1998 SC 3281: (1998)7 SCC 507; *D.K. Baru v. State of West Bengal*, 1997 Cri LJ 743: AIR 1997 SC 610; *Rama Murthy v. State of Karnataka*, 1997 Cri LJ 1508: AIR 1997 SC 1739: (1997)2 SCC 642; *Common Cause (2) v. Union of India*, 1997 Cri LJ 195: AIR 1997 SC 1539: (1996) 6 SCC 775; *Common Cause (1) v. Union of India*, 1996 Cri LJ 2380: AIR 1996 SC 1619: (1996)4 SCC 33; *Shaheen Welfare Association v. Union of India*, 1996 Cri LJ 1866: AIR 1996 SC 2957: (1996) 2 SCC 616; *R.D. Upadhyay v. State of A.P.*, (1996) 3 SCC 422; *S.C. Legal Aid Committee representing U.T. Prisoners v. Union of India*, (1994) 6 SCC 731: 1994 AIR SCW 5115; *Kartar Singh v. State of Punjab*, 1994 Cri LJ 3139: (1994)3 SCC 569; *Nilabati Behera v. State of Orissa*, 1993 Cri LJ 2899; AIR 1993 SC 1960.
14. *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998 Cri LJ 4561 at 4577: AIR 1998 SC 3164: 1998 (7) SCC 392: 1999(1) Guj CD 137 (SC).
15. *Rama Murthy v. State of Karnataka*, 1997 (3) Bom CR 634.

done. The Court took a very serious view of this criminal lapse on the part of these institutions in not responding to the call of Rinpas and to take back the aforesaid 48 persons.

The Court disposed of this petition and by passing the following order issue herein below contained directions:—

- (i) The Director, Rinpas, Kanke, Ranchi, with respect to all the aforesaid 48 inmates, write to the Superintendents of Police and the Chief Judicial Magistrates of all the Districts from where these inmates were referred to the Institution (whether these districts are in the State of Bihar or Jharkhand is totally immaterial for the purpose of this order. He shall convey to both these Authorities the fact that the inmates have now been declared medically fit and they are deserving of being discharged by this Institution. These communications shall be sent to the aforesaid District Authorities, namely, the Superintendents of Police and the Chief Judicial Magistrates of the Districts within one week from today. These communications shall be sent by Speed Post along with each communication, a copy of this order shall be enclosed.
- (ii) Within one week from the date of receipt of the aforesaid communication, the Superintendents of Police of the concerned Districts shall ensure by making all appropriate arrangements to take over and shift the inmates from the RINPAS and lodge them back in the Jails from where they were referred. The concerned Chief Judicial Magistrates of the Districts in absolute implementation and execution of these discretions shall liaison with the concerned Superintendents of Police and both of them shall jointly ensure and these directions are implemented in letter and spirit.
- (iii) All the inmates shall be at liberty to apply to the concerned Chief Judicial Magistrates or other trial Courts for being release on bail.

Orders on their bail applications shall be passed within two weeks from the date these are filed. After the concerned Chief Judicial Magistrate or the concerned trial Courts decide to order their release on bail in accordance with the established principles of law, they shall also decide whether keeping in view the minor nature of the offences alleged against them and the long periods for which they have already been in custody, they can ordered to be released on mere submission of Personal Bonds Without furnishing any surety.¹⁶

15. Re-construction of Bankipur jail in addition to Beur jail.— Government of Bihar is directed to refrain from setting up a jail on the lands on which the quondam Bankipur Jail stands. A committee is constituted to go into the question of proper use of the lands on which the quondam Bankipur jail stands. It will be open to the Committee to take the help, advice and opinion of experts, town-planners architects, engineers, or any other person to prepare an appropriate report. The Chief Secretary shall ensure that all records and facilities are made available to the Committee which shall submit its report to the Court in three months time.¹⁷

16. Bishwananth Singh v. State of Jharkhand, 2002 Cri LJ 2504 at 2504, 2505 Jharkhand, HC V.K. Gupta, C.J. and Vishnudeo Narayan, J.)

17. Sontan Sinha v. State of Bihar, (2001)3 BLJ 17 at 21(Pat) (Nagendra Rai and S.K. Katriar, JJ.)

16. Remuneration of prisoners.—In the study conducted by the *United Nation on Prison Labour*, published in 1955, there is a chapter on “Remuneration of Prisoners. Regulations governing the Expenditure of Income and Aid to Dependants.” The study referred to various practices prevailing in twenty-two countries which had submitted information on the amounts of remuneration paid to prisoners including that by India. Para 240 refers to the system prevailing in India, which is as under:—

“240. No uniform system or regulations for remuneration have yet been instituted in India. In some States payments are made at a fixed percentage of wages earned for comparable work by free employees; in others, only gratuities are paid. At an experimental extramural rehabilitation project in the state of Uttar Pradesh, prisoners from several jails are employed for periods up to eight months in constructing an irrigation dam on the Chandraprabha River. Living under conditions closely approximating those of free workers, the prisoners earn an average of Rs. 1/8/-per day, part of which may be spent on minor purchases and part of which may be sent to dependents. Only the costs of three meals daily are deducted by the state.”

The study noticed that virtually countries with systems of remuneration made regulations governing the deposition of payments to prisoners. Aside from the special rules for those earning the equivalent of free wages, prisons in majority of non-English Speaking states required the division of remuneration in specified proportions of at least two, three or four shares. It said that five main purpose were served by such policies of allocation of remuneration and these were:—

- (a) provision for spending money;
- (b) saving for release;
- (c) aid to dependents;
- (d) board and room or other institutional expenses; and
- (e) indemnities and/or Court-fees.

Para 181 of the Study on Prison Labour is as under:—

“181. That prisoners should be remunerated for their work is principle accepted by most contemporary penologists, Differences of opinion on legal and ethical considerations, and on procedural problems do not obscure the fact that definite benefits are felt to accrue from carefully planned prisoner remuneration schemes. In addition to stimulating the offenders’ industry and interest, money can be earned, at the very least, for the purchase of approved articles and for the accumulation of a savings fund against the day of release. If payments are more than minimal, some possibility exists for making at least token contributions to the needs of dependents, for paying indemnities and other legal obligations and for reimbursing the state for the expense of incarceration. If inmates can earn wages approximating those of free workers, not only can they make adequate payments for their moral and legal obligations, but they will be more nearly sharing in the normal economic functions of the society to which the majority will eventually return.” *Vide State of Gujarat v. Hon’ble High Court of Gujarat*. AIR 1998 SC 3164 Sc 3164 at 3181-82: 1998 Cri LJ4561: (1998) 7 SCC 392 : 1999 II) Guj CD 137 (SC).

17. Rules for treatment of prisoners.—After the study was made by the United Nations on Prison Labour Standard Minimal Rules for the treatment of the prisoners were adopted. These Rules provide for the prisoners (1) proper accommodation, (2) medical facilities. (3) clothing and bedding, (4) books, etc. These rules also stated that:—

“58. The purpose and justification of a sentence of imprisonment or a similar measure derivative liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible that upon his return to society the offender is not only willing but able to lead a law abiding and self-supporting life.

“59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available and should seek to apply them according to the individual treatment needs of the prisoners.

“65. The treatment of persons sentenced to imprisonment or a similar measures shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as well encourage their self-respect and develop their sense of responsibility.”

For the work to be taken from the prisoners and remuneration to be paid, Paras 71.

72, 73 and 76 may be referred to, which are as under:—

“71.(1) Prison Labour must not be of an afflictive nature.

- (2) All prisoners under sentences shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
- (4) So far as possible the work provided shall be such, as will maintain or increase the prisoners ability to earn an honest living after release.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirement of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

- (2) The interests of the prisoners and of their vocational training however must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73'(1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

- (2) Where prisoners are employed in work controlled by the administration, they shall always be under the supervision of the

institution's personal. Unless, the work is for other departments of the Government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.
- (2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
- (3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings funds to be handed over to the prisoner on his release Education and recreation."

It is not disputed that wages are being provided to the prisoners in all the States, in the country except the State of Bihar. There is, however, no opposition from any quarter that certain amount of wages are to be given to the prisoners doing work in the prison. If Court examined the rates of wages presently fixed in various States these vary from Rs. 1.50 to Rs. 6.00 per day for an unskilled worker and Rs. 2.50 to Rs. 8.00 per day for skilled worker. The amount of wages so paid shocks the conscience. In Pondicherry it is in terms of few paise a day and it could be said that in fact no payment is being made. The amounts so paid these days would appear to be rather a pittance and certainly need upward revision.

It is not, therefore, that prisoners is entitled to minimum wage fixed under the Minimum Wages Act. But, then there has to be some rational basis on which Wages are to be paid to the prisoners.

Since, the claim of the prisoners for payment of wages and also at the rates fixed under the Minimum Wages Act, is based on Article 23 of the Constitution and that of the Prisons Act Court should as well consider these provisions.

Under Seventh Schedule, List II (State list of Constitution "prisons" is a State subject. Entry 4 deals with "prisons" and it reads as under :—

- "4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisoners and other institutions.'

Prison Act, 1894 regulates "Jail". There are various State amendments to this Act. though those amendments are not of any significance for four purpose. The Act, defines a criminal prisoner, a convicted criminal prisoner and a civil prisoner. The Act, provides as to how the prisons are to be maintained; the duties of officers manning the prisons: discipline of prisoners; food, clothing and bedding of civil and unconvicted criminal prisoners; health of prisoners; prisoners-offences and punishment of such offences; etc. Chapter VII of the Act. deals with employment of the prisoners. There is no provision in the Act, for payment of wages to criminal prisoners sentenced to hard labour. Only the civil prisoners are entitled to receive whole of the earning except where the implements used by them are supplied by the prison authorities a certain amount is deducted from their earnings. Section 59 gives power to the State Government to make rules. Clause (11) and (12) of Section 59 empower the State Government to make rules for the provisions of food and employment etc. of the prisoners. It would, therefore, appear that

when wages are paid to the prisoners doing hard labour it is because of rules or other government orders.

How, Articles 23 and 24 took the present shape Court referred to the study by B. Shiva Rao in his book "The Framing of India's Constitution." The subject was first considered in the Sub-Committee on Fundamental Rights and the provisions against exploitation as finally approved by the Sub-Committee were reproduced as Clause 15 in the draft report as follows:—

"15.(1) (a) slavery.

(b) traffic in human beings.

(c) the form of forced labour known as begar.

(d) any form of involuntary servitude except as a punishment for crime where of party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.—Compulsory service under any general scheme of education does not fall within the mischief of this clause.

(2) Conscription for military service of training, or for any work in aid of military operation, is hereby prohibited.

(3) No person shall engage any child below the age of 14 years to work in any mine or factory or any hazardous employment."

This Clause 15 was then considered by the Advisory Committee and the drafted provisions as adopted by the Advisory Committee were reproduced as Clauses 11 and 12 in its interim report which were as follow:—

"11. (a) traffic in human beings, and

(b) forced labour in any form including begar, and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted. Are hereby prohibited and any contravention of this prohibition shall be offence.

Explanation.—Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes wit out any discrimination on the ground of race, religion, caste or class.

12. No child below the age 14 years shall be engaged to work in any factory, mine or any other hazardous employments.

Explanation.—Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour."

These clauses were then discussed in the Constituent Assembly and finally came up for discussion as Articles 17 and 18 as prepared by the Drafting Committee in the Draft Constitution and as follows:—

"17. (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provisions shall be an offence punishable in accordance with law.

- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such, service the State shall not make any discrimination on the ground of race, religion, caste or class.
18. 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.” Now, when Article 17 was taken up for discussion certain amendments were moved by the Members. Relevant for our purpose are—(1) “That in Clause (2) of Article 17, after the words “Caste or Class” the words “and shall pay adequate compensation for it” be inserted. (2) “That in Clause (2) of Article 17, for the word “public” the words “social or national “ be substituted. (3) “That in Clause (2) of Article 17, after the words “discrimination on the ground” the word “only” be added”. In reply Dr. B.R. Ambedkar said.—“Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof K.T.Shah, No. 559, which introduces the word ‘only’ in Clause (2) of Article 17 after the words ‘discrimination on the ground’. The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K.T. Shah, introducing the word ‘devadasis’. Now, I understand that his arguments for including ‘devadas is’ have been replied to by other member of the House who have been part of this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged. With regard to the amendments of my honourable friend, Mr. H.V. Kamath, he wants the words ‘social and national’ in place of the word ‘public’ I should have thought, that the word ‘public’ was wide enough to cover both ‘national’ as well as ‘social’ and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that is the correct attitude to take. With regard to the amendments of my honourable friend Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that, whenever compulsory labour is imposed by the State under the provisions of Clause (2) of Article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance such compulsory labour is restricted to what might be called ‘hours of leisure’ or the hours, when for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the state to say, that it shall not pay any compensation. In this Clause, it may be seen that non-payment of compensation could not be a ground of attack; because, the fundamental proposition enunciated in sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not

pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the Article as it stands.”

Article 23 and 24 of the Constitution are now as under:—

“23 Prohibition of traffic in human beings and forced labour.—(1) Traffic inhuman beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. Prohibition of employment of Children in factories, etc.—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.” See *State of Gujarat v. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164 at 3182-85: 1998 CD LJ 4561: 1998(7) SCC 392: 1999(1) Guj. CD 137 (SC).

18. Prisoner's right.¹⁸ Even if overcrowding be not constitutionally impermissible, there is no doubt that the same does affect the health of prisoners for the reasons noted above. The same also very adversely affects hygienic conditions. It is, therefore, to be taken care of.^{18 19}

The decision of Supreme Court requiring release on bail of certain categories of undertrial prisoners, who constitute the bulk of prison population, has to result in lessening the overcapacity. It would be useful to refer here to the Seventy-eighth Report of the Law Commission of India in ‘Congestion of Undertrial Prisoners in Jails’. The Commission has in Chapter 9 of the Report made some recommendations acceptance of which would relieve congestion in jails. These suggestions include liberalisation of conditions of release on bail. It may be pointed out that it has already been held by this Court in *Babu Singh v. State of U.P.*²⁰ and *Gurbaksh Singh Sibbia v. State of Punjab*,²⁰ that imposing of unjust or harsh conditions, while granting bail, are violative of Article 21.

The concerned authorities were required by Court to take appropriate decision on the recommendations of the Law Commission within six months from today.

Overcrowding may also be taken care of by taking recourse to alternatives to incarceration. These being:

- (1) fined;
- (2) civil commitment; and
- (3) probation.

There is an enlightened discussion on judicial choices in Chapter IV of “Justice, Punishment, Treatment” by Leonard Orland. In that chapter (of 1983 edition) the author has referred to many cases on this subject and has pointed out the difference between “civil” and “penal” institutions from the perspective of the inmate. As to release on

18. Jan Adalat v. State of Maharashtra, (Bombayj(DB), 2017 ALL MR(Cri) 1166.

19. AIR 1978 SC 527: (1978) 2 SCR 177.

20 AIR 1980 SC 1632: (1980) 3 SCR 383.

probation it may be stated that it really results in suspension of sentence, as the person released on probation is required to execute bond under the provisions of the Probation of Offenders Act, 1958, requiring maintenance of good conduct during the probationary period, the failure to do which finds the concerned person in prison again. That Act has provision of a varying conditions of probation and has also set down the procedure to be followed in case of the offenders falling to observe conditions.

Overcrowding is reduced by release on parole as well, which is a conditional release of an individual from prison after he has served part of the sentence imposed upon him. Various aspects of parole have been dealt in Chapter 11 of Professor Orland's aforesaid book. In *Suresh Chandra*,^{21 22} and *Krishan Lal*,¹¹ (*supra*) liberal use of parole was recommended by this Court.

Reference may also be made in this connection to Chapter 20 of the Report of All India Committee on Jail Reforms (headed by Justice A. N. Mulla) (1980-83) Vol. I. That chapter deals with the system of remission, leave and premature release. The Committee has mentioned about various types of remission and has made some recommendations to streamline the remission system. As to premature release, which is the effect of parole, the Committee has stated that this is an accepted mode of incentive to a prisoner, as it saves him from the extra period of incarceration; it also helps in reformation and rehabilitation. The Committee has made certain suggestions in this regard too. We direct the concerned authorities to take appropriate decision on the suggestions within a period of six months from today. It may be pointed out that there is really a grievance about allowing the recommendations to remain in cold storage.²³ While taking appropriate decision, the authorities may apprise themselves of what has been in chapter 6 (headed 'parole') of the British White Paper on 'Crime, Justice and Protecting the Public' (1990).

There is yet another baneful effect of overcrowding. The same is that it does not permit segregation among convicts. Those punished for serious offences and for minor. The result may be that hardened criminals spread their influence over others. Then, juvenile offenders kept in jails (because of inadequacy of alternative places where they are required to be confined) get mixed up with others and they are likely to get spoiled further. So problem of overcrowding is required to be tackled in right earnest for a better future.

(i) *Delay Trial*—It is apparent that delay in trial finds an undertrial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. In the present proceeding, Court was really not concerned regarding the causes of delay and how to remedy this problem. Much has been said in this regard elsewhere and the Court did not propose to burden this judgment with this aspect. The Court confine itself as to how to take care of the hardship which is caused to a UTP because of the delay in disposal of this case. The recent judgments of this Court (noted above) requiring release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard.

21. AIR 1976 SC 2462.

22. AIR 1976 SC 1139.

23. See article of T. Ananthachari 'Human Rights Behind Prison Walls published at pp. 35-47 the 1995 report by Commonwealth Human Rights Initiative (a NGO) titled 'Behind Prison Walls - Police, Prisons and Human Rights'.

Another aspect is the grievance very often made about non-production of UTPS in Courts on remand dates. The District Judge in his report has also found this as a fact. The reason generally advanced for such non-production is want of police escorts. It has to be remembered that production before the Court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial Court before ordering for further remand, as pointed out in number of decisions by this Court.

Police force in the country is rather overworked. It has manifold duties to perform. In such a situation it is a matter for consideration whether the duty of producing UTP on remand dates should not be entrusted to the prison staff. To enable the prison staff to do so, it would, however, need escorts vehicles.

(ii) *Torture and ill-treatment*—There are horror stories in this regard. The cellular jail in Port Blair resounds with the cries of the prisoner who were subject to various forms of torture. This is now being brought home in the Light and Sound programme being organised in that jail, which, after Independence has been declared as a national monument. Other jails would also tell similar stories.

Apart from torture, various other physical ill-treatment like putting of fetters, iron bars are generally taken recourse to in jails. Some of these are under the colour of provisions in Jail Manuals. The permissible limits of these methods has been spelt out well in many earlier decisions of this Court to which reference has been already made. We do not propose to repeat.

If what is being done to prisoners in the above regard is to enforce prison discipline mentioned in various Jail Manuals, there exists a strong need for a new All India Jail Manual to serve as a model for the country, which Manual would take note of what has been said about various punishments by this Court in its aforesaid decision. Not only this, the century old Indian Prison Act, 1894, needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of the Independent India and of our constitutional mores and mandate. The National Human Rights Commission has also felt that need for such exercise, mention about which has been made in para 4. 18 and 4.21 of the aforesaid Report.

A reading of the Chapter IX on 'Prison Discipline' in RN Datir's book on 'Prison as a Social System', shows that in some Jail Manuals even flogging/whipping has been retained as a punishment, which would not be permissible in view of the right enshrined in Article 21 of the Constitution.

It would be apposite in this context to refer to the recent decision of the United States Supreme Court in *Hudson n. Me Millian*^{2*}, in which that Court was required to decide whether the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even when the inmate does not suffer serious injury. This question was answered in affirmative by majority of 7:2. As already mentioned. Article 21 of the our Constitution also does not permit cruel punishment.

The ideal prison and the advance prison system which the enlightened segment of the society visualises would not permit torture and ill-treatment of prisoners. Of course, if

for violating prison discipline some punishment is required to be given, that would be a different matter.

(Hi) *Neglect of health and hygiene*—The Mulla Committee has dealt with this aspect in Chapters 6 and 7 of its Report, a perusal of which shows the pathetic position in which most of the jails are placed insofar as hygienic conditions are concerned. Most of them also lack proper facilities for treatment of prisoners. The recommendations of the Committee in this regard are to be found in Chapter 29. Court have nothing useful to add except pointing out that society has an obligation towards prisoners' health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.

In 'American- Prison System' (*supra*) there is a discussion at pages 411-13 as to whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right. Policy makers may bear this also in mind while deciding about the recommendations of the Mulla Committee Report, which they would so do within six months from today.

(iv) *In substantial food and inadequate clothing*—There is not much to doubt that the rules contained in concerned Jail Manual dealing with food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the persons who are entitled to inspect Jails should do so after shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other Jails also. The complaint received must be fairly inquired and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive fully assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.

(v) *Prison vices*—On this aspect nothing more is required to be said than what was pointed out in Sunil Batra's case (II). It may only be stated that some vices may be taken care of if what is being stated later on the subject of Jail visits is given concrete shape. Court said so because many of the vices are related to sexual urge, which remains unsatisfied because of snapping of marital life of the prisoner. If something could be done to keep the thread of family life unbroken some vices may take care of themselves, as sexual frustration may become tolerable.

The aforesaid is a more rational way to deal with prison vices rather than awarding hard punishment to them. It can not be, however, understood to say that the Jail authorities need not take action against the prisoners indulging in vices; but in the situation in which they are placed, a sympathetic approach is also required.

(vi) *Deficiency in communication*.—While in jail, communication with outside world gets snapped with a result that the inmate does not know that is happening even to his near and dear ones. This causes additional trauma. A liberalised view relating to communication with kith and kin specially is desirable. It is hoped that the model All India Jail Manual, about the need of which we have already adverted, would make necessary provision in this regard. It may be pointed out that though there may be some ratio nale for restricting visits, to which aspect we shall presently address, but insofar as communication by post is concerned, there does not seem to be any plausible reason to deny easy facility to an inmate.

(vii) *Streamlining of jail visits.*—Prison visits fall into three categories:

- (1) relatives and friends;
- (2) professionals; and
- (3) lay persons.

In the first category comes the spouse. Visit by him/her has special significance because a research undertaken on Indian prisoners sometime back showed that majority of them were in the age group of 18 to 35, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. Visits by a spouse is, therefore, of great importance.

It is, of course, correct that at times visit may become a difficult task for the visitors. This would be so where prisoners are geographically isolated. This apart, in many jails facilities available to the visitors are degrading. At many place even privacy is not maintained. If the offenders and visitors are screened, the same emphasises their separation rather than retaining common bonds and interests. There is then urgent need to streamline these visits.

Dr. Mir Mehral-ud-din in his book 'Crime and Criminal Justice System in India' has dealt with different aspects of prison visits in Chapter VI headed '*Resocialization ; Search for Goals*'. The author has said that frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other members of the family.

As to visits by professionals, i.e., the lawyer, the same has to be guaranteed to the required extent, if the prisoner be a pre-trial detainee, in view of the right conferred by Article 22(1) of the Constitution.

(viii) *Management of open air prisons.*—Open air prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desideratum of prison management. They represent one of the most successful applications of the principle of individualization of penalties with a view to social readjustment as stated by B. Chandra in the Preface to his book titled "Open Air prisons". It has been said so because release of offenders on probation, home leave to prisoners introduction of age system, release on parole, educational, moral and vocational training of prisoners are some of the features of the open air prison (camp) system. Chandra has stated in the concluding portion of Chapter 3 at page 150 (of 1984 edition) that in terms of finances, open institution is far less costly than a closed establishment and the scheme has further advantage that the Government is able to employ in work, for the benefit of the public at large, the jail population which would have otherwise remained unproductive. According to the author, the monetary returns are positive, and once put into operation, the camps pay for itself.

Reference may also be made to what has been stated in Chapter 5 about the change in the human and social outlook, which activities and programmes of these camps bring about. The whole thrust is to see that after release the prisoners may not relapse into crimes, for which purpose they are given incentives to live normal life, as they are trained in the fields of agriculture, horticulture etc. Games, sports and other recreational facilities, which form part of the routine life at the open air camps, inculcate in the

prisoners a sense of discipline and social responsibility. The prayers made regularly provide spiritual strength.

While on the subject of prayer, mention may be made about the experiment carried out even in the closed Tihar Jail sometime in 1993-94, when Vipassana meditation was introduced in a big way, which according to *Tarsem Kumar*, one of the Jail Superintendents of the Jail, brought about a radical change in the living and thinking of the prisoners, as narrated in his book titled 'Freedom Behind Bars.

Open air prisons, however, create their own problems which are basically of management. These problems are not such which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So, let more and more open air prisons be opened. To start with, this may be done at all the District Headquarters of the country.

(ix) *Conclusion*.—It would be usefull to recapitulate the directions Supreme Court has given on the way to various authorities. These are :

- (1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of 'Congestion of undertrial prisoners in jail' as contained in Chapter 9. (para 20A).
- (2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Volume I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful, (para 23).
- (3) To consider the question of entrusting the duty of producing UTPs on remand dates to the prison staff. (Para 27).
- (4) To deliberate about enacting of new Prison Act to replace century old Indian Prison Act, 1894. (Para 31). We understand that the National Human Rights Commission has prepared an outline of an All-India Statute, which may replace the old act; and some discussions at a national level conference also took place in 1995. We are of the view that all the States must try to amend their own enactments, if any, in harmony with the all India thinking in this regard.
- (5) To examine the question of framing of a model new All India Jail Manual as indicated in para 31.
- (6) To reflect on the recommendations of Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps. (Paras 35 & 36).
- (7) To ponder about the need of complaint-box in all the jails. (Para 37).
- (8) To think about introduction of liberalisation of communication facilities. (Para 40).
- (9) To take needful steps for streamlining of jail visits an indicated in Para 42.
- (10) To ruminate on the question of introduction of open air prisons at least in the District Headquarters of the country (Para 48).

In the end of Court observed :—

Let us, therefore, resolve to improve our prison system by introducing new techniques of management and by educating the prison staff with constitutional obligations towards prisoners. Rest would follow, as day follows the night. Let the dawning ray (of hope) see the end of gloom cast on the faces of majority of prisoners and let a new awakening percolate every prison wall. Let it be remembered that 'where there is will, there is way'. Will there is, way would be found also expressed their opinion this context.^{25 26 27 28}

The epistolary power had been invoked earlier also in a similar matter when Sunil Batra had written a letter to an Hon'ble Judge of this Court from Tihar Jail, Delhi. The judgments in his cases and that of Charles Sobraj are such which can be said to be beacon lights insofar as management of jails and rights of prisoners are concerned. This Court in these judgments: (1) *Charles Sobraj v. Superintendent Central Jail, Tihar*¹⁶

(2) *Sunil Batra (I) v. Delhi Administration*²¹ and (3) *Sunil Batra (II) v. Delhi Administration*,²³ on being approached either through formal writ petitions or by addressing letter, which was treated as a writ petition, has a laid bare the constitutional dimension and rights available to a person behind stone walls and iron bars.

These are not the only decisions on the question of rights' of prisoners and approach to be adopted while dealing with them as there are many other renderings of this Court which deal with some other aspects of prison justice. A brief resume of earlier decisions would be helpful to tread the path further. The resume reveals this :—

- (1) In *State of Maharashtra v. Prabhakar*²⁹³⁰ and of Article 21 made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books while in jail.
- (2) *Suresh Chandra v. State of Gujarat*²⁰ and *Krishan Lal v. State of Bihar*,³¹³² saw this Court stating about penological innovation in the shape of parole to check recidivism because of which liberal use of the same was recommended.
- (3) A challenge was made to the segregation of prisoners in *Bhuyan Mohan Patnaik v. State of Andhra Pradesh*²² and a three Judge Bench stated that resort to oppressive measures to club political beliefs (the prisoner was a Naxalite because of which he was put in a 'quarantine' and subjected to inhuman treatment) could not be permitted. The Court, however, opined that a prisoner could not complain of installation of High-volt live wire mechanism on the jail walls to prevent escape from prisons, as no prisoner has fundamental right to escape from lawful Custody.

25. Rama Murthy v. State of Karnataka, 1997 Cri LJ 1508 at p. 1509, 1510, 1511, 1512, 1513, 1514, Kuldip Singh, B. L. Hansaria and S. B. Majmudar, JJ.

26. AIR 1978 SC 1514: 1979(1) SCR 512.

27. AIR 1978 SC 1675: 1979 (1) SCR 392.

28. AIR 1980 SC 1579: 1980 (2) SCR 7.

29. AIR 1966 SC 424: (1966) 1 SCR 702.

30. (1976)2 SCC 654: AIR 1976 SC 2462

31. (1976) 1 SCC 655: AIR 1976 SC 1

32. AIR 1974 SC 2092: (1975) 2 SCR

- (4) In *Charles Sobraj*?³³ it was stated that this Court would intervene even in prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of a prisoner. In that case the complaint was against torture.
- (5) Sunil Batra (I),³³³⁴ dealt with the question whether prisoners are entitled to all constitutional rights, apart from fundamental rights. In that case this Court was called upon to decide as to when solitary confinement could be imposed on a prisoner. In *Kishore Singh v. State of Rajasthan*,³⁵ also the Court dealt with the parameters of solitary confinement.
- (6) *Prem Shanker v. Delhi Administration*,³⁶³⁷ and *Kadra Pahadiya n. State of Bihar*,³¹ prohibited putting of undertrial prisoners in leg-irons.
- (7) In *Sunil Batra (II)*,³⁸ the Court was called upon to deal with prison vices and the judgment protected the prisoners from these vices with the shield of Article 21, Krishna Iyer, J. stated that 'prisons are built with the stones of law'.
- (8) A challenge was made to a prison rule which permitted only interview in a month with the members of family of legal advisor in *Francies Goralie v. Union Territory of Delhi*,³⁹ and the rule was held violative, *inter alia* of Article 21.
- (9) In series of cases, to writ *Veena Sethi n. State of Bihar*,⁴⁰
 - (i) *Sant Bir v. State of Bihar*,⁴¹ and
 - (ii) *Sheela Barse v. Union Territory*.⁴²

this Court was called upon to decide as to when an insane person can be detained in a prison. In *Sheela Barse* it was held that jailing of non-criminal mentally ill persons is unconstitutional and directions were given to stop confinement of such persons.

It would be of some interest to point that in *Sheela Barse*, an order was passed to acquaint the Chief Secretaries of every State with the decision and he was directed to furnish some information to the Standing Counsel of his State. On being found that State of Assam had not complied with the order, this Court appointed Sr. Advocate Shri Gopal Subramaniam as its Commissioner by its order dated 13-5-1994 to have discussion with the Chief Secretary of that State and to ensure immediate obedience of the orders passed in that case, Shri Subramaniam's voluminous report dated 15-9-1994 running into 532 pages tells a story too wet for tears. All concerned were found ignorant of the decision in *Sheela Barse* which

33. AIR 1978 SC 1514.
34. AIR 1978 SC 1675.
35. AIR 1981 SC 625: 1981 (1) SCC 508.
36. AIR 1980 SC 1535: 1980 (3) SCR 855.
37. AIR 1981 SC 939: (1981) 3 SCC 671.
38. AIR 1980 SC 1579.
39. AIR 1981 SC 746: (1981) 2 SCR 516.
40. AIR 1983 SC 339: 1982 (2) SCR 583.
41. AIR 1982 SC 1470: (1982) 3 SCC 131.
42. (1993) 4 SCC 204: 1993 AIR SCW 2908.

was rendered in August, 1993 and what is more a disturbing nexus between the judiciary, the police and the administration came to light. This was said to have led to a most shocking state of affairs negating the very basis of the existence of human life.

It was hoped by the Supreme Court that all the States of the country must have acted as per the directions in *Sheela Barse*.⁴³

- (10) The judicial work done by this Court on the subject at hand would not be complete without mentioning what was held in *Mohammad Glasuddrn v. State of Andhra Pradesh*,⁴⁴ because in that case reformatory aspect was emphasised by stating that the State has to rehabilitate rather than avenge. Krishna Iyer, J. speaking for a two-Judges Bench, pointed out that the sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalisation."
- (11) On top of all, there is the undoubted right of speedy trial of under-trial prisoners, as held in a catena of cases of this Court, reference to which is not deemed necessary, Mention may only be made of the further leaves added to this right. These consist of ordering for release on bail where trial is protracted. The first decision in this regard is by a two-Judges Bench in Supreme Court Legal Aid Committee representing *Under-trial Prisoners v. Union of India*,⁴⁵ wherein the bench was concerned with the detention of large number of persons in jail in connection with various offences under Narcotic Drugs and Psychotropic Substances Act, 1985. The Court, after noting the stringent provisions relating to bail as incorporated, in that Act, directed for release of those under-trial prisoners who were languishing in jail for a period exceeding half of the punishment provided in the Act. This decision was cited with approval by another two-Judges Bench in *Shaheen Welfare Association v. Union of India*,^{46*} in which harsh provisions of TADA were borne in mind and the bench felt that a pragmatic and just approach was required to be adopted to release TADA detenus on bail because of delay in conclusions of trials. The Bench classified these undertrials in four categories and passed different orders relating to their release on bail.

More comprehensive view was adopted in two later decisions - these being.

(i) *FD Upadhyay v. State of Andhra Pradesh*"; and

(it) "*Common Cause*" v. *Union of India*.TM

The first of these cases dealt with under-trial prisoners lodged in Tihar Jail and directions were given to release them on bail depending upon the type of offences allowed against them on the completion of period mentioned in the judgment. The second case is more general inasmuch as it dealt with undertrial prisoners lodged in various jails

43. 1993 AIR SCW 2908.

44. AIR 1977 SC 1926: (1978) 1 SCR 153.

45. (1994) 6 SCC 731: 1994 AIR SCW 5115.

46. (1996) 2 SCC 616: 1996 SCW 1161.

47. (1996)3 SCC 422.

48. 1996 (4) SCC 33 : 1996 AIR SCW 2279.

of the country. The Bench directed for their release on conditions laid down in the order. It was stated that directions shall be valid in all the States in Union Territories and would apply not only to pending cases but also to future cases. The directions were, however, not made applicable to certain classes of cases mentioned in the order.

The journey which commenced in 1966 has thus, during the last 30 years, planted many mile-stones. But it seems there are yet promises to keep and miles to go before one can sleep. And how can one sleep with wailing of prisoners getting louder and louder which requires a sentinel on the quiver, as this Court is so far as fundamental rights are concerned, to take note of the agony and to lay down what is required to be done to make prisons match the expectations of society?

Let it be seen how to protect various rights of the prisoners and how the object of rehabilitation of a prisoner does not remain will-o-the-wisp. We have to be pragmatic also. Constitutional rights of the prisoners shall have to be interpreted in such a way that larger public interest does not suffer while trying to be soft and considerable towards the prisoners. For this, it has to be seen that more injury than is necessary is not caused to a prisoner. At the same time efforts have to be made to reform him so that when he comes out of prison he is a better citizen and not a hardened criminal.

Before proceeding to lay down the do's and don't's it would be useful to note what is the general position of prisons in the country presently. To bring home this, it would be enough to note what has been mentioned in the 1994-95 Annual Report of National Human Rights Commission in this regard at page 13 in para 4.17. The same is as below:—

“The situation in the prisons visited was varied and complex. Many, such as Tihar Jail in Delhi were overcrowded; yet others, like the open jail in Hyderabad were under-utilized. Often, within a single State, conditions varied from one jail to another in this respect, pointing to the need for a more rational State-wise use of facilities. The Commission a few jails which were notably clean and where the diet was reasonable such as the Central Jail in Vellore. Unfortunately, it saw many others which are squalid, such as the newly constructed Central Jail in Patna. In yet others, the diet was inferior, and the management was denounced by the inmates as brutal and corrupt. In some, care was being taken to separate juveniles from others, petty offenders from hardened criminals. In others, no such care was being taken and the atmosphere appeared to nurture violence and criminality. In a few, major efforts were being made to reform conditions, to generate employment in a worthwhile and remunerative way, to encourage education and restore dignity. In others, callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates regardless of whether they were criminal or otherwise, were incarcerated with others, with no real effort being made to rise above the very minimum required for the meanest survival. Where prisoners worked, their remuneration was often a pittance, offering scant hope of savings being generated for future rehabilitation in society. By and large, the positive experiences were the exceptions rather than the rules, dependent more upon the energy and commitment of individual officials rather than upon the capacity of the system to function appropriately on its own.”

As alluded, this petition has its origin in a letter from one Ram Murthy, a prisoner in Central Jail, Bangalore, addressed to the Hon'ble Chief Justice of this Court. In the letter the main grievance was about denial of rightful wages to the prisoners despite doing

hardwork by them in different sections of the prison. Mention was also made about “non-estable food” and ‘mental and physical torture”. On the matter being taken up judicially, a need was felt, in view of the denial of the allegations in the objection filed on behalf of the respondent, that the District Judge, Bangalore, should visit the Central Jail and should find out the pattern of payment of wages and also the general conditions of the prisoners such as residence, sanitation, food-medicine etc. This order was passed on 26-11-1992 and the District Judge, after seeking time for submitting report from this Court, did so on 28-4-1993. His report runs into more than 300 pages (along with voluminous annexures), which shows the earnestness and pains which the District Judge evinced and took in submitting the report.

It would be enough for our purpose to note the various conclusions arrived at by the District Judge, which have been incorporated in para 23 of the report reading as below:

- ‘23. Therefore, on the basis of a thorough and proper enquiry by me in the Central prison, Bangalore as directed by the Hon’ble Supreme Court, I have reached the following conclusions.
1. The general conditions of the prisoners is satisfactory. Their treatment by the Jail Authorities is also satisfactory.
 2. The quality, quantity and timely supply of food to the prisoners are satisfactory.
 3. The pattern of payment of wages is as per ‘Annexure-F and it is being followed properly. The wages are correctly recorded and paid to the prisoners as per rules.
 4. The residence (the accommodation) to the prisoners in the jail are adequate and satisfactory. But the maintenance of buildings by the PWD authorities is hopelessly bad for want of funds from the Government according to them.
 5. The sanitation is not satisfactory due to accute scarcity of water. The jail premises is normally maintained clean and tidy with great efforts. But it is improving since about a month after opening 3 or 4 borewells.
 6. The medical facilities in the Jail Hospital and supply of medicines to the prisoners are satisfactory. Due to over population in the jail the two Doctors and their staff at present in the jail Hospital are unable to cope up with the demands but still there is no slackness or negligence in their work. For want of Lady Doctor and women staff in the hospital the Medical attendance to women prisoners is not proper or satisfactory.
 7. Visit of prisoners to their homes or their places is not prompt or regular as per rules due to want of Police Escorts. This has caused lot of dissatisfaction and depression among the prisoners.
 8. The production of prisoners in Courts on the dates of hearing in their cases is not regular or prompt due to want of Police Escorts and vehicles. This has affected the expenditure disposal of custody cases in Courts. The prisoners are very much agitated over this.
 9. The production of prisoners in the Hospital outside the jail for examination or treatment by the experts is not prompt or regular due to want of Police Escorts.

10. Mental patients in the jail and the prisoners with serious disease requiring treatment outside the jail are compelled to remain in jail for want of accommodation in such hospitals.
11. The place and procedure followed for interviews between the prisoners their kith and kin, friends and visitors is not satisfactory.
12. Canteen facilities should improve. The sale of articles in the Canteen at the price above market prices to make profit is causing great hardship to the prisoners.

In view of the above conclusions the District Judge made certain recommendations which are contained in para 24 of the report reading as below:—

In view of the above conclusions the following recommendation are made for consideration and implementation:

1. PWD Authorities in charge of the maintenance of the buildings and the premises of the jail are to be directed to maintain the buildings properly as per the requirement in the jail by getting necessary funds from the Government on priority basis. Necessary instructions may be issued to the Government in this regard to provide fund and to accord permission.
2. Sanitation in the jail premises required lot of improvement. PWD authorities are to be directed to repair the existing pipe lines and the sewerage lines in addition to providing Electric pumps to the bore-wells in the jail premises.
3. The staff in the jail hospital has to be increased by providing at least 2 more Doctors preferably who have specialised in the particular field where the prisoners may require their services in special cases. One Lady Medical Officer, a Lady Nurse and two lady attendants for the purpose of attending the women prisoners. The location of their office may be provided in the separate block meant for women prisoners. In regular posting of Doctors cannot be made for the purposes stated above, the services of the Doctors from other Government Hospitals, in Bangalore may be secured as routing periodically or in case of emergencies by providing them some conveyance. It is suggested that Doctors incharge of the Hospital may visit each barrack at least once in a week and meet the inmates to know their health problems and to treat them in jail Hospital. In case of emergency as agreed by them, they may visit the prisoners whenever their services are required.
4. The Jail Authorities may be directed to arrange for the regular visit of the prisoners of their homes or their places periodically as per the rules without insisting any deposit or security or police report unless it is inevitable and in case of emergency like death, serious illness and other important festivals, functions arrangements should be made for their visit relaxing all the required formalities, by way of follow up action, the Jail Authorities may be instructed to submit the report of the returns to the prl. City Civil and Sessions Judge, Bangalore once in a month in this regard in addition to special reports as and when it is necessary or as per the directions of the prl. City Civil and Sessions Judge, Bangalore. For the purpose the Home Department has to be requested to spare sufficient number of police escorts and the vehicles as and when it is required by the Jail Authorities. If possible as suggested by the Superintendent of Jail, some fixed number of escorts

may be permanently posted to work in the jail to assist the Jail Authorities in cases of visits due to emergencies.

5. The superintendent of the Jail may be instructed to produce the UTPS before the Courts in which their cases are pending on the dates of hearing fixed by the Courts regularly and promptly. For this purpose, the Home Department of the Government may be requested to spare sufficient number of police escorts and the vehicles as and when it is required by the Jail Authorities. The Superintendent of the Jail has to be instructed to submit a report in this regard at least once in a month to the prl. City Civil and Sessions Judge, Bangalore in compliance of such instructions.
6. the Superintendent of the Jail should take all the steps to produce the prisoners to the Hospitals outside the jail for the purpose of examination and treatment whenever necessary as per the opinion of the Jail Doctors and for this purpose also, the same procedure may be followed regarding police escort as stated above.
7. All the hospitals under the control of the Government who are expected to treat the prisoners either the normal cases or in special cases may be strictly instructed to treat the prisoners either as in-patients or otherwise as per the recommendation of the Jail Doctors and the Superintendent of the Jail without referring them back to the jail for treatment, particularly in cases of mental patients, the NIMHANS authorities may be requested to treat them as in-patients till they become normal without referring them back to the jail.
8. It is absolutely necessary to provide proper accommodation with sufficient space for the interview between the prisoners with their kith and kin, friends and visitors. The procedure which is being followed at present also required to be modified as suggested in the discussions stated above in para-20. If possible separate portions may be made in the accommodation for the purpose of interviews. The Superintendent of the Jail may be instructed to submit the report in this regard at least once in 3 months to the prl. City Civil and Sessions Judge, Bangalore who may review the same, issue instructions as and when it is necessary.
9. Canteen facilities in the jail require improvements. Some more articles for day to day use of the inmates may be sold in the Canteen. The Superintendent of the Jail may in consultation of the prisoners submit a report in this regard to the prl. City Civil and Sessions Judge, Bangalore mentioning the articles which may be sold in the Canteen. The Jail Authorities should be strictly instructed not to sell any of the articles to the prisoners at a rate more than the market price of for profit. For this purpose, they may adopt any procedure whereby the articles can be held on the Principle 'no loss no profit' basis.
10. It may be necessary to instruct follow up action by all the concerned Authorities in regard to the implementation of the items stated above."

We wish to place on record our appreciation for the admirable work done by the District Judge.

Being concerned with a problem which is not confined to the happenings in Central Jail, Bangalore, but which are faced more or less by all the persons confined in 1155

prisons of different kinds in India, Court thought it fit not to confine our attention and concern to what was found in the Central Jail by the District Judge. It would be more opposite to keep in view all the prisoners, whose population at the end of 1993 was 1,96,240, of whom 1,37,838 were unconvicted remands or undertrials.

It may be pointed that the National Human Rights Commission is also of the view that the prison system as such is in need of reform, nationwide.⁴⁹

The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are

- (1) overcrowding;
- (2) delay in trial;
- (3) torture and ill-treatment;
- (4) neglect of health and hygiene;
- (5) insubstantial food and inadequate clothing;
- (6) prison vices;
- (7) deficiency in communication;
- (8) streamlining of jail visits; and
- (9) management of open air prisons.

We propose to take each of the problems separately and express our view as to what could reasonably be done and should be done to take care of the same.

Overcrowding jails are over-crowded is a known fact. To illustrate, in Tihar Jail as against the housing capacity of 2,500 prisoners, as mentioned in Chapter 16 of '1 Dare', a biographical work on Ms. Kiran Bedi of course, the percentage of over-crowding varies from prison to prison.

Though the aforesaid fact is known, what is not known is the controversy as to whether over-crowding itself violates any constitutional right. This question arises because overcrowding contributes to a greater risk of disease, higher noise levels, surveillance difficulties, which increases the danger level. This apart, life is more difficult for inmates and work more onerous for staff when prisoners are in overcapacity.

The American Supreme Court in two major decisions had addressed itself on overcrowding problem. First of these is *Woff v. Me. Donnel*,⁵⁰ involving pretrial detainees. The Court held that the principle of 'one man, one cell', cannot be read in the Due Process Clause of the Fifth Amendment. It was further held that the practice of placing two detainees in a cell meant for one person was not unconstitutional. Of course, this view was taken because of the facts of that case where it was found that the detainees in the federal Metropolitan Correctional Centre were not required to spend much time in their cells-only 7 or 8 hours per day. Furthermore, they were not exposed to the over-crowding for very long as average stay was 60 days. The second decision was in *Rhodes v. Chapman*.⁵¹ The Court there was concerned with a convicted prisoner and examined the question whether overcrowding constituted cruel and unusual punishment. It did not

49 See para 4.18 of the aforesaid Report.

50. (1994) 418 US 539.

51. (1981) 452 US 337.

read any violation of the Eighth Amendment as there was no evidence that double-celling had inflicted unnecessary or wanton pain or was grossly disproportionate to the severity of the crimes warranting imprisonment.”⁵² The Court went on to conclude that “the Constitution does not mandate comfortable prisons.”

Mention has been made of the aforesaid two decisions despite there being no exact parallel to the Due Process Clause of the Fifth Amendment of American Constitution or of guarantee against cruel and unusual punishment mentioned in their Eighth Amendment, in our Constitution, but Article 21 of our paramount parchment also does prohibit cruel punishment, which would be apparent from the decision of a three-Judges Bench in *Deena v. Union of India*,⁵³ in which execution of death sentence by hanging was challenged on the ground of being cruel and barbarous.⁵⁴

19. Offences by Juvenile.—Offences committed by the delinquent juveniles is triable by the juvenile Courts only not by the Courts.⁵⁵

A child marriage though prohibited by Child Marriage Restraint Act is not rendered invalid provision therein.⁵⁶

The age of juveniles can be determined only on the basis of genuine education certificate. *Suresh Agarwal v. State of M.P.*, 1998(1) JLJ 274 (MP).

Entries in school register can not be the conclusive evidence of age. *Lekhraj v. State of M.P.*, 1988(1) MPWN 201 (MP).

If the neglected juveniles are kept in juvenile homes, they must be provided proper facilities regarding food clothing health etc.⁵⁷

If the bail application is moved on behalf of a minor accused the provisions of juvenile justice Act should not be ignored.⁵⁸

Food Inspector must be appointed by the Government Notification for the purpose of inspection of foods etc.⁵⁹

According to Calcutta High Court a purchaser other than a Food Inspector may take sample and send it for the purpose of analysis.⁶⁰

A medical Officer appointed in Nagar Mahapalika is properly authorised person to make complaint for the adulteration of foods.⁶¹

20. Right to life of prisoners.—Society has an obligation towards prisoners health for two reasons. First, the prisoners does not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of

52. See ‘American Prison System’ by Richard Hawkins and Geoffery, p. 420 of 1989 edition.

53. AIR 1983 SC 1155 (1984) 1 SCR 1.

54. Ram Murthy v. State of Karnataka, 1997 Cri LJ 1508 at pp. 1514, 1515, 1516, 1517, 1518, 1519 (SC); (Kuldip Singh, S.L. Hansaria and S.B. Majumdar, JJ.).

55. State v. Banshilal, AIR 1957 Bom 13.

56. B Shivanandi v. P. Bhagwathyamma, AIR 1962 Mad 400.

57. R. Rathinam v. Kamla Vadurian, (1991) 3 Crimes 582 Mad.

58. Amit v. State of U.P., 1999 Cri LJ 1978 (All).

59. Parmeshwar Prasad Chowdhary v. State, 1964 (1) Cri. LJ 605 (Pat).

60. Mohindra Nath Banerjee v. Jyotish Chandra, AIR 1937 Cal 63.

61. Nagar Mahapalika Kanpur v. Shri Ram, AIR 1964 All 270.

choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap. In 'American Prison System there is a discussion as to whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right. Policy-makers may bear this also in mind while deciding about the recommendations of the Mulla Committee Report, which they would so do within six months from today. There is not much to doubt that the rules contained in jail manual concerned dealing with the food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the persons who are entitled to inspect jails should do so after giving shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other jails also. The complaint received must be fairly inquired into and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.⁶²

21. Right of prisoners—Delay in trials.—Delay in trial finds an undertrial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. In the present proceeding, Court is really not concerned regarding the causes of delay and how to remedy this problem. Much has been said in this regard elsewhere and Court does not propose to burden this judgment with this aspect. Court would rather confine itself as to how to take care of the hardship which is caused to a UTP because of the delay in disposal of this case. The recent judgments of this Court requiring release of UTP on bail where the trial gets protracted would hopefully take care to a great extent of the hardship caused in this regard. Court desires to see full implementation of the directions given in the aforesaid cases. Another aspect to which Court propose to advert is the grievance very often made about nonproduction of UTPs in Courts on remand dates. The District Judge in his report has also found this as a fact. The reason generally advanced for such non-production is want of police escorts. It has to be remembered that production before the Court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial Court before ordering for further remand as pointed out in a number of decisions by Supreme Court. Court is also conscious of the fact that police force in the country is rather overworked. It has manifold duties to perform. In such a situation it is a matter for consideration whether the duty of producing UTP on remand dates should not be entrusted to the prison staff To enable the prison staff to do so, it would, however, need escort vehicles. Court would require the authorities concerned to take appropriate decision on this regard within a period of six months from today.⁶³

62. Ram Murthy v. State of Karnataka, (1997) 3 SCO 386; (1997) 3 Bom CR 634 at 646; See also Krishan Lal v. State of Delhi, (1976) 1 SCC 655 : D. Bhuvan Mohan Patnaik v. State of A.P., (1975) 2 SCR 24; Woolf v. McDonnell. 418 US 539 : 41 L. Ed. 2d 935 (1974); Rhodes v. Chapman, 452 US 337 (1981); Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731.

63. Rama Murthy v. State of Karnataka, (1997) 3 SCC 386; (1997) 3 Bom CR 634 at 644. 645; See also Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Association v. Union of India, (1996) 2 SCC 616;

22. Non-official visitors of jail—Appointment of.—A life convict undergoing punishment in the Kolhapur Central Jail, Kalamba, addressed a letter to the Chief Justice of High Court, which has been treated as a writ petition, and assigned for hearing and disposal.

By the letter the petitioner made the following grievances :

- (a) That on account of lack of medical facilities of Kolhapur Central Jail, Kalamba, one Prisoner, Bhagwan Ishwara Patil, died on 22nd May, 1995 because he suffered a heart-attack and was not given a prompt medical attention despite his request and that Patil's plea for removal to the Hospital for urgent treatment failed on the deaf ears of Superintendent, Rokade, Senior Jailor, Mate, and the Jailor, Patil, who, instead of sending to the Hospital for medical treatment threatened him against making false pleas.
- (b) The petitioner had addressed a letter drawing attention of this Court to the circumstances under which Bhagwan Ishwara Patil died. This resulted in the petitioner being victimized by the Senior Jailor with threats of his being eliminated in the same manner in which one convict in Sangli Jail was beaten up, died and subsequently shown as having committed suicide.
- (c) on 15th July, 1995, Jailor Patil gave a threat to the petitioner that he was leaking out in formation from the jail for which he would be beaten up and taught a lesson.
- (d) That the petitioner was not given the facility of getting a post card for 5/6 months.
- (e) That the petitioner was not given the wages which he was entitled to for about seven months despite his having worked in the Jail Factory.
- (f) That one Prisoner, Nathu Bapu Mhaskar, was severely beaten for his having conveyed to the Court the unsatisfactory conditions inside the Jail.
- (g) That the petitioner himself was severely beaten and subjected to indignities and inhuman behaviour.

High Court issued Rule in the matter to the respondents and called upon them to file a detailed affidavit. An affidavit of Under Secretary Government, Home Department, was filed in which it was contended that there was no truth in any of the grievance made by the petitioner, that the Inspector General of Prisons, Maharashtra State, Pune was directed by the State Government to cause an enquiry in the complaint made by the petitioner, that one Dhanajirao Chaudhary, Deputy Inspector General of Prisons (Western Region) Yerawada, Pune, conducted an enquiry and after recording the statements of all concerned persons he made a report on 12th August, 1996 and found that there was no substance in the grievances made by the petitioner. Along with the affidavit the papers of the enquiry conducted by Dhanajirao Chaudhary and statements recorded during the so-called enquiry were also filed on the record of this writ petition. After careful perusal of the enquiry documents and the Report of Deputy Inspector General High Court was not satisfied that there was no truth in the complaint of the petitioner and therefore, directed that the petitioner and his co-prisoners, named by him, be kept present before High Court

for recording their evidence. Accordingly, the petitioner and his co-prisoners were present before High Court recorded the evidence of the petitioners.

A perusal of the evidence showed that the so-called enquiry held by Deputy Inspector General, hardly complied with the principles of natural justice. The enquiry was held on a complaint made by the petitioner about inhuman indignities and ill-treatment to which he was subjected inside the Jail and about the lack of basic medical facilities leading to the death of one co-prisoner. It was seen from evidence of the petitioner before this Court that before he entered the chamber of Deputy Inspector General, where he was conducting enquiry, he was threatened by Superintendent Rokade that he would be finished. The statement made by the petitioner at the enquiry bears his signature and is counter-signed by Deputy Inspector General and the Superintendent Rokade. When the statement was put to him in Court, the petitioner refuted several substantial imputations made therein to him. The other witnesses examined at the enquiry by Deputy Inspector General have also denied the correctness of the alleged statements during the enquiry'. A scrutiny of the conclusion that the witnesses were not freely allowed to give their statements during the enquiry by the Deputy Inspector General. The witnesses were threatened or were required to sign statements prepared without being read out to them. This was wholly inconsistent with the principles of natural justice. The enquiry made by Deputy Inspector General could hardly be expected to establish the correctness or otherwise, the serious allegations made by the petitioner.

Considering the petitioner's allegation about contravention of his fundamental right under Article 21 of the Constitution of India, instead of remitting the matter to the District and Sessions Judge for making an enquiry, High Court decided to record the evidence of the material witnesses in order to see whether there was any contravention of the fundamental right under Article 21 of the Constitution of India as alleged. A perusal of the evidence on record, more than *prima facie*, indicated such a situation. In fact, High Court was satisfied that there is a *prima facie* case for registering cognizable offences under the Indian Penal Code. No evidence has been led by any of the respondent including Superintendent Rokade. High Court has also refrained from making any specific findings arising out of the evidence, since this would cause prejudice to Superintendent Rokade against whom serious allegations were made. For the present, it would suffice to state for the purpose of this petition that High Court was of the view that a *prima facie* case exists for registering cognizable offences under the provisions of the Indian Penal Code and for investigation thereof by the concerned local Police. High Court was inclined to give such a direction to the concerned local Police. It has become necessary to do so because the petitioner is not a free citizen and in a respect of his complaint of physical assault and subjection to inhuman indignities by the authorities he has no other means of ventilating his grievances. Since he is not free to go to the concerned Police Station and lodge a complaint, it is essential that the concerned Police be directed to register appropriate offences under the Indian Penal Code, cause investigation there into and proceed according to law.

So far as to the grievance of lack of medical facilities was concerned. Even Deputy Inspector General found in his report that there were no adequate facilities available at the Kalamba Prison and recommended provision of medical facilities. The Advocate General, who appeared on request, has assured the Court that an appropriate Prison Hospital as prescribed in the Maharashtra (Prison Hospital) Rules, 1970, shall be forthwith established at the Kolhapur Central Prison, Kalamba, and, a Resident Medical Officer Class II would be attached to the said Hospital to deal with matters concerning

the health of the Prisoners, in the said prison and that in respect of complicated cases they would be referred to C.P.R. Hospital, Kolhapur.

During the course of the hearing it came to light that the requirements of the Maharashtra Visitors of Prisons Rules, 1962, were not being complied with inasmuch as non-official visitors as required by Rules 5 and 6 had been appointed in respect of the Kolhapur Central Prison, Kalamba. Since the matter was a serious one pertaining in general to the Administration of all prisons, High Court directed the respondent State of Maharashtra to give particulars of the different Prisons and as to whether non-official visitors were appointed in the Prisons. By an affidavit filed by Secretary to the Government of Maharashtra, Home Department it was pointed out that non-official visitors have been appointed only from Oct., 1996. Perhaps, the hearing of High Court writ petition and the Court's pointedly drawing attention of the State Government's failure to appoint non-official visitors to different prisons might have catalysed the State of act.

Apart from the *ex-officio* visitors, the appointment of non-official visitors interested in or likely to take interest in the welfare of prisoners acts as a check on mal-administration of Prisons. In fact High Court suggested to the Advocate General that it would be in the fitness of things that a nominee of the National Human Rights Commission should be appointed either as an *ex-officio* visitor by amending the concerned Rules or at least as a non-official visitors, since it would ensure continuous monitoring of the conditions inside the prisons, particularly with regard to human rights. Suggestion of High Court was immediately conveyed to the State Government and the Advocate General informed the High Court that the State Government has accepted the suggestion and would be implementing immediately.⁶⁴

23. Cut of remission—Imposition of.—The petitioner was the prisoner who was sentenced to life imprisonment. Accordingly he was sent to jail on September 26, 1984. He would complete that sentence on September 25, 2004. However, in view of the orders of the Government Order Ms. No. 3 (Home (P) Department) dated 17-1-1995 and G.O. Ms. No. 4 (Home (P) Department) dated 17-1-1995, the petitioner was entitled to be released, if as on January 14, 1995 he had undergone ten (10) years of imprisonment after granting remission. The petitioner claimed that he had complied with the requirements of the Government Orders and sought a direction to the respondents to release him from the prison.

In the counter-affidavit, it was stated, *inter alia*, that the petitioner has completed, after taking in account the period of remission. Only nine years, nine months and twenty two days as on 14-1-1995. It was also mentioned that the petitioner has overstayed 674 days when he was released on parole. For that he was punished by imposing out of remission of 1245 days and he was also removed from the remission rolls. The punishment was imposed under rule 973 of the Prison Rules.

Rule 973 of the Prison Rules reads as follows:—

“973. If a prisoner who is released on furlough/leave the following punishments or any of them may, in the discretion of the Superintendent of the Prison be awarded to Prisoner, after giving him an opportunity to show cause as regards the breach of the conditions

64. Mukataram Sitaram Shinde v. State of Maharashtra, 1997 Cri LJ 3458 at pp. 3459, 3460, 3461, 3462, 3463 (Bom.) (B.N. Srikrishna, J.)

1. A maximum cut of five days remission for each day of. overstay.
2. Withholding the concession of either interviews or letters or both a maximum period of three months.
3. Non-inclusion of furlough/leave period towards sentence.
4. Warning.
5. Reduction from the grade of 'Night Watchman' or 'Convict Overseer' or 'Convict Warder' to convict if applicable.

Provided that if a prisoner who is released on furlough/leave in that behalf he may be arrested time specified in that behalf he may be arrested by any Police Officer and brought back to prison to undergo the sentence.

From a plain reading of the above Rule, it is clear that if a prisoner, who is released on furlough or leave, is guilty of breach of any of the conditions of furlough/leave. the Superintendent of the Prison may award any of the following punishments after giving him an opportunity to show cause with regard to the breach of conditions. The punishments for breach of any of the conditions of furlough/leave are as follows:—

1. A maximum cut of five days remission for each day of overstay.
2. Withholding the concession of either interviews or letters or both a maximum period of three months.
3. Non-inclusion of furlough/leave period towards sentence.
4. Warning.
5. Reduction from the grade of 'Night Watchman' or 'Convict Overseer' or 'Convict Warder' to convict if applicable.

The proviso entitles the police to arrest the prisoner who has committed the breach of condition of furlough and bring him back to the prison to undergo the punishment.

In the counter-affidavit, it was stated that the petitioner was given on oral opportunity to show cause against the breach of condition, viz., overstay during the period of parole.

Counsel for the petitioner, submitted that the opportunity to show cause, under Rule 973 of the Prison Rules, has to be given in writing and that was not done. Additional Advocate General, contended that in the jail, the practice is to give an oral opportunity and accordingly the petitioner was also given an oral opportunity.

Having regard to the tenor of the rule, giving of opportunity can only mean giving notice in writing, calling upon petitioner to show cause with reference to the alleged violation of the condition which should be stated in the notice and it should also be stated what punishment is proposed to be imposed from among the punishment mentioned in Rule 973 of the Prison Rules, referred to above, duly specifying the time within the cause should be shown. The authority should take into consideration the nature of the condition breached and its impact on the jail discipline, the reason given by the prisoner, his past conduct including violation of conditions, if any, in the past and then impose reasonable and just punishment which should neither be too lenient nor disproportionate to the gravity of the breach. Court cut of remission of five days is the maximum penalty and the same need not be imposed in every case. Having regard to the nature of the breach, the reason for the breach explained in the explanation, the cut of can be imposed which should not, in any

event, exceed five days. It is always open to the Jail Superintendent to impose cut of less than five days having regard to the above said circumstances. No mathematical precision can be demanded in such cases, what all is required is a fair and reasonable consideration of all the facts and passing of order in writing supported by reasons. The order should also be communicated to the concerned prisoner.

Admittedly, in this case no such procedure has been followed. It was held that imposing the punishment of cut of as many as 1245 day is illegal and unsustainable, it was left open to the Superintendent of Prisons, if he proposed to impose the cut of remission for the above said breach of condition to issue a show cause notice to the petitioner in writing, calling upon him to submit his explanation within a reasonable time in writing, consider the same as to how much cut of remission should be imposed.⁶⁵

24. Wage rates for prisoners.—NHRC is of the view that while fixing fair, adequate and equitable wage rate for the prisoners the minimum wage rate for agriculture, industry, etc., as may be applicable in the State and the Union Territory be taken into account and from this average per capita cost of food and clothing on an inmate should be deducted from the the minimum wage and remainder should be paid to him. According to NHRC this would be a fair and equitable basis for fixing wage rates for prisoners Senior Advocate, who appeared for NHRC proposed that:—

- (a) a wage fixation bod; be created to fix the equitable recompense of prisoners.
- (b) a body may be createc to determine the distribution of equitable recompense between sums for dependents and sums for future use; and invested accordingly.
- (c) a grievance committee be established which will examine complaints in respect of prisoners in respect of wages, wage determination, deduction and working conditions. This is consistent with the jurisprudence enunciated earlier that procedural provisions should strengthen substantive entitlements.

The lower wage for inmates of prison is admissible under the European Convention on Human Rights. Article 4 of this Convention provides as under:—

“1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purposes of this Article the term ‘forced or compulsory labour’ shall not include:—

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in the case of conscientious objectors in countries where they are recognised service exacted instead of compulsory military service;
- (c) any service exacted in a case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms pan of normal civic obligations.”

65. Ch. Ramaswamy v. Govt, of A.P., 1997 Cri LJ 3256 at pp. 3256, 3257, 3258 (AP) (Syed Shar Mohammed Quadri and B.S. Baikote, JJ.).

Article 5 guaranteed liberty of the person, and in particular provided guarantees against arbitrary arrest or detention. It seeks to achieve this object by excluding any form of arrest or detention without lawful authority and proper judicial control. Article 4(2) provides that no one shall be required to perform forced or compulsory labour but Article 4(3)(a) excludes from the term "forced or compulsory labour" any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of the Convention or during conditions release from such detention.

In the case of twenty one detained persons against the Federal Republic of Germany decided on April 6, 1968 by the European Convention on Human Rights the main grievance of the applicants was that they were refused adequate remuneration for the work which they had to perform during the detention and that no contributions under the social security system were made for the in this respect by the prison authorities. The Commission noted a particular complaint which said that "the prisoners were compelled to work at ridiculous salaries which enabled the Public Treasury to extract fortunes from the detainees, namely, profiting from the difference between the salaries and the market value of their world." The Commission examined the provisions of Article 4 and held that in the present applications detention concerned was imposed by the competent Courts in a lawful manner and work performed during this detention was, therefore, covered by Article 4(3), taken in conjunction with Article 5. The Commission further observed that Article 4 did not contain any provision concerning the remuneration of prisoners for their work and consequently it said that it had in its constant jurisprudence rejected as being admissible any applications of prisoners claiming higher payment for their work. The Commission also observed that there was a study made by the United National which was published in the basic documents of 1955 on prison labour. The study revealed that the amounts paid to the working persons were, with very few exceptions, extremely small, and that normally prisoners had no legal right to remuneration which is only paid as a "reward" or "gratuity" subject to regulations governing the disposition of the money and which may, in certain circumstances, be withdrawn as a disciplinary measures. Commenting on this study the Commission found that "the form of prison labour of which the applicants complain, whatever its merits or demerits from a penological point of view, clearly appears to fall within the frame work of work "normally" required from prisoners within the meaning of Article 4 Paragraph 3(a), of the European Convention.⁶⁶

25. Whether deterrence is the main objective for punishment?—Among the conflicting theories for punishment modern criminologists are highlighting the reformatory effect on the punished criminal as the most germane aspect. Jereme Bentham who propounded the theory of deterrence is now considered as a postle of a conservative old school of thought. Retributive theory of punishment has waned into a relic of the Primitivity because civilised society has realised that retribution cannot solve the problem of escalating criminal offences. Crime is now considered to be a problem of social hygiene. That modern diagnosis made by criminologists is now causing a sea change to the whole approach towards crime and punishment. The emphasis involved in punishment has now been transposed from retribution to cure and reform so that the original man, who was mentally healthy can be recreated from the ailing criminal.⁶⁷

66. State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1988 SC 3164 at 3180-81: 1998 Cri LJ 4561: (1998)7 SCC 392.

67. State of Gujarat v. Hon'ble High Court of Gujarat, 1998 Cri LJ 4561 at 4568: AIR 1998 SC 3164: 1998(7) SCC 392: 1999(1) Guj CD 137(SC).

Accused was convicted u/s 376 and 302 IPC and Trial Court had awarded 7 years imprisonment and life Imprisonment respectively for offences and directed sentences to run consecutively. Writ petition was filed for reduse of permanent parol. It was held that as conviction judgment had affirmed finally hence prayer to direct sentences to run currently could not be allowed even in exercise of inherent powers.⁶⁸

26. Grant of Bail.—Grant of bail to respondent after filings of charge sheet on sole ground that respondent had been under detention for more than 3 years. Allowing of 9th bail application was not justified. Impugned order granting bail to respondent was quashed. Respondent's bail application filed before the High Court dismissed. Detention of Persons accused of non bailable. Offences unless uncharged on bail in accordance with law Such detention not liable to be questioned as being violative of Article 21 of Constitution as it was otherwise proper by law.⁶⁹

27. Refusal from release on parole.—Where order was sought for release on emergency parole on ground of marriage of brother of petitioner prisoner. However the proof of alleged marriage was produced further, his mother was alive and release on emergency parole for 20 days was legally not sustainable. As such order refusing to release on parole was proper.⁷⁰

28. Purpose of imposition of Sentence.—Taking note of the purpose for which a sentence is imposed. It can not be laid down as a rule of universal application that long passage of time in all cases would justify minimum sentence long pending of a matter by itself could not justify lesser sentence.⁷¹

29. Purpose of detention.—If the detention is not fit for the purpose of the preventive detention laws the order of detention would be mala fide or ultra vires.⁷²

Where the accused person was the member of a gang which committed an offence of dacoity in a running train equipped with fire arms. The Court upheld the detention of detainees under M.I.S.A. on the ground that the accused was the member of a gang.⁷³

Where the petitioner was detained under the provisions of M.I.S.A. (Maintenance of Internal Security) Act, 1957. He was prosecuted under Railway Property (Unlawful Possession) Act, 1966. Since no evidence was produced against him therefore the case was dropped. The Apex Court held that the detention was invalid.⁷⁴

Where the detenu was not communicated for the reasons of his detention it was held that the detention was violative of Article 22 (5) therefore it is liable to be set aside.⁷⁵

68. Pyari Devi v. State of Rajasthan, 2004(1) Civiles 20 (Raj).

69. Kalyan Chandra Sarkar v Rajesh Ranjen @ Pappu Yadav, 2005 Cri LJ 944 (SC); 2005(2) JT 450.

70. Manish Dixit v. State, 2004 Cri. LJ 865 (Raj).

71. State of M.P. v. Ghanshyam Singh, 2003 (8) SCC 13; 2003 Cri LJ 4339.

72. A.D.M., Jabalpur v. Shukla, AIR 1976 SC 1207; 1976 (2) SCC 521; 1976 Supp SCR 172; 1976 CRLJ 945.

73. Babuial v. State of West Bengal; AIR 1975 SC 606; 1975 (3) SCR 193; 1975 (1) SCC 311. 1975 SCC (Cri) 138; 1975 Cri. LJ 585.

74 Sri Lal Shah v. State of West Bengal, AIR 1975 SC 339.

75. Fogla and S.K. Jalil v. State of West Bengal. AIR 1975 SC 245; 1974 (4) SCC 501; 1975 SCC (Cri) 537; 1974 Cri LJ 1252.

Arrested person should be produced before the nearest Magistrate as soon as possible.⁷⁶

If the grounds for detention have been mentioned it must be in existence at the time of making order.⁷⁷ If the order for detention was vague or irrelevant the entire order and grounds of order would fail.⁷⁸ The language of Article 22(5) is obligatory for the State Government to consider the representation of detenu as soon as it is received by it.⁷⁹ There must be reasonable justification for arrest if the ground of arrest is delayed it must be justified by reasonable circumstances.⁸⁰ A person is not liable to be arrested only on the ground of suspicion of the complicity in an offence. The Court held that there must be reasonable justification for arrest.⁸¹

It is the Constitutional right of every accused person to have free legal services if he is unable to engage a lawyer and secure legal services on account of reason of poverty.⁸² Protection of Article 22 is not available to those persons who have been convicted by a competent Court of justice.⁸³ Where a minor girl was removed from brothel under Bengal Suppression of Immoral Traffic Act, 1923. It was held that such removal does not constitute arrest and detention under Article 22 of the Constitution.⁸⁴

30. Accused cannot choose investigation agency.—Accused persons cannot choose as to which Investigating Agency must investigate offence committed by them.⁸⁵

31. Constitution of Supreme Court Committee on Prison Reforms.—Overcrowding in prisons; unnatural deaths of prisoners; gross inadequacy of staff; and available staff being untrained or inadequately trained, effort relating to rights of prisoners was made through Report of Committees earlier. Due to all this there is dire necessity of reforms in prison administration and prison management despite earlier efforts, Ministry of Home Affairs in Government of India was directed to issue notification constituting Supreme Court Committee on Prison Reforms.⁸⁶

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76. C.B.I. v. Anupam J. Kulkarni, 1992 (3) SCC 141.

77. State of Bombay v. Atma Ram, AIR 1951 SC 157: 1951 SCR 167: 1951 Cr. LJ 373.

78. Ram Bahadur v. State of Bihar, AIR 1975 SC 223: 1975 (2) SCR 732: 1975 (3) SCC 710: 1975 (RL) 269: 1975 SCC (Cri) 160.

79. Sakul v. West Bengal, AIR 1979 SC 675.

80. State v. Shobha Ram, AIR 1966 SC 174.

81. Joginder Kumar v. State of U.P., 1994 (4) SCC 260: AIR 1994 SC 1349: 1994 (3) JT 423: 1994 CrLJ 1981: 1994 (2) Crimes 106: 1994 (2) Scale 662: 1994 SCC (Cri) 1172.

82. Hussainara Khatoon v. Home Secretary, Bihar, AIR 1979 SC 1377: 1979 (3) SCR 760: 1980 (1) SCC 108: 1979 CrLJ 1052: 1980 SCC (Cri) 50.

83. Veshan Singh v. Speaker of U.P., AIR 1965 All 349.

84. Rajbahadur Singh v. Legal Remembrancer, AIR 1955 Cal 522 P.

85. *Romila Thapar v. Union of India (SC)*, 2018(10) SCC 753 : AIR 2018 SC 4683 : 2018(13) Scale 278 : 2019(1) SCC(Cri) 638 : 2018 (10) JT 442 : 2018(3) AIR Bom.R (Cri) 705 : 2019(1) ALT (Cri.) 86 : 2018(3) All. Cri. Rulings 2811 : 2018(4) Crimes 435 : 2019 CrLJ 262 : 2018(72) Orrisa Cri. R. 788 : 2018(3) PCCR324 : 2018(4) RajCriC 1589. [Followed 2011(5) SCC 79]

86. *Re- Inhuman Conditions in 1382 Prisons (SC)*, 2018(13) Scale 52.

Chapter 12

Women and Children



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1. Triple Talaq is unconstitutional ('talaq-e-biddat').—Given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. Also, as understood by the Privy Council in Rashid Ahmad case, such Triple Talaq is valid even if it is not for any reasonable cause, which view of the law no longer holds good after Shamim Ara case. This being the case, it is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. *It is violative of the fundamental right contained under Article 14 of the Constitution of India.*

The 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (Shariat Act), was declared unconstitutional.¹

2. Treacherous act against women—Remedy.—This public interest litigation case concerns an innocent woman and her treacherous husband. The petitioner was the daughter of a retired sub-inspector of Police with cardiac problems. She had four sisters and one brother, a Commerce graduate and a qualified higher-grade Stenographer. While working as an office Assistant in Royal Laboratories, Hyderabad in the year 1986, she became closely associated with one Doctor, who was working as a Junior Chemist in the same concern. At the time, his qualification was only M.Sc., (Chemistry). They fell in love but deferred their marriage as he wanted to obtain a Ph. D., Degree. She helped him in completing his thesis foregoing a better job she got in the A.P. Bhavan, New Delhi. She also spent her own money apart from assisting him in completing his thesis. She was even taken by him to his Guide Barkatullah University, Bhopal, where he had registered for Ph. D., for finalising the thesis. When the formalities of submitting the thesis were over, they were married under the Special Marriage Act. At that time, the petitioner was still a Hindu. When the petitioner became pregnant, her husband persuaded her to terminate her pregnancy as he had two sisters yet to be married and his having any children would inconvenience him. Obliging her husband, petitioner got her pregnancy terminated. After six month of marriage, both lived as husband and wife, though not under the same roof. Doctor's family was a large one... .apart from his parents, he had six sisters and five brothers, all living jointly. Presumably, he did not want his parents to come to know of the marriage. However, they were meeting at hotels and at the houses of his friends. The fourth respondent herein, Doctor, played havoc with the life of the petitioner. He not only betrayed her trust totally and ruined her life completely, but also misled another innocent

1. Shayara Bano v. Union of India & others, Writ Petition (C) No. 118 of 2016, dt. 22.8.2017

woman, 'S' in to marrying him under the Muslim Law, keeping her in dark about his marriage with the petitioner. His pretensions of innocence that because of the pressure of his parents, he contracted a second marriage under the Muslim Law Smack of his crafty attitude contrived to somehow extricate himself from the present situation. He deserves no sympathy. The law will catch up with such a person should be brought home to him so as to be a deterrent to all others of his evil, who try to outmanoeuvre the legal system treating women as play things meant for pleasure.

For the shock and trauma suffered by the petitioner by reason of the treachery perpetrated by the fourth respondent, Doctor it was thought fair to pass an appropriate order compensating her in terms of money. Presently, she was entrapped in a tragedy; her future was gloomy and highly uncertain. She has suffered a serious social stigma as a deserted and abandoned wife of Doctor. His readiness to treat her as his wife during his sojourns in Hyderabad and maintain her by meeting her expenses will not give her the status of a wife, since bigamy is prohibited by the Special Marriage Act. Being an educated woman, coming from a respectable background, she, very rightly spurned this debased and illegal offer made by the fourth-respondent. She will continue to be the target of ridicule, scorn and humiliation in her own circles-family, social and official. She was hardly 30 years old with a night-marish past and dark future. Her marital happiness lasted only a jiffy like a colourful dream. There can never be a proper reparation. Money.. .whatever be the quantum.... is a compensatory factory. Even so, Courts of law and equity cannot but evaluate any situation in no terms other than pecuniary, while exercising Civil Jurisdiction, in order to enable the victim to make efforts to absorb the shock. The fourth respondent's present income was Rs. 4,800 Saudi Riyals per month, which in terms of Indian currency, comes approximately to Rs. 45,000/- (the current exchange rate is Rs. 9.65 per Riyal). The petitioner was entitled to, at Rs. 5 (five lakhs) and this amount shall be paid by the fourth respondent Doctor to her within three months from today. It will not preclude the petitioner from bringing a separate civil action, claiming higher amount of compensation.

The Mahila Court (XXIII Metropolitan Magistrate's Court, Hyderabad), whose jurisdiction covers matrimonial offences was directed to take cognizance of the offence under Section 494 IPC on the basis of the reply-affidavit filed by the petitioner. But the law, does not seem to permit such a course of action in view of the specific language of Section 198(1) of the Code of Criminal Procedure, under which, the complaint to the Court, competent to take cognizance of offences punishable under Chapter XX of the Indian Penal Code....of which Section 494 of constitutes a part-should only be by "some person aggrieved by the offence" and the exceptions to this incorporated in proviso (g) to sub-section (1) exclude the complaint by anyone else including a Court, even a higher Court. At any rate, there appears to be no judicial precedent in this regard. It was held that it is open to the petitioner to file a complaint before the Mahila Court (XXII Metropolitan Magistrate-Hyderabad) and if such a complaint is filed, the Mahila Court shall take cognizance of the same and dispose of in accordance with law and in the light of this judgment as expeditiously as possible in any event not later than six months from the date of receipt of the complaint.

It was open to the petitioner, if advised, to approach the Family Court for obtaining the relief contemplated under the Family Courts Act, 1984. The fourth-respondent's passport bearing No. H. 978436, dated 31-1-1991, which was in deposit with the Register (Judicial) of this Court shall continue to be in the custody of this Court until the Civil and Criminal Proceedings against the fourth respondent, if any are terminated finally. Until

the proceedings., both in the Civil and criminal Courts, if any are terminated finally, the Regional Passport Officer, Hyderabad shall not issue another passport to the fourth respondent, Doctor either in his name as such or under any other aliases. The fourth respondent, Doctor shall not leave this country until all the proceedings against him are finally terminated and the amount of compensation five lakh rupees, ordered by us, is fully paid. To ensure compliance of this direction, respondents 1 to 3 shall take all necessary steps. The amount of compensation shall be deposited by the fourth respondent with the registry of this Court and the petitioner can withdraw the same.²

3. Child marriages to be voidable at the option of contracting party being a child.—(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the District Court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the District Court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district Court and show cause why such order should not be passed. [Vide Section 3 of The Prohibition of Child Marriage Act 2006.]

4. Maintenance and residence to female contracting party to child marriage.—

(1) While granting a decree under Section 3, the District Court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

(2) The quantum of maintenance payable shall be determined by the District Court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum

(4) In case the party making the petition under Section 3 is the female contracting party, the District Court may also make a suitable order as to her residence until her remarriage. [Vide Section 4 of The Prohibition of Child Marriage Act, 2006.]

2. S. Radhika Sameena v. S.H.O., Habeebnagar Police Station, Hyderabad, 1997 Cri LJ 1655 at pp. 1655, 1658, 1659 (AP) (G. Rajasekharan, J.)

5. Custody and maintenance of children of child marriage.— (1) Where there are children born of the child marriage, the District Court shall make appropriate order for the custody of such children.

(2) While making an order for custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the District Court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the District Court may, in the interest of the child, deem proper.

(4) The District Court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians. [Vide Section 5 of The Prohibition of Child Marriage Act, 2006.]

6. Legitimacy of children born of child marriages.— Notwithstanding that a child marriage has been annulled by a decree nullity under Section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes. [Vide Section 6 of The Prohibition of Child Marriage Act, 2006.]

7. Power of district court to modify orders issued under Section 4 or Section 5.—The District Court shall have the power to add to modify or revoke any order made under Section 4 or Section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition. [Vide Section 7 of The Prohibition of Child Marriage Act, 2006.]

8. Court to which petition should be made.— For the purpose of grant of reliefs under Sections 3, 4 and 5, the District Court having jurisdiction shall include the District Court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnized or where the parties last resided together, or the petitioner is residing on the date of presentation of the petition. [Vide Section 8 of The Prohibition of Child Marriage Act, 2006.]

9. Punishment for male adult marrying a child.— Whoever being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. [Vide Section 9 of The Prohibition of Child Marriage Act, 2006.]

10. Punishment for solemnising a child marriage.—Whoever performs conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage. [Vide Section 10 of The Prohibition of Child Marriage Act, 2006.]

11. Punishment for promoting or permitting solemnization of child marriages.— (1) Where a child contracts a child marriage, any person having charges of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnized, including attending or participating in a child

marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no woman shall be punishable with imprisonment

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized. [Vide Section 11 of The Prohibition Of Child Marriage Act, 2006.]

12. Marriage of a minor child to be void in certain circumstances. — Where a child, being a minor—

- (a) is taken or enticed out of the keeping of the lawful guardian; or
- (b) by force compelled, or by any deceitful means induced to go from any place; or
- (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void. [Vide Section 12 of The Prohibition of Child Marriage Act, 2006.]

13. Power of court to issue injunction prohibiting child marriages.—(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reasons to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnization of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suo motu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as Akshaya Tritiya, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also be have additional powers to stop or prevent solemnisation of child marriage and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or members of any organisation or association of persons unless the Court has previously given notice to such person, member of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of ahy urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescinds or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and in the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment. Vide Section 13 of The Prohibition Of Child Marriage Act, 2006.

14. Child marriages in contravention of injunction orders to be void.—Any child marriage solemnized in contravention of an injunction order issued under Section 13, whether interim or final, shall be void *ab initio*. Vide Section 14 of The Prohibition Of Child Marriage Act, 2006.

15. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) an offence punishable under this Act shall be cognizable and non-bailable. Vide Section 15 of The Prohibition Of Child Marriage Act, 2006.

16. Child Marriage Prohibition Officers.—(1) The State Government shall, by notification in the Official Gazette appoint for the whole State, or such part thereof as may be specified in that notification an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality Or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

(3) It shall be the duty of the Child Marriage Prohibition Officer —

- (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
- (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
- (c) to advise either individual cases or counsel the resident of the locality generally not to indulge in promoting, helping aiding or allowing the solemnisation of child marriages;
- (d) to create awareness of the evil which results from child marriages.
- (e) to sensitize the community on the issue of child marriages;

- (f) to furnish such periodical returns and statistics as the State Government may direct; and
- (g) to discharge such other functions and duties as may be assigned to him by the State Government.

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(5) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under Sections 4, 5 and 13 and along with the child under Section 3.[Vide Section 16 of The Prohibition Of Child Marriage Act, 2006.]

17. Child Marriage Prohibition Officers to be public servants.—The Child Marriage Prohibition Officers shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860). Vide Section 17 of The Prohibition Of Child Marriage Act, 2006.

18. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prohibition Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. [Vide Section 18 of The Prohibition Of Child Marriage Act, 2006.]

19. Child Marriage—A stigma.—This petition was a public interest litigation, petitioner Smt. Sushila Gothala, resident of C-3, Lal Kothi, Jaipur has approached this Court under Article 226 of the Constitution of India for issuance of direction to the respondents to stop immediately in effectively manner; writ, order or direction to the respondents to enforce the provisions of the Child Marriages Prohibition Act 1929 (hereinafter to be referred to as “the Act”) as amended by Act No. 2 of 1978, and further for a direction to punish the officer who is responsible for not prohibiting the child marriages.

Every year, child marriages are performed in contravention of the Act. It has been also averred in the petition that even after enforcement of the said Act, the State of Rajasthan has practically failed in preventing the solemnisation of child marriages in contravention of the said Act. It has been stated that child marriages are mainly prevalent in the communities like Lohar, Kumhar, Rawat, Bairwa, Regar, Balai, Khateek, Jat, Gujar Bishonoi etc. Even some lower caste Muslims recently converted to Islam also observe this age-old custom of child marriage. The festival of “AKHA TEEJ” is considered as an auspicious day for performing child marriages. It is alleged that even babies in arms are married by their parents on this occasion. On the basis of census reports of 1971 and 1981 it has been alleged that largest number of child marriages have been performed in the State of Rajasthan. In para 7 of the writ petition, it has been stated that the petitioner has written so many letters to the respondents regarding stoppage of child marriages in the State of Rajasthan, but no proper and satisfactory reply has been given to the petitioner regarding steps being taken to prevent this custom. The petitioner was also alleged to have served some notices on the respondents Nos. 2 and 3 by hand on 9-5-1994. The festival of “AKHA TEEJ” is observed every year in the State of Rajasthan, which sometime falls in the month of April and sometimes in May the day of “AKHA TEEJ” this year. The petitioner’s counsel stated that the petition may be heard and necessary orders may be passed directing the respondents to stop the child marriages.

It is strange that there is practice in this Court that the Government Advocates cannot accept notices on behalf of the Chief Secretary and Director General of Police in the Court, unless specifically directed to do so. It was stated by the Government Advocate that notices are sent to the respondents from the Court and after the Government directs the Government Advocates to put in appearance, they put in their appearance. Faced with this situation and in view of the urgency of the matter, oral direction was given to the Government Advocate to direct the Director General of Police of Rajasthan to be available in Court for furnishing any information, if required, as he was arrayed as respondent No. 3. The time was so short that the Government Advocate also expressed inability to file any counter-affidavit to the writ petition.

The child marriage, which were to be solemnized on the day of "AKHA TEEJ" *i.e.* 13th May, 1994 were not being performed for the first time in Rajasthan but such marriages have been performed every year and as stated by the counsel for the petitioner during the course of arguments that such marriages are performed in thousands. If the petitioner was really interested in seeking any direction from the Courts she should have approached the Court earlier.

The State Government enforced the Act prohibiting child marriages, but no action has been taken by the respondents after enforcement of the aforesaid Act to prevent child marriages. This argument advanced on behalf of the petitioner is wholly fallacious, inasmuch as no act prohibiting the child marriages has been enacted by the State of Rajasthan. On the contrary, the Central Government passed an Act No. 19 of 1929 known as Child Marriages Restraint Act, 1929, which was made applicable to the whole of the country except the State of Jammu and Kashmir and by Amending Act No. 2 of 1978, the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) was made applicable to the offences under this Act as the offences committed under the Act of 1929 were cognizable offences. Thus, it is evidently clear that the Central Government has already enacted a Legislation as back as in the year 1929, but this custom of performing child marriages, specially in the State of Rajasthan has assumed alarming proportion and this social evil which has become a cancer has not been eradicated so far. Amount of legislation can stop the solemnisation of child marriages in contravention of the Act. Unless it is discarded by the society at large and this age-old custom is scrapped. The most disturbing feature is that instead of discouraging this custom which is a social evil, it has received sanction from the society. There can also be no doubt that performing of child marriages has far reaching consequences. The children who do not even understand the meaning of marriage are married at any early age. Many of the female married during their childhood are abandoned and deserted by their husbands when they become major, on account of illiteracy or other considerations. This social evil requires more condemnation than the evil of dowry in the Indian society. But it is unfortunate that no social organisation has come forward so far to educate masses about the demerits of the child marriages. As far as the allegation of the petitioner relates to the non-action on the part of the Government of Rajasthan is concerned. Court found that the Government of Rajasthan is very much concerned and the Police machinery is also very much alive about the situation *i.e.* conducting child marriages on the day of "AKHA TEEJ" every year in contravention of Act, in the State of Rajasthan. During the course of arguments, Government Advocate has invited attention of the Court to an appeal issued by the Chief Minister of Rajasthan which has been published in a Newspaper (Rajasthan Patrika) dated 13th May, 1994, in which he has made an appeal to the residents of Rajasthan not to commit offence under the Act and to marry only those girls who have attained the age of 18 years and the males who have attained the age of 21 years.

From a perusal of the Radiogram there can be no manner of doubt that the law enforcing machinery *i.e.* the Police of Rajasthan has also not been sleeping over the matter and has tried to prevent this social evil. During the course of arguments, the fact which has emerged is that the child marriages are being performed every year in contravention of the Act in almost 80% villages of Rajasthan. As has been stated before this Court that there are about 40,000 villages in the State of Rajasthan and as such even if the entire police personnel's of Rajasthan are deployed for the purpose of preventing child marriages in contravention of Act, they would not be able to do so, inasmuch as it is neither feasible nor practical. The contents of the radiogram also indicate that sometimes the people who gather to perform the child marriages in contravention of the Act are in rebellious mood and even retaliate if the police tries to intervene. Therefore, the only irresistible conclusion is that this custom is most shameful social evil' and can be prevented by the society at large and no Government worth-the-name or its machinery can prevent recurrence of such marriages and such marriages should be condemned by all and sundry.

For the reasons and the facts stated above, Court was of the definite view that the petitioner has failed to make out any case for issuance of any direction to the respondents to enforce the provisions of the Act, so far as the Government is concerned, it is very much concerned about this 'social evil and has not failed on its part in preventing such marriages. In fact this social evil can be eradicated only if the people of Rajasthan themselves revolt against this age-old custom, which is primitive in nature and cannot be justified by any civilized society. However, before parting with this case. It can be mentioned that the Government should consider the feasibility of constituting District/Block/Village level committees comprising social workers, officer of the Revenue/Development Department, who should hold regular seminars at village levels to educate the people about the demerits and consequences of child marriages. The Government, should also utilise its media *i.e.* TV. radio, news-papers, magazines etc. for condemning this social evil' but this condemnation should not be confined only on the occasion of "AKHA TEEJ" but planned and sustained campaign should be launched throughout the year in whole of Rajasthan for discouraging the people from performing such child marriages.

By Section 13 of the Act, the State Governments have been authorised to appoint Child Marriages Prevention Officers for whole State or for such part may be specified in that notification and such officer shall be known as Child Marriage Prevention Officer. His duties have also been specified in the aforesaid Act. The Government Advocate has not been able to furnish correct information as to whether Child Marriage Prevention Officer have been appointed in the State of Rajasthan or not as provided under Section 13 of the Act. If no such officers have been appointed, the State Government should consider the feasibility of appointing such officer. The Central Government as well as the State Government should also consider the feasibility of making the provisions of the Act more stringent, deterrent and punishment for contravention of the Act should be severe.³

20. Guidelines to prevent sexual harassment of working women.— The Supreme Court laid down some exhaustive guidelines to prevent sexual harassment of working women.⁴

3. Sushila Gothala v. State of Rajasthan, AIR 1995 Raj 90 at pp. 90, 91, 92, 93 (Jaipur Bench) (Anshuman Singh, J.).
4. Vishaka v. State of Rajasthan, AIR 1997 SC 3011: 1997 (6) SCC 241: 1997 (5) Scale 453: 1997 (7) Supreme 323: 1997 SCC (Cri.) 932.

All employers should take appropriate steps to prevent sexual harassment and should also mention working conditions in respect of work leisure.⁵

Women have the right to be respected and treated as equal citizens they also have the right to lead an honorable and peaceful life.⁶

Women's physical structure and the performance of the mental functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of Public Interest and care in order to preserve the strength and vigour of the race.⁷

21. Public Interest Litigation and Women—Section 509 of I.P.C, and women. —

Where the accused person went to the house of a woman in the night and found her asleep. He took off her clothes with a view to sexually assault her it was held that it is an offence under Section 509 of Indian Penal Code.⁸

22. Public Interest Litigation and Women—Unnatural offence.—Where the father of victim committed with her own daughter deforment punishment of seven years rigorous imprisonment held to be appropriate.⁹

Where a married rural woman was raped by the accused person. The accused person held liable for punishment under Section 376 of the Indian Penal Code on the testimony of natural witnesses.¹⁰

Where a girl was raped by four persons. It was the case of gang rape. They were held guilty for the offence of rape.¹¹

23. Cruelty and Dowry Death.—Where the husband was habitual drinker and used to come to home late at night, it amounts to cruelty.¹²

Where the husband his mother torturing the deceased woman in demand of dowry. It was held that they were guilty for the offence committed under Section 498-A of the Indian Penal Code.¹³

Where there was proper evidence of harassment and demand of dowry and unnatural death occurred within seven years after the marriage under these circumstances the presumption of dowry death against accused persons was right.¹⁴

The provisions of Section 304-B attracted where soon before or her death the victim was subjected to cruelty or harassment either by husband or his relatives.¹⁵

There must be proper nexus between harassment and cruelty on one side and demand of dowry on another side.¹⁶

5. Ibid.

6. Bodhisatwa Gautham v. Subra Chakraborty, (1996) 1 SLC 490.

7. Miller v. Oregon, 52 L. Ed.551.

8. Bankey v. State, (1961) 1 Cri LJ 330 (All).

9. Gorakh Daji Ghadji v. State, 1980 Cri LJ 1380 (Bom).

10. State v. Shri Narayan, AIR 1992 SC 2004.

11. Pramod Mehto v. State, AIR 1989 SC 1475; 1989 (3) JT 494; 1989 Cr. LJ 1479; 1989 Supp (2) SCC 672; 1989 (1) Scale 1049; 1990 SCC (Cri.) 206.

12. Wazir Chand v. State, AIR 1989 SC 378; 1988 (4) J T 558; 1989 (1) SCC 244; 1989 Cri LJ 809; 1989 (1) Crimes 173; 1989 SCC (Cri.) 105; 1988 (2) Scale 1477.

13. P. Krishnamurthy v. State, 1994 Cr LJ 506 (AP).

14. Prakash Chander v. State, 1994 (1) Crimes 865 (Del).

15. Babaji v. State, 1994 (1) Orissa Law 67.

Where the evidence showed that the accused person demanded for dowry from his wife his conviction was held justified.^{16 17}

Where the death of deceased occurred within 1-1/2 years of the marriage. The offence of dowry death and harassment was proved on the basis of produced evidence against accused person. Conviction of accused upheld.¹⁸

Where the accused persons were ill-treating and harassing the woman for the insufficiency of dowry. Conviction of accused was confirmed by the Supreme Court.¹⁹

24. Public Interest Litigation and Women—Outraging modesty of women.—here a woman was pulled by a person by his arms and requested for sexual intercourse. It was held that the act of accused person constitute the offence under Section 354 of the Indian Penal Code.²⁰

Where an accused person touched the belly of woman while travelling in the bus it was held it does not constitute an offence under Section 354 of I.P.C.²¹

25. Rehabilitation of Prostitute.—It is the duty of the State and all voluntary non-government organisations and public spirited persons to come into their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead to a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in Society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self-confidence. Housing, legal aid, free counseling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The Courts are part of the State steering by way of judicial review. Judicial statesmanship is required to held regarding social order and stability. Interpretation is effective armoury in its bow to steer clear the social malady, economic reorganisation as effective instruments remove disunity, and prevent frustration of the disadvantaged, deprived and denied social segments in the efficacy of law, and pragmatic direction pave way for social stability, peace and order. This process sustains faith of the people in rule of law and the democracy becomes useful means to the common man to realise his meaningful right to life guaranteed by Article 21.

V. C. Mahajan Report stated that an organisation by name Prerana, selected Kamathipura red light area, Bombay, where 14 lanes are in the occupation of the Managers of the brothels and has located a centre for counseling. Therein, they organize regular counseling and service centre for the fallen women and do work for the children. The national plan of action for the girl child in SAARC (1991-2000) was launched as a project for the welfare and development of the girl children including adolescent girls and street children in particular an inter-departmental monitoring committee was also set up under this plan in some of the red light areas. The provisions of integrated child

16. Nav Kishore v. State of Maharashtra, 1996 (3) Crimes 126 (Bom).

17. Ram Kumar v. State of Haryana, (1999) 1 Femi Juris 707 (Bom).

18. Venugopal v. State of Karnataka, (1998) 2 SCJ 6151: AIR 1999 SC 146: 1999 (1) SCC 216: 1998 (5) JT 307: 1998 (4) Scale 375: 1998 (6) Supreme 221.

19. Prem Chand Singh v. State of Haryana, (1998) 2 SCJ 617.

20. Sena Shetty v. Emperor, (1890) 1 Weer 347.

21. S.P. Mallik v. State, 1982 Cr. LJ 19 (Pat).

Development Services Scheme were extended. A number of voluntary agencies have also been involved in the care, rehabilitation and advocacy to retrieve prostitutes including child prostitutes. The rehabilitation and welfare organisation is to be initiated.

Women found in the flesh trade, should be viewed more as victims of adverse socioeconomic circumstances rather than as offenders in our society. Prostitution in five star hotels is a licence given to persons from higher echelons. The commercial exploitation of sex may be regarded as crime but those trapped in custom oriented prostitution and gender oriented prostitution should be viewed as victims of gender oriented vulnerability. That could be arrested by not only law enforcing agencies but by constant counseling and interaction by the NGOS impressing upon them the need to shed off the path and to start with a new lease of life. The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under ITP Act through inter-State or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. Court was concerned in this case more with the rehabilitation aspect than with prevention of the crime. Therefore, we emphasise on the review of the relevant law in this behalf Effective implementation of the scheme to provide self-employment, training in weaving, knitting, painting and other meaningful programmes to provide the fallen women the regular source of income by self-employment or, after vocational education, the appropriate employment generating schemes in governmental, semi-governmental or private organisations.

Article 21 of the Constitution of India provides protection to life and personal liberty. Every Person has right to life with dignity. Prostitutes are also required dignity. They are required self employment training in Knitting, painting, and other meaningful programmes. They are required appropriate employment under governmental, semi-governmental or private organizations.²²

26. Welfare of children.—The Supreme Court as the sentinel on the *quit vive*, is constitutionally obliged to enforce the fundamental rights of the all the citizens of the country, and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socioeconomic justice, empowerment and to free the handicapped persons from the liabilities with which they suffer from and to make realize and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, Supreme Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the reliefs sought for in adversorial litigation, has been softened; new methods, tools and procedures were evolved to mete out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner *Gaurav Jain*, Supreme Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and degradation. In addition, this Court appointed V. C. Mahajan Committee to enquire into and submit a report. The report was accordingly submitted after extensive travelling to far and wide parts of the *²⁵

22. *Gaurav Jain v. Union of India*, AIR 1997 SC 3021: 1997 (8) SCC 114: 1997 (6) JT 355: 1997 (4) Scale 657: 1997(6) Supreme 394: 1997(2) SCJ 334: 1997 (3) Crimes 40: 1998 SCC (Cri) 25.

country; it studied not only the problem of the children of the fallen women but also the root cause of the menace of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government was supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the Court can take cognizance from indisputable or the undisputed facts from the Report of V. C. Mahajan Committee and other reports and articles published in recognised Journals and act upto it. Placing reliance thereon, the directions given in the order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the order, it is for the Government to evolve suitable programme of action.

When the issue had not been squarely raised, concerned parties not informed, pleadings being not there, it may not be correct to embark upon that task and to give interpretation of the law applicable thereto and that too without hearing the parties when the issue is so profound certainly involving hearing of the Union of India and State Governments with respect to their problems.^{23 24 25}

Children below the age of 14 years cannot be employed in any hazardous industries mines etc.²⁴

27. Prohibition and Regulation of Child Labour.—If an employer engaged a child labour in the contravention of the provisions of this Act he shall be subject to the criminal liability.²⁵

The Child Labour (Prohibition and Regulation) Act, 1986 imposes a criminal liability upon the employer who engaged a child labour in the contravention of the provisions of the said Act. *M. C. Mehta v. Union of India*, AIR 1997 SC 699: 1997 (2) SCC 411: 1997 (1) JT 221: 1996 (9) Scale 397.

If a notice is given to the employer in respect of compensation for child labour it is necessary that employer of such child labour must be given an opportunity of hearing. *Anil Kumar Agarwal v. Asstt. Commissioner of Labour, Mathura*, 1999 (81) FLR 43 (All). (All).

The concept of social justice is essential for the development of personality of every citizen. It is an integral part of justice. *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC 645: 1997 (9) SCC 377: 1996(11) JT 109: 1996 (9) Scale 70: 1997 (2) Supreme 165: 1996 (6) SLR 233.

Where the children were employed in Sivakasi Cracker Industries. A Public Interest Litigation was brought before the Court under Article 32 of the Constitution. The Court issued appropriate directions to the Government to eradicate child labour exploitation. *M.C. Mehta v. State of T.N.*, AIR 1997 SC 699. 1997 (2) SCC 411: 1997 (1) JT 221: 1996 (9) Scale 397.

23. Gaurav Jain v. Union of India, AIR 1997 SC 3021, at p. 3051, 3054.

24. M.C. Mehta v. State of T.N., AIR 1997 SC 699: 1997 (2) SCC 411: 1997 (1) JT 221: 1996 (9) Scale 397.

25. Anil Kumar Agarwal v. Asstt. Labour Commissioner 1999 (81) FLR 43 (All).

country; it studied not only the problem of the children of the fallen women but also the root cause of the menace of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government was supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the Court can take cognizance from indisputable or the undisputed facts from the Report of V. C. Mahajan Committee and other reports and articles published in recognised Journals and act upto it. Placing reliance thereon, the directions given in the order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the order, it is for the Government to evolve suitable programme of action.

When the issue had not been squarely raised, concerned parties not informed, pleadings being not there, it may not be correct to embark upon that task and to give interpretation of the law applicable thereto and that too without hearing the parties when the issue is so profound certainly involving hearing of the Union of India and State Governments with respect to their problems.²³

Children below the age of 14 years cannot be employed in any hazardous industries mines etc.²⁴

27. Prohibition and Regulation of Child Labour.—If an employer engaged a child labour in the contravention of the provisions of this Act he shall be subject to the criminal liability.²⁵

The Child Labour (Prohibition and Regulation) Act, 1986 imposes a criminal liability upon the employer who engaged a child labour in the contravention of the provisions of the said Act. *M. C. Mehta v. Union of India*, AIR 1997 SC 699: 1997 (2) SCC 411: 1997 (1) JT 221: 1996 (9) Scale 397.

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25. *Anil Kumar Agarwal v. Asstt. Labour Cotnmissie»«r* f. 1999 (81) FLR 43 (All).

“bonded labour” means any labour or service rendered under the bonded labour system;

“bonded labourer” means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

28. “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditors to the effect than,—

- (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
- (ii) in pursuance of any customary or social obligation, or
- (iii) in pursuance of an obligation devolving on him by succession, or
- (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- (v) by reason of his birth in any particular caste or community,—
he would—
- (1) render, by himself or through any member of his family, or any person dependant on him, labour or service to the creditors, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely throughout the territory of India, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him,

and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditors to the effect that in the event of the failure of the debtor repay the debt, he would render the bonded labour on behalf of the debtor;

Explanation.— For the removal of doubts, it is hereby declared that any system of forced or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an Inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State migrant workman (Regulation of Employment and Conditions of Service) Act, 1970 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is “bonded labour system” within the meaning of this clause. [Vide Section 2 (e) (f) (g) of the Bonded Labour System (Abolition) Act, 1976]

29. Abolition of bonded labour system.— (1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such

commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) After the commencement of this Act, no person shall—

(a) make any advance under, or in pursuance of, the bonded labour system, or

(b) compel any person to render any bonded labour or other form of forced labour. [Vide Section 4 of The Bonded Labour System (Abolition) Act, 1976]

30. Agreement, custom, etc., to be void.—On the commencement of this Act, any custom or traditional or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act), by virtue of which any person, or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative. [Vide Section 5 of The Bonded Labour System (Abolition) Act, 1976]

31. Liability to repay bonded debt to stand extinguished.—(1) On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.

(2) After the commencement of this Act, no suit or other proceeding shall lie in any civil court or before any other authority for the recovery of any bonded debt or any part thereof.

(3) Every decree or order for the recovery of bonded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall be deemed, on such commencement, to have been fully satisfied.

(4) Every attachment made before the commencement of this Act, for the recovery of any bonded debt, shall, on such commencement, stand vacated; and, where, in pursuance of such attachment, any movable property of the bonded labourer was seized and removed from his custody and kept in the custody of any court or other authority pending sale thereof, such movable property shall be restored, as soon as may be practicable after such commencement, to the possession of the bonded labourer.

(5) Where, before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family or other dependent was forcibly taken over by any creditors for the recovery of any bonded debt, such property shall be restored, as soon as may be practicable after such commencement, to the possession of the person from whom it was seized.

(6) If restoration of the possession of any property referred to in sub-section (4) or sub-section (5) is not made within thirty days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of the possession of such property and the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the concerned property within such time as may be specified in the order.

(7) An order made by any prescribed authority, under sub-section (6), shall be deemed to be an order made by a civil court and may be executed by the court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction the creditor Voluntarily resides or carries on business or personally works for gain.

(8) For the avoidance of doubts, it is hereby declares that, where an attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, such sale shall not be affected by any provision of this Act:

Provided that the bonded labour, or an agent authorized by him in this behalf, may, at any time within five years from such commencement, apply to have the sale set aside on his depositing in court, for payment to the decree-holder, the amount specified in the proclamation of sale, for the recovery of which the sale was ordered, less any amount, as well as *mesne profits*, which may, since the date of such proclamation of sale, have been received by the decree-holder.

(9) Where any suit or proceeding, for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceeding, shall on such commencement, stand dismissed.

(10) On the commencement of this Act, every bonded labourer who has been detained in civil prison, whether before or after judgment, shall be released from detention forthwith. [Vide Section 6 of The Bonded Labour System (Abolition) Act, 1976]

32. Property of bonded labourer to be freed from mortgage, etc.—(1) All property vested in a bonded labourer which was, immediately before the commencement of this Act under any mortgage, charge, lien or other encumbrances in connection with any bonded debt shall, in so far as it is relatable to the bonded debt, stand freed and discharged from such mortgage, charge, lien or other encumbrances, and where any such property was, immediately before the commencement of this Act, in the possession of the mortgagee or the holder of the charge, lien or encumbrances, such property shall (except where it was subject to any other charge), on such commencement, be restored to the possession of the bonded labourer.

(2) If any deal is made in restoring any property referred to sub-sections (1) to the possession of the bonded labourer, such labourer shall be entitled, on and from the date of such commencement, to recover from the mortgagee or holder of the lien, charge or incumbrance, such *mesne profits* as may be determined by the civil court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated. [Vide Section 7 of The Bonded Labour System (Abolition) Act, 1976]

33. Freed bonded labourer not to be evicted from homestead, etc.—(1) No person who has been freed and discharged under this Act from any obligation to render any bonded labour, shall be evicted from any homestead or other residential premises which he was occupying immediately before the commencement of this Act as part of the consideration for the bonded labour.

(2) If, after the commencement of this Act, any such person is evicted by the creditor from any homestead or other residential premises, referred to in sub-section (1), the Executive Magistrate in charge of the Sub-Division within which such homestead or residential premises is situated shall, as early as practicable, restore the bonded labourer to the possession of such homestead or other residential premises. [Vide Section 8 of The Bonded Labour System (Abolition) Act, 1976]

34. Creditor not to accept payment against extinguished debt.—(1) No creditor shall accept any payment against any bonded debt which has been extinguished or

deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to three years and also with fine.

(3) The court, convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under that sub-section, direct the person to deposit, in court, the amount accepted in contravention of the provisions of sub-section (1), within such period as may be specified in the order for being refunded to the bonded labourer. [Vide Section 9 of The Bonded Labour System (Abolition) Act, 1976]

35. Authorities who may be specified for implementing the provisions of this Act.—The State Government may confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer so specified. [Vide Section 10 of The Bonded Labour System (Abolition) Act, 1976]

36. Duty of District Magistrate and other officers to ensure credit.—The District Magistrate authorized by the State Government under section 10 and the officer specified by the District Magistrate under that section shall, as far as practicable, try to promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract and further bonded debt. [Vide Section 11 of The Bonded Labour System (Abolition) Act, 1976]

37. Duty of District Magistrate and officers authorized by him.—It shall be the duty of every District Magistrate and every officer specified by him under section 10 to inquire whether, after the commencement of this Act, any bonded labour system or any other form of forced labour is being enforced by, or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour. [Vide Section 12 of The Bonded Labour System (Abolition) Act, 1976]

38. Vigilance Committees.—(1) Every State Government shall, by notification in the Official Gazette, constitute such number of Vigilance Committees in each district and each Sub-Division as it may think fit.

(2) Each Vigilance Committee, constituted for a district, shall consist of the following members namely:—

- (a) the District Magistrate, or a person nominated by him, who shall be the Chairman;
- (b) three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the district, to be nominated by the District Magistrate.
- (c) two special workers, residing in the district, to be nominated by the District Magistrate;

- (d) not more than three persons to represent the official or non-official agencies in the district connected with rural development, to be nominated by the State Government;
- (e) one person to represent the financial and credit institution in the district, to be nominated by the District Magistrate.

(3) Each Vigilance Committee, constituted for a Sub-Division, shall consist of the following members, namely:—

- (a) the Sub-Divisional Magistrate, or person nominated by him, who shall be the Chairman;
- (b) three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
- (c) two social workers, residing in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
- (d) not more than three persons to represent the official or non-official agencies in the Sub-Division, connected with rural development to be nominated by the District Magistrate;
- (e) one person to represent the financial and credit institution in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
- (f) one officer specified under section 10 functioning in the Sub-Division.

<4) Each Vigilance Committee shall regulate its own procedure and secretarial-assistance, s may be necessary, shall be provided by—

- (a) the District Magistrate, in the case of a Vigilance Committee constituted for the district;
- (b) the Sub-Divisional Magistrate, in case of a Vigilance Committee constituted for the Sub-Division.

(5) No proceeding of a Vigilance Committee shall be invalid merely by reason of any defect in the constitution, or in the proceedings, of the Vigilance Committee. [Vide Section 13 of The Bonded Labour System (Abolition) Act, 1976]

39. Functions of Vigilance Committees.—(1) The functions of each Vigilance Committee shall be,—

- (a) to advise the District Magistrate or any officer authorized by him as to the effort made, and action taken, to ensure that the provisions of this Act or of any rule made thereunder are properly implemented;
- (b) to provide for the economic and social rehabilitation of the freed bonded labourer;
- (c) to co-ordinate the functions of rural banks and co-operative societies with a view to canalising adequate credit to the freed bonded labourer;
- (d) to keep an eye on the number of offences of which cognizance has been taken under this Act;
- (e) to make a survey as to whether there is any offence of which cognizance ought to be taken under this Act;

- (f) to defend any suit instituted against a freed bonded labourer or a number of his family or any other person dependent on him for the recovery of the whole or part of bonded debt or any other debt which is claimed by such person to be bonded debt.

(2) A Vigilance Committee may authorize one of its members to defend a suit against a freed bonded labourer and the member so authorized shall be deemed, for the purpose of such suit, to be the authorized agent of the freed bonded labourer. [Vide Section 14 of The Bonded Labour System (Abolition) Act, 1976]

40. Rights to Muslim women—Gender discrimination.—In spite of guarantee of the Constitution, muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her. Although the issue was raised before this Court in *Ahmedabad Women Action Group (AWAG) v. Union of India*,²⁶²⁷, this Court did not go into the merits of the discrimination with the observation that the issue involved state policy to be dealt with by the legislature. This Court referred to the observations of Sahai, J. in *Sarla Mudgal v. Union of India*,²² that a climate was required to be built for a uniform civil code. Reference was also made to observations in *Madhu Kishwar v. State of Bihar*,²⁸ to the effect that the court could at best advise and focus attention to the problem instead of playing an activist role.²⁹

41. Treatment of acid attack victims.—States and Union Territories to work out details with regard to treatment of acid attack victims keeping in mind not only the provisions of Section 357C of the Cr.P.C, but also the 226th Report of the Law Commission, concerned officers should also discuss and prepare some Model Rules for compensation to be paid to the acid attack victims keeping in the mind the directions issued by Supreme Court.³⁰

42. Proactive detection of online Child pornography-direction issued to FACEBOOK.—The Apex Court directed Facebook to state whether it is developing or has developed new “proactive detection” technology for real time screening through artificial intelligence.³¹

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26. (1997)3 SCC 573.

27. (1995)3 SCC 635.

28. (1996 (5) SCC 125.

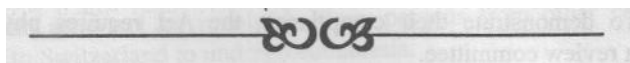
29. Prakash v. Phulavati (SC), 2016(2) SCC 36 : AIR 2016 SC 769 : 2015(11) Scale 643 : 2015 AIR (SCW) 6160.

30. Laxmi v. Union of India (SC), 2016(3) SCC 669 : 2015(2) Scale 223.

31. *Re Prajwala* Letter dated 18.2.2015 Videos of Sexual Violence and Recommendations, (SC >, 2018(1) Scale 545.

Chapter 13

Mercy killing



Synopsis

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1. Euthanasia—General background.

(i) Active Euthanasia.—Active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304, IPC while assisted suicide is a crime under section 306 IPC (abetment to suicide). Active euthanasia is taking specific steps to cause the patient's death, such as injecting the patient with some lethal substance, e.g. sodium pentothal which causes a person deep sleep in a few seconds, and the person instantaneously and painlessly dies in this deep sleep. A distinction between euthanasia and physician assisted dying, the difference being in who administers the lethal medication. In euthanasia, a physician or third party administers it, while in physician assisted suicide it is the patient himself who does it, though on the advice of the doctor. In many countries/States the latter is legal while the former is not. The difference between “active” and “passive” euthanasia is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. An important idea behind this distinction is that in “passive euthanasia” the doctors are not actively killing anyone; they are simply not saving him. While the court usually applaud someone who saves another person's life, it does not normally condemn someone for failing to do so. If one rushes into a burning building and carries someone out to safety he will probably be called a hero but if one stands on the sidelines—whether out of fear for his own safety, or the belief that an inexperienced and ill-equipped person like himself would only get in the way of the professional firefighters, or whatever and if one does nothing, few would judge him for his inaction. One would surely not be prosecuted for homicide.

(ii) legal position in some other countries.

Netherlands: *Euthanasia legalized.*

Euthanasia in the Netherlands is regulated by the “Termination of Life on Request and Assisted Suicide (Review Procedures) Act”, 2002. It states that euthanasia and

physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. These criteria concern the patient's request, the patient's suffering (unbearable and hopeless), the information provided to the patient, the presence of reasonable alternatives, consultation of another physician and the applied method of ending life. To demonstrate their compliance, the Act requires physicians to report euthanasia to a review committee.

The legal debate concerning euthanasia in the Netherlands took off with the "Postma case" in 1973, concerning a physician who had facilitated the death of her mother following repeated explicit requests for euthanasia. While the physician was convicted, the court's judgment set out criteria when a doctor would not be required to keep a patient alive contrary to his will. This set of criteria was formalized in the course of a number of court cases during the 1980s. Termination of Life on Request and Assisted Suicide (Review Procedures) Act took effect on April 1, 2002. It legalizes euthanasia and physician assisted suicide in very specific cases, under very specific circumstances. The law was proposed by Els Borst, the minister of Health. The procedures codified in the law had been a convention of the Dutch medical community for over twenty years.

The law allows a medical review board to suspend prosecution of doctors who performed euthanasia when each of the following conditions is fulfilled :

- The patient's suffering is unbearable with no prospect of improvement.
- The patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness, or drugs).
- The patient must be fully aware of his/her condition, prospects and options.
- There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above.
- The death must be carried out in a medically appropriate fashion by the doctor or patient, in which case the doctor must be present.
- The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).

Switzerland: *Euthanasia illegal but assisted suicide legal.*

Switzerland has an unusual position on assisted suicide: it is legally permitted and can be performed by non-physicians. However, euthanasia is illegal, the difference between assisted suicide and euthanasia being that while in the former the patient administers the lethal injection himself, in the latter a doctor or some other person administers it.

Article 115 of the Swiss penal code, which came into effect in 1942 (having been approved in 1937), considers assisting suicide a crime if, and only if, the motive is selfish. The code does not give physicians a special status in assisting suicide; although, they are most likely to have access to suitable drugs. Ethical guidelines have cautioned physicians against prescribing deadly drugs.

Switzerland seems to be the only country in which the law limits the circumstances in which assisted suicide is a crime, thereby decriminalising it in other cases, without requiring the involvement of a physician. Consequently, non-physicians have participated in assisted suicide. However, legally, active euthanasia e.g. administering a lethal

injection by a doctor or some other person to a patient is illegal in Switzerland (unlike in Holland where it is legal under certain conditions).

The Swiss law is unique because (1) the recipient need not be a Swiss national, and (2) a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia.

Belgium: *Euthanasia legal, except minors.*

Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002. The Belgium law sets out conditions under which suicide can be practiced without giving doctors a licence to kill. Patients wishing to end their own lives must be conscious when the demand is made and *repeat* their request for euthanasia. They have to be under “constant and unbearable physical or psychological pain” resulting from an accident or incurable illness. The law gives patients the right to receive ongoing treatment with painkillers - the authorities have to pay to ensure that poor or isolated patients do not ask to die because they do not have money for such treatment. Unlike the Dutch legislation, minors cannot seek assistance to die. In the case of someone who is not in the terminal stages of illness, a third medical opinion must be sought. Every mercy killing case will have to be filed at a special commission to decide if the doctors in charge are following the regulations.

U.K., Spain, Austria, Italy, Germany, France etc.: *Euthanasia/Physician assisted death illegal.*

In none of these countries is euthanasia or physician assisted death legal. In England, in May 2006 a bill allowing physician assisted suicide, was blocked, and never became law.

United States of America : *Euthanasia illegal*

: Physician assisted death legal only in 3 states-Oregon, Washington and Montana

Active Euthanasia is illegal in all states in U.S.A., but physician assisted dying is legal in the states of Oregon, Washington and Montana. As already pointed out above, the difference between euthanasia and physician assisted suicide lies in who administers the lethal medication. In the former, the physician or someone else administers it, while in the latter the patient himself does so, though on the advice of the doctor.

Canada: *Physician assisted suicide—illegal.*

In Canada, physician assisted suicide is illegal vide Section 241(b) of the Criminal Code of Canada. The leading decision of the Canadian Supreme Court in this connection is *Sue Rodriguez v. British Columbia (Attorney General)*, (1993) 3 SCR 519. Rodriguez, a woman of 43, was diagnosed with Amyotrophic Lateral Sclerosis (ALS) and requested the Canadian Supreme Court to allow someone to aid her in ending her life. Her condition was deteriorating rapidly, and the doctors told her that she would soon lose the ability to swallow, speak, walk, and move her body without assistance. Thereafter she would lose her capacity to breathe without a respirator, to eat without a gastrotomy, and would eventually be confined to bed. Her life expectancy was 2 to 14 months.

The Canadian Supreme Court was deeply divided. By a 5 to 4 majority her plea was rejected. Justice Sopinka, speaking for the majority (which included Justices La Forest, Gonthier, Iacobucci and Major) observed:

“Sanctity of life has been understood historically as excluding freedom of choice in the self infliction of death, and certainly in the involvement of others in carrying out that

choice. At the very least, no new consensus has emerged in society opposing the right of the State to regulate the involvement of others in exercising power over individuals ending their lives.” The minority, consisting of Chief Justice Lamer and Justices L’Heureux-Dube, Cory and McLachlin, dissented.

(iii) Passive Euthanasia.—Passive euthanasia is usually defined as withdrawing medical treatment with a deliberate intention of causing the patient’s death. For example, if a patient requires kidney dialysis to survive, not giving dialysis although the machine is available, is passive euthanasia. Similarly, if a patient is in coma or on a heart lung machine, withdrawing of machine will ordinarily result in passive euthanasia. Similarly, not giving life saving medicines in certain situations may result in passive euthanasia. Denying food to a person in coma or PVS may also amount to passive euthanasia.

As already stated above, euthanasia can be both voluntary and non voluntary. In voluntary passive euthanasia a person who is capable of deciding for himself decides that he would prefer to die (which may be for various reasons e.g., that he is in great pain or that the money being spent on his treatment should instead be given to his family who are in greater need, etc.) and for this purpose he consciously and of his own free will refuses to take life saving medicines. In India, if a person consciously and voluntarily refuses to take life saving medical treatment it is not a crime. Whether not taking food consciously and voluntarily with the aim of ending one’s life is a crime under section 309 IPC (attempt to commit suicide) is a question which need not be decided in this case.

Non voluntary passive euthanasia implies that the person is not in a position to decide for himself e.g., if he is in coma or PVS.

There are techniques available, which make it possible to ascertain the state of the cerebral cortex, and in Anthony Bland’s case these, indicated that, it had degenerated into a mass of watery fluid. In this situation the question before the House of Lords was whether the doctors could withdraw medical treatment or feeding Anthony Bland thus allowing him to die. It was held by Lord Keith that a medical practitioner is under no duty to continue to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance of the treatment. Existence in a vegetative state with no prospect of recovery is by that opinion regarded as not being of benefit to the patient.

Given that existence in the persistent vegetative state is of no benefit to the patient, the House of Lords then considered whether the principle of the sanctity of life which is the concern of the State (and the Judiciary is one of the arms of the State) required the Court to hold that medical treatment to Bland could not be discontinued. Lord Keith observed that the principle of sanctity of life is not an absolute one. For instance, it does not compel the medical practitioner on pain of criminal sanction to treat a patient, who will die, if he does not, according to the express wish of the patient. It does not authorize forcible feeding of prisoners on hunger strike. It does not compel the temporary keeping alive patients who are terminally ill, where to do so would merely prolong there suffering. On the other hand, it forbids the taking of active measures to cut short the life of a terminally-illpatient (unless there is legislation which permits it).

Lord Keith observed that although the decision whether or not the continued treatment and cure of a PVS patient confers any benefit on him, is essentially one for the medical practitioners in charge of his case to decide, as a matter of routine the hospital/medical practitioner should apply to the Family Division of the High Court for

endorsing or reversing the said decision. This is in the interest of the protection of patient, doctors and for the reassurance of the patient's family and the public.

(iv) Law in India.—In India abetment of suicide (Section 306 Indian Penal Code) and attempt to suicide (Section 309 of Indian Penal Code) are both criminal offences. This is in contrast to many countries such as USA where attempt to suicide is not a crime.

The Constitution Bench of the Indian Supreme Court in *Gian Kaur v. State of Punjab*, 1996(2) SCC 648 held that both euthanasia and assisted suicide are not lawful in India. That decision overruled the earlier two Judge Bench decision of the Supreme Court in *P. Rathinam v. Union of India*, 1994(3) SCC 394. The Court held that the right to life under Article 21 of the Constitution does not include the right to die (vide para 33). In *Gian Kaur's* case the Supreme Court approved of the decision of the House of Lords in *Airedale's* case (1993) All E.R. 82 (H.L.) and observed that euthanasia could be made lawful only by legislation.

Withdrawal Of Life Support Of A Patient In Permanent Vegetative State (PVS)

There is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection. It is correct that euthanasia should be permitted in our country in certain situations; the court did not agree with Attorney General that it should never be permitted. Hence, following the technique used in *Vishakha's* case, the court laid down the law in this connection, which will continue to be the law until Parliament makes a law on the subject.

A decision has to be taken to discontinue life support either by the parents or the spouse or others close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

(v) Procedure to be adopted by the High Court when such an application is filed.—When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed.

The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/ her next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.¹

1. *Aruna Ramchandra Shanbaug v. Union of India and others*, 2011 (2) CRC (Cri.) 167.

2. Euthanasia case¹—patients inability to express right to live or die.—Euthanasia is one of the most perplexing issues which the courts and legislature all over the world were facing today. This court, in this case, was facing the same issue. The case before the Supreme Court related Aruna Shanbaug. The staff of the KEM hospital have looked after her for 37 years, after she was abandoned by her family. The Dean of the KEM Hospital (representing the staff of hospital) was an appropriate surrogate.

If the doctors treating Aruna Shanbaug and the Dean of the KEM Hospital, together acting in the best interest of the patient, feel that withholding or withdrawing life-sustaining treatments was the appropriate course of action, there actions should not be considered unlawful.

Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) was not a benefit to the patient of a terminal illness being unrelated to. the principle of ‘sanctity of life’ or the right to live with dignity’ was of no assistance to determine the scope of Article 21 for deciding whether the guarantee of right to life’ therein includes the right to die’. 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 was not to be confused or equated with the ‘right to die’ an unnatural death curtailing the natural span of life.

The troublesome question was that happens when the patient was in no condition to be able to say whether or not he consents to discontinuance of the treatment and has also given no prior indication of his wishes with regard to it as in the case of Aruna.

Absence of any indication from a patient who was incompetent, the test that was adopted by Courts was what was in the best interest of the patient whose life was artificially prolonged by such life support. This question was not whether it was the best interest of the patient that he should die rather it was in the best interest of the patient that his life should be prolonged by the continuance of the life support treatment. A responsible and competent body of medical persons in charge of the patient to form this opinion.

The legal issues in this case, it may be noted that euthanasia was of two types: active and passive. Active euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who was in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient was likely to die, or removing the heart lung machine, from a patient in coma.

A categorization of euthanasia was between voluntary euthanasia and non-voluntary euthanasia. Voluntary euthanasia was where the consent was taken from the patient, whereas non-voluntary euthanasia was where the consent was unavailable e.g. when the patient was in coma, or was otherwise unable to give consent. While there was no legal difficulty in the case of the former, the latter poses several problems, which the Supreme Court address:

Sections 306 and 309 IPC read as under:

Abetment of suicide—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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.”

Held, that although Section 309 of IPC (attempt to commit suicide) has been held to be constitutionally valid in Gian Kaur’s case, the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in a depression, and hence he needs help, rather than punishment. The court recommended the parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.

It may be noted that in Gian Kaur’s case although the Supreme Court has quoted with approval the view of the House of Lords in Airedale’s case, it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma (due to an accident or some other reason) or for some other reason are unable to give consent, and then the question arises as to who should give consent for withdrawal of life support.

This is an extremely important question in India because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method. Also, since medical science is advancing fast, doctors must not declare a patient to be a hopeless case unless there appears to be no reasonable possibility of any improvement by some newly discovered medical method in the near future. In this connection court referred to a recent news item which came across on the internet of an Arkansas man Terry Wallis, who was 19 years of age and newly married with a baby daughter when in 1984 his truck plunged through a guard rail, falling 25 feet. He went into coma in the crash in 1984, but after 24 years he has regained consciousness. This was perhaps because his brain spontaneously rewired itself by growing tiny new nerve connections to replace the ones sheared apart in the car crash. Probably the nerve fibers from Terry Wallis’ cells were severed but the cells themselves remained intact, unlike Teri Schiavo, whose brain cells had died.

In this case, it was alleged in the writ petition filed by Ms. Pinky Virani (claiming to be the next friend of Aruna Shanbaug) that in fact Aruna Shanbaug is already dead and hence by not feeding her body any more we shall not be killing her. The question hence arises as to when a person can be said to be dead? A person’s most important organ is his/her brain. This organ cannot be replaced. Other body parts can be replaced e.g. if a person’s hand or leg is amputated, he can get an artificial limb. Similarly, we can transplant a kidney, a heart or a liver when the original one has failed. However, we cannot transplant a brain. If someone else’s brain is transplanted into one’s body, then in fact, it will be that other person living in one’s body. The entire mind, including one’s personality, cognition, memory, capacity of receiving signals from the five senses and capacity of giving commands to the other parts of the body, etc. are the functions of the brain. Hence one is one’s brain, it follows that one is dead when one’s brain is dead.

As is well-known, the brain cells normally do not multiply after the early years of childhood (except in the region called hippocampus), unlike other cells like skin cells, which are regularly dying and being replaced by new cells produced by multiplying of the old cells. This is probably because brain cells are too highly specialized to multiply. Hence if the brain cells die, they usually cannot be replaced (though sometimes one part

of the brain can take over the function of another part in certain situations where the other part has been irreversibly damaged).

Brain cells require regular supply of oxygen, which comes through the red cells in the blood. If oxygen supply is cut off for more than six minutes, the brain cells die and this condition is known as an-oxia. Hence, if the brain is dead a person is said to be dead. The term 'brain death' has developed various meanings. While initially, 'death could be defined as a cessation of breathing, or, more recent medical advances have made such definitions obsolete. In order to understand the nature and scope of brain death, it is worthwhile to look at how death was understood.

Brain death, may thus, be defined as "the irreversible cessation of all functions of the entire brain, including the brain stem". It is important to understand that this definition goes beyond acknowledging consciousness- a person who is incapable of ever regaining consciousness will not be considered to be brain dead as long as parts of the brain e.g. brain stem that regulate involuntary activity (such as response to light, respiration, heart-beat etc.) still continue to function. Likewise, if consciousness, albeit severely limited, is present then a person will be considered to be alive even if he has suffered brain stem death, wherein breathing and heartbeat can no longer be regulated and must be mechanically determined. Hence, the international standard for brain (i.e. the part of the brain that regulates consciousness and thought), the cerebellum or mid-brain, and the brain stem have all ceased to demonstrate any electrical activity whatsoever for a significant amount of time. To say, in most cases, that only the death of the higher brain would be a criteria for 'brain death' may have certain serious consequences-for example, a foetus, technically under this definition, would not be considered to be alive at all. Similarly, as per this, different definitions of death would apply to human and non-human organisms.

In legal terms, the question of death would naturally have significance as death has a set of legal consequences as well. As per the definition in the American Uniform Definition of Death Act, 1980, an individual who "sustain(s)... irreversible cessation of all functions of the entire brain, including the brain stem, is dead" This stage, thus is reached at a situation where not only consciousness, but every other aspect of life regulated from the brain can no longer be so regulated.

In the case of 'euthanasia, however, the situation is slightly different. In these cases, it is believed, that a determination of when it would be right or fair to disallow resuscitation of a person who is incapable of expressing his or her consent to a termination of his or her life depends on two circumstances:

(a) When a person is only kept alive mechanically, i.e. when not only consciousness is lost, but the person is only able to sustain involuntary functioning through advanced medical technology-such as the use of heart-lung machines, medical ventilators etc.

(b) When there is no plausible possibility of the person ever, being able to come out of this stage. Medical "miracles" are not unknown, but if a person has been at a stage where his life is only sustained through medical technology, and there has been no significant alteration in the person's condition for a long period of time at least a few years then there can be a fair case made out for passive euthanasia.

Aruna Shanbaug meets most of the criteria for being in a permanent vegetative state which has resulted for 37 years. However, her dementia has not progressed and has remained stable for many years. From the above examination by the team of doctors, it cannot be said that Aruna Shanbaug is dead. Whatever, the condition of her cortex, her

brain stem is certainly alive. She does not need a heart-lung machine. She breathes on her own without the help of a respiration. She digests food, and her body performs other involuntary function without any help. From the CD (which we had screened in the courtroom on 02-03-2011 in the presence of counsels and others) it appears that she can certainly not be called dead. She was making some sounds, blinking, eating food put in her mouth, and even licking with her tongue morsels on her mouth.

However, there appears little possibility of her coming out of PVS in which she is. In all probability, she will continue to be in the state in which she is in till her death. The question now is whether her life support system (which is done by feeding her) should be withdrawn, and at whose instance?

In this case, it was noted that Aruna Shanbaug's parents are dead and other close relatives are not interested in her ever since she had the unfortunate assault on her. As already noted above, it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends, and not Ms. Pinky Virani who has only visited her on few occasions and written a book on her. Hence it is for the KEM hospital staff to take that decision. The KEM Hospital staff has clearly expressed their wish that Aruna Shanbaug should be allowed to live.

Assuming that the KEM hospital staff at some future time changes its mind, in such a situation the KEM hospital would have to apply to the Bombay High Court for approval of the decision to withdraw life support. Hence, even if a decision is taken by the near relatives, doctors, or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in *Airedales case*.²

3. Doctor's have claimed that her condition was improving at one point, and it appears that the family may have ignored medical advice.—Euthanasia in broad concept is a technical term, which in simpler terms may be understood as mercy killing. The issue was being debated all over the world. It was debatable because it was not comparable with the code of conduct of the medical profession, which obliges the doctor to preserve life. The issue was debatable if it was brought to the court as it was not the place of the Court to end a life except by due process of the law as indictment or conviction.

The person upon whom the issue has been made was one 'K', she was in a coma. The priority of the Court at the time when the petition was brought was to forthwith make, arrangements for medical attention for this lady who has been in coma for quite sometime. This was necessary because once an issue was put in the lap of the Court, until the questions raised in the petition were answered the Court owed a public duty that the woman involved should not be denied an access to medical attention if it was required. On the petition as it was presented *prima facie* and on the issues which were made, the Court was given to believe that the issues in their purity need to be debated academically, and the Court granted indulgence. This matter was brought as Public Interest Litigation.

There were also side issues, which were presented, Doctors "extracting" money was mentioned. It was contended that while 'K' was in coma and was unable to sign any cheque, a sum of Rs. 9000/- was withdrawn from the bank in her name. The question was, who had tailored the situation to take the thumb impression of 'K' when she lay in coma? the record apparently shows that the husband of 'K', the banker and others who might be present at the nursing home, seem to be involved in withdrawing money from a bank account of a person who had no capacity to even think or be conscious to the world.

2. Aruna Ramchandra Shanbaug v. U India and others, 2011 (2) CRC (Cri.) 167).

If the issues were pure as they were being stated perhaps the Court would have considered answering them academically but upon issue of notice the Court finds that some one, somewhere was making capital out of this case, Meanwhile, the Court was being placed in the "Dharmasankat" that if something happened to 'K', it will be on the hands of the Court.

Either the concept of euthanasia has entirely been misunderstood or apparently this plea was suggested to the petitioners for the purpose of making a wide, well-publicised debate out of this Public Interest Litigation. Much time of the Court has been consumed, as the record already shows, in giving attention to this matter and taking submissions of counsel on face value that such issues do arise.

Euthanasia was a debatable concept. It was not that the Court has not done its home work on what the issues may be. If the Court were to go into the concept, it would have to be examined with the available record, decisions of the Court if available, report in local journals and legal journals and so on. There is no standardised legislation on the subject of euthanasia and the matter before the Court was not of a patient who was conscious that he has terminal disease and was conscious of the fact that in the days to come death was imminent. It was not the case that the patient and the medical professionals were presenting a case that euthanasia may be an escape for her. Even in such circumstances, the Courts have been hesitant in giving a declaration, as the job of the Judge was not to take life. The Hippocratic oath also binds the doctor to try to save life. This concept stands reaffirmed by the Geneva Court's in 1948. The medical fraternity had not abdicated its responsibility or sent the case before the High Court that assisted suicide or euthanasia may be considered. The Court feels that there was a distinction between allowing a patient to die, and causing a patient to die. This Court was not about to make this distinction here, as this was not a proper case.

While this matter was presented, the State counsel drew the attention of the Court to the indiscriminate publicity of this case being encouraged by the petitioners and counsel - alike. The case was blown up in the newspapers and other media. In one of the newspapers there was statement of counsel that organs of the patient are available for research. The Court was told that such statement had never been given, but the petition shows in paragraph 5 that there was a statement that organs of the patient should be utilised. So between the statement of the counsel and the press statement there was no contradiction and nothing was shown to the Court that it had been contradicted.

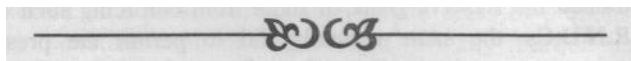
The issue of euthanasia has not been properly raised or framed in this matter. No solid ground has been laid for raising it, by documenting the condition of the patient and obtaining medical opinion. In fact, some doctor's have claimed that her condition was improving at one point, and it appears that the family may have even ignored medical advice or acted contrary to it. The case has also been tainted by excess of publicity and further dramatic statements have been made in the press even as this judgment was being prepared and signed. Allegations of attempts at extortion further cloud the situation. The question has not been raised in purity, and the Court was certainly not in a position to, in effect, give an order that this patient should be killed.³

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3. Tarkeshwar Chanrabanahi v. Union of India, 2001(2) BI. J 321 (Pat) (Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.).

Chapter 14

Socio Economic Welfare



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1. Evolution of New Law Role in the process of social transformation.—In *M.C. Mehta v. Union of India*¹ it was held that where a law of the past does not fit in the present context, the Court should evolve a new law and in *National Worker's Union v. P R.Ramkrishnan*,¹² it was held, if the law fails to respond, to the needs of the changing society, then either stifle the growth or the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in the way of its growth. Law must, therefore, constantly be on the move adopting itself to the fast changing society and not stand lag behind. It must shake off the inhibiting legacy of its colonial past and assume dynamic role in the process of social transformation.

“The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again, practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The Judges do

1. AIR 1987 SC 1086.
2. AIR 1983 SC 75.

everyday make law, though, it is almost hearsay to say so. If, the truth is recognised then Court may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present.”²

2. Economic Justice.—Granting of interim order in such writ proceeding although might have restrained the Reserve Bank of India from enforcing such direction against the aforesaid R.N.B.Cs. the same certainly did to permit the present respondents R.N.B.Cs. to act in a manner jeopardising the safety and security of the deposits of the small depositors and the return of such deposits to the depositors or to divert and siphon of funds to subsidiary companies and the directors of the companies thereby leading the company to the brink of a financial disaster.³⁴

In *Chairman and M. D., B. P. L. Ltd. v. S. P. Gururaja?* it was observed as follows (paras 31, 32, 33 and 34):

31. In the facts and circumstances, we do not find that the Board and the State had committed any illegality which could have been as subject matter of judicial review. The High Court in our opinion committed a manifest error insofar as it failed to take into consideration that the delay in this case had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only took possession of the land but also made sufficient investment. Delay of this nature shall have been considered by the High Court to be of vital importance.

32. Furthermore, the High Court ought to have taken into consideration the factum of resistance in the matter from those persons whose lands have been acquired. Only because the lands are vested in the State upon acquisition thereof, the same by itself would not mean that the persons whose lands were acquired were not interested in getting the allotment. The locus standi of the respondent ought to have been taken into consideration having regard to the specific pleas raised in this behalf by the appellants herein.

33. Undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held to be mala fide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The Court, it is trite, is not concerned with the merit of the decision but the decision making process. In absence of any finding that any legal malice was committed, the impugned allotment of land could not have been interfered with. What was only necessary to be seen was as to whether there had been a fair play in action.

34. The question as to whether any undue haste had been shown in taking an administrative decision is essentially a question of fact. The State had devolved a policy of Single Window System with a view to get rid of redtapism generally prevailing in the bureaucracy. A decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law on the ground that there had been undue haste on the part of the State and the Board.

2. See the reform of Equity in C.J. Hamson (Ed.), Law Reform and Law Making (1953) at 31.
3. State v. Union of India, AIR 1996 Cal 181 at 222 (1996) 1 Com LJ 258 (Samaresh Banerjee, J.).
4. AIR 2003 SC 4536 at 4548.

3. Public Interest Litigation—Scope and object.—In *S.P. Gupta v. Union of India*, the Supreme Court crystallised the concept of public interest litigation and explained the object, purpose, scope and limitation of the same by holding 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 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 legal burden is threatened and such person or determinate class of persons 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 of the Constitution and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 of the Constitution seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial inmates of the projective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution who are barely eking 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 filed by the public spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting *pro bono publico*. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 of the Constitution of India and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public minded individual as a writ petition and act upon it. Today a vast revolution is taking place in the judicial process, the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate the new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Court of the Country will also adopt this pro-active, goal-oriented, approach. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice *

5. AIR 1982 SC 149 quoted in *State v. Union of India*, AIR 1996 Cal 181 at 193: (1996) 1 Com LJ 258.

and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject this application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons is violated and as far as possible, not entertained cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases.”

4. Public interest litigation on behalf of poor and ignorant of law.—Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining Writ Petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or legal injury or whose constitutional or legal rights have been violated, but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.⁶

Public interest litigation can be brought to the Court for the purpose of upholding the rights of the people, who are poor and who are under the veil of ignorance of their rights and obligations. Small depositors may not be in a position to know that their deposits were remaining unsafe and in order to protect the interest of these small depositors if the State files a writ application by way of public interest litigation this Court does not see any reason to reject the petition on the ground that it has no *locus standi* to do. The several cases decided by the Supreme Court as also by the American Court clearly indicate that the past decade has been a lowering of barriers imposed by the standing requirements to challenge such actions. The Courts are moving forward broadening the standing requirement. The strict legal interest principle has been abolished, by allowing the public interest litigation. Even in the United States, the standing requirement is too somewhat different. In the United States, the standing has been conferred by various decisions of the American Supreme Court also to competitors, consumers and the environmentalists and that the Supreme Court of India by various decisions have in fact and in substance extended the concept of *locus standi* to such an extent that in case of any illegality—or irregularity the Court may intervene even at the instance of the stranger inasmuch as personal or legal interest principle is not required to be satisfied in case where a writ petition is filed to espouse the cause of a larger number of people who are poor and ignorant of their rights and who have no means to reach the Court and where the interest of the people and the society are involved.

In the instant case, it is not in dispute that millions of small depositors have deposited all their life savings in these companies and the affairs that have been brought to the notice of the Court is very distressing.⁷

6. S. P. Gupta v. Union of India, 1981 (Supp.) SCC 87: AIR 1982 SC 149.

7. Overland Investment Ltd. v. State, AIR 1997 Cal 18 at 23, 24 (Bhagabati Prosad Banerjee and Asok Kumar Chakravarty, JJ.).

When the selection of a Reader and Lecturer had been impugned in the writ petition and the High Court issued Rules to show cause as to why the selection and appointment of respondent to the post of Reader and post of Lecturer in the respective subject in the University should not be set aside, some responsible persons, namely, Registrar of the University or the Member of the Selection Committee of the University should have sworn the affidavit but that has been avoided by the respondents counsel for the respondents has stated that the deponent is a Dealing Assistant in the University. A Dealing Assistant in such important matter of selection of Reader and Lecturer by a Selection Committee and approval thereof by the Executive Council is not expected to state the fact and to take the responsibility of such statement. This deponent, a Dealing Asstt. who cannot take part in the selection, has however sworn that statements made in the affidavit in opposition on behalf of the Respondent Nos. 1, 2 and 4 as true to his knowledge although apparently he could (not) have personal knowledge. As such it was difficult to place reliance on the statements made in the affidavit-in-opposition on behalf of Respondent Nos. 1, 2 and 4. Neither Respondent No. 6 nor Respondent No. 7 has filed affidavit-in-opposition controverting or rebutting contentions made in the writ petition. Although records were called for, no record has been filed in support of the contentions made in the affidavit-in-opposition Counsel for the responde d Nos. 1, 2 and 4 has submitted that the petition is not maintainable, inasmuch as, the petition did not fall within the ambit of public interest litigation. The petition is by students' union, questioning the appointment of teachers on the allegations that they are not qualified and/or did not possess the minimum qualification and that while selecting and appointing respondent Nos. 6 and 7 qualified individuals and/or better candidates were ignored. The students had no *locus standi* to file the petition. In support of his contention counsel for respondents placed reliance on the decisions or *Bandhua Mukti Morcha v. Union of India*,^{8 9} *State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla*, *Shri Sachidanand Pandey v. State of West Bengal*,^{10 11} *Ramsharan Aulyanuprasi v. Union of India*," In the case of *Bandhua Mukti Morcha v. union of India*,¹² the writ petition was against the existence of alleged bonded labour and the Hon'ble Supreme Court entertained the petition as public interest litigation. The Hon'ble Supreme Court amongst other held in the said case that public interest litigation was not in the nature of adversary litigation but it was 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 was the signature tune of our Constitution.

Placing reliance on the said decision counsel for the petitioner has submitted that the norms and standard of imparting technical education to the student in the university involves public interest. It is in the interest of the public the students must get proper

8. AIR 1984 SC 802: 1984 Lab IC 560: 1984(3) SCC 161: 1984 SCC (Lab) 389: 1984(2) Lab LN 60.
9. AIR 1985 SC 910: 1985(3) SCC 169: 1985(2) SCWR 48: 1985(11) All LR 487: 1985(2) Cur CC 239.
10. AIR 1987 SC 1109: 1987(2) SCC 295: 1987(1) Com LJ 211: 1987 JT 425: 1987(2) SCJ 70: 1987(1) Supreme 492.
11. AIR 1989 SC 549: 1988(4) JT 577.
12. AIR 1984 SC 802: 1984 Lab IC 560: 1984(3) SCC 161: 1984 SCC (Lab) 389: 1984(2) Lab LN 60.

teaching by competent teachers, if the teacher lecturers or Readers of the University of a particular technical subject are recruited for which they are not qualified as prescribed by the statutory rules, public interest would certainly suffer, inasmuch as, if proper technical education to the students is not imparted it would affect not only the students but the public at large. With a view to maintaining the proper standard of imparting technical education the Parliament has enacted the All India Council for Technical Education Act, 1987. As such the application by way of public interest litigation is maintainable. There was force in the submission made on behalf of the petitioner. Besides, the students are directly concerned with the standard of teaching imparted to them by qualified teachers. On that count also the petitioner has *locus standi* to prosecute this petition.¹³

In the case of *State of Himachal Pradesh v. A parent of a Student of Medical College, Shimla*,^{14 15 16} it has been told in (para 1).

“Public interest litigation is weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the legislature.”

In the case of *Shri Sachidanand Pandey*,¹⁵ a petition was filed by way of public interest litigation against the administrative action involving environmental problem. The Hon'ble Supreme Court held that since the Government was aware of the problem in arriving a conscious decision the Court will not interfere unless *mala fide* or illegality of breach of public interest was established.

In the case of *Ramsharan Autyanuprasi*,¹⁶ a petition under Article 32 of the Constitution was filed by way of public interest litigation in respect of running of a trust created by the erstwhile Maharaja of the Jaipur State for the benefit of the public. A serious dispute was raised by the Jaipur Raj Family about the running of the trust,, between the Maharaja who was also the Chairman of the Trust and his stepmother, the Rajmata and also there were several litigation between the said two parties in different Courts over those matters. It was held by the Hon'ble Supreme Court that a petition under Article 32 of the Constitution asserting to be a public interest litigation alleging the running of the trust by its Chairman in an arbitrary and high handed manner, would not be maintainable as it could not be predicted that there was any breach of fundamental right of the petitioner, the section of members of public. It would be a case which was more amenable to the proceedings under Sections 37 and 38 of the Rajasthan Public Trust Act. Moreover it was not *pro bono publico* for the benefit of the public, but for the benefit of a particular section of people for their personal rights. As it was litigation between the members of the erstwhile Raj Family to settle their own scores and thus not a public interest litigation.

13. *Biswajit Sinha v. Dibrugarh University*, AIR 1991 Gau 27 at 32, 33, 34 (SK. Homchaudhuri and Mrs. M. Sharima, JJ).

14. AIR 1985 SC 910: 1985(3) SCC 169: 1985(2) SCWR 48: 1985(11) All LR 487: 1985(2) Cur CC 239.

15. AIR 1987 SC 1109: 1987(2) SCC 295: 1987(1) Com LJ 211: 1987 JT 425: 1987(1) Supreme 492.

16. AIR 1989 SC 549: 1988(4) JT 577.

If therefore even in an ordinary writ proceeding a person or a body of persons or a society, or company can be amenable to writ jurisdiction if it is invested with some public duty and obligation or if its functions are in public interest, it does not stand to reason why a public interest litigation cannot be maintained against person or association or persons or a society or a company, if it is invested with public duty and obligation or statutory duty and if its actions in not fulfilling such duty and obligation causes legal injury, to large number of persons, socially, economically or otherwise oppressed who are unable to approach the Court.^{17 18}

5. Petition on Public spirited Association.—In *State v. Union. Of India*,¹⁸ it was observed as follows (Para 36, 37):

“36. Thus when even a public spirited person or association not having normally any *locus standi* to move a petition can be allowed to move a public interest litigation in public interest for vindication and protection of the constitutional or legal right of a determinate and oppressed class unable to approach the Court, in my view there cannot be any justification whatsoever to deny such right to the State itself in a fit and proper case to move public interest litigation for protection and vindication of the legal and constitutional right of the underprivileged and of a determinate class of persons who are unable to approach the Court who sometimes are not even unaware of their rights to save themselves from exploitations. It is now the consistent view of the Supreme Court that every action of the State is for public interest and must be for public good and therefore every action of the State is to be tested in the touchstone of the Article 14 of the Constitution of India. Thus if every action of the State is to be for public interest and for public good, the State can safely be said to be repository of public interest. Under such circumstances if by the impugned action of a body or person amenable to writ jurisdiction complained of, the right and interest of a determinate oppressed class unable to approach the Court, is affected, the State can also be allowed to maintain a public interest litigation in a fit and proper case, particularly in absence of suitable legislation and inability to legislate in the particular field, to protect and vindicate the rights of such determinate class before the Court of law and if the basic ingredients of the public interest litigation are found to be present, the application cannot be thrown out at the threshold merely on the ground the petition has been moved by the State.

“37. In a public interest litigation, in my view, the emphasis has to be on the object and purpose of the same, namely, rendering of social and economic justice to the weak and underprivileged and vindication and protection of their rights and interest they being unable to approach the Court, and not on the person who sets the Court on motion. Any person should be allowed to move the Court, except a busybody, interloper, person having his own interest, publicity seeker etc. The emphasis in the instant case being protection of the rights and interest of the countless small depositors who belong to the weaker section of the society and are unable to approach the Court themselves and to rescue them from their financial ruination, and deprivation of life's savings, there is no reason why State should not be permitted to take up their cause by way of public interest litigation, when the 1987 Direction and the Reserve Bank of India Act, do not contain any provision for rescuing the small depositors from financial ruination by return of their money with dues accrued thereon by the R.N.B.Cs. who have violated the provisions of

17. *State v. Union of India*, AIR 1996 Cal 181 at 202, 203: (1996) 1 Com LJ 258 (Samaresh Banerjee, J.).

18. AIR 1996 Cal 181 at 197: (1996) I Com LJ 258 (Samaresh Banerjee, J.).

the 1987 Directions and when it is beyond the competence of the State of West Bengal to bring about any legislation in respect thereof.”

In *Fertilizer Corporation v. Union of India*,¹⁹ Krishna Iyer, J., used the following expression on the subject

“If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to anyone of the 660 million peoples of this country, the door of the Court will not be a jar for him.”

6. PIL is not in the nature of adversary litigation.—P.I.L. is *pro bono publico* and should not smack of any ulterior motive and no person has a right to achieve any ulterior purpose through such litigations. It was held Court can take cognizance in P.I.L. when there are complaints which shocks the judicial conscience.

PIL is for enforcement of basic human rights of weaker sections of community who are poor, downtrodden, ignorant, illiterates and whose fundamental rights and statutory rights have been violated. There must be a public injury and public wrong caused by wrongful or *ultra vires* acts of omission of the State or a public authority. It is for compelling the executive to carry out its constitutional and legal obligations it must not be frivolous litigation by persons having vested interest.

Public Interest Litigation filed raising a grievance that Development Authority had earlier earmarked certain area of land for hospital, post office and Sulabh Sauchalaya but in said land a Commercial Complex has been constructed and shops have been allotted to private persons. No document has been filed by the petitioners to show that the land in dispute had earlier been earmarked for Hospital, Post office and Sulabh sauchalaya. Rather there are documents on record to show that the land is in front of the hospital. Held petition suffers from want of proper pleadings liable to be dismissed.²⁰

7. Rule of Locus Standi relaxed for downtrodden.—In order to preserve and protect the fundamental or marginalized, deprived and poor sections of the society, the Courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and order. The Supreme Court and the High Courts earned great respect and credibility in the eyes of public because of their innovative efforts to protect and preserve the fundamental rights of people belonging to the poor, and marginalized sections of the society. The court’s contribution in helping the poorer sections of the society by giving new definition to life and liberty and to protect ecology.²¹

8. State’s Locus standi.—The State has no *locus standi* to move a public interest litigation, it has been contended by the respondents, that in a normal litigation undoubtedly the State could not have any *locus standi* to move this writ application not being aggrieved by the impugned action admittedly State not being a depositor having any right or interest against the private respondents.²² It has been further contended that if the nature of the public interest litigation is examined, it will appear that even in the public interest litigation the State has no *locus standi* to move the same. It has been

¹⁹ AIR 1981 SC 344 quoted in AIR 1996 Kant 112 at 119 : (1996) 1 Kant LJ 1.

²⁰ Ramji Singh v. State of Orissa, AIR 2009 (NOC) 1047 (Ori).

²¹ State of Uttaranchal v. Balwant Singh Chaufal, 2010(3) SCC 402 (SC).

²² State v. Union of India, AIR 1996 Cal 189 at 190: (1996) 1 Comp LJ 258.

argued *inter alia* that public interest litigation is intended to vindicate and effectuate public interest by prevention of violation of the rights, constitutional or statutory, or sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert, their rights and quite often not even aware of those rights.²³

It is well-settled principle that legal injury is caused to a person or to determinate class of persons by reason of violation of any constitutional or legal provision or without authority of law or any such legal wrong or injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or social or economical disadvantaged position are 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 Art. 226 and in case of breach of any fundamental right of such persons or determinate class of persons in this Court under Art. 32 of the Constitution.²⁴

9. Weaker section of Society—Deprived of Justice.—In *Bihar Legal Support Society, New Delhi v. Chief Justice of India*,²⁵ the Supreme Court held thus (Para 2):—

“Now, we may point out that so far as this Court is concerned, the special leave petitions of “small men” are as such entitled to consideration as special leave petitions of “big industrialists”. In fact, this Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlement and combat exploitation and injustice. The majority of the people of our country are subjected to this denial of access to justice and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings. This Court has always, therefore, regarded it as its duty to come to the rescue of these deprived and vulnerable sections of Indian humanity in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation. The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the community.; This Court has always shown the greatest concern and anxiety for the welfare of the large masses of people in the country who are living a life of want and destitution, misery and suffering and has become a symbol of the hopes and aspirations of millions of people in the country.”

23. See *Sheela Barse v. Union of India*, AIR 1988 SC 2211 at 2214, p. 6: 1988(3) JT 765: 1988(4) SCC 226.

24. *Overland Investment Ltd. v. State*, AIR 1997 Cal 18 at 24 (Bhagabati Prosad Banerjee and Asok Kumar Chakravarty, J J.).

25. AIR 1987 SC 38 quoted in *State v. Union of India*, AIR 1996 Cal 181 at 195 : (1996) 1 Com LJ 258.

10. Petition for miserable people of Kalahandi.—By letter petitioners have brought to the notice of Court the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty. It was alleged that the people of Kalahandi, in order to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labours by the well-to-do landlords. It was alleged that in view of distress sale of labour and paddy, the small peasants are deprived of the legitimate price of paddy and they somehow take out their daily existence. Further, their case is that being victims of ‘chill penury’, the people of Kalahandi are sometimes forced to sell their children. It has been prayed that the State Government should be directed to take immediate steps for the purpose of ameliorating the misery of the people of the district of Kalahandi.

On receipt of the said letter, this Court directed the same to be treated as a writ petition and it was registered as such.

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

The State of Orissa appeared in both these writ petitions and opposed the same by filing counter-affidavits denying the allegations of the petitioners. The State of Orissa filed two statements one dated October 20, 1986 consisting of 160 pages and the other dated December 1, 1986 consisting of 181 pages. In these statements, it has been alleged by the State of Orissa that the State Government has implemented the social welfare measures in the district of Kalahandi.

In order to ascertain the correct State of affairs, Court by its order dated January 16, 1987 requested the District Judge of Kalahandi to enquire as to whether the State Government, has, in fact, implemented the social welfare measures in the district of Kalahandi and whether such measures were adequate to meet the needs of the people there. The learned District Judge was asked to submit a report to this Court. It was further directed by this Court that the District Judge, while preparing his report, would consider the feasibility of the implementation of some suggestions made by the petitioners regarding the steps to be taken for the purpose of ameliorating the condition of the people in the said district.

In the circumstances, Supreme Court direct the Government of Orissa that it shall, within a month from date, nominate the names of at least five persons belonging to the recognised voluntary organisations like Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as members of the said Natural Calamities Committee of the district. Supreme Court also accepted the suggestion of Shri Pattanayak that the Committee shall hold at least one meeting every two months. The function of the Committee will not be confined only to the cases of starvation deaths, but it shall be responsible for looking after the welfare of the people of the district.

The measures, which have been taken and are being taken, as stated in the written not submitted by the Advocate General, have been briefly mentioned. There was no reason not to accept the statements made on behalf of the State of Orissa that the measures, are being taken for the purpose of mitigating hunger, poverty, starvation deaths, etc. of the people of Kalahandi. If such measures are taken, there can be no doubt that it will alleviate to a great extent the miseries of the people of Kalahandi. Such measures are also being taken in respect of the district of Koraput. The Natural Calamities Committee shall also keep a watch over the working of the social welfare measures, which are being taken and may be taken in future. Shri Pattnayak also does not dispute that if such measures are continued to be taken, it will be a great relief to the people of Kalahandi and Koraput, Supreme Court hoped and trusted that in view of the prompt action that has been taken by the Government, soon the miseries of the people of these two districts would be over.²⁶

11. Social Interest.—Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it was against the social interest and public good. *D.N. Thaware v. State of Maharashtra*, AIR 2005 SC 540 at 544: 2005 AIR SCW46.

12. Reservation.—Article is of the Constitution contains the particular application of general rule of equality which is given in the Article 14 of the Constitution regarding the appointment and employment under the state.²⁷

It is the Constitutional duty of State to take necessary actions in regard of violation of rights guaranteed under Article 17 of the Constitution.²⁸

Untouchability is not defined in the Constitution but we should understand its sense literally as well as grammatically. According to Mysore High Court —A literal construction of the term untouchability includes those persons who are untouchables.²⁹

SC, ST and other Backward Classes are the separate class for the purpose of reservation under Article 15 (4) and 16 (4) of the Constitution.³⁰

Reservation in a single post for other Backward Classes is not permissible. In making reservation for Backward Classes the State can not ignore the fundamental rights of the rest of citizens.³¹

I.A.S. and I.P.S. children are not entitled to O.B.C. quota jobs.³²

26. Kishenv. State of Orissa, AIR 1989 SC 677 at pp. 678, 680, 681: 1989(1) JT 46: 1989 68 Cut LT 104. (Murari Mohan Dutt and K.N. Saikia, JJ.)

27. Sukhnandan Thakur v. State of Bihar, AIR 1957 Pat 617.

28. P.U.C.L. v. Union of India, AIR 1982 SC 1473: 1982(2) SCC 494: 1982 BLJR 401: 1982(2) Lab LN 410: 1982 East LR487: 1.982(2) SCWR 202: 1982(2) Lab LJ 454.

29. Devarajjah v. Padmanna, AIR 1958 Mysore 84.

30. Chatra Singh v. State of Rajasthan, AIR 1997 SC 303: 1996 (1) SCC 742: 1996 (9) JT466: 1996 (7) Scale 701: 1996 (8) Supreme 763.

31. P.G.Institute of Medical and Research v. Faculty Association, AIR 1998 SC 1767: 1998 (4) SCC 1: 1998 LabIC 1582: 1998 (2) A11WC 1300: 1998 (2) Bom LR 293: 1998 (3) Guj LR 1862: 1998 (3) JT223: 1998 (2) MPLJ 1: 1998 (2)MahLJ 353: 1998 (2) Orissa LR 70: 1998 (2) SCR 845: 1998 (2) Scale 772: 1998 (3) Serv LJ SC 139: 1998 (2) Serv LR 765: 1998 (4) Supreme 110.

Carry forward rule is valid but 50 per cent reservation can only be exceeded in an extraordinary situations.^{32 33}

Caste of a person can not be sole test for the purpose of determining whether a particular class is backward class or not.³⁴

Compulsory retirement of Government servant from service in public interest after the completion of qualifying service is not violative of the provision of Article 16.³⁵

Teachers employed in schools of State of Haryana which were aided and privately managed it was held that they are entitled to the same salary and dearness allowance as is paid to teachers who were employed in Government schools.³⁶

Equal pay for equal work is the constitutional goal under Articles 14, 15 and 16 and 39(C) of the Constitution.³⁷

Equality of opportunity has been guaranteed in the matter of appointment in the State services, if any technical qualification is required as in this case then it should be prescribed properly.³⁸

13. Rehabilitation and resettlement of land owners.—The rehabilitation and resettlement of landowners, where land has been acquired and held to be a facet of Article 21 of the Constitution. The policy framed by the State Government for allotment of a plot on fulfillment of the eligibility conditions, in fact is creating a class requiring preferential allotment. Allotment of plots to the oustees creates a class of persons entitled to preferential allotment than the general public. The policy of allotment to oustees, is in fact reservation of plots to such class of eligible erstwhile landowners. If the oustees do not form a class entitled to reservation of plots, the scheme itself would be hit by the doctrine of equality enshrined by Article 14 of the Constitution of India. Therefore, the policy contemplating the plots for oustees is nothing but a reservation of plots for such class.

The restrictions of allotment of one plot to a joint khata holder are unreasonable and arbitrary as each of landowner is entitled to rehabilitation in his individual right. A co-owner is owner of land as much as his other co-owners are. Mere fact that two or more persons have not sought partition of their holding and/or are enjoying the joint possession, does not affect the title of each of the co-owners. The co-owners are deprived of their title and possession by way of acquisition of land. Therefore, there is no reasonable explanation as to why a co-owner has been made ineligible, except to the extent that number of co-owners would be so large, which will make the process of

32. Ashok Kumar Thakur v. State of Bihar, 1955 (5) SCC 403.

33. Mandal's case.

34. Balaji v. State of Mysore, AIR 1963 SC 649: 1963 Supp (1) SCR 439: 1962 Ker LT (SC) 145: 1963(2) SCA 1.

35. P.R. Naidu v. Government of A.P., AIR 1977 SC 854: 1977 (1) SCC 561: 1977 (1) SLR 258: 1977 (2) SCR 365.

36. State of Haryana v. Rajpal Sharma, AIR 1997 SC 449: 1996 (S) SCC 273: 1996 (6) Supreme 76: 1996 (6) JT 710: 1996 (5) Scale 517: 1996 SCC (L & S) 1159.

37. Randhir Singh v. Union of India, AIR 1982 SC 879: 1982 (1) SCC 618: 1982 (3) SCR 298: 1982 (1) Scale 110: 1992 (1) SLR 756.

38. Banarasi Das v. State of U.P., AIR 1956 SC 520: 1956 SCR 357: 1956 SCJ 529: 1956 SCA 702: 1956 All LJ 517: 1956 BLJR511: 1956 SCC299: 1956 All WR(SC)421.

acquisition itself futile. Thus, the Clause restricting the allotment of one plot to all co-owners is irrational, arbitrary and with no reasonable nexus with the objective to be achieved and thus, not sustainable. Therefore, Clause 6(V) of the Policy dated 16.9.1994 restricting allotment of one plot to all the co-sharers, liable to be declared as illegal and void. Therefore a co-owner, as per the eligibility criteria fixed by the State government, shall be entitled to be considered for allotment of plot irrespective of the fact that his holding of land is joint with other co-owner.³⁹

14. Non-awareness about Exploitation.—There can be a situation when the underprivileged and the socially and economically or otherwise oppressed class of the society may not even be aware of their rights and about violation thereof and their exploitation. But it cannot be said that under such circumstances a public interest litigation cannot be maintained for protection and vindication of rights of such oppressed class by a person who has no personal interest of his own.⁴⁰

15. Transfer—PIL can be maintained by a person or group of persons who have no personal interest in the matter and for the benefit of those under-privileged and helpless who cannot come to the Court of law for redressal of their grievance.—It is now well-settled that a Public Interest Litigation can be maintained by a person or group of persons, who have no personal interest in the matter and for the benefit of those under privileged and helpless, who cannot come up to the Court of law for the redress of their grievance. Chief Secretary, Director General of Police and other Officials, who have been transferred by the impugned orders, are neither underprivileged nor helpless and, therefore, it cannot be claimed that they could not come to the Court for the redress of their grievance. Similarly, the petitioners, who have been at daggers drawn with the State Government, cannot claim that they have no personal interest in the matter.

A plain reading of Section 14 of the Administrative Tribunal Act, 1985 shows that the Patna High Court has no jurisdiction to interfere with service matters relating to All India Service and Central Services etc. directly under Sendee and Central etc. directly under Article 226 of the Constitution. The aggrieved person has to first approach the Central Administrative Tribunal for the redress of his or her grievance. The claim of the counsel for the petitioners that although the transfer of these officers cannot be challenged by them directly under Article 226 of the Constitution, it may be done by way of Public Interest Litigation, it simply relaxes the rule of *locus standi* but it cannot confer or enlarge jurisdiction of the Court.⁴¹

16. Land for hospital, post office & sulabh sauchalaya.—Public interest litigation is for enforcement of basic human rights of weaker sections of community who are poor, downtrodden, ignorant, illiterates and whose fundamental rights and statutory rights have been violated. There must be a public injury and public wrong cause by wrongful or ultra vires acts of mission of the state or a public authority. It is for compelling the executive to carry out its constitutional and legal obligations it must not be frivolous litigation by persons having vested interest. Pleading must be complete public interest Litigation filed raising a grievance that Development Authority had earlier earmarked certain area of land for hospital, post office and sulabh sauchalaya

39. Jamail Singh & Others etc. v. State of Punjab & Others, AIR 2011 P & H 58.

40. State v. Union of India, AIR 1996 Cal 181 at 215 : (1996) 1 Com LJ 259.

41. Samta Party v. Union of India, 2000 (1) BLJ 606 at 609 (Pat) (J.N. Dubey A. C.J. and Radhika Mohan Prasad, J.).

but in the said land a commercial complex has been constructed and shops have been filed by the petitioners to show that the land in dispute had earlier been earmarked for hospital, post office and sulabh sauchalay rather there are documents on record to show that the land is in front of the hospital, petition suffers from want of proper pleading, liable to be dismissed.⁴²

17. Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.—For enforcement of the 1993 Act, data collected by the petitioners make it clear that the practice of manual scavenging continues unabated. Dry latrines continue to exist notwithstanding the fact that the 1993 Act was in force for nearly two decades but states have acted in denial of the 1993 Act and the constitutional mandate to abolish untouchability. Act, 2013 has been brought for abolition of this evil and for welfare of manual scavengers. All State Governments and Union Territories have been directed to fully implement the provisions of 2013 Act and simultaneously take appropriate action for non-implementation of the Act.⁴³



42. Ramji Singh v. State of Orissa, AIR 2009 (NOC) 1047 (Ori.).

43. *Safai Karamchari Andolan Union of India (SC)*, 2014(11) SCC 224 : 2014(4) Scale 165 : 2014(4) JT 409 : 2014(2) S.C.T. 638.

Chapter 15

Honour Killing



Synopsis

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1. Father killed his daughter.—This expression means act beneficial to general public, it means action necessarily taken for public purpose.

The prosecution case was that the appellant was very annoyed with his daughter, who had left her husband Raju and was living in an incestuous relationship with her uncle, Srinivas. This infu'iatec' the appellant as he thought this conduct of his daughter Seema had dishonoured his fan ily, and hence he strangulated her with an electric wire. The trial court convicted the app llant and this judgment was upheld by the High Court, hence this appeal.

This was a case of circumstantial evidence, but it was settled law that a person can be convicted on circumstantial evidence, provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt vide Vijay Kumar Arora vs. State 9NCT of Delhi) (2010) 2 SCC 353 (para 16.5), Aftab Ahmad Ansari vs. State of Uttaranchal, (2010) 2 SCC 583 (vide paragraphs 13 and 14), etc. In this case the prosecution has been able to prove its case beyond reasonable doubt by establishing all the links in the chain of circumstances.

These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, evidence may be of some assistance but there are generally reluctant to depose in court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime were not in a position to give direct evidence, which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

'Honour' killings have become commonplace in many parts of the country, particularly in Haryana, western U.P. and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. It has been held in Lata Singh's case that there was nothing 'honourable' in 'honour' killings, and they were nothing but barbaric and brutal murders by bigoted, persons with feudal minds.

Honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices, which were a slur on our nation. This is necessary as a deterrent for such outrageous,

uncivilized behaviour. All persons who were planning to perpetrate 'honour' killings should know that the gallows await them.¹

2. Right to Life.—A country like India with so much diversity, one must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc., only then we keep our country united and strong.

This is the age of democracy and equality, no people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, the so-called upper castes and OBC's should not use the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings.

Hence, inter-caste marriages are in fact in the national interests as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severally punished. As already stated in Lata Singh's case there is nothing honorable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder.²

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1. Bhagwan Dass v. State NCT OF Delhi, 2011 (3) Supreme (729).
2. Arumugam Serval v. State of Tamil Nadu, AIR 2011 SC 1859.

Chapter 16

Contempt of Courts



Synopsis

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1. Public Interest Litigation—Scope of.—The petitioner was Editor, Printer and Publisher of Daily Mumbai ‘Tarun Bharat’ and Managing Editor, Printer and Publisher of ‘Vivek Weekly’. This petition was filed in public interest and he has prayed as under:—

- (a) this Court may issue direction to the Union of India to satisfy that the thick clouds of suspicion regarding the integrity and/or competency of all the three candidates, namely, respondent Nos. 1, 7 and 8 who are now being considered for the post of Chief of the Naval Staff, have been looked into in order to ensure the safety, security and integrity of the Nation and also to preserve the morale of the Indian Navy.
- (b) to issue appropriate direction that the HDW/SSK submarine deal and the alleged corrupt practices should be investigated by the Central Bureau of Investigation and necessary follow-up actions taken thereafter.
- (c) The Union of India should satisfy that the alleged contact with foreign national and the alleged influence of foreign powers in the personnel and promotional structure of the Indian Navy are properly and thoroughly examined and necessary actions thereof have been taken to ensure the safety, security and integrity of the Nation.

The entire petition was founded on writ petition No. 2757 of 1990 filed by respondent No. 1 for deleting the adverse Confidential Reports communicated to him. It was submitted that in the said writ petition respondent No. 1 had made serious allegations against the senior and Superior Naval officers, the then Principal Secretary to the Prime Minister and other Senior Officials of the Central Government, Defence Ministry, Home Ministry and against the then Honourable Prime Minister, who was also holding charge of Defence Ministry and these complaints and allegations are more grave and serious than complaints made by Shri Lakhubhai Pathak, which is under active examination of Delhi High Court as well as by the Honourable Supreme Court. It was, therefore, submitted that for the safety,

security and integrity of the Nation the investigation may be carried out on the basis of the allegations made in the said writ petition filed by respondent No. 1.

The learned Additional Solicitor General appearing for the Union of India submitted that this petitions not public interest litigation, but is only filed to scandalize the administration and is for oblique motive. He pointed out that the aforesaid writ petition filed by respondent No. 1 was withdrawn in April, 1991. At the relevant time the Court permitted the withdrawal of the said petition as the request for deleting the adverse remarks was allowed. He also submitted that the petitioner wants to re-open the said petition even by casting as persons on the functioning of this Court by stating that respondent No. 1 was erroneously permitted to withdraw the said petition. He has pointed out that the learned Counsel who appeared on behalf of respondent No. 1 at the relevant time moved an application that the matter be placed before the Division Bench consisting of Bharucha J., (as he then was) and Savant, J., on 16th April 1991 along with an application for withdrawal of the petition. In that application it has been specifically mentioned that the Chief of Naval Staff by his communication dated 26th Dec., 1990 has informed the petitioner that the Government has directed that the relevant A.C. Rs. which are adverse should not be treated as adverse. In paragraph 2 of the Application it had been stated that the Chief of Naval Staff constituted a Committee comprising the Vice chief of Naval Staff Constituted a committee comprising of the Vice chief of Naval Staff and 3 Commanders-in-Chief of the Western Naval Command, Eastern Naval Command and Southern Naval Command to examine issues related to the writ petition, *inter alia*, relating to appointments, administrative censure and related issues and that Committee has submitted its findings and recommendations. It was also specifically mentioned that the Government/Ministry of Defence was inquired into other issues mentioned in the petition and has already initiated action in respect of some issues. On the basis of the said application, respondent No. 1 was permitted to withdraw the petition.

Held, The Public interest litigation was misused by the petitioner for some extraneous purpose. Unfortunately, these so-called public interest petitions were fought with more vehemence than the litigations where some personal stakes are involved; reason may be that petitioner has not to lose anything in such petitions. It is forgotten that in a public interest litigation the party has only to draw attention of the Court where some directions were required to be issued for doing justice in accordance with law. But Court process cannot be permitted to be misused for delaying legitimate administrative actions. It is not for the Court to decide suitability of some of the respondents for being appointed to the highest post in the Navy. Further, legal process cannot be permitted to be misused for tarnishing someone's reputation. The object of Public Interest Litigation is to see that provision of the Constitution of the law is enforced for advancing the cause of community or weaker section of the society or individual by a person without any private motivation or gain. Merely because a person is a journalist, it does not give him/her a right to institute litigation which affects the reputation of any individual holding high post on a crucial point, when the highest authority of the State is considering the suitability for the highest post. In this case it was difficult to say that the present petition is to vindicate any public interest.

The Supreme Court in the case of *S.P. Gupta v. President of India*¹:—

“23. But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting *bona fides* and not for personal

1. Reported in AIR 1982 SC 149.

gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and other to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that “political pressure groups who could not achieve their aims through the administrative process” and Court might add, through the political process, “may try to use the Courts to further their aims.” “These are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between *locus standi* and justifiability and it is not every default on the part of the State or a public authority that is justifiable. The Court must take care to see that it does not over-step the limits of its judicial function and trespass into areas which were reserved to the Executive and the Legislature by the Constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which would change the complexion of the law and which were so far as embedded in the womb of the future are beginning to be borne.”

Similarly, the judgment rendered by the Supreme Court in the case of *The Janata Dal n. H.S. Chowdhury*? also requires to be kept in mind, (para 108):—

“It is depressing to note that on account of such trumpety proceedings initiated before the Court, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigant. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our 1 mger arm of sympathy to the poor the ignorant, the oppressed and the needy whos; fundamental rights are infringed and violated and whose grievances go unnoJced, unrepresented and unheard, yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddle some interlopers, wayfarers or officious interveners having absolutely no pubic interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation

creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.”³

2. Collective activity.—In the instant case, inaction not to implement the judgment was accepted, implying that there is a violation but, the Court was in conscious of two aspects:—

(1) the judgment arose out of an affirmative action, a public interest litigation in which one person was not alone to make submissions on the writ petition. The reliefs sought were for the benefit of public good, concerning the entire city of Allahabad in a matter of environment, ecology and planning where references to Article 484 and Chapter VIA, Article 51-A(g)(h) and (j) could not be ignored even by a contempt Court (2) Civil contempt is a proceeding requiring the implementation of an order. Punishment may not be a solution in a matter concerning environment unless to a defy a judgment is blatant. Thus, with all opposite parties clearly indicating that in this matter of environment, ecology and planning, that they would readily implement the judgment, the constitution’s guideline to resolve this matter in a spirit of inquiry and reform (reference Article 51-A (b) can neither be ignored nor forgotten). The implementation as a cooperative venture in this collective activity on an environmental matter was more important than the belligerence of a contempt proceedings, as again Article 51-A(j) casts such an obligation. Thus, the proceedings as a participatory exercise, in Chambers.⁴

3. Contempt proceedings against Government Officials.—If the Government officials violate orders of the Courts they are equally liable and accountable in that matter also. Therefore, they are not entitled to be defendant at the cost of State Exchequer because it gives encouragement to them to act arbitrarily even in the matters settled by the Courts amounting to disobedience of the orders of the Courts. When contempt notices are issued to the Government Officials they take it as a chance to take a holy dip in Sangam at the cost of State Exchequer and thus it gives encouragement to the tendency of deliberately flouting the orders of the Courts.

The total pendency of contempt cases in the main seat at Allahabad and Bench at Lucknow is an eye-opener demonstrating that the Government Officials have developed and cultivated habit of defying the orders of the Courts and such arrogant attitude certainly tells upon the efficiency if not integrity of the concerned officials of the State. In this regard it is needless to say that complying with the orders of the Court is not only part of duty but also is a constitutional obligation enshrined under Indian Constitution to respect the orders of the Court while maintaining the rule of law. In the democratic set up like ours’ democracy is deeply rooted and for which India is known as basis of democracy the whole world where the Government acts as a custodian of its people and, therefore it is common expectation of the people that the Government Officials shall protect the interest of the people in following and complying the orders of the Court, consequently the Government Officials are to be discouraged in disobeying the orders of the Court. If the tendency of extending monetary help and free legal aid to the erring officials in contempt matters is continued it would lead to an impression that either the officials are having upper hand in the Government or are defying the orders of Court under secret instructions, therefore, in

3. Dilip Karambelkar v. Vishnu Bhagwat, AIR 1997 Bom 131 at pp. 132, 133, 135, 136 (M.B. Shah, C J. and LN. Patel, J.).
4. Jitendra Nath Singh v. Alok Ranjan, 1991 Cri LJ 1183 at p. 1185 (All); 1991 All LJ 370.

case the practice of extending monetary help to contemnors Government officials for contesting contempt matters is allowed to continue it would certainly result in serious erosion of the rule of law as well as the constitutional obligation on the Government.

Therefore, in the considered opinion of High Court, the Government officials against whom contempt notices are issued should personally incur the expenses of contempt proceedings and only thereafter if they are honourably exonerated the amount spent may be reimbursed to them. It will naturally discourage the tendency of flouting the Court orders by the Government Officials.

In the premises aforesaid, the impugned Government was quashed to the extent it relates to the State Law Officers other than Advocate General and Additional Advocate General. Accordingly the objection was allowed and it was held that Government Advocates and Standing Counsel referred above cannot be allowed to appear and defend the Government officials against whom notices for contempt were issued. It was further held that no monetary help can be extended from State Exchequer to such Government officials towards litigation expenses in contempt proceedings and the expenses are to be incurred personally by the Government Officials concerned which would be reimbursed to them subsequently if they are honourably exonerated in contempt proceedings.⁵

4. False statement made before the Court.—Effect.—A telegram dated 15-2-1977 sent to the Honourable Chief Justice of this Court by the 'C' alleging that his son an intermediate student was kidnapped by the Head Constable, VI Town Police Station, Crime Branch, Vijayawada from his residence and his whereabouts were not known and that he is apprehending danger to his son's life, was taken up as write petition under Article 226 of the Constitution of India and notices were issued to the concerned. Pursuant to the notice issued, the Sub-Inspector of Police, VI Town Police Station, Vijayawada produced the alleged detenu in this High Court and High Court recorded his statement. The alleged detenu denied the factum of his kidnapping by the police.

The Sub-Inspector of Police, VI Town Police Station, Vijayawada also filed a counter-affidavit stating that the alleged detenu was not wanted in any case nor any case is pending against him in his police station. He also made enquiries with the Head Constable, who was alleged to have kidnapped the alleged detenu and found that the Head Constable and never taken the alleged detenu into custody and that the allegation that the Head Constable had kidnapped the detenu is totally false. After receipt of the notice from the High Court, he went to the house of the alleged detenu and he found him at his residence. He informed him to accompany him to Hyderabad to enable him (S.I.) to produce him before the High Court. The alleged detenu agreed for the same and he accompanied the Sub-Inspector of Police to the High Court.

In view of the statement of the alleged detenu that the police did not kidnap him, the Sub-Inspector of Police was directed to produce the petitioner. Accordingly, the Sub-Inspector produced the petitioner and this Court recorded the statement of the petitioner who has issued the telegram. From the statement and the demeanour of the petitioner, a Division Bench of High Court came to the conclusion that the petitioner was not speaking truth and, therefore, called upon him as to why he should not be punished for committing contempt of the Court by abusing the process of this Court by issuing a false telegram. The petitioner was directed to submit his explanation within three weeks from and directed to be present in the Court. Pursuant to the directions of High Court, the petitioner appeared before

5. Rohtas Singh v. Commissioner, Agra Division, AIR 1997 All 278 at 284, 285, 286.

this Court and filed an affidavit averring, *inter alia*, that he is eking out his livelihood as taxi driver and that he has got three sons. He also stated that he used to stand as surety for petty offenders and that the police used to call him to the police station whenever the offenders did not attend the police station. To secure his presence, the police used to take his sons to the police station and used to enquire about him. On 14.2.1977, the alleged detenu did not come home. He waited for one day and as his whereabouts were not known, he gave a telegram to the High Court with a disturbed mind stating that the police might have kidnapped his son. His son came on 16.2. 1977 and he was informed that he had been to Mangalagiri. he lastly stated that he had issued the telegram *bona fide* believing that his son was taking by the police. He, however, prayed that if he had committed any mistake, he may be pardoned and he undertook not to repeat such things in future.

The above stated facts will manifest that the telegram issued by the petitioner is false because the petitioner as well as his son both on death stated before this Court that the Head Constable did not take the petitioner's son away. Thus, it is established that the petitioner has abused the process of the Court by issuing a false telegram.

The facts stated supra show that this writ petition taken up on the basis of the telegram issued by the petitioner as a PIL case. After the development of the innovative strategy of public interest litigation by the Apex Court and the High Courts, it is trying to remove any possible hindrance that can obstruct the process of reaching justice to the poor masses in India. So much so that in order to encourage the vigilante citizens to bring to the notice of the Court the socio-legal problems of the poor and downtrodden, the higher judiciary in India has been treating even 'Tetters', 'post cards' and 'telegrams' addressed to judges, the Court or the Legal Aid Committee, as writ petitions. This is, indeed, a unique development that distinguishes Indian judicial system from other judicial system in the world. By adopting this method the deprived and needy sections of the society are not only exempted sections of the society are not only exempted from legal expenses, but they are also absolved of the cumbersome procedure which is not easily understandable to the poor, illiterate persons who have no idea of law and Court-door at the very out set.

Letters, telegrams or postcards are entertained whenever human rights or fundamentals rights are violated and persons are taken into illegal custody by the police or any authority. To safeguard the fundamental rights of the citizens as so life and liberty as envisaged under Article 21 of the Constitution of India is the prime concern of the Court as the Constitutional Courts are the guardians of the fundamental rights of the citizens.

The principles laid down in the above judgments make it clear that where a false statement is made before the Court on oath or any act, which causes hindrance in the process of administration of justice, is done, it amounts to a criminal contempt. In the present case, the petitioner issued a telegram with false allegations though his son went to Mangalagiri without verifying the said fact. The said statement has been found to be false according to the sworn statements given by the alleged detenu and his father, the petitioner. Issuing of the telegram with false allegations amounts to causing obstruction in the due course of judicial proceedings and has the tendency to impede, obstruct and interfere with the administration of justice. The due process of law cannot be permitted to be slighted nor the Majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation. The act of the petitioner to use the jurisdiction of this Court with false telegram amounts to an attempt to impede, undermine, or obstruct the free flow of the unsoiled stream of justice. Therefore, the petitioner has committed criminal contempt, within the meaning of Section 2 (c) of the Contempt of Courts Act.

In the affidavit filed by the petitioner he stated that he is a poor taxi driver getting Rs. 1,500/ per month. He requested that he may be pardoned and undertook that he will not repeat such things in future.

The petitioner was represented by Mr. 'G' who was appointed as a Legal Aid Counsel. The Counsel pleaded that a lenient view may be taken having regard to the facts and circumstances of the case and also the fact that the petitioner is a poor taxi driver, having three children and earning Rs. 1,500/- per month.

The petitioner was a resident of Vijayawada and a taxi driver. He was not a rustic villager. According to his own affidavit he was standing surety for the persons who committed petty offences and he knew the police. Therefore, if he was not able to find his son he ought to have verified with the police before issuing the Telegram. The act of the petitioner in issuing a false telegram to this Court amounts to gross abuse of process of the Court. High Court has to take the facts and circumstances into consideration particularly the conduct of the petitioner to see whether he has abused the process of the Court. As stated above, the petitioner herein has grossly abused the process of the Court. Therefore, it was not a proper case to absolve the petitioner by giving a pardon.^{6,7}

In *Bandhua Mukti Morcha v. Union of India*? an organisation dedicated to the cause of the release of bonded labour in the Country surveyed some of the stone quarries in different States to know about the working conditions of bonded labourers, who were under inhuman and intolerable conditions. The organisation wrote a letter to the Supreme Court pointing all the facts to the notice of the Supreme Court. This letter was treated as a writ petition under Article 32 of the Constitution of India and after issuing notices, the Supreme Court justified its treating the letter as a writ petition and observed as follows:—

“Where a member of the public acting *bona fide* moves the Court for the enforcement of Fundamental Rights on behalf of a person or class of persons, who on account of poverty or disability or socially or economically disadvantaged position, cannot approach the Court for relief, such member of the public may move the Court even by just writing a letter, because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition.”

The process of approaching the Courts by way of letters, telegrams and postcards started continuing and in number of cases, for instance,⁸ and matter of complaint received from Delhi Judicial Service Association, Tis Hazari Court, Delhi,⁹ the Supreme Court entertained telegrams, letters and postcards as PIL cases. Procedural objections as regards

6. Chintakrindi Venkateswarlu v. H.C.T.P.S., (1997) 3 CCR 445 at pp. 447, 448, 450, 451 (AP).

7. AIR 1984 SC 802.

8. People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473, Upendra Baxi v. State of U.P., 1981 (3) SCALE 113, Olga Tellis v. State of Maharashtra, AIR 1986 SC 180, Kendra Bahadur v. State of Bihar, 1983 (2) SCC 104, Sheela Barse v. State of Maharashtra, 1983 (2) SCC 96, Ghanshyam Pardes v. State of Tamil Nadu, W.P. No. 2261 of 1980, Veena Sethi v. State of Bihar, AIR 1983 SC 339, Katheja Bai v. Superintendent Engineer, 1984 (3) SCC 518, Sala Hydro Electric Project v. State of J&K, 1984 (3) SCC 538, Ram Kurnar Mishra v. State of Bihar, 1984 (2) SCC 451, Neerja Chaudhary v. State of M.P., 1984 (3) SCC 243, Lakshmi Kant Pande v. Union of India, 1984 (2) SCC 244, Janki v. Sardar Nagar Municipality, AIR 1986 Gujarat 49, Pratul Kumar Sinha v. State of Orissa, 1989 (1) SCALE 1271.

9. 1989 (2) SCALE 654.

to treating letters etc., as writ petitions were raised and the Supreme Court in *S.P. Gupta v. Union of India*,¹⁰ held as follows:—

“It must not be forgotten that procedure is but a handmaiden of justice and cause of justice can never be allowed to be thwarted by any procedural technicalities. This Court, would, therefore, unhesitatingly and without any qualm of conscience cast aside the technical rules of procedure in the exercise of a dispensing power and treat the letter of public minded individual as writ petition and act upon it.”

Thus, the Supreme Court has dispelled all the objections regarding the procedural objections to treating letters etc., as writ petitions as PIL cases and the same are followed by the High Courts while exercising power under Article 226 of the Constitution of India and the letters etc. are treated as writ petitions and the relief is being given to the needy in proper cases. The principle laid down in the above judgment is that either letter or telegrams addressed moving the Court must be *bona fide* act bringing the correct facts to the notice of the Court. Of late, experience is showing that a number of false telegrams and letters are being received and in some of the cases in respect of persons who are involved in criminal cases, arrested and produced before the Court, telegrams are being sent requesting the Court for their release treating them as if they were taken into illegal custody. Thus, the benefit or opportunity given to redress the grievances of the weaker sections of down-trodden sections of the society on account of poverty, disability etc., must be utilised properly and the cases like the present one, the persons are approaching the Court with all false allegations and are abusing the process of the Court. Therefore, there is any amount of requirement to check that the jurisdiction of the constitutional Court is utilised for the purpose of redressing the grievances of the PIL litigants in *bona fide* cases bringing the true and correct facts before the Courts. If the Courts are moved purposefully by giving false information and the time and process of the Court is abused, then proper action to curb such proceedings and to punish such persons is one of the vital requirements of the day, so that any person who approaches the Court in the name of public interest comes with clean hands and with true facts.^{10 11}

The facts of the present case as stated supra, show that the petitioner sent a telegram stating that his son was taken away by the Head Constable, of the VI Town Police Station, on 16-2-1997, and this Court treated the telegram as a writ petition and gave a direction for production of the alleged detenu. Accordingly, the alleged detenu was produced. He has given a sworn statement before this Court that he was not taken into custody by the police on 16.2.1997 or on any subsequent date and that he went to Mangalagiri. Thereafter, notice for production of the petitioner was given. The petitioner appeared in the Court and his statement was recorded. He stated on oath that as his son did not return to his home, he thought that the police might have taken him into custody. Thus, the facts stated in the telegram sent by the petitioner coupled with the two sworn statements of the alleged detenu and his father the petitioner herein make it clear that the telegram was issued without verifying the facts whether the alleged detenu was actually taken into illegal custody by the police on 16-2-1997. Thus, the petitioner not only abused the due process of the Court, but also committed criminal contempt of Court. This Court has got power to punish for Contempt of Court under section (Sic. Article) 215 of the Constitution of India as well as under Contempt of Courts Act. It is apt here to extract

10. AIR 1982 SC 149.

11. Chintakrindi Venkateswarlu v. H.C.T.P.S., (1997) 3 CCR 445 at pp. 448,449 (AP).

the meaning of criminal contempt'. Section 2 (c) of the Contempt of Courts Act, 1971 defines 'criminal contempt. It means, inter alia, as the doing of any act whatsoever which prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. C.J. Miller's Contempt of Court states that a criminal contempt may be committed by indulging in conduct which creates a serious risk or prejudice to the fair trial of particular criminal or civil proceedings, whether through an effect upon the parties, the witness, or the Tribunal itself. In the words of Anthony Alridge and David Eady in their treatise on the law of 'Contempt of Court' means "any conduct calculated to interfere with the administration of justice. Calculated means no more than tending to. The House of Lords in Attorney General v. Times Newspaper,¹² held that "any act which raised a real albeit small likelihood of interference with the administration of justice amounts to contempt of Court. In Ram Autar Shukla' case,¹³ the Supreme Court held as follows:—

"Due course of justice means not only any particular proceeding but broad stream of administration of justice. Therefore, due course of justice used in Section 2 (c) of Section 13 of the Act is of wide import and is not limited to any particular judicial proceeding. Much more wider when this Court exercises *suo motu* power under Article 129 of the Constitution. Due process of law is blinkered by acts or conduct of the parties to the litigation or witnesses who generate tendency to impede or undermine the free flow of the unsullied stream of justice by blatantly resorting, with impunity, to fabricate Court proceedings to thwart fair adjudication of dispute and its resultant end. If the Act complained of substantially interferes with or tends to interfere with the broad stream of administration of justice, it would be punishable under the Act. If the act complained of undermines the prestige of the Court or causes hindrance in the discharge of due course of justice or tends to obstruct the course of justice or interfere with due course of justice, it is sufficient that the conduct complained of constitutes Contempt of Court and liable to be dealt with in accordance with the Act."

As regards swearing of false affidavits in judicial proceedings, in *Dhanjay Sharma v. State of Haryana*,¹⁴ Dr. A.S. Anand, /held as follows:—

"The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the act."

12. 1974 AC 273.

13. 1975 Supp (2) SCC 130.

14. 1995 (3) SCC 757; AIR 1995 SC 1795; 1995 (2) SCR 411.

In *Afzal v. State of Haryana*,¹⁵ the Supreme Court has held that “a false or a misleading or a wrong statement deliberately and sidfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings.”^{15 16}

5. Apology—How to be made?.—Counsel for the officials of the Horticulture Department submitted an oral apology to the contradictions on record, and submitted that he had advised that the filing of the stay application was an error. Any regret or apology, High Court is afraid, must be by an affidavit. High Court had neither been intimated of a pending Special Leave Petition, nor of a stay not granted, nor of the filing of yet another stay application before a higher Court. High Court cannot issue any direction nor suggest to any party to press or not to press a prayer for stay in a higher Court but it can question a party, if it indulges in double standards and duplicity. The Court observed that if any affidavit is to be filed, in reference to the context, let it be filed.¹⁷

6. Ingredients of Criminal Contempt.—The intention is not an ingredients for commission of offence of Criminal Contempt of Court. When the acts complained of also disclose any intention certainly that would result in aggravating the offence and the same will have to be necessary considered at the time of imposing the sentence.¹⁸

7. Contempt Power of High Court.—It is also to be borne in mind that the frequent use of *suo motu* power on the basis of information furnished in a contempt petition otherwise incompetent u/s 15 of the Act may render the procedural safeguards of Advocate General’s consent nugatory.¹⁹

8. Appeal-Maintainability of.—The Learned single judge had dismissed the contempt petition offer having found no ground from reply filed by the respondent to continuation of proceeding. No appeal maintenance against the order u/s 19 of Jammu and Kashmir Contempt of Court Act.²⁰

9. Contempt of Court-what amounts to.—Direction of writ Court to dispose of representation of petitioner by giving reasoned order. Representation was in respect of his entitlement for time bound promotion. Promotion given to him by BSEB was set aside as it was given without considering fact that the departmental proceeding were initiated against petitioner and he was not entitled for promotion for 3 years. Jharkhand State Electricity Board created and it was left to JSEB to dispose of his representation JSEB decided representation against petitioner on basis of standing order of BSEB which were adopted by JSEB. Order passed by JSEB did not amount to contempt of Courts order.²¹

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15. 1996(7) SCC 397; AIR 1996 SC 2326; 1996 Cri LJ 1679; 1996(1) JT 328; 1996 (1) SCR 573.

16. Chintakrindi Venkateswarlu v. H.C.T.P.S., (1997) 3 CCR445 at p. 447, 450 (AP).

17. Jitendra Nath Singh v. Alok Ranjan, 1991 Cri LJ 1183 at p. 1186 (All).

18. Kopal Cooperative Bank Ltd. v. State of Maharashtra 2005 Cri LJ765.

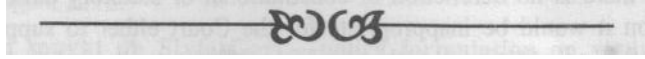
19. Bal Thackrey v. Harish Pimpal Khute 2005 (1) SCC 254; 2005 Cri LJ 396; 2004 (10) JT 244.

20. Jagdev Singh v. Lokesh Jha 2005 Cri. L.J. 821 (J.K).

21. Banchha Ram Chakrawarti v. Jharkhand State Electricity Board, 2005 Cri LJ 1556.

Chapter 17

Judicial Review of Administrative Functioning



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1. Direction sought on CAG for estimation of profit & loss—Gold reserves.—

Petition seeking direction that Comptroller and Auditor General should be directed to estimate country's profit and loss in light of the depletion in Currency and Gold Revaluation Account of Reserve Bank and and to file a detailed report before Court or to the President of India for laying before House of Parliament Court would not issue such direction in exercise of powers under Art. 226 of Constitution of India.

Court cannot supplant role and functioning of constitutional authority or to substitute its judgment for policy making authority or for discretion of Constitutional functionary.

Those who are vested with the discharge of such powers exercise the jurisdiction of the Court, when it is invoked in a petition filed in the public interest with a view to ensuring that there is no dereliction of constitutional or statutory duties. In entertaining such a petition it would be inappropriate for the Court either to supplant the role and functioning of a constitutional authority or to substitute its judgment for the policy making authority or the discretion of a constitutional functionary.

Litigation instituted in the public interest is directed towards ensuring governance in accordance with constitutional and statutory mandate. Public interest litigation cannot provide an avenue for substituted governance nor can the Court, in a democratic set up governed by separation of powers assume to itself the task of governance which the Constitution leaves to elected representatives or to expert bodies who are accountable to the collective wisdom of the Legislature.¹

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2. 2G Spectrum case.—Allegations of manipulations were made by some of the applicants for getting the licences and how the exercise undertaken by the DoT for grant of UASL has resulted in serious financial loss to the public exchequer.

Allocation of spectrum resulted in a huge loss to the public exchequer and, therefore, a thorough probe was ordered by an independent agency so that all the persons who may be found guilty are brought before law and punished. The documents produced, referred to the grant of permission for use of dual/alternate technology to three operators a day before the policy decision was announced to the public by means of press release dated 19.10.2007, the change of cut off date from 1.10.2007 to 25.9.2007, issue of LOIs by DoT on 10.1.2008, gross violation of the policy of first-come-first-served, non compliance of the rollout and other obligations by the licensees, failure of the TRAI and DoT to ensure that the licensee complied with the conditions on which they were permitted to use the spectrum and huge loss caused to the public exchequer by manipulative mechanism as also sale of equities by different licensees to foreign companies.

The TRAI recommendation showed that no proposal for permission for merger and acquisition could be entertained till the fulfillment of rollout obligations but DoT acted contrary to the TRAI recommendation without complying with fifth proviso to Section 11 of the Act and as a result of that the licensees violated the conditions of licence with impunity. Grant of licences on the basis of 2001 price in the garb of implementing the recommendations made by TRAI alleged to have resulted in loss to the public exchequer to the tune of more than Rs. 1,76,000 crores.

Grant of 45 minutes to the applicants to collect LOIs and the very fact that some of the applicants could submit bank drafts of Rs. 1600 crores within few hours shows that everything had been pre-fixed with a view to favour some operators at the cost of public revenue.

The Apex Court directed the CBI alongwith Directorate of Enforcement to conduct thorough investigation on two counts: first into issues highlighted in the CAG report, who have prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible and secondly, investigation into the allegation of grant of huge loans by the public sector and other banks to some of the companies which have succeeded in obtaining licences in 2008 and find out whether the officers of

1. Raghunath Shankar Kelkar v. Union of India, AIR 2009 (NOC) 2665 (Bom) : 2009 (4) AIR Bom R 667.

the DoT were signatories to the loan agreement executed by the private companies and if so, why and with whose permission they did so.

The ongoing investigation has seen unprecedented effects, resulting in a cabinet minister, senior bureaucrats, top honchos of the business world behind bars and not being granted bail till August 2011,²

3. Direction sought on State Govt.—policy formulation on setting up retail outlets along National Highway. Public Interest Litigation for issuing direction to State of Orissa for formulating guidelines/norms for setting up of retail outlets along National Highways, State Highways, Major District Roads and other District Roads in State not tenable. *Held*, that Court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the Court can legislate, nor it has any competence to issue directions to the Legislature to enact the law in a particular manner.³

Public Interest Litigation, Non-implementation of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in State of Sikkim. Court directed State respondents to take all necessary steps and actions for implementation of Act in its letter and spirit as expeditiously as possible so that the benefits, protections and opportunities specified in Act would reach beneficiaries at an earliest possible time.⁴

4. High Security Registration Plates (HSRP).—Petition filed by private vehicle owners to quash NIT for implementation of High Security Registration Plates project. Private interest sought to be protected in guise of PIL by making bargaining in price amount of Rs. 1600/-. Entire process for having HSRP had been initiated by specific direction of Supreme Court. *Held* such PIL bereft of merit cannot be entertained.⁵⁶

5. Allotment of land for TATA Nano car project in Gujarat-PIL rejected.—Seeking direction jip State Government not to allot agricultural land for Tata Nano Car Project. Petition filed by organisation styled as Rashtriya Kishan Dal. Nothing to show that organisation was registered as representing cause of farmers in State of Gujarat. Nothing further to show that decision taken by Government in allotting land had in any way violated any statutory provision or statutory rules or regulations allegation that if land was allotted, it will adversely affect agriculture, power supply, etc. cannot be countenanced by writ Court. *Held* that PIL filed only for media attention and publicity cannot be entertained?

6. PIL against construction for Commonwealth Games Village (CGV), Metro Section of Delhi Metro Rail Corporation etc.—Reports from specialized agencies like Ministry of Environment and Forests (MoEF), National Environmental Engineering Research Institution (NEERI) etc. and Government Departments in addition clearing apprehension about damage to Yamuna ‘riverbed’ and ‘floodplain’.

Further High Powered Committee was constituted with approval of Prime Minister for monitoring ongoing constructions of CGV. Decisions of such expert bodies cannot be lightly interfered with by Court without adequate contra materials. *Held*, direction of High

2. Centre for Public Interest Litigation & others v. Union of India, SLP (C) No. 24873 OF 2010.
3. Utkal Petroleum Dealers Association v. State of Orissa, AIR 2009 (NOC) 105 (Ori).
4. Paljor Bhutia v. State of Sikkim, AIR 2010 Sikkim 1.
5. All India Private Vehicle Owners Association, New Delhi v. Union of India, AIR 2010 Sikkim 3.
6. Rashtriya Kisan Dal, Gandhinagar v. State of Gujarat, AIR 2009 (NOC) 2666 (Guj).

Court for formation of fresh Committee by Government to examine and monitor construction carried out by DMRC, liable to be set aside.⁷

7. Public Interest Litigation against increase in non-recovered loans by Bank.—Legislative and Administrative measures taken by Union Government. Reduction and Control of Non-Performing Assets is within domain of Executive and Legislature and not Judiciary.⁸⁹

8. Grant of exclusive privileges to liquor vendors by State—Public interest litigation, against cannot be maintained by Public Trust.—In a case the persons who are affected because of infraction of any of the statutory provisions or any illegal grant of exclusive privileges to liquor vendors by State can always come forward and fight for their grievances. They do not belong to that strata of society who cannot fight for their interest or society who cannot fight for their interest or protect their rights however constricted it may be.

A trust cannot come forward to espouse such a cause in the garb of loss to the public exchequer. That will be not in accord with the quintessential concept of public interest litigation, it would tantamount to structuring a public interest where there is remotely none.⁹

9. Political reasons—allegations of infrastructure fraud-referred to appropriate govt, machinery like Lokayukta.—Letter addressed to Judge enclosed with book named “Bangalore-Mysore Infrastructure Corridor Project — a case study in Fraud and Collusion to defeat ends of justice and defraud Courts”. Allegation and averments being political in nature, required to be inquired by appropriate authority. Allegations of fraud and collusion or an attempt to defeat ends of justice referring to project were made. Judicial review cannot be exercised. It was held that since the State Government has separate machinery to enquire such matters, alleged matter ordered to be referred to Lokayukta.¹⁰

10. Govt, property alienated—PIL Maintainability.—Government property alienated by corporation through agreement of lease sought to be quashed on ground that mandatory procedure of law not followed. Tender granted to private person without giving opportunity to people at large to participate in auction. Earlier petition filed for same relief not entertained. It means that it has never been considered by Court on merits or issue involved therein was not decided. Principle of *res judicata* will not apply. Held that PIL not barred in furtherance of public interest.¹¹

11. Judicial Review—Policy Decision of the Govt.—An executive order termed as a policy decision is not beyond judicial review. Whereas the superior Courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the Court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the Superior Court would not be without jurisdiction as it is subject to judicial review. Broadly, a policy decision is subject to judicial review on the following grounds : (a) if it

7. D.D.A. v. Rajendra Singh, AIR 2010 SC 2516.

8. Common Cause (A Regd. Society v. Union of India, AIR 2010 SC 3351.

9. Humlog Trust, Patna v. State of Bihar, AIR 2010 Pat 79.

10. Suo Motu v. Chief Secretary, Government of Karnataka and the Chairman, Empowered Committee, Bangalore, AIR 2009 (NOC) 1786 (Kant): 2009 (3) AIR Kar R 357.

11. Sundargarh Citizen's Forum v. Orissa State Road Transport Corp., AIR 2009 (NOC) 1690 (Ori).

is unconstitutional; (b) if it is dehour the provisions of the Act and the Regulations; (c) if the delegate has acted beyond its power of delegation; (d) if the executive policy is contrary to the statutory or a larger policy. Stand of DDA was that the relationship between the parties arises out of the contract. The terms and conditions were, therefore, required to be complied with by both the parties and can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders, which is not backed by any statute, new terms of contract could thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the scope of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such.

It can be assumed that the office orders were issued by DDA keeping in view the representations made by a large number of defaulters. The plea taken by DDA gives rise to a dichotomy. It is a case of contract qua contract; the provisions of the Contract Act must be taken recourse to. If DDA was exercising a statutory power, the same must be tested on application of doctrine of ultra vires. Floating a scheme for providing housing facilities to a group of people, although is governed by statute by an executive not only can be tested on the touchstone of Article 14 of the Constitution of India, but can also be tested on the touchstone of source of the power under the statute. No provision either in the Act or the Regulations was brought to notice, which makes the allottee bound by the purported policy decision taken by DDA. Even if it is so, the superior Courts may exercise its power of judicial review as the power, which is sought to be exercised by a statutory authority, is not under the contract but under a statute. When a contract emanates from a statute or is otherwise governed by the provisions thereof, the Superior Court can also exercise the power of judicial review.¹²

12. Allegations of failures and lapses on the part of the government, deserve substitution of the government machinery by setting up a committee or commission like a superimposed authority by the court.—Mere allegations of failures and lapses on the part of the Government deserve substitution of the Government machinery by setting up a Committee or Commission like a superimposed authority by the Court. Several allegations made against Government and its machinery may have some basis on media report. But it would not be in public interest to take over the work of the Government machinery and hand it over to a Committee or a Commission to be set up by the Court. The allegations of failure and incapacity of the Government machinery show a prejudice and distrust in the elected Government.

The paradox in a democratic society is that the people expect too much from the elected Government and its executive and at the same time show utmost distrust in it and its functionaries. It was too early to attribute any failure to the Government machinery and show distrust in its capability to meet the situation, which has arisen out of the disaster. The petitioners could have been careful enough not to take any stand as would have a demoralising effect on host of officers, members of the staff and workers in the Government machinery who are actively involved in the relief and rehabilitation operations.

12. Delhi Development Authority, ; Another v. Joint Action Committee, Al lotee of SFS Flats & Others, AIR 2008 SC 1343.

Obviously, the country was totally unprepared for a calamity of this dimension but there was no cause to distrust capabilities of Government machinery to handle the situation. It was in gesture of cooperation that the petitioners by proposed amendment sought deletion of certain paragraphs, which contained objectionable allegation against the Government.¹³

13. Background: Judicial review of administrative decisions.—Writ Jurisdiction—Locus standi. Though this is not a PIL but considering the Judicial Activism in the backdrop of the restraint being advocated in current scenario with the terminology being: 'Judicial overreach', it is important at this juncture to weigh judicial pronouncements made by the Judiciary on its own functioning.

The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in *Tata Cellular v. Union of India*, (1994) 6 SCC 651. It was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there were inherent limitations in exercise of that power of judicial review. Government was the guardian of the finances of the State. It was expected to protect the financial interest of the State. The right to refuse the lowest or any other tender was always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose could not be considered to be an arbitrary power of course, if the said power was exercised, that power will be struck down.

After an exhaustive consideration of a large number of decisions and standard books on Administrative Law: The Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decisions was permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract.¹⁴

Judicial review-possible when ?.—While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere. The correctness of the reasons, which prompted the Government in decision-making, taking one course of action instead of another, is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a

13. Bipin Chandra Diwan v. State of Gujarat, AIR 2002 Guj . s 100.

14. Siemens Public Communication (P) Ltd. & Anr. v. Union of India, AIR 2009 SC 1204.

decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The concept of equality as envisaged under Article 14 of the Constitution is a position, which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.¹⁵

14. Trains to be run on a particular route—Writ jurisdiction—Exercise of.—As to number of trains to be run in a particular route and time table to scheduled train and other factors including convenience and timing of running train from a particular point to another point *i.e.*, from Mangalore to Bangalore up and down and also providing budget for said train lies exclusively within the domain of respondents Railways, Union and State. Petitioners cannot claim as of right that a train should be run from Mangalore to Bangalore up and down to overcome congestion of traffic on surface transportation and in that behalf, prayer of the petitioners cannot be granted in exercise of the writ jurisdiction.

Also question of issuing *ai v* direction to the respondents to implement condition of concession agreement between Railways and Hassan Mangalore Rail Development Company also does not arise. It is open to the petitioners to work out their remedy before the respondents in accordance with law.^{16 17}

15. Writ petition under the label of “Public Interest Litigation” seeking direction to restrain the Container Corporation of India Limited—Maintainability of.—It is evident that establishment of ICD at Jodhpur is undisputedly in the larger public interest. The location of ICD at Bhagat Ki Kothi has been selected after full survey and consideration of viewpoints of all concern. The project has not only crossed the stages of conception and decision to undertake the project, but also the stage of execution. A sum of Rs. two crore has already been spent and the ICD at Bhagat Ki Kothi shall come into operation on any day, as soon as the Customs Department issues relevant notification. The entire infrastructure is available at Bhagat Ki Kothi, as Railway Goods Shed and Militray Siding and F.C.I Godown was already in operation. The location was not likely to be traffic hazard, as the entry was from the side of Basni Industrial Area and not the City *i.e.* from Rotary Circle. The apprehension that approach roads will not be able to bear the load of trucks/trollers is unfounded. It goes without saying that first respondent shall be bound by the orders/directions given by the Court in this case of Mahendra Lodha, to the extent applicable to them.¹

16. Writ Jurisdiction.—The dominant purpose in construing a statute is to ascertain the intention of the parliament. One of the well-recognized canons of construction is that the Legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the court should adopt literal construction if it does not lead to the absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used speaks the mind of parliament and there is no need to look somewhere else to

15. Ekta Shakti Foundation v. Govt of NCT of Delhi, AIR 2006 SC 2609.

16. M. Rammohan Rao v. Union of India, AIR 2009 (NOC) 2794 (Kant) : 2009 (4) AIR Kar R 472.

17. Mahesh Chandra Purohit v. Container Corporation of India Ltd., AIR 2002 Raj 5 at 10, 11: 2002 (1) WLC 140 : 2002 (1) Raj LW 695.

discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the position in which the rule is placed, the purpose for which it is enacted and the objection which it is required to sub serve and the authority by which the rule is framed. This necessitates examination of the board features of the Act.

In *Bharat Singh v. Management of New Delhi Tuberculoses Centre*,¹⁸ the Apex Court while dealing with the applicability of Section 17-B of the Industrial Disputes Act, 1947 discussed how the objects and reasons are to be appreciated. In that context, their Lordships expressed thus:

The objects and reasons give an insight into the back ground why this Section was introduced. Though objects and Reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provisions. The objects and reasons are clearly spell out that delay in the implementation of the awards is due to the contest by the empower which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the sward was passed, for example just a day before the Section came into force. In our view it would be not only defeating the rights of the workman, but going against the spirit of the enactment. A right interpretation of this Section as is attempted by the learned counsel for the respondents would be rendering the workman works off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages, which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, given a mandate to the Courts to award wages if the conditions in the Section are satisfied.

The sovereign power of the Indian Union can be invoked to ban the entry of any foreigner into India and the Government need not explain or give an opportunity to such foreigner to impose such ban and the lack of power as stated by the Petitioner is unsustainable in law. It is not for the petitioner to suggest which act of the Government will be prudent in the given circumstances. It is respectfully submitted that there is absolutely no infringement of any fundamental rights of the petitioner's brother, as he being a foreigner does not have any fundamental right. Hence, grounds argued have no merits in them. The Union of India need not state any reason to ban the entry of a foreigner. It is enough; if it is satisfied that there exists some basis for taking such decision for in such matters the Government is exercising its Sovereign Powers.¹⁹

17. Campaign for awareness of the Govt? schemes-held, non political campaign.—Petitioner seeking directions to State Government against incurring any expenditure from public exchequer on 'Vikas Yatra which aimed at showcasing the achievements of the government. Allegations that the purpose behind campaign is political. Fact stated that campaign includes exhibition of documentary films on subjects like social welfare schemes, schemes for Scheduled Caste and Backward Caste, education and welfare programmes and others. Held, Campaign that generates awareness among the

18. (1986) 2 SCC 644 : AIR 1986 SC 842

19. *Indore Development Authority v. Shri Ram Builders & Ors.*, AIR 2009 M.P. 169 (Full Bench).

masses so that public can draw benefits from schemes of Government should be deemed legitimate. No interference warranted in said campaign. Hence, Petition dismissed.²⁰

18. Allotment of Land carrying tag of cast or religion—allotment to be *per doctrine of equality*.—The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise upon the particular functionary or officer of the State. There cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions dehors, an invitation or advertisement by the State or its agency /instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that one a piece of land is earmarked or identified for allotment to institution/organizations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. In a given case, the Government may allot land at a fixed price but in that case, also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution. The allotment of land by the State or its agencies/instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organizations /institutions on political considerations or by way of favouritism or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.

These allotments cannot lead to an inference that the State Government has framed a well-defined and rational policy for allotment of land. The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can stake their claim for allotment. Part IV of the RBC contains the definitions of Nazul land and provides for allotment of land. The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can stake their claim for allotment. Part IV of the RBC Contains the definition of Nazul land and provides for allotment of land at market price or concessional price. The authorities competent to allot land for different purposes have also been identified and provisions have been made for scrutiny of applications at different levels. However, these provisions have been misinterpreted by the functionaries of the State for several years as if the same empowered the concerned authorities to

20. *Vijender Kumar v. State of Haryana*, 2010(2) SCT 2 (P&H).

allot Nazul land without following any discernible criteria and in complete disregard to their obligation to act in accordance with the constitutional norms. Unfortunately, the Division Bench of the High Court over looked that the entire process of reservation of land and allotment thereof was fraught with grave illegality and was nothing but a blatant act of the favouritism on the part of functionaries of the State and summarily dismissed the writ petition.²¹

19. Renaming of “Anti Romeo Squad”.—Petitioner took an objection to the name of the squad as Anti-Romeo Squad initiated by the UP government. The Court held, that action which is being taken or is proposed to be implemented is in order to protect the weaker sex from being subjected to any harassment or any incident that is likely to reach up to the stage of an offence and disturb the peace and harmony of the society. If christening of the squad has been done for such avowed honest purpose, then to co-relate it to an offence to Literature without understanding the contents thereof is totally misplaced. The Court stated that their job is to find out as to whether the activity which is proposed to be taken has behind it a genuine motive in order to protect its citizens or not.²²

20. Arbitrary action by way of changing implementation agency responsible for infrastructure.—The Government and public bodies are free to choose their implementing agency in executing the works funded by them but any such selection or cancellation must demonstrate that it was unaffected by any extraneous consideration. Any decision which seems to be arbitrary, without any transparent method or for political considerations, will be amenable to judicial review and liable to be quashed and set aside.²³

21. Street light project of Nagpur Municipal Corporation.—Corporation was paying huge amount while in market same LED was available at much cheaper rate whereas in response Corporation stated that the lights were of much more superior quality having automatic dimming wattage working for entire life time of LED. With regard to purchase procedure, it was an on-line process in which anybody would have participated. Tender specifications were to stop energy theft, bringing down electric consumption because of dimming facility and burning hours of LED procured were twice the burning hours of standard equipments.²⁴

22. No jurisdictional bar, if conscience of Court is pricked in a given case.—A petition without clear element of public interest, cannot be entertained at the instance of a political rival merely on account of an alleged procedural irregularity in the decision making which can be challenged at appropriate forum by the aggrieved party. There is no jurisdictional bar, if conscience of the Court is pricked in a given case.²⁵

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21. Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Ors., AIR 2011 SC 1834.

22. Rituraj Mishra v. Govt, of U.P., (Allahabad)(DB)(Lucknow Bench), 2017(4) ADJ 684 : 2017(2) All WC 1966.

23. Shri. Gautam Baburao Maske v. State of Maharashtra, (Bombay)(DB)(Aurangabad Bench), 2017(3) AIR Bom.R 791.

24. Court on its own motion v. State of Maharashtra, (Bombay)(DB)(Nagpur Bench), 2019(1) AIR Bom.R 151 : 2019(1) BCR 729.

25. Swaraj Abhiyan v. Union of India (SC), 2018(4) SCC 300 : 2018(2) SCC(Cri) 274 : 2018(2) Scale 449 : AIR 2018 SC 993 : 2018(71) Orrisa Cri. R. 790.

Chapter 18

Media

(including Communication Media)



Synopsis

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1. Fundamental Right—Role of Media.—The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. The High Court of Australia in *Minister for Immigration and Ethnic Affairs v. Tech* 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of Bill of Rights in the Constitution of Australia.

So far as the role of media is concerned the Nariman Committee suggested certain modalities as follows:—

(a) *The Trusteeship principle.*—Professional journalists operate as trustees of public and their mission should be to seek the truth and to report it with integrity and independence, (b) *The Self Regulation Principles.*—A model of self-regulation should be based upon the principles of impartiality and objectivity in reporting; ensuring neutrality; responsible reporting of sensitive issues, especially, crime, violence, agitations and protests; sensitivity in reporting women, children and matters relating to national security; respect for privacy, (c) *Content Regulations.*—In principle, content regulation except under very exceptional circumstances, is not to be encouraged beyond vetting of cinema and advertising through the existing statutes. It should be incumbent on the media to classify its work through warning systems as in cinema so that children and those who are challenged adhere to time, place and manner restraints. The media must also evolve codes and complaint systems. But prior content control (while accepting the importance of codes for self restraint) goes to the root of censorship and is unsuited to the role of media in democracy, (d) *Complaints Principle.*—There should be an effective mechanism to address complaints in a fair and just manner, (e) *Balance Principle.*—A balance has to be maintained which is censorial on the basis of the principles of proportionality and least invasiveness, but which effectively ensures democratic

governance and self restraint from news publications. The committee recommended the following suggestions:—

(i) India has a strong, competitive print and electronic media

(ii) Given the exigencies of competition, there is a degree of sensationalism, which is itself not harmful so long as it preserve as the essential role of the media vzz; to report news as it occurs—and eschew comment or criticism. There are differing view as to whether the media, particularly the electronic media has exercised its right and privilege responsibly, but generalisations should be avoided. The important thing is that the electronic and print media has expressed (unanimously) its wish to act responsibly. The media is largely responsible and more importantly wishes to act responsibly.

(iii) Regulation of media is not an end in itself; and allocative regulation is necessary because the air waves are public property and cannot technically be for all but have to be distributed in fair manner. However, allocative regulation is different form regulation *per se*. All regulation has to be within the framework of the constitutional provision. However, a fair interpretation of the constitutional dispensation is to recognize that the principle of proportionality is built into the concept of reasonableness whereby any restrictions on the media follow the least in vasive approach while emphasizing the need for media responsibility, such an approach would strike the correct balance free speech and the independence of the media.

(iv) Although the print media has been place under the supervise of the press council there is need for choosing effective measure of supervision not control.

(v) As far as amendments mooted or proposed to the press council Act. 1978 this committee would support such amendments as they do not violate article 19(1) (a) which is a preferred freedom.

(vi) Apart form the Press Council Act, 1978, there is a need for newspapers and journals to set up their own independent mechanism.

(vii) The pre-censorship model used for cinema under the Cinematography Act, 1952 or the supervisory model for advertisements is not at all appropriate and should not be extended to live print or broadcasting media.

(viii) This committee wholly endorses the need for the formation of

(a) principles of responsible broadcasting

(b) institutional arrangements of self-regulation.

But the committee emphasised the need not to drift from self regulation to some statutory structure which may prove to be oppressive and full litigative potential.

(ix) The committee approved of the NBA model as a process that can be built upon both at the broad casting service provider level as well as the industry level and recommend that the same be incorporated as guidelines issued by the court under Art 142 of the Constitution of India as was done in *Visit aka's case* (AIR 1997 SCW 3043).'

2. Corrupt Practices In Telephone exchange.—The petitioner filed the instant original petition as a public interest litigation for and on behalf of the public and to protect their interest. According to the petitioner several corrupt practices were repeatedly going on in the telephone exchanges at Paia, Erapupetta, Ettumanoor and Ramapuram of Kottayam district causing loss of many lakhs of rupees to the telecommunication department in

particular and to the nation in general. The foundation of those allegations was mainly press reports. The petitioner also filed petition before the Additional Director General of Police. It was seen that most of the alleged irregularities could not be proved due to lack of material evidence. It was also stated that they were keeping a close watch.

Dissatisfied with the lethargy and the laxity on the part of the various respondents in responding to the serious allegations made by the petitioner against the officers of the telecommunication department, petitioner filed this original petition mainly praying for a writ of mandamus for conducting immediate investigation into the allegations made in complaint paper report and to file a copy of the investigation report this Court within a stipulated time. In the counter affidavit it was stated that no corrupt practices were reported to have taken place in the place mentioned in the statement of facts and there was no loss to the telecommunication department. It was further stated that the Sub-Divisional Engineer (Vigilance) in the Office of the General Manager, Telecommunications, Kottayam had conducted a very detailed investigation on the alleged burning of 1500 kg. of cable. Each and every allegation made by the petitioner had been the subject of departmental enquiry. Therefore, it was finally stated that there was no ground for this Court to give any direction and that none of the allegations made by the petitioner had been substantiated on enquiry and that the petitioner had been carrying on a smear campaign through papers and otherwise. In the statement it was stated that the local police charged 5 cases and that a special team had been constituted in Paia Sub-Division to conduct further investigation in the above cases. The allegation that local police did not take any legal action on the offences reported was denied.

The attitude of the petitioner was further revealed by the two prayers he made in the original petition. The second prayer in the Original Petition was for a direction to respondent No. 5 to place respondents 7 to 10 under suspension till the investigation of the entire incidents are completed by the 6th respondent and to take appropriate disciplinary proceedings against them. Another prayer in the Original Petition was for a direction to the second respondent to suspend the 5th respondent with immediate effect, to keep him under suspension till the investigation is over, and to take appropriate disciplinary proceedings against him. High Court was persuaded to pass an interim direction to the first respondent in C.M.P. No. 29137 of 1995 not to allow the second respondent to resume duty as Sub-Divisional Engineer, Telephones (outdoor) at Paia until further orders. Subsequently the Court after considering the various aspects of the matter vacated the above interim direction. Though the petitioner took up the matter in appeal, the order of the single Judge was not interfered with. All these attempts on the part of the petitioner lead to the irresistible conclusion that the petitioner has approached this Court not with the idea of taking up the larger interest of the public or to streamline the telecommunication department in and around Paia. The main idea seems to be settle the score with the 7th respondent. The Supreme Court has clearly stated in the *Janata Dal* cases quoting eminent Judges who paved the way for the public interest litigation that the Courts must be careful in entertaining public interest litigation and that the doors of the Courts would not be ajar for such vexatious litigants. In *Niyamavedi's* case also this Court categorically held that this Court in exercise of the powers under Article 226 of the Constitution or for that matter no Court has power to direct the investigating officer to include a person as an accused in the case while the investigation is in progress. Before the police file the final report before the Court, no Court can direct the investigating agency to implicate one as an accused and arrest him.^{2 3}

Relied on *Janata Dal v. H. S. Chowdhury*? The Supreme Court while dealing with

2. M. K. Paul v. State, AIR 1997 Ker. 69 at pp. 70, 72, 73 (C. S. Rajan, J.).
3. AIR 1993 SC 892.

the public interest litigation has observed as follows (at page 918 of AIR):—

“It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.”

“It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our 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, unrepresented and unheard, yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matter involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are linked up, detenus expecting their release from the detention orders etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious intervenes having absolutely no public interest except for personal gain or private profit either for themselves for as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result or which the queue standing outside the doors of the Court never moves which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system”.

Reliance was placed on a Bench decision of this Court reported in *Niyamavedi v. Rarnan Sriuastava*? This Court made the following observations in the above case :—

Mr. Tulsi, the learned Additional Solicitor General, representing the Central Bureau of Investigation, highlighted the impropriety of the prayer made by the petitioner in the O. P. Petitioner wants the investigating machinery to implicate the first respondent as an accused in the espionage case and to arrest him. This prayer is made on the basis of the news items published by Indian Express and Mathurbhoomi. Since the case is one stated to be affecting the security of the nation, according to *Mr. Tulsi*, the Court may be justified in examining the records.

. But, if such a prayer is made by anyone on the basis of paper reports to get another arrested or implicated in an ordinary criminal case, can the Court direct the investigating officer to include the named person as an accused in the case? On this aspect, we are having no doubt in our mind that this Court in exercise of the powers under Art. 226 of the Constitution or for that matter no Court has power to direct the investigating officer to include a person as an accused in the case while the in *

vestigation is in progress. Before the police files the final report before Court, no Court can direct the investigating agency to implicate one as an accused and arrest him.”

It is when there is gross violation of fundamental rights or when there is invasion of basic human rights or when there is complaint of acts which shock the judicial conscience, then alone the Courts should countenance the public interest litigation freeing themselves from the procedural shackles for remedying the hardships and miseries of the needy, the underdog and the neglected. As early as in 1987 Khalid, J. in the Ruling reported in *Shri Sachindanand Pandey v. State of W.B.*,⁵ has cautioned against the proliferation of public interest litigation in the following words (at page 1134):—

“Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public Interest Litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.”

3. Deficiency in Communication.—While in jail, communication.—With outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. A liberal view relating to communication with kith and kin specially is desirable. It is hoped that the model All India Jail Manual, about the need of which Court has already adverted, would make necessary provision in this regard. It may be pointed out that though there may be some rationale for restricting visits, to which aspect Court shall presently address, but insofar as communication by post is concerned, there does not seem to be any plausible reason to deny easy facility to an inmate. Prison visits fall into three categories:—

- (1) relatives and friends;
- (2) professionals; and
- (3) lay persons.

In the first category comes the spouse. Visit by him/her has special significance because a research undertaken on Indian prisoners sometime back showed that majority of them were in the age group of 18 to 34, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. Visits by the spouse are, therefore, of great importance. It is, of course, correct that at times visit may become a difficult task for the visitors. This would be so where prisoners are geographically isolated. This apart, in many jails facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasises their separation rather than retaining common bonds and interests. There is then urgent need to streamline these visits.⁶

4. Right to protect minors from obscenity published in newspapers.—In this petition it was contended that newspaper are publishing sex-oriented material which may not be obscene otherwise but still caters to prurient interest of the minor. Minors have got

5. AIR 1987 SC 1109.

6. Rama Murthy v. State of Karnataka, (1997) 3 SCC 386; (1997) 3 Bom CR 634 at 646, 647.

fundamental right under Article 19(1)(a), Article 21 read with “Article 39(f) of the Constitution and United Nation Convention on the Rights of the Child. As freedom of speech and expression also includes the expressions of the minors which need care, due to their tender age and mental immaturity minors are not capable of deciding themselves as to what is in the interest of their growth morally & culturally, so that they can assume their responsibility within the community. The right also flows from Article 21 as the right to have shall also includes right to education as pronounced in the judgments of the Court. By necessary corollary, it shall also mean right to proper education which may be decided by the parents, teachers and other experts and newspapers cannot be allowed to disturb that by their indeterminately access of the offending article to the minors regardless of their age. The State, which has the duty to protect the minors by appropriate legislation or executive orders, has failed in its duty. The Press Council of India, which was constituted for preserving the freedom of press and maintaining and improving the standard of newspapers but the news agency, is a powerless body. No guidelines have been framed for the minors and adolescents in particular, which can be enforced in Court of law. The Council itself feel the necessity of some strong and effective measure to correct it. The citizens of this country can only pray to the Court to prevent injustice being done to them. The Court under Article 32 read with article 142 can issue guidelines to ensure the growth of the children in a healthy and moral atmosphere, which is not exploited by the newspapers.

There should be no suppression of speech and expression in protecting children from harmful materials; In *Janet Reno v. American Civil Liberties Union*, 138 Led 2nd 874.

Where art and obscenity are mixed, the element of art must be so prepondering as to overshadow the obscenity or make it so trivial/inconsequential that it can be ignored; obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech. In judging as to whether a particular work is obscene, the society, its tradition and culture should be borne in mind. While the Supreme Court in India held *Lady Chatterley’s Lover* to be obscene, in England the jury acquitted the publishers finding that the publication did not fail the obscenity test. This was heralded as a turning point in the fight for literary freedom in UK. The test has become somewhat outdated in the context of the Internet age, which has broken down traditional barriers and made publications from across the globe available with the click of a mouse.

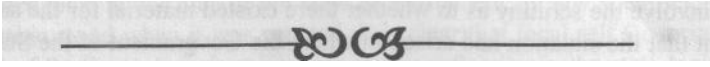
The definition of obscenity differs from culture to culture, between communities within a single culture and also between individuals within those communities. Many cultures have produced laws to define what is considered to be obscene and censorship is often used to try to suppress or control materials that are obscene under these definitions. The terms obscenity is most often used in a legal context to describe expressions (words, images, actions) that offend the prevalent sexual morality. The Constitution of India guarantees the right of freedom to speech and expression to every citizen. This right will encompass an individual to take on any issue. However, this right is not absolute, if such speech and expression is immensely gross and will badly violate the standards of morality of a society. Therefore, any expression is subject to reasonable restriction. This right offered by the Constitution has triggered various issues. One of the most controversial issues is balancing the need to protect society against the potential harm that may flow from obscene material, and the need to ensure respect for freedom of expression and to preserve a free flow of information and idea.⁷

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7. *Ajay Goswami v. Union of India, & Ors.*, AIR 2007 SC 493.

Chapter 19

Election



Synopsis

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1. Coalition Politics post election-Allegation of corrupt practices.—The action, which results in preventing a political party from staking claim to form a Govt, after election, on such fanciful assumption, if allowed to stand, would be destructive of the democratic fabric. It is one thing to come to the conclusion that the majority staking claim to form the Govt.; would not be able to provide stable Govt, to the State but it is altogether different thing to say that they have garnered majority by illegal means and, therefore, their claim to form the Govt, cannot be accepted. In the latter case, the matter may have to be left to the wisdom and will of the people, either in the same House is being taken up by the opposition or left to be determined by the people in the elections to follow. Without highly cogent material, it Would be wholly irrational for constitutional authority to deny the claim made by a majority to form the Govt, only on the ground that the majority has been obtained by offering allurements and bribe which deals have taken place in the cover of darkness but his undisclosed sources have confirmed such deals. The extraordinary emergency power of recommending dissolution of a legislative Assembly is not a matter of course to be resorted for good governance or cleansing of the politics for the stated reasons without any authentic material. It is urged that given a choice between going back to the electorate and accepting a majority obtained improperly, only the former is the real alternative. The proposition is too broad and wide to merit acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dissolutions and has far reaching alarming and dangerous consequences. It may also be a handle to reject post election alignments and realignments on the ground of same being unethical, plunging the country or the State to another election. This aspect assumes great significance in situation of fractured verdicts and in the formation of coalition Governments. If, after polls two or more parties come together, it may be difficult to deny their claim of majority on the stated ground of such illegality.

It is well settled that if the satisfaction is *mala fide* or is based on wholly irrelevant grounds, the Court would have the jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter on which he is required to be satisfied. On consideration of these observations made in the case of State of

Rajasthan as also the other decisions, *Kehar Singh & Another v. Union of India & Another*, 1989. (1) SCC 204 and *Maru Ram v. Union of India*, 1981 (1) SCC 107, Justice Sawant concluded that the exercise of power to issue proclamation under Article 356 (1) is subject to judicial review at least to the extent of examining whether the conditions precedent to the issue of proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that the situation had arisen in which the Government of the State could not be carried on in accordance with the provision of the Constitution. While considering the question of material, it was held that it is not the personal whim, wish, view or opinion or the *ipse dixit* of the President dehere the material but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of, has to have sufficient proof of information with regard to, or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from material is certainly open to judicial review.

The scope of judicial review was delineated by the Court in *State of Rajasthan and others v. Union of India and others*, 1977 (3) SCC 592 and was further expended in *Bommai's case* 1994 AIR SCW 2946 : 1994 (3) SCC 1. Tested on the touchstone of the guidelines set out in *Rajasthan's case* AIR 1977 SC 1361 and *Bommai's case* the Governor's report is clearly unsustainable and consequential Presidential Proclamation is unconstitutional. It is to be noted that the Presidential Proclamation was solely on the Governor's report as has been accepted by the Union of India.⁷

2. Prayer for countermanding the election of Madhepura Parliamentary Constituency on the ground of failure of Election Commission to conduct free, fair and impartial election.—In these circumstances, this writ petition is disposed of with a direction to the Election Commission of India, respondent No. 2 to hear the petitioner and others including the aggrieved candidate and/or his representative who wish to be heard in the matter and who wish to produce before the commission such material as in their possession to substantiate the allegations made. After hearing the persons concerned, the Election Commission of India may pass such order as it may consider necessary and proper in the facts and circumstances of the case.

The counting of the ballots has begun today and is likely to continue till tomorrow. Since the Election Commission of India is to hear the parties by forenoon tomorrow, the result of the election shall not be declared till the matter is heard by the Election Commission of India. Thereafter, the Election Commission will pass suitable orders regarding declaration of result as it may be advised. Nothing said in this order should be considered as expression of opinion on the merit of the case, on the allegations made in the writ petition. The Election Commission of India is free to consider all aspects of the matter and pass such order as it considers appropriate and proper in accordance with law.^{1 2}

3. Panchayat Election Local Self Government is an integral part of Parliamentary democracy.—The Parliament and the Legislature were always mentioned in the Constitution. The Panchayats and the Municipalities were specifically mentioned by a Constitutional amendment; and in between were sandwiched the local

1. Rameshwar Prasad & Others v. Union of India and another, AIR 2006 SC 980.
2. Janta Dal (United) v. Union of India, 2000 (2) BLJ 707 at 709 (Pat) (B.P. Singh a ' I.P. Singh, JJ.).

boards. The spirit of local self Government, however, was always there in the Constitution. It was destroyed by those two worked it. Even the founding fathers desired that this five tiered structure must be represented. The composition of the Legislative Councils in no uncertain terms lays down that about one third of the seats in the Council shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the state as Parliament by law specifies. This is how the Constitution stood when it was enacted. It is clear that local self Government was an integral part of Parliamentary democracy, and this reflection in the state legislatures was projected into the Federal Parliament as well. Democracy, thus, was to worked to togetherness with representatives from all sections of the people of India. Clearly, then, if local self Government bodies., that is, grass-root democratic institutions are not represented, Parliamentary democracy is incomplete?

4. Poll Violence.—The brief facts which are necessary for disposal of this public interest litigation are that 25th June, 2000 was the date fixed for municipal election for the Bidhan Nagar Municipality and the respondents Nos. 3 to 9 were deputed to see that the civil poll in Salt lake is held peacefully. On the day of Salt lake and the respondent authorities have failed to maintain peace, law, and order in the area. It is alleged that it will be evident from the newspaper reports and from the television news. It is alleged that in Ward No. 16 of Bidhan Nagar Municipality the electronic voting machine (EVM) at booth No. 3 A became inoperative after polling was completed as a result of which the ultimate decision of the electorate of that booth could not be ascertained. The State Election Commission thereafter ordered for repoll which was held on 2nd July, 2000. From the late night of 1st July, 2000 about 1000 miscreants were brought to Salt lake who started throwing bombs in the late night of 1st July, 2000 and in the early morning of 2nd July, 2000. Bombing was resorted to scare away the voters which continued up till 2.00 a.m. of 2nd July, 2000. It is alleged that 2nd July, 2000 was a Sunday and polling in Booth No. 3A of Ward No. 16 of Bidhan Nagar Municipality commenced at around 7.00 a.m. in the evening, At around 11.3 a.m. severe bombing started and some of the miscreants even went to the extent of beating up 'T', the Hon'ble Minister of State for Telecommunication, 'R', 'S', 'B' and 'A', all Members of the Lok Sabha and 'J', Member of Rajya Sabha. It is alleged that others who were beated were 'S', 'C', 'G' and 'S', all MLAs. Several gun shots were fired in the air. It is alleged that all these took place in front of respondents Nos. 2 to 9 that is the DGP, SP, Sub-Divisional Magistrate and District Magistrate of the area and other officers, but they failed to check the violence. As a result of these the genuine voters were prevented from going to the poll booth and exercise their franchise. It is alleged that the respondents Nos. 2 to 8 failed to discharge their duties, despite the fact that the incident has taken place, no effective measures were taken to check this violence and nor any follow up action was taken by the police. Therefore, by this petition it is prayed that these respondents have failed to discharge their duties, therefore, they should notice assigned any election duty in the forthcoming election.

No prompt action was taken of identifying those miscreants and apprehending them and bringing them to the book. It is the duty of the Police to take effective action by apprehending those miscreants. Section 23 of the Police Act mandates the duty of the police to maintain public peace and to prevent the commission of the offence and public nuisance, detecting and bringing offenders to justice and to apprehend all persons whom

3. Nand Kishore Singh v. Union of India, (2001)1 BLJ 481 at 484 (Ravi S. Dhavan, CJ & Aftab Alam, J.

he is legally authorised to apprehend and for whose apprehension sufficient ground exists. Though it is admitted by the SP in his affidavit that the police has registered a case against 300 unknown persons on the complaint of 'B', Officer in charge of Bidhan Nagar South Police Station under Sections 147, 148, 149, 323, 325 and 307 of IPC and under Sections 23 and 27 of the Arms Act, still no effective arrest was made. Mere registration of a case for investigation is not the end of the matter when such a serious law and order problem has taken place. It is necessary for the police to have effectively investigated the matter and bring the miscreants to the book. Section 23 of the Police Act gives mandate to the police to prevent commission of such offences as well as to maintain public peace and to prevent those who disturb the public peace. Simply registering a case does not mean that the police has effectively discharged their duties. Till the time of the hearing of the matter it was not known that police has really apprehended miscreants who were involved in the matter. In this kind of law and order problem a helplessness cannot be pleaded on behalf of the police, that only shows their lack of conviction to deal with the matter effectively. It is true that this public interest litigation should not be permitted to be misused at the hands of the persons who are motivated other than the cause of justice.

Though, allegations have been made by the respondents that his public interest litigation is not *bona fide* motivated and it is actuated with consideration other than public purpose. The fact remains that the incident did take place and the police registered a case against 300 unknown persons, but since then no serious investigation has been undertaken no arrest has been made except one. That shows that the police failed to bring the miscreants to the book. Therefore, the Court directed that the case which has been registered by the police should be properly investigated and pursued by the concerned police official to see that those who are involved in the matter should be brought to book at the earliest. Coming to the question whether those police officials and administrative officers who were entrusted to maintain law and order for peaceful conduct of the election has failed in their duties and they should not be assigned any election duty is a matter which is within the domain of the Election Commission and no direction for that part can be given. Election is very sacrosanct in democracy and persons who are entrusted to conduct the election impartially were polluting the election process then this will affect the sustenance of Indian democracy. Therefore, it is expected from the authorities who are supposed to maintain law and order do their duties honestly, objectively, impartially and allow this stream of election process to allow this stream of election process to flow uninterruptedly without being polluted by irrelevant consideration.^{4 5}

5. Hate Speeches during election campaign.—A writ was dismissed in deciding whether the Court in exercise of power under Article 32 of the Constitution should enter into the arena of effect and impact of election speeches rendered during the election campaign in a public interest litigation. Handling hate speeches could be a matter of adjudication in an appropriate legal forum and may also have some impact in an election disputes raised under the Representation of People Act, 1951, therefore, to entertain a petition as a PIL and to give directions would be inappropriate."

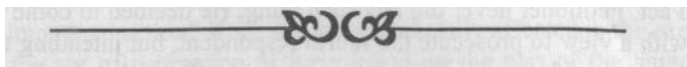
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4. Jyoti Priya Mallick v. State of West Bengal, 2001 Cri LJ 3101 at 3102, 3104 (Cal) (Ashok Kumar Mathur, C.J. and Girish Chandra Gupta, J.)
5. Jafar Imam Naqvi v. Election Commission of India (SC), 2014(15) SCC 420 : AIR 2014 SC 2537 : 2014(7) Scale 95.

Chapter 20

Accidents

(Motor Vehicles & Railways)



Synopsis

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1. Person Aggrieved.—On contravention of any condition of a passport or travel document or any provision of the Act, punishment prescribed is imprisonment for a term which may extend to three months or with fine which may extend to Rs. 500/- or with both. If an offence, if any it, *a* i reasonably to taken to be slightly or minimal, one may draw the presumption under Set 'on 95 of the I. P.C. which states:—

“Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and tember would complain of such harm.”

Section 157 of the Criminal Procedure Code, which states that an officer in charge of a police station, if, from information received or otherwise, has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate a cognizable case, shall proceed to investigate the facts and circumstances of the case, has got a proviso, which states “when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge or a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot” and further “if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case,” It is difficult to see why the petitioner did not go to the Police making a complaint about the offence committed by the fourth respondent. Even the Police would have legitimately ignored the complaint of the petitioner as on the facts aforesaid, it would be difficult to say that there was any *mens rea* present in the action of the fourth respondent in deciding to leave India and go to Sri Lanka. A public interest for the purpose of no action in Court should not be confused with any and every legal action which the State is expected to take. One who is aware of the criminal jurisprudence and the procedure prescribed by law in this behalf cannot even remotely suggest that a prosecution can be initiated only by the Director of the Central Bureau of Investigation, a Government of the State or Union of India. Law in this behalf can be brought in motion by any person bringing information about the commission of the offence to the notice of the officer-in-charge of a police Station. In case the Officer in charge of Police Station fails to act in accordance with law. Section 36 of the Criminal Procedure Code provides another forum to such a person to bring to the notice of an officer superior to the in charge of the Police Station that a cognizable offence has been committed and that the

Police is required to act under Section 3 of the Police Act alone, a Government of the State comes to exercise the power of superintendence and control. A complaint against the State comes to exercise the power of superintendence and control. A complaint against the State of no action taken by it can be available to a person only when he approached the officer in charge of the Police Station and he took no action and thereafter he approached the officers superior to the officer in charge of the Police Station and they too failed to act. Petitioner never did any such thing. He decided to come to this Court, it seems, not with a view to prosecute the fourth respondent, but intending to make a noise as to the violation of law and allege that a serious offence has been committed by a member of Parliament. On the question of *locus standi* of a person to maintain a writ of *certiorari*, which rule in my view, has to apply strictly to a writ of mandamus or for any other direction under Article 226 of the Constitution of India, the Supreme Court in *Jabhai v. Roshan Kumar*,¹ held (Para 36 of AIR):—

“It will be seen that in the context of *locus standi* to apply for a writ of *certiorati*, an applicant may ordinarily fall in any of these categories;

- (i) ‘person aggrieved’;
- (ii) ‘stranger’;
- (iii) busybody or meddle some interloper.

Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. They indulge in the pass time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.”

Thereafter the Supreme Court said (para 37 of AIR):—

“The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of ‘person aggrieved’. In the grey outer-circle the bounds which separate the first category from the second, intermix interfuse and overlap increasingly in a centrifugal direction. All persons in these outer-zone may not be “persons aggrieved.”

Some broad tests which are applied therefore to find out who amongst the strangers is a person aggrieved, who can maintain a litigation in a Court of law on behalf of another, the Supreme Court has said (para 38 of AIR):—

“ . . . Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by

1. AIR 1976 SC 578: 1976 3 SCR 58.

law has been prejudicially and directly affected by the act or omission of the authority complained of? Is he a person who has suffered a legal grievance, a person “against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something”? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? or is it a statute dealing with private rights of particular individuals?”²

2. Railways Facilities.—The instant petition was filed by socially conscious Advocates practising in the Co-operative Courts, making grievance about the action of the Railways, and which seriously affect the commuting passengers on the Suburban service. It is well known that large number of passengers are required to travel on the suburban service of the Central Railway and the service extends from Victoria Terminus up to Diwa Station. The passengers who travel by this train leave their house early in the morning to reach their offices situated at the extreme south of the city and return back late in the evening. The passengers include large number of women and also children attending the schools and colleges. The complaint of the petitioners is that initially the passengers had the facility of using toilets and urinals situated at the Railway Stations, but the Railways have started demolishing large number of these toilets and urinals causing grave hardship to the passengers. The petitioners also claimed that the Railways do not take any steps to keep these toilets and urinals clean, but permit people who are residing outside the Railway Stations to use it even though they are not genuine passengers. The petitioners also made a grievance that the action of the Railways in charging the passengers for use of the facilities at the two Railway Stations, Victoria Terminus and Dadar is illegal. The petitioners also made some other grievances in respect of these facilities, but it is not necessary to set out those grievances in detail.

It would not be proper for the Railways to deprive these basic facilities to the passengers. Counsel for railways pointed out that the Railways had taken this decision because the trespassers were using these facilities to the detriment of *bona fide* passengers and the passengers association has suggested demolition of urinals and toilets on the railway platforms in the meeting held with the railway officers. It is well-known that the people residing in hutment or on the streets outside the railway stations use these facilities in absence of proper facilities made available to them by the Corporation, but the mere fact that the facilities are misused by the trespassers is no ground to deprive the genuine and *bona fide* passengers from these basic requirements. One can very well imagine what would be the plight of women, children and large number of passengers travelling on these railways if they cannot answer the call of nature for the whole day for absence of the proper facilities. The action of the Railways in demolishing the toilets and urinals is nothing short of a deprecate act because of its inability to prevent the trespassers from using it.

2. D. Gopalan v. Union of India, 1991 Cri LJ 2249 at pp. 2251, 2252, 2253 (Mad.).

In these circumstances Court suggested to Counsel for the Railways that the Railways should give the facilities of toilets and urinals to the suburban passengers by providing with requisite number of toilets and urinals at each railways platform. Court inquired from Counsel for the Railways whether it would not be reasonable if some charges are levied for use of these facilities as that would generate employment to large number of poor people and it would also enable the Railways to provide clean toilets and urinals which the passengers would very well appreciate. Counsel with his usual fairness stated that he entirely agrees with the suggestion and would convey it to the Railway Officials and reasonable time should be granted to secure instructions. Accordingly, the petition was adjourned on more than one occasion and today counsel for the Railways that the Railway authorities also appreciated the suggestion but desired that the Court pass the order.

Counsel for the petitioner submitted that though the petitioner had challenged the action of the Railways in levying some charges for grant of these facilities, the petitioners would have no objection if the facilities are given at each railway platform and for the use of these facilities the Railways levy some charges. It would do public good if the Railways maintain toilets and urinals on the suburban Railway Stations and adopts the principles of 'pay and use'.

The respondents were directed to provide toilets and urinals facilities at each railway station situated between Victorial Terminus and Diwa Station by employing the pay and use system. The Railway Authorities should implement this direction as expeditiously as possible. The Railway Authorities shall ensure that the toilet and urinals facilities would **be** maintained in good shape and would be kept clean.³

3. Stage Carriage Permit—Grant of.—An important question on the interpretation of Clause (4) of Section 71 of the Motor Vehicles Act, 1988, hereinafter referred to as the Act arises for consideration. As per that clause a Regional Transport Authority shall not grant more than five stage carriage permits to any individual or more than ten stage carriage permits to any company, not being a State Transport Undertaking. Clause (5) of that section further states that in computing the number of permits to be granted under sub-section (4), permits held by an applicant in the name of another person and the permits held by any company of which such applicant is a Director shall also be taken into account. Clause (5) has got an explanation added to it. As per that explanation 'company' means anybody corporate and includes a firm or other association of individuals. It further states that Director in relation to a firm means a partner in the firm. A plain reading of the above provisions makes it clear that an individual cannot have more than five stage carriage permits. Likewise a company which is a body corporate, a firm or other association of individuals cannot have more than ten stage carriage permits. This restriction is not applicable to State Transport Undertaking. The question raised here is whether a co-operative society is entitled to have than ten stage carriage permits.

Regional Transport Authority, Kollam notified the route Keralapuram-Chavara under Section 57(2) of the Motor Vehicles Act, 1939, hereinafter referred to as 1939 Act. In pursuance to that notification, the fourth respondent, a co-operative society and three others applied for the permit. Those applications were published under Section 57(3) of the 1939 Act, inviting objections from interested operators. By the time it became ripe for consideration, the 1939 Act ceased to be in force. Applications came up for consideration

3. Ramanathsekhar v. Pandho Padhava, AIR 1997 Bom. 98 at op. 98, 99 (1986) 2 Bom LR 60: 1986 Mah LR 812 (Pendse, J.).

before the authority at its meeting held on 7-4-1990. Fourth respondent's application was rejected. Fourth respondent challenged that decision of the second respondent before the first respondent, tribunal by moving M.V.A.A. 619/90. First respondent by judgment took the view that the restriction regarding the number of permits contained in Section 71(4) does not apply to Co-operative Societies. In this view the decision of the Transport Authority was set aside and the authority was directed to consider the fourth respondent's application afresh. When the matter came up before the second respondent at its meeting held on 6-5-1991, application put in by the fourth respondent was sanctioned as directed by the first respondent subject to settlement of timings by the third respondent. Petitioner challenges this grant.

Fourth respondent filed a detailed counter-affidavit. The contentions taken therein are that the petitioner has no *locus standi* to challenge the impugned grant and that the restriction imposed by Section 71(4) will not apply to Co-operative Societies. It is also contended that Cooperative Societies are Transport Undertaking for the purpose of the Motor Vehicles Act, 1988 and so is outside the purview of the restrictions contained in Section 71(4).

Petitioner claims to be a registered association of private bus operators in Kollam district and is affiliated to the Kerala State Bus Operators Federation. Ext. P1 was a representation submitted by the petitioner to the Chairman of the second respondent. It was a the letter-head of the petitioner-association. That letter-head shows that the association is registered under the Societies Act with registration No. 161/84. From this it was seen that the petitioner was a society registered under the Societies Registration Act. This fact was not disputed by the fourth respondent in the counter-affidavit or at the time of the argument. In *D. S. Nakara v. Union of India*,⁴ the question whether a society registered under the Societies Registration Act, 1860 has the *locus standi* to maintain the petition before the Supreme Court was considered. Dealing with that issue their Lordships observed at page 149 (of AIR):—

“*Locus standi* of third petitioner was questioned. Petitioner No. 3 is a Society registered under the Societies Registration Act of 1860. It is a non-political non-profit and voluntary organisation. Its members consist of public spirited citizens who have taken up the cause of ventilating legitimate public problems. This Society received a larger number of representations from old pensioners, individually unable to undertake the journey through labyrinths of legal judiciary process, costly and protected, and, therefore, approached petitioner No. 3 which espoused their cause. Objects for which the third petitioner Society was formed were not questioned. The majority decision of this Court in *S. P. Gupta v. Union of India*,⁵ rules that any member of the public having, sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Third petitioner seeks to enforce rights that may be available to a large numbers of old infirm retirees. Therefore, its *locus standi* is unquestionable.”

Petitioner approached High Court not to protect any particular interest of the members of the Society. It has come to the Court to highlight the illegality committed by

4. AIR 1983 SC 130; 1982 Lab IC 1.

5. 1981 SCC (Supp) 87; AIR 1982 SC 149 at p. 194.

the second respondent in granting permit, in violation of the statutory provision. The petitioner was according to counsel interested in protecting the interests of the stage carriage operators. It wants to see that the provisions of the Act were strictly implemented. Since the second respondent granted the permit in violation of the statutory mandate, it is contended the petitioner is entitled to move High Court. This argument appeared to be well founded. According to the counsel representing the fourth respondent, petitioner not filed any objection in pursuance to the notification issued under Section 57(3) of the 1939 Act. So he was debarred from raising any contention against the claim for the permit put forward by the fourth respondent. This argument would have had some force, had the application of the fourth respondent been considered under the 1939 Act. It is common case that the application which was filed under the 1939 Act was disposed of under the Act of 1988 and that the provisions of the 1988 Act controls the matter. So the absence of objection in pursuance to the notification under Section 57(3) of the 1939 Act cannot go to disentitle the petitioner from raising the objection based on the statutory prohibition.

It was then contended by the counsel for the fourth respondent that the petitioner did not raise any objection before the second respondent when Ext. P5 grant was made. This statement could not be accepted be-, cause of the following circumstance. The files now made available to Court by the Government Pleader shows that the petitioner appeared before the second respondent while it considered the fourth respondent's application for the permit by engaging the counsel. The vakalath filed by the advocate is in the files. No written objection was filed. According to the counsel representing the petitioner the grant was objected to. Since petitioner appeared before the second respondent through counsel whose vakalath is seen among the files. Court took the view that petitioner objected to the grant. Therefore he was held entitled to challenge the grant. In the above circumstances it was also held that the petitioner was having *locus standi* to maintain this Original Petition.

A Regional Transport Authority should not grant more than ten stage carriage permits to any company other than a State Transport Undertaking. Admittedly fourth respondent was holding more than twenty permits. Fourth respondent can sustain Ext. P5 grant only if it succeeds in showing that it is a State Transport Undertaking. Otherwise the grant evidence by Ext. P5 will be against the statutory prohibition contained in Section 71(4) of the Act. The counsel attempted to establish that a Co-operative society is a State Transport Undertaking for the purpose of the Act. He argued a co-operative society is a body corporate. A body corporate is a Corporation. If that corporation is controlled by the Government, then it will be a State Transport Undertaking as defined in Section 2(42) of the Act, Co-operative societies registered under the Kerala Co-operative Societies Act are controlled by the State Government. So fourth respondent is a State Transport Undertaking. In this view of the matter, the argument proceeded, the prohibition contained in Section 71(4) cannot apply to the fourth respondent.

In *S. S. Dhanoa v. Delhi Municipality?* their Lordships had to consider whether a member of the Indian Administrative Service, whose services were placed at the disposal of a Co-operative Society registered under the Bombay Co-operative Societies Act can be considered as public servant within the meaning of Clause (12) of Section 21 of the Penal Code for purposes of Section 197 of the Code. There, while dealing with that issue their Lordships took the view that a Co-operative society registered under the Co-operative

Societies Act is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a statute. In the light of this decision, it was contended, a co-operative society is held to be not a corporation established by or under an Act, But this view has not been, according to counsel followed in a later decision. Their Lordships in *Asoka Marketing Ltd. v. Punjab National Bank*,¹ after considering the above decision took the view that there is no distinction between a body corporate and a corporation. Hence it was argued that if Co-operative Societies are body corporate they are corporations. Section 9 of the Cooperative Societies Act provides that the registration of a society shall render it a body corporate. Thus it was contended that a Co-operative Society is a corporation.

Section 2(42) of the Act defined State Transport Undertaking in the following terms:

“State Transport Undertakings means any undertaking providing Road Transport Service, where such undertaking is carried on by :—

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under Section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.”

Sub-clause (iii) of the above clause makes a corporation controlled by Central Government or State Government a State Transport Undertaking. According to counsel, all Co-operative Societies registered under the Co-operative Societies Act are controlled by the State Government. Various provisions contained in Co-operative Societies Act show that the Governmental control is all pervasive. In this view counsel wanted High Court to hold that Co-operative Societies doing business in transport are State Transport Undertaking for the purpose of the Act.

The Government control over the Co-operative Societies was considered by a Full Bench of High Court in *Bhaskaran v. Addl. Secretary*,^{7 8} This Court observed at page 85 (of AIR):—

“The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover, the Government has no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the Societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not ‘an imprint of State under Article 12’.”

From this authoritative statement of law, it was held, that Co-operative societies are not corporations controlled by the State Government. Consequently they are not State Transport Undertaking.

7. AIR 1991 SC 855.

8. 1987 (2) Ker LT 903: AIR 1988 Ker 75 (FB).

Clause (3) of Section 71 gives power to Central Government to limit number of stage carriages generally or of any specified type operating in city routes in towns with a population of not less than five lakhs by issuing notification. If such a limit is fixed sub-clause (b) of that clause states that the Government of the State shall reserve in the State certain percentage of stage carriage permits for scheduled castes and scheduled tribes from out of the number reserved by the State under sub-clause (b). Sub-clause (d) further stated that the Regional Transport Authority after reserving such number of permits for scheduled castes and scheduled tribes as provided by sub-clause (c) shall in considering an application for the permit, have regard to the following matters, namely, financial stability of the applicant, satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service and such other matters as may be prescribed by the State Government. That sub-clause contains a proviso. As per that proviso when other conditions being equal, preference shall be given to applications for permits from stage carriage undertakings and then to Co-operatives Societies registered or deemed to have been registered under any enactment in force. From this provision it is abundantly clear that the legislature was aware of the existence of the Co-operative societies in contradiction to State Transport Undertaking, the above proviso will be meaningless. Legislature cannot be presumed to have used the language without knowing its meaning. Therefore it was held that Co-operative Societies registered under the Kerala Cooperative Societies Act, 1969, by no stretch of imagination can be treated as "State Transport Undertakings" as defined in the Act.

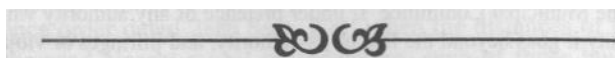
The distinction between State Transport Undertaking and Cooperative Society is recognised by the legislature in the very same section, namely, Section 71. So the Co-operative Societies are outside the definition of State Transport Undertaking. Co-operative Societies can be considered as associations of individuals only. Such associations of individuals come within the mischief of Section 71(4) of the Act. The contrary view taken by the first respondent in Ext. P4 judgment is unsustainable. If that approach is adopted, this Court will be rewriting the section. This Court is not to resort to such a course. Therefore, judgment was quashed. The grant of the permit in pursuance to that judgment should also be set at naught because it is conceded before Court that the fourth respondent is having more than ten stage carriage permits fixed under Section 71(4) of the Act. Therefore Ext. P5 grant was also set aside.⁹

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9. Quilon Dist. Pvt. Bus Operators Association v. S.T.A.T., Emakulam, AIR 1992 Ker. 267 at pp. 269, 270, 271, 272 : (1991) 2 Ker LJ 545.

Chapter 21

Construction



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1. Haphazard Construction of Hotels.—Relief Not Granted.— Admittedly, no right of the petitioner is invaded or threatened, as such, lie has no cause of action to file the present writ petition in his individual capacity but as a member of the general public of Manali town and being one of the apple orchardists and hoteliers who has the interest keep the beauty and ecology of Manali town intact, which is one of the most important tourist spots in Himachal Pradesh, the petitioner has *locus standi* to file this petition as public interest litigation to complain that the respondents are permitting haphazard construction of hotels, guest houses and other commercial establishments in violation of

the Municipal Act and building bye-laws made and instruction issued in this regard.¹

In *K.Ramadas Shenoy v. The Chief Officers, Town Municipal Council, Udipi*,² it is observed in para 27 of the judgment that: —

“The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative.”

2. A high land meant exclusively for growing of the trees and not meant as a public thoroughfare A community hall has been constructed under the orders of the Block Development Officer—Public Funds were provided for building the community hall Simultaneously, the State counsel is under an obligation to intimate the District Magistrate that the matter will be before the Panchayat and such should be parameters of local self Government which need to be encouraged.—Five residents domiciled in village Uprahuli, Police Station Pariya, District Gaya, filed the writ petition as a Public Interest Litigation complaining that upon Plot No. 622, Khata No. 175 Gairmazrua Aam land otherwise Chhaur, (A High land meant exclusively for growing of the trees and not meant as a public thoroughfare) a community hall has been constructed under the orders of the Block Development Officer, Public funds were provided for building the community hall.

In the circumstances, notwithstanding the fact that the construction has been made and regard being had to the context of the present times that at the slightest opportunity protected common use lands and green areas are being encroached by *abadi* that was habitation, the community hall has been made on land which was meant to be protected and left vacant. Thus, the High Court cannot certify that the action of the respondents was correct. In fact, making a community hall on an area which was meant to be left vacant, was an illegality. It was not curable and the High Court cannot encourage this sort of building activity where conforming usage of land requires it to be left vacant, as necessarily village life also demands vacant stretches of land for use as pathways, embankments, ponds and grazing have been made on any other area. Normally the Court would pass an order that the community hall be demolished, but the Court was not giving this direction at present for one basis reason.

In the circumstances, this issue will be kept alive. This matter, will be referred to the local Panchayat. The local Panchayat will be guided by regulations which prevent and protect conforming usage of land and Chhaur land was one of them.

The Court will refrain comments on this as it would amount to encouraging an illegality. This matter now will be before the Panchayat and it will be obliged to take a decision in accordance with law even if it be the removal of the community hall and building it elsewhere its construction was permissible.

The petitioner may place this matter before the Panchayat. Simultaneously the State Counsel was under an obligation to intimate the District Magistrate that this matter will

1. Krishan Banon v. State of H.P., AIR 1999 H.P. 87 at 93.94

2. AIR 1974 SC 2177

be before the Panchyat and such should be parameters of local self Government which need to be encouraged.³

3. Street alignment is in a straight or a gentle curve natural to the road and the set back, from the center of the road, as indicated in the details given to the Court are maintained—Buildings eclipsed by a 110 foot distance or either side of the road are to be identified.—A plain reading of the entries of the six buildings when taken into account (reference order dated 28th Sept. 2001) then the distances of the buildings from the center of the road clearly reveal an indication, such of those buildings which may have been used for residences and these are pointed out as premises mentioned at Item No. 1 (Municipal Survey No. 470/139) and premises at Item No. 2 (Municipal Survey No. 233/160) the set-backs are less than public buildings. It is clear that all public buildings have their set-backs more than the residential buildings. For instance, the High Court has been set back from the center of the road at 173' 6". The distance of the buildings opposite, the Patna Women's College was not less than that. The buildings known as Gardiner State Hospital has been set back to 170 from the centre of the road. The buildings opposite known as Sahay Sadan is 201'.

While the respondents are still searching for their buildings bye-laws which they cannot seem to locate and the set backs are being measured without the bye-laws, this clearly is a reverse way of finding the misplaced bye-laws. This is like digging into an archaeological site to discern how this section of the city was planned. By now it is clear that those incharge of city planning do not find it convenient to locate the bye-laws. Instead they would rather re-measure previous habitat controlling distances. On record are the measurements which have been taken by the Superintending Engineer, Central Circle, Road Constructions Department, Patna.

Before this Urban area deteriorates further a retrievable plan will need to be chalked out for the drainage system, the sewerage system, the drinking water supply system, of re-allocating the footpaths, the curb on the road, all of which appear to have disappeared as if Urban planning discipline could be violated at anybody's will. But there is an obligation on the respondents and on the Court not to overlook the concept of intergeneration equity to for see the future and ensure that the generation hereinafter gets a safer city to live in a civic city with amenities for civic citizens. Let further damage not be done otherwise it will not be possible to keep up the standards in protecting conforming areas of the city and resurrect, repair, maintain and identify the storm-rains, the public sewteiage system and the municipal water supply lines. The Court has "already been addressed that these standards stand abdicated under the cover of lost plans and regulations, both. It needs to be kept in mind, that storm-drains, sewage pipes, municipal water supply lines have a common factor in hydraulic engineering. Drains, sewage pipes and water supply lines are laid in a straight line and do not suffer obstructions if they are meant to function. Buildings which are erected alongside of a public road affect the aforementioned public facilities and essential services if building concepts are violated. Running a city without respecting conforming areas is a dangerous trend and will ultimately ground and collapse the city.

To prevent further damage, until further orders all construction work on the entire strength of the public street, the Bailey Road, within 110' (foot) from the center of the road on either side shall remain stayed and this will be ensured by the respondents, their

3. Deoratan Vishwakarma v. State of Bihar, (2001) 3 BLJ 231 at 232, 233 (Pat) (Ravi S. Dhavan, C.J. and Shashank Kumar Singh J.).

agents and assigns. No map for construction within this stretch of the area will be passed.

The respondents will now indicate to the Court the Bailey Road as the law strictly obliged them to protect and maintain and for its restoration with stricter parameters as Patna's Urban Area bye-law has changed from a municipality to a corporation. A clear acceptance that the population density on this metropolis has increased manifold.^{4 5}

4. Encroachment.

(i) **on Government Land.**—A public interest writ petition was decided by an order of the Division Bench of his Court comprising *B.N. Kirpal* and *Arun Madan, JJ* on 29 October, 1993.

That writ petition was numbered as C.W.P. 1924 of 1993 and has been filed by South Delhi Citizens Forum, *inter alia*, stating that despite acquisition of land measuring 316.9 acres in Kilokari, Khizrabad and Okhla, which was very valuable land, large scale encroachments have taken place which were not being removed by the D.D.A. or by the police.

By the order dated 29 October, 1993, the writ petition was disposed of and direction was given to remove the encroachment in accordance with law.

The applicant has now filed an application for intervention in the said decided writ petition asserting that he filed earlier a writ petition, and that writ petition was disposed of by a Division Bench of High Court (R.C. Lahoti and A.K. Srivastava, JJ) with certain observations. The applicant relies upon the observations of the Division Bench that clarification can be obtained from the Bench which decided the case.

Held, that in a decided writ petition, which was a public interest petition, a person who could have made representation therein, and heard in that petition, and chosen not to do so, is entitled to (be) heard, especially in petition in which complaint was made that encroachments have taken place on the land vested in the Government.³

The admitted facts in the present case were that the encroached land where the *jhuggi jhopris* are now based belong to the Railways and some of these dwelling houses are built on areas which are adjoining the railway line in and around the Tuglakabad Railway Station as well as near the power cabin which can be a source of continuous hazard to even the dwellers. In the present petition under Article 226 of the Constitution of India where the *jhuggi jhopris* were built on the railway land and even in and around railway tracks, no relief can be granted to the petitioners as prayed for. There may be some hardship and dislocation of the dwellers who have stayed in these places for sometime but that does not by itself confer any legal rights which can be adjudicated in exercise of powers under Article 226 of the Constitution of India, particularly when the ownership of land is not disputed. It will be following a very dangerous precedent to give legal sanction to encroaches who occupy Government land on the false assurance of regularisation held out by some unscrupulous persons who often mislead the poor and needy for selfish and vested interest. The matter has also to be viewed on the basis of the safety of the dwellers as the *jhuggis* are located in and around the railway tracks which are further exposed to high tension electricity wiring and power cabins and the

4. R. Usha v. State of Bihar, (2001) 3 BLJ 688 at 689, 690 (Pat) (Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.)
5. South Delhi Citizens Forum v. Government of N.C.T. of Delhi, AIR 1996 Del 155 at 155, 156 (Mahinder Narain and Vijender Jain, JJ.)

continuous presence of the dwellers is indeed very hazardous. Faced with this plea as raised by the respondents, the counsel for the petitioners submits that the dwellers will not make any claim or claims in case accident takes place resulting in injury to them. This submission is totally misconceived and no reasoning is required to reject the same.

The dwellers herein have unauthorisedly occupied railway land which can safely be held to be reserved or earmarked for public purpose as trains run in and around the said land and high tension cables are installed for electric operations, as required for the functioning of the railways.

The members of petitioner's association have unauthorisedly and illegally occupied and encroached upon the public properties which are intended to serve the national interest as well as the convenience of general public.

In view of the settled position of law and for the aforesaid reasons, there is no merit in the present petition. Reference to the assurance and to the so-called National Housing Policy as made by the petitioners, does not specifically deal with the case of the dwellers who have unauthorisedly and illegally encroached upon the railway land and in any case, no statutory and constitutional rights can be established on the basis. The petition is, therefore, dismissed. To obviate the sufferings of the dwellers and to minimise the hardship involved in their eviction, High Court direct that the respondents shall not remove the *Jhuggis* and other unauthorised structures until 31st August, 1996.^{6*}

(ii) of road.—The Apex Court observed with regard to existence of rule of law in Delhi in respect of unauthorised constructions, encroachments etc. It was stated that Monitoring Committee is fully entitled to carry out functions for which it was constituted in accordance with directions of Supreme Court. *M.C. Mehta v. Union of India, (SC)*, 2018(1) Scale 416.

If the width of road at a particular spot tallies with the width of the road shown in the revisional survey map, it was still necessary to measure and correct the boundary of the adjoining plots of landholders. Since the Court is concerned in this case with public lands which include not only the metalled portion of the road but even the kuccha road on the flanks of the metalled portion, the authorities were strictly concerned with the encroachments made on the road which includes the flanks. The Court may clarify that the flanks may include not only the land, which is immediately adjacent to the metalled portion, but also the land which may have been kept reserved for future widening of the road and in that sense, it forms a part of the road. If on measurement it was found that the width of the road in its comprehensive sense tallies with the width of the road, as shown in the concerned official map including R.S. map, there was no need to ask the landholders of the adjoining lands to correct their boundaries. The direction are issuing was not with regard to the areas falling within the P.R.D.A. and other Regional Development Authorities which are governed by bye-laws framed by the Authority. In the absence of such bye-laws or rules that may have been framed by the Government, the rational approach was first to locate the road by reference to official document and thereafter to demarcate the encroached portion of the road and ask the person concerned to remove the encroachment. It would be unfair to equally divide the blame of encroachment on two landholders, one of whom may not have encroached at all while the entire encroachment may be the handwork of the work landholder.

6. Tuglakabad jhuggi Jhopri Welfare Association v. Union of India, AIR 1996 Delhi 370 at 372, 374, 375 ; (1996) 63 Del LT 265.

After the authorities take measurement and mark the offending structures which they find to be in nature of encroachment, the authorities may give a written notice to the landholders indicating therein the width of the road, and the nature and extent of encroachment and requiring the landholders/encroacher to remove the encroachment within 72 hours. If the landholder fails to remove the encroachment within 72 hours at his own cost, the same may be removed by the authorities at the cost of the landholder. '

Where a notice has been served upon a landholder or informing him of the nature and extent of encroachment made by him on public road/land, if the measurement has not been done in presence of the said landholder, and he makes a request within 72 hours of receiving such notice for measurement of the alleged encroached portion of the road, the authorities should normally accept to this request. However, where a measurement was done in presence of the landholder, the landholder will not be justified in making such request for measurement. If for any reason the notice cannot be served upon the landholder by reason of his refusal to accept or by reason of his absence or by reason of anyone else accepting such notice, the notice will be deemed to have been validly served, if the same was affixed at some prominent part of the offending structure. The Court may only impress the authorities the fact that it would be advisable, if possible to associate the landholders with the measurement of the road encroachment etc. So as to avoid future objections. It was sometimes found that the residents of the area are not aware of the specification/width of the road, and it may be that sometimes unwillingly they encroach upon the road. The Court would request the authorities to find ways and means of marking the extent of the road including the metalled portion of the road, flanks and the land meant for future broadening of the road. The Court are told by Counsel for the P.R.D.A. that stone pillars have been erected at many places to demarcate the roads. The Court direct that wherever such demarcation was absent, the authorities may take appropriate steps, as indicated above. The Court may further clarify that the above direction was in relation to areas and matters which are not governed by any rules, bye-laws etc. framed by the Regional Development Authorities or by the Government. In those cases the bye-laws, rules etc. Framed by the Regional Development Authorities shall prevail. An encroachment of a few inches, say 6" to 9" (six to nine inches) should not be taken serious note of, and no structure should be demolished only for removal of an encroachment which was not more than 1' (one foot), but this direction will not apply where the minimum width of the road has been specified or there was any rule or bye-law passed in accordance with the governing the case.^{8 9}

It appears that there has been some litigation pertaining to subject land before the Civil Court as well as before the Court. In one of the writ petition, the Court took a view of the Rajiv Gandhi Kachchi Basti a part of which situated at Samanvay Nagar that it could be disturbed because poor persons were occupying the place since years together. The said observations were made in the writ petition filed by the petitioner himself being S. B. Civil Writ Petition No. 2135/99 *Anil Chordiya v. State* decided on 5-11-999. A special appeal against the said judgment was dismissed by the judgement of the Division Bench dated 2-2-2001. A further survey was undertaken under the direction dated 18-7-2002, The details in regard to occupation has been placed on record. It was stated that Rajiv Gandhi Basti has got nearly 3000 encroachments of different type of houses in all.

8. Arun Kumar Mukherjee v. State of Bihar, (1999)1 BLJ 306 at 306, 307 (Pat); (1999)1 PLJ R 254 (B.P. Singh and N.K. Sinha, JJ.).
9. Arun Kumar Mukherjee v. State of Bihar, (1997)1 BLJ 306 at 307(Pat); (1999)1 PLJ R 254.

It was further stated that it was only a part of the Basti which was situated on the land of “Samanvay Nagar” Plan. The petitioner and similarly situated persons have taken the licence from the Urban Improvement Trust with an open eye that there was an encroachment on the subject land. In the peculiar facts and circumstances of the case, no direction can be given by the Court in exercise of powers under Art. 226 of the Constitution of India to evict large number of families settled for number of years. Suffice it to say that it was not a fit case to invoke the extraordinary powers of the Court under Art. 226 of the Constitution of India. (*Anil Chordiya v. State of Rajasthan* AIR 2003 Raj 49 at 50).

In this Public Interest Litigation, the petitioner had brought to the notice of the Court the malfunctioning of Rajendra Madical College and Hospital. Ranchi (now known as Rajendra Institute of Medical Sciences, Ranchi), alleging therein, that the Hospital was encroached by a number of persons; there was no boundary wall; no security arrangement; stray animals (specially dogs) and that anti-social elements were moving and visiting the Hospital as well as the residential area freely. The toilets and bathrooms were in dilapidated state and practically there was no supply of water and, as such, the Hospital was facing acute crisis. The interest wiring of the Hospital was in such a dangerous condition that it might cause accident at any point of time. Other malfunctioning was also brought to the notice of the Court.

In spite of repeated orders, passed from time to time, no step was taken to remove all the encroachments and even one of the Ministers continued to occupy the quarter of Superintendent of the Hospital. Since 2001 continuous monitoring were done and orders were passed from time to time, on account of which certain improvements, like removal of encroachments, cleaning of filth, garbage etc., took place for the time being. After a number of orders, having been passed by this Court, ultimately an order was passed by the Supreme Court and thereafter, pursuant to initiation of a contempt proceeding, the said Minister vacated the quarter of the Hospital.

Though such orders were passed in public interest and a large number of persons intervened and complained their difficulties, no interest was shown either by the State Government or by any Public Representative. Even no individual, including N.G.O., took any step to ensure that the Hospital functions property. However, whatever was done was due to the orders, passed by this Court from time to time.

Certain developments having been made, it was brought to the notice of the Court that though the patients are now admitted, they are neglected. Patients of the departments of Gynecology, Obstetrics and Surgery were found to be most neglected one amongst others. In spite of repeated orders, passed by this Court, hygiene and cleaning in the Hospital, on inspection by the Committee, were not found up to the mark. Meanwhile, the State Government made a big announcement that the Hospital would be converted as an Institute of repute like “All India Institute of Medical Sciences, New Delhi”. It came out with an act of changing the name of the Hospital from “Rajendra Medical College & Hospital, Ranchi”, to “Rajendra Institute of Medical Sciences, Ranchi” and after change of name, though the Hospital was given autonomy, it continued to function in the manner, it was functioning and, thus, even after the Hospital having become autonomous, no development took place.

In the meantime, a stage came when the College was issued notice by the Medical Council of India as to why the College be not de-recognized. It was brought to the notice of the Court that the Medical College, one of the petitioner colleges of the State, is facing

threat of de-recognition because no step was taken to fill up Teaching, Non-Teaching, Medical, Para-Medical, Class-II & Class-IV posts. At that time, even there was no Director appointed by the Institute for years together. When the matter was enquired into, it was found that while the Chief Secretary was the Ex-officio Chairman, some other Government Officials were the Members of the Committee and because of non-cooperation by the State, posts were not filled up. Since 2002, though repeated orders were passed to fill up Teaching, Non-Teaching, Medical, Para-Medical, Class-III and Class-IV posts, giving one or other ground, all the posts were not filled up. A stage further came that because of less number of Teachers' strength, Post Graduate seats of Medical Education could not be filled up, as they were dependent on the ratio of Teachers and Students. The Court had to pass orders, prohibiting the Institute from admitting P. G. students in this Medical College beyond the ratio of the Teachers & Students, due to which the students also did suffer. In spite of repeated orders when the posts were not filled up, the Chief Secretary, who was the Chairman of the Governing Body of RIMS, Ranchi, the Acting Director of RIMS, Ranchi and the Development Commissioner, Ranchi, who was the Chairman of the Selection Committee, were called and asked to give the total number of posts, which were to be filled up, and directions were issued since 14th December, 2004 to fill up all the posts immediately. In spite of repeated orders, posts could not be filled up due to one or other action on the part of the State Members of the Governing Body and recently only in February, 2006 i.e. after five years of monitoring by this Court, a regular Director for the Institute has been appointed. A large number of Teaching, Non-Teaching, Medical, Para-Medical, Class-III and Class-IV posts have also been filled up in between 2005 and 2006 i.e. after monitoring by this Court for about 4-5 years. During the aforesaid period, though one or other order had been flouted, for which no reason was shown, but taking into consideration the public interest, instead of punishing anyone, the Court allowed time to ensure that all the posts are filled up and the Institute functions in a proper way and ultimately, satisfactory developments have taken place.

As pointed out above, whatever development took place was because of the orders, passed by this Court from time to time in Public Interest Litigation, as neither any individual nor any organization nor any Public Representation nor any Social Organization nor any of the N.G.Os. had taken care of for development of this Institute since creation of this State i. e. for last six years.

On 7th July, 2006 it was reported that some other Committee, consisting of Legislatures, had been constituted to supervise the functioning of RIMS. As it was not clear as to why such a Committee was constituted at a stage, when it was within the knowledge of the State that the matter is pending consideration before this Court and different orders are being passed in public interest, learned Advocate General for the State and Mr. Delip Jerath, counsel appearing for Legislative Assembly, were allowed time to obtain instructions regarding the jurisdiction of the Committee and to state under which provision such Committee was empowered to supervise the functioning of RIMS, Ranchi.

In the public interest it was not desirable to have parallel monitoring by two Institutions like High Court and Assembly over an autonomous body like RIMS, Ranchi. If the State Government has failed to perform its duties and the Legislatures, after five years, have, at least, come forward to play some role, let them do so in public interest. We hope and trust that the Committee of Legislature will ensure betterment of the

Institute of a repute within a year. But, if they fail to do so, the petitioner may bring it to the notice of the Court and in such case the High Court may again take up the matter.¹⁰

5. Permanent Construction—Beach. [Line To Establish An Electronic And Video Games Complex (Amusement Park)]—A perusal of the terms and conditions of licence would clearly show that the VUDA has taken, all the necessary precautions and measures to safeguard their interests and the interest of the public at large including the effect of pollution and environmental aspects of the matter. There is a clear condition in the licence that the licensee shall not make any excavation in the demised land except in the requirement for setting up of amusement park and related activities. As the licence, the licensee was under an obligation to comply with all the statutory requirements to safeguard the environment. It has been made specifically clear in the deed of licence that the licensee shall not extend to raising any permanent structure which was the grievance voiced by the petitioner in this writ petition. By leasing out the property to the 4th respondent, 1st respondent is regularly getting annual compensation of Rs. 18.00 lakhs for the first three years and that the compensation should be paid in advance every year on or before 8th of November and in default interest at 24% shall be charged. Conditions of licence also provide that the compensation shall be increased by 33% for every three year or part thereof during the currency of the agreement. Accordingly, Schedule of payment has been fixed as per Clause 3 (b) in the deed of license. Under the deed of license, the 4th respondent was required to make minimum investment of Rs.5.00 crores in the project. The licensee has to adhere to the progress and minimum investment as stipulated in clause 5(a) and 5(b) and the licensee has also agreed to pay penalty for the short fall on they target at 20% per annum. The prohibited activities are: setting up of new industries, manufacture or handling or storage or disposal of hazardous substances, setting up and expansion of fish processing units, setting up and expansion of units/mechanisms for disposal of waste and effluents, discharge of untreated wastes and effluents from industries, cities or towns and other human settlements, dumping of city or town wastes for the purpose of land filling up or otherwise, dumping of ash or any wastes from thermal power stations, land reclamation, bundling or disturbing the natural course of sea water, mining of sands, rocks and other substrata materials, harvesting or drawl of ground water and construction of mechanisms therefore within 200 metres of HTL, construction activities in ecologically sensitive areas as specified in Annexure-1 of the notification, any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharge into the sea etc. and dressing or altering of sand dunes, hills etc.

From a perusal of the terms and condition of the deed of licence, it is seen that none of the above-prohibited activities have been permitted to be undertaken by the 4th respondent nor it is the case of the petitioner that the 4th respondent has undertaken such activities. Clause 3 of the notification deals with permissible activities. Sub-clause (3) (i) of Clause (3) provides that the coastal States and Union Territory and Administrations shall prepare coastal management plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the notification and obtain approval of the Central Government in the Ministry of Environment and Forest. Sub-clause (3) (ii) of Clause 3 says that within the framework of such approved plans, all development activities within the CRZ other than those convert in para 2 and para 3(2) shall be regulated by the State Government. Union Territory,

10. Citizens' Cause v. State of Jharkhand, AIR 2007 Jhar, 32 at 32, 33, 34.

Administration or the local authority, as the case may be, in accordance with the guidelines given in Annexures I and II of the notification. Annexure-1 deals with coastal area classification and development regulations.

The grievance of the petitioners is that the area wherein the disputed construction is alleged to be made falls in Category-III of the said notification. Category III (CRZ III) will include coastal zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas which are substantially built up. Annexure-II provides for guidelines for development of designated areas of CRZ-III for temporary occupation of tourists/visitors with prior approval of the Ministry of Environment and Forests. Guideline 7(1) provides that construction of beach resorts/hotels with prior approval of MRF in the designated areas of CRZ-III for temporary occupation of tourists/visitors shall be subject to the conditions mentioned therein. Guidelines 7(1)(i) of Annexure-II of the notification clearly prohibits any construction (including temporary constructions and fencing or such other barriers within 200 metres in the landward side) from the High Tide Line and within the area between the Low Tide and High Tide Line. The conditions provide that the total plot size shall not be less than 0.4 hectares and that the construction shall be consistent with the surrounding landscape. The overall height of construction up to the highest ridge of the roof shall not exceed nine metres and the construction shall not be more than two floors. The ground water shall not be tapped within 200 metres of the HTL and within the 200 metre 500 metre zone; it can be tapped only with the concurrence of the Central/State Ground Water Board. The other conditions deal with the quality of treated effluents, extraction of sand, levelling or digging of sandy stretches and arrangements for the treatment of the effluents and solid wastes. As already noticed, conditions mentioned in Annexure-II, have been strictly adhered to in the instant case and that necessary arrangements for the treatment of the effluents and other directions mentioned therein have been duly incorporated in the deed of licence. The 1st respondent has taken all the necessary precautionary measures essential for protecting and safeguarding the sensitive area in question before granting the license in favour of the 4th respondent. The authorities were not wrongly exercised their power of jurisdiction in favour of the 4th respondent. In our view, the 1st respondent and other authorities have not allowed any activities, which would ultimately lead to unscientific and unsustainable development and ecological destruction.”

6. Construction Of Mosque:— What is so inherently wrong with the mosque where namaz has been offered by the village community all these years?

Namaz is prayer. It is offered because the Holy Book THE KORAN ordains it. When the mu’azzin, the caller of azan, summons to prayer or calls from the village mosque, from a minaret or otherwise, it is one voice for the village calling on the faithful to come to prayer. It is one voice of the mu’azzin, a call from one mosque, for one prayer, but by all, as one congregation. As far as the call for prayer be heard it will call all for one prayer. Islam is a monotheistic religion. It stands for oneness in all its attributes. The prayer hour is ordained in “THE KORAN”. In this regard it is written:

“Regularly perform the prayer at the declension of the sun, at the first Darkness of the night, and the prayer of day-break, for the prayer of Day-break is borne witness unto

11. MVP Social Workers Association v. Visakhapatnam Urban Development Authority, AIR 2002 AP 195 at 199, 200 : 2002 (2) An LT 297: 2002 (1) An LD 854.

by the Angels. And watch some pan of the night in the same exercise, as a work of supererogation for Thee; peradventure thy Lord will raise thee to an honourable station.”

And then:

”O THOU wrapped up, arise to prayer, and continue therein during the night, except a small part; that is to say, during one half thereof: or do thou lessen the same a little, or add thereto. And repeat the KORAN with a distinct and sonorous voice: for we will lay on thee a weighty word. Verily the rising by night is more efficacious for stead-fast continuance in devotion. And more conductive to decent pronunciation: for in the day-time thou hast long employment.”

*CHAP XVII, ENTITLED, The Night-Journey, revealed at MECCA. THE KORAN; commonly called THE ALCORAN OF MOHAMMED:

Translated

From the original Arabic By George Sale, Gent, London: J. Walker, White and Cochrane; C. Law; J. John. Son & Co; Lackington, Allen, And Co.; J. Cuthell; J. Nunn; R. Lea; Black Parry, And Kinhsbury; J. Aspeme; J. Hamilton; And Longman, Hurst, Rees, Orme, and Brown, 1812.

Patna High Court Judges Library: Pages 102-103.

**Ibid CHAP. LXXIIL: Entitled, The wrapped up; revealed at MECCA Pages 453,454.

The two petitioners were the products of a growing number of those who do not have respect for religion but play petty politics with it. And, the village today or even any urban locality may hear over loudspeakers two azans, if not more, when one was called for, the ringing of temple bells but from several temples of the same deity in the same village. This arises from misplaced power politics with religion to shout a second prayer over the first prayer, to impose another mosque when within the community the elders say “let there be one”. Muscle tactics are being used to make temples, idgahs and other supposedly sacred places, on side walks of roads, blocking passage; in dedicated parks and on public lands, which renders all such structures encroachments. Made in violation of the law these are encroachments no places of worship. Such places are not blessed in the name of God, whoever may claim HIM wrongly to be on their side. This is politics playing with religion for aggrandizement, for offerings as an unholy enrichment, or to assert naked power. Nobody’s God showers blessings where Peace does not reside, where Truth does not prevail and tranquility cannot descend.

It was stated in the petition that the petitioners started constructing a mosque on their own property. Nothing restrained them from having a personal mosque or an Idgah for the use of whatever followers they may command. They may, but this new venture apparently was writ large with complications. The old mosque which stands in the village apparently did not disturb anyone. The new place sought to be used by the petitioners turned out to be within close proximity of a Brahmsthan of the Hindu community, as confirmed in the counter affidavit by the District Magistrate. The situation is entirely of the petitioners making, manufacturing a complication when none existed before. They are making noise that the District Magistrate was not permitting them to establish a mosque or an Idgah. This was not so. The petitioners was violators of the peace in the village. They were responsible on many occsions for law and order situations and the District Magistrate had to take proceedings as warranted in urgent cases of nuisance or

apprehended danger, under S. 144 of the Code of Criminal Procedure, 1973, to take steps to restore law and order.¹²

7. Toilet Block Near ‘Gateway of India’ in Mumbai.—The petitioners had filed writ petition in the Bombay High Court as Public Interest Litigation praying for a writ of certiorari or any other appropriate writ, order or direction to quash and set aside all permissions and sanctions granted by the Municipal Corporation of Greater Bombay and the Municipal Commissioner for the construction of “new public toilet block abutting the sea on the northern side of the plaza of the Gateway of India and for the demolition of the existing old toilet block.” A writ of mandamus was also sought directing Indian Hotels Company Ltd. to take all necessary steps under the provisions of the Maharashtra Regional and Town Planning Act, 1966 to prevent and prohibit the Municipal Corporation of Greater Bombay, the Municipal Commissioner and the State of Maharashtra from proceeding with the construction of the said new toilet block and for demolition of old toilet block. Lastly, the petitioners prayed requiring Union of India in the Ministry of Environment and Forests to take necessary steps under the provisions of Environment (Protection) Act, 1986 to prohibit the aforesaid respondents from proceeding with the construction of the said new public toilet block. There was also a prayer for demolition of the existing old toilet block and of whatever construction of the new public toilet block was there. In short the writ petition was directed against the construction of the new toilet block near the Gateway of India and for demolition of the old toilet block. High Court in the impugned judgment said that it was not a fit case for interference under Art. 226 of the Constitution when the Municipal Corporation was providing a facility which is a must for the human beings at a place which is visited by thousands of persons everyday. It said that facility of providing toilet block was also to prevent nuisance because there could be unauthorised use of the open spaces around the Gateway of India by persons to answer calls of nature. It was noticed that the resolution to construct toilet block was passed as far back on August 5, 1991 and till after the toilet block was constructed the writ petition was filed only March 13, 1992. After having said so High Court also examined the merits of the case and dismissed the writ petition. Interim relief, which the High Court had granted from using the new toilet block by the public, was vacated.

Stress of the Municipal Corporation of Greater Bombay has been to the validity of the construction of the new toilet block. That is something, which is not now being challenged. As to the observations in the impugned judgment that “the entire city of Bombay would fall within the ambit of Coastal Regulation Zone II,” it was submitted that the High Court was not concerned with the other areas except Fort area where the structure of Gateway of India is situated and whole of the area is built up within roads and all infra-structural facilities to the structure. In this view of the matter it was submitted that it was not necessary in this case to consider whether the structure or any other place falls within the CRZ I or CRZ II. It was then submitted that State Government had clarified that it would be sending the revised guidelines for CRZ and it was most unlikely that the structure of Gateway of India would be falling with the CRZ I and the area around it would fall in CRZ II and that the said revised proposal was likely to be issued by the State Government “very soon”.

It was necessary for the Apex Court to consider the matter any further and would

12. Mohd. Gulam Rasood v. State of Bihar, AIR 2001 Pat 182 at 183 : 2001 (2) Pat LJR 414 : 2001 (2) BLJR 1052 : 2001 (2) BLJ 561.

leave the consideration of notification dated July 9, 1997 amending the earlier notification dated February 20, 1991 and also the communication dated September 27, 1996 addressed by the Central Government to the State of Maharashtra in an appropriate case.¹³

8. Against construction for Commonwealth Games Village (CGV).—Observation by High Court that site in question is on a “riverbed” by disregarding and ignoring material scientific literature and opinion of experts and scientific bodies which categorically held that CGV site is neither located on a “riverbed” nor on “flood plain”, not tenable.^{11,14}

9. Construction of stadium.

(i) Whether the writ petition qualifies the requirements of public interest litigation?—It goes without saying that it was the tax payers money that went to build the impugned stadium spending several crores of rupees to meet the international standards, and it is a settled law that the tax payers have a right to claim that the stadium should be maintained as such and not to be treated as just any other public place.¹⁵

(ii) on historic park.—Construction of a double storied air conditioned indoor stadium at the historic park with historic values dating back to 20th century aesthetics, held illegal and directions issued for removal of structures already built and restoration of the area as a Park.¹⁶

10. Public Property.—The prime land which has been sold by GCDA is public property and if it is sold at a throw away price or in contravention of the notice inviting tenders whereby public interest is allowed to be sacrificed, it will be open to any member of the public to approach the Court and bring the fact to its notice. It is true that the petitioner was not the competitors of the third respondent but that would not prevent them from filing the Public Interest Litigation pointing out that a public body has thrown public interest to the winds in selling its properties.¹⁷

11. Construction near Protected monuments—Humayun’s Tomb.—Humayun’s Tomb is a historical monument. Recognition of a Humayun’s Tomb as a protected monument has itself a long history, Notification issued on 16th June, 1992 by the central government, an area of 100m surrounding the Humayun’s Tomb has been declared a “prohibited area” within which no construction activity is permitted, despite this reconstruction of the property located within 100m of Humayun’s Tomb was allowed. Archaeological Survey of India (ASI), a six member committee set up in 2006 to grant permission for construction near protected monuments and heritage sites has been declared illegal. Held, setting up of the committee by the ASI with the approval of the

13. P. Navin Kumar v. Bombay Municipal Corporation, AIR 1999 SC 1816 at 1816, 1818: 1999 AIR SCW 1412: 1999 (4) ADSC 209: 1999 (3) Bom CR 539: 1999 (3) Bom LR 19: 1999 (3) JT 287: 1999 (3) LRI 57: 1999 (4) SCC 120: 1999 (5) SRJ 286: 1999 (3) Scale 52: 1999 (4) Supreme 375: 1999 (1) UJ(SC) 781.
14. D.D.A. v. Rajendra Singh, AIR 2010 SC 2516.
15. K. Santhal Kumar v. State of Tamil Nadu, AIR 2006 Mad. 71 at 78.
16. Paryavaran Avam Janathan Mission (Regd Society) v. Ltd. Governor, 2010(7) RCR (Civil) 1509 (Del).
17. M. Sadasivam v. Greater Cochin Development Authority, AIR 2005 Ker 14 at 21: 2005 (1) Ric Civ R 195: 2004 (2) Ker LJ 595.

Union Minister for Culture and Tourism on grant of permission for construction in a prohibited area was wholly without any legal basis.¹⁷

13. Delay in National Highway construction.

Delay in construction of Highway project, High Court directed NHAI to take over the project attributing delay to Concessioner, since NHAI will have to issue to contract all over again it will rather cause more delay, being a BOT project where entire investment is done by the Concessioner he has nothing to gain from delay, the High Court order was set aside whereas directions were issued to expedite the project.¹⁸

Contractual agreement and obligations: Court may forego/overlook the technicalities coming in the way of issuance of any direction which may conflict or jeopardise the public interest but the same cannot be allowed to reach to the extent or affect the contractual agreement itself which reduces a valid and a legal document into a worthless piece of paper or a waste paper which clearly means that the relationship between the parties although were to be governed and supported by a valid legal document, the same would finally turn out to be a document having no legal significance in spite of its validity in the eye of law.¹⁹

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17. Emca Construction Co. through. M.P. Gupta v. Archeological Survey of India. 2010(6) RCR (Civil) 66.

18. M/s. Soma Isolux NH One Tollway Private Limited v. Harish Kumar Puri (SC), 2014(6) SCC 75 : 2014(5) Scale 252 : 2014(5) JT 451 : AIR 2014 SC 2495.

19. *Ibid.*

Chapter 22

Education



Synopsis

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1. Schools suffer from abject neglect—Primary and Secondary Education.—

There are basically Primary and Secondary Education Schools run largely by the State Government, otherwise with the aid of the State Government grants. These schools suffer from abject neglect Day after day the newspapers in Patna have reported that Primary and Secondary' Education suffers badly as the infrastructure was just not available. In this case are noticed facts as up to March 2002. The list of neglected schools was increasing and further reports are on record. In some instances the school buildings have disappeared, other schools are without roof, yet others are without doors and windows and in some cases one room housing two classes with children sitting in the opposite direction, because the rest of the building has fallen down. And, there are examples of one room schools with children receiving instructions by shifts. There are cases where schools are without facilities like drinking water, lavatories, blackboards, school desks etc. The Court was not going into the details as in the present matter no issue has been taken by the Government in the affidavits, which were filed in response to this affirmative writ action.

The Secretary, Primary and Adult Education, Government of Bihar, accepts and records that even in Patna itself about 21 Schools mentioned in the news report, whatever be the reason, are facing a State of neglect. It was accepted that majority of schools do not have proper infra-structural facilities. Most of the buildings/rooms are in urgent need of repair and reconstruction. Some of the schools do not have building of their own. "It was also accepted in the report of the Secretary that" schools do not have separate rooms for each class. So it was common practice to group the students in one room by different grades and classes". It was further reported that" most of the schools also suffer inadequately of blackboard, drinking water, electricity, toilet facilities and sitting, should be seated arrangements for students. The children are not provided benches/desks to sit

on classes. Then it was further accepted that there are cases where more than one schools was accommodated in the same building.

Other problems are mentioned by the Secretary in his affidavit, that there was encroachment of lands of the Government schools by unauthorised, persons, school campus being used by antisocial elements and garbage is dumped on the ground of the schools; school grounds are being used as open lavatories by the public and classes are being held outside the schools while encroachers have occupied the schools. Then the Secretary contends that the department had commissioned a survey of all Primary and Middle schools of Patna urban area in the month of August 2001 and that the department has prepared a detailed plan for enhancement of elementary education institutions of Patna under the "SARB SIKSHA ABHIYAN".

The lack of repair of the school buildings was accepted. It was also accepted that the 365 Primary/Middle Schools within Patna urban area, 68 have no buildings of their own and 30 are being run from buildings other than that of the schools.

Then it was contended that as far as availability of funds for construction of school building was concerned, the Government has launched a scheme of "Sarab Siksha Abhiyan" with financial assistance from the Central Government in which it was proposed that all schools will have buildings of their own in a phased manner between financial year 2002-10. A rider has been indicated that such construction was however subject to land being available by public donation for which appeals have been reiterated by the State Government. Then there are statistics given acknowledging that of the 365 schools in Patna urban area, 78 schools are without toilet facilities and 71 schools are without drinking water facilities and that the Government was taking up this matter for providing these facilities in a phased manner under a scheme of the 11th Finance Commission. Then it was submitted that under schemes for primary education the Government does not provide desks to the children at the primary stage. The Court was not going into the other aspects of student and teacher ratio at present.

The report of the Secretary to the Government was very defensive but acknowledges that even half a century after independence primary education was not even a priority in the State. A school without desks and chairs was part of planning. Then, what exactly has been planned? Racketeering in school buildings which fell down and employment of government school teachers without schools?

Pending consideration are public interest litigation which flood the Patna High Court like no other High Court of the nation. These are on many subjects. These proceedings take up the time of the High Court as public interest litigation. Citizens come and seek writs (of those which are genuine) in the hope that the High Court will be able to do something about public grievances not responded to by the State or its functionaries. This was perhaps an illusion. At times the High Court may have issued writs and they have remained without compliance and the petitioner citizen returns with a contempt action and yet there was no compliance. This has saddled the High Court with multiplicity of proceedings based directly on a cause that the State has done nothing and the grievance continues. It renders the Court proceedings in a state that Court directions have not been carried out. These are matters of execution of public plans, the non-execution of which floods the High Court with PILs.

The Courts was dealing with the subject of primary and secondary education at present, and that also within the urban area of Patna. But to understand the circumstances on what exactly happened to the public funds, facts and figures will have to be seen.

These facts and figures were provided to the Court through the good offices of the Additional Advocate General 2. At times these facts and figures do not come so easily.

In the circumstances now it would be in the fitness of thing that having permitted almost 100 crores to lapse in the last 20 years meant for plan allocation for Primary and Secondary Schools, the State Government pulls up its socks and gets into the exercise of budgetary planning and further executing the plans on this subject. Both factors when not resorted to, affect the people and consequently the High Court because it was saddled with litigations which it could avoid but cannot. The Court will now expect a report of the systematic manner in which remedial steps will be undertaken to repair and resurrect the schools so that they are available to the children as part of a public plan which in any case was the obligation of the State. But now there was no time to grant long adjournments as keeping the schools in good repair and functional was the normalcy of the situation. Sitting back and letting jungle weeds and cobwebs grow in schools was an abnormality a disease to be shed.¹

2. Taking over schools to facilitate political rallies is an arbitrary act- It offends the rule of law and tantamounts to requisitioning the property and the premises of the educational institutions.—The explanation that the management of the schools had acquiesced to the situation and had not objected to it is a very feeble explanation on behalf of the respondents. It is strange that the State Government is relying on a presumption of acquiescence on the part of the management of the schools. It has been suggested that the Court should presume the existence of such circumstances. The court is afraid that this presumption cannot be drawn so easily as it has been suggested. Presumption rests on a foundation. The Court may presume only if there be the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Section 114 of the Evidence Act, 1872. In the present State of affairs and regard being had to the nature of circumstances it was unlikely that the management of the schools would have so readily separated with their grounds, accommodations and premises so easily for being invaded by delegates to a political convention. Acquiescence as a defence was a submission made, in the facts and circumstances of the present case, in bad taste.

But what the Court can presume was the effect that this occupation will inevitably have on the educational institutions. At modest estimate it may be presumed that each school or college will at least have 500 students. If this were so, then of the 242 schools and colleges ordered to be closed, 1,21,000 students will have their orderly process of education disturbed. Numbers in schools today are larger than the modest estimate taken by the Court. It was to be assumed that the State Government was also looking for larger premises. The actual number could be many times this conservative estimate. The aftermath of such a heavy, concentrated use of the such premises as a campsite will inevitably be degradation and damage to grounds, property and environment.

The Court has no hesitation, taking into account all the factors, in describing the impending walk by the State respondents into the property, the accommodations, the grounds and the premises of educational institutions as an arbitrary and illegal act, It has

1. Collapse of Established Educational Institutions v. State of Bihar, AIR 2003 Pat. 3 (Ravi S, Dhavan, C.J. and Shashank Kr. Singh, J.)

already been acknowledged on behalf of the State respondents that the directions which have been issued are not under any law.²

3. Whether the students and their parents had any right to be heard or show cause before closing of the school, so, what is the effect of its violation?—The appellants-petitioners have not placed before the Court any document to show that the Parents-Teachers Association was a registered and recognised association. The writ petition has been allegedly filed in public interest and the alleged large interest of the students. It was evident that the so-called Parents-Teachers Association was an unregistered and unrecognised association and, therefore, in view of the Court has no fundamental right to approach the Court under Article 226 of the Constitution of India.³

4. Lapse of 100 crores rupees in Bihar—For plan allocation, Primary and Secondary School.—There are basically Primary and Secondary Education schools run largely by the State Government, otherwise with the aid of the State Government grants. These schools suffer from abject neglect. Day after day the newspapers in Patna have reported that Primary and Secondary Education suffers badly as the infrastructure is just not available. In this case are noticed facts as up to March 2002. The list of neglected schools is increasing and further reports are on record.

In some instances the school buildings have disappeared, other schools are without roof yet others are without doors and windows and in some cases one room housing two classes with children sitting in the opposite direction, because the rest of the building has fallen down. And there are examples of one room schools with children receiving instructions by shifts. There are cases where schools are without facilities like drinking water, lavatories, blackboards, school desks etc. The Court was not going into the details as in the present matter no issue has been taken by the Government in the affidavits which were filed in response to this affirmative writ action.

The Secretary, Primary and Adult Education, Government of Bihar, accepts and records that even in Patna itself about 21 Schools mentioned in the news report, whatever be the reason, were facing a State of neglect. It was accepted that “majority of schools do not have proper infrastructural facilities. Most of the buildings/ rooms are in urgent need of repairing and re-construction. Some of the schools does not have building of their own.” It was also accepted in the report of the Secretary that “schools do not have separate rooms for each class. So it was common practice to group the students in one room by different grades and classes”. It was further reported that “most of the schools also suffer inadequacy of (sic) blackboards, drinking water, electricity, toilet facilities and seating arrangements for students. The children are not provided benches/desks to sit on classes”. Then it was further accepted that “there are cases where more than one schools is accommodated in the same building.

Held: The Court will now expect a report of the systematic manner in which remedial steps will be undertaken to repair and resurrect the schools so that they are available to the children as part of a public plan which in any case was the obligation of the State. But now there was no time to grant long adjournments as keeping the schools

2. Association of Independent Schools, Bihar v. State of Bihar, (2001) 3 BLJ 747 at 755, 756 (Pat).
3. Parents Teachers Association v. Chairman, Kendriya Vidyalaya Sangathan, AIR 2001 Raj 35 at 38; 2001 (1) WLC 40; 2001 (1) Raj LW 511; 2000(3) Raj LR 794.

in good repair and functional was the normalcy of the situation. Sitting back and letting jungle weeds and cobwebs grow in schools was an abnormality; a disease to be shed away with.⁴

5. Allotment of land for the purpose of school.—If the allottee of the disputed land encroaches or threatens to encroach upon the appellant's khatedari land, it will be open to the appellant to take necessary action in that behalf in the competent Court.

Thus, allotment made in favour of School in 1947 stood final. After dismissal of review application filed by son of Udmi Ram as well as by Labh Mai. Thereafter it appears that along with his brother and some other persons sought mutation of the said land in question in favour of number of other persons by making application in that regard before the Collector. The said application was objected by the residents of the village. Amongst the persons in whose name mutation was sought to be recorded was name of respondent No. 7. The mutation was sought to be secured on the premises that many constructed buildings are existing over the land in question and therefore such constructed land be recorded in the names of persons whose construction are existing on the land. It was pointed out in his report by the Deputy Collector, Hanumangarh submitted to the District Collector, that the complaint made by Prithvi Raj and his associates was wholly incorrect. The only construction which is existing on site is building construction for the residence of the teachers of the school and other allegations are not correct. In view of this report the objection raised on behalf of villagers against the mutation sought by various persons including Surender and over the land in dispute were found to be valid and on the basis of Annexure-8 dt. 6th October, 1995 the objection filed on behalf of through his Counsel in the name of so many persons was rejected and allotment made in favour of School re-affirmed with the direction to make available a passage to the School. It was also noticed in the order that though the application for mutation purports to be made on behalf of a number of persons, it is only on behalf of Prithviraj, inasmuch as Power or Vakalatnama in favour of sole Counsel appearing in the case has been by Prithviraj alone and not by any other person.

This order dt. 6th October, 1995 was sought to be modified by the impugned order dt. 22nd August, 1998 (Annexure-9) almost three years thereafter by cancelling the allotment made in favour of School over which the respondents Nos. 6, 7 and 8 are clamouring to secure possession and regularization and pursuant thereto applications for mutation in favour of those persons were directed to be entertained vide Annexure-10.

From the aforesaid facts it is apparent that land stood allotted to the School way back in the year 1974. Over the land stands construction made for residence for teacher of the School. One of sons of Udami Ram along with Labh Singh made an abortive attempt to get that allotment of the land for the purpose of Primary School cancelled, firstly by raising claims of the said land which was adjoining to land alleged to be theirs and claiming right to said land also and also right of way through that land. Such claim was not accepted by the then Collector. In writ petition arising out of these proceedings, this Court also found that those petitioners have not even a semblance of any right, title or interest over the land in question for which that can only be considered as trespassers liable to be evicted. The subsequent proceedings produced before this Court in the form of Annexures-5, 6 and 7 go to show that mutation proceedings were sought to be initiated in respect of very same land by and at the behest of same son which included lodging of claim on behalf of this brother respondent No. 7. Thereafter, after about three years, land

4, Collapse of Established Educational Institution v. State of Bihar, AIR 2003 Pat 3 at 3, 6.

has been mutated in the name of said by reviewing the order dt. 6-10-95. This order also speaks of giving alternate land to School.

In these circumstances irresistible conclusion was that entire proceedings for cancelling the allotment made in favour of School in 1974 has been undertaken by the concerned authority at the behest of the then Revenue Minister only to benefit the respondents Nos. 6, 7 and 8, notwithstanding they had successively lost in their attempt to grab the land in question for almost two decades. It does not stand to any reason why State has shown suddenly such an interest to cancel a lawful allotment made in 1974, particularly when need for such land for Primary School is existing, which is apparent from the fact that the impugned order talks of allotting alternative land to the School. This only confirms that whole exercise has been undertaken with some motive to benefit some individuals, who were unsuccessful litigants at the cost of interest of public in getting the School functioning, which was successively thwarted by such oblique and obtrusive motives. It was worth noticing that no right to the land has been found to exist in favour of respondents Nos. 6, 7 and 8 for the protection of which, the order could be made. Apparently the cancellation of lawful allotment was made to pave the way for regularization in favour of unauthorized occupants.

Such a blatant subversion of rule of law and use of discretionary powers by the author of Exs. 9 and 10 cannot be countenanced, which action apparently suffers from legal malice.

Accordingly, this petition was allowed with costs. Annexure-9 and Annexure-10 were quashed and allotment made in favour of the School in 1974 as affirmed by the order dt. 6-10-95 was held to be subsisting and operative.⁵

6. Fundamental rights—Running of Educational Institutional.—The right to establish and run an educational institution is a fundamental right guaranteed under Article 19 (1) (g) of course, under Article 19 (6) reasonable restrictions can be placed on such a fundamental right, and hence the Court has to examine whether such restrictions are reasonable or not. Surrendering the total process of selection in private unaided professional institutions to the State is unreasonable and illegal. The private unaided institutions have a right to devise a rational manner of selecting and admitting students. The unaided institutions have to generate their own funds and hence they must be given more autonomy as compared to aided institutions, so that they can generate these funds. However, this does not mean that the private unaided professional institutions have absolute autonomy in the matter. There can validly be a certain degree of State control over the private unaided professional institutions for the reason that recognition has to be granted by the State authorities and it is also the duty of the State to see that high standards of education are maintained in all professional institutions. However, to ..what degree the State can interfere with respect to private unaided institutions in a matter deserving careful consideration.

It cannot be left to the unilateral decision of the State Government to say that the private institutions have failed to meet with the triple tests mentioned in 2003 AIR SCW 4240 because that will be giving unbridled, absolute and unchecked power to the State Government. *Prima facie*, the M.P. Adhinyam, 2007 appears to handover the entire selection process to the State Government or the agencies appointed by State Government for under graduate, graduate and post graduate medical/dental colleges and fee fixation.

5. Ram Singh v. State of Rajasthan, AIR 2001 Raj 381 at 382, 383.

This is contrary to, and inconsistent with the observations in 2005 AIR SCW 3923 and hence the 2007 Act would become unconstitutional if it is read literally. The Court has, therefore, to read down the 2007 Act and Rules to make them constitutional. Such reading down of a statute is permissible, since it is well settled that the Court should make all efforts to sustain the validity of a statute, even if that involves reading its language down. *Modern Dental College & Research Centre & Ors. v. State of M.P. & Ors.*, AIR 2009 SC 2432.

7. Education—Prevention of ragging.—Ragging in educational institutions has been a matter of concern for the Court in *Vishwa Jagriti Mission through President v. Central Government through Cabinet Secretary & Ors.*, AIR 2001 SC 2793 few remedial practical measures have been taken to prevent the menace of ragging in educational institutions, by order dated 27.11.2006, a Committee was constituted under the chairmanship of Mr. R.K. Raghavan, Ex-Director, C.B.I. The Committee has submitted its report and suggested certain measures. Subsequently orders dated 16.5.2007 and 10.12.2007 were passed. Further Status report has been submitted by Shri Gopal Subramaniam, learned Amicus Criae. Pursuant to the directions given by the Court, the second and third reports of the Committee have been filed which read as follows :

“Second Report: The Committee under the chairmanship of Dr. R.K. Raghavan met at New Delhi on the 2nd April 2008 to take stock of the situation and review the progress made by different authorities, agencies and other stage holders who had been directed by the Hon’ble Supreme Court to implement the recommendations of the Committee’s Report on ragging and also of the Lyngdoh Dommitt on elections to student unions. On the 10th December, 2007 the Supreme Court had heard the matter and had passed certain orders. Accordingly, on 4.1.2008 the Ministry conveyed to all the regulatory institutions like UGC, AICTE, MCU, DCI, PCI, INC and ICAR, the observations of the Court and its directions that in the prospectus of the higher educational institutions it should be mentioned that if any incident of ragging comes to the notice of the authority concerned, the accused student will be given opportunity to explain and if his explanation is not satisfactory the authority would expel him from the institution. The regulatory institutions were also requested to intimate from time to time the progress being made and were also informed that the reports being received from individual institutions be consolidated and analysed and only the findings intimated to the Ministry for placing before the Committee. For arousing public consciousness against ragging, audio video jingles/spots have been prepared by the Ministry with the assistance of DA VP for release in the media.

Ragging is rationalized and justified as a way of “Introduction or getting remiliar” with the fresher at the starting of an academic session of any educational institution. In a very positive aspect, Ragging” could not be considered as an abridgement between the seniors and the fresher, whereas “Introduction” could be considered as genesis of relationship between the two. “Seniors” under the garb of “Introduction” have started ragging the fresher and due to which, in recent years, it has become the talk of the day that the fresher who have faced severe ragging are leaving the educational institutions and some have attempted to commit suicide and even some have committed it. In modern era, “Ragging” has become to be known only as synonym of testing”, “terror”, “harassment”, “cruelty”, “fear” and “physical and mental torture”. By perusal of records and survey, it has come to be accepted that “Ragging” is a systematized form of Human Rights’ abuse as embodied under the constitution of India as well as other Constitutions of the World. Over the years in all over the world and especially in South Asia, the practice of “Ragging” has come to be meant as an extreme “harassment”, “terror” and

even “physical and mental torture” of fresher in educational institutions as a whole.

Ragging is a set of undisciplined activities undertaken by the seniors to break the ice with the juniors, who have been suddenly thrown into a totally new environment. The contention of seniors behind all such activities is simply to bring the fresher down to earth, because in their opinion the fresher do not respect the seniors and by doing all such inhuman activities under the grab of “Introduction”, the seniors rag the fresher so that the fresher may respect them and be under their control. But this act cannot be reasonable and just. The act by the seniors is a “fist of steel against ice” and likewise by doing so, they shatter the ambition, aim and object of fresher and they become aloof in this practical world. The prohibit “Ragging”, the court has given a series of guidelines to the educational institutions whether being Central, State or Private Institute. *Vishva Jagriti Mission v. Central Government*, AIR 2001 SC 2793.

Everyman’s Encyclopedia (1938 Edition Vol. II) and Random House Dictionary of the English Language (1967 Edition) have reference about ragging. The synonyms of ragging as racking, ducking, teasing, etc. are mentioned in detail in these reference books. In England the credit/discredit goes to Duke of Exeter to introduce the practice of ragging. Racking was another form of ragging in which a special instrument called ‘rack’ was used to torture the victim. Gradually it mixed up with the term of ragging. Egyptian, Romans and Greeks were also not lagging behind. Some form or the other of ragging was found in their societies. Ragging is not a new phenomenon. It existed even in older times. It was part of civilized societies. In ancient seats of learning, e.g., Berytus and Athens ragging was prevalent. In army schools of England regging insisted as a tradition. Later on this tradition took its root in medical and engineering colleges. In English society ragging took the form of fresher being paraded on street which caused much annoyance not only to fresher but even to general public especially girls. Ragging is a form of systematic and sustained physical, mental and sexual to abuse of fresh students at the college/university/any other educational institution at the hands of senior students of the same institution and sometimes’ even by outsiders. Although some form of ragging is present in every educational institution but serious abuses of human rights take place generally in medical and engineering colleges and Armed Forces. The form and effect of ragging differ from institution to institution. It creates a sense of fear in the minds of first year students and they become apprehensive of unforeseen incidents which later comes true and culminates in actual form of action.

Ragging is “display of noisy, disorderly conduct and great high spirits considered by perpetrators (raggers) as excellent fun and by many outsiders as a bloody nuisance”. Another meaning of ragging is “to question vigorously and jocularly, horseplay or assail roughly and noisily”. Yet another definition of ragging refers to popular Spanish game of “Bull-Fight”, wherein bull is shown red ‘rag’ and a person shouts which infuriates the bull in fighting. As noted above “Ragging” means display of noisy, disorderly conduct or doing any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution and includes, (a) teasing, abusing of, playing practical jokes on or causing hurt to, such students; or (b) asking the student to do any act or perform something which such student will not, in the ordinary course, willingly do.

The word “ragging” colloquially means to tease or play practical jokes on someone, specially on students who are the fresh entrants in the schools, colleges, Universities or any other educational institutions. In the beginning, it was a way of introduction of the first year students in the institutions which gradually has become not only serious

problem but also a social stigma. While in the age of a child in cradle, it was a harmless practice by senior students over their juniors. Regarding the origin or initiative steps of the ragging, it can be traced back to the seventh or eighth century A.D. In 1828-1845, in United States' Colleges and Universities Campus, several student organizations called 'fraternities' popped up. Fresher to these fraternities were known as pledges. In its rudimentary form, it is called 'hazing' which was merely ritual to test the courage of the pledge.

In ancient Greece, fresher to the sporting communities were subjected to humiliation and teasing to inculcate team spirit. After the passage of time this type of activities were adopted by Armed Forces in which new entrants have to pass out by obeying the seniors in off-duty time. As has been said above, in the age of child in cradle, the ragging was a harmless practice rather permissible in the society but it had taken shape of brutality, humiliation and harassment after the First World War. In fact the technique, style or forms which the soldiers participating in the War had learnt and faced in army atmosphere, were brought by them, when they re-entered in the colleges after returning from the War. Actually these forms were devised to highlight the importance of the team. Gradually these techniques and forms passed on those persons who did not know the real meaning of the technical word 'hazing' or 'ragging'. Now the ragging has acquired a heinous meaning which indicates any disorderly conduct whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness any other student, indulging in rowdy or undisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student or asking the student to do any act or perform something which such student will not do in the ordinary course and which has the effect of causing or generating a sense and which has the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the physique or psyche of a fresher or a junior student. After consideration of the reports. The Supreme Court directed that the Government in the States and the Union Territories and the University shall act in tenns of the guidelines formulated by the Constituted Committee. The MCI, BCI in consultation with UGC shall frame the requisite regulations which shall be binding on the institutions. They shall be indicated to the students at the time of admission by appropriate provision in the prospectus issued for admission. The consequences which flow from not observing the guidelines shall also be indicated. Inquiries which are pending shall be completed and report shall be completed and report shall be submitted before the Court.⁶

8. Construction for Municipal School.—There is absolute necessity to construct a building for the Municipal Middle School as they have to vacate the present building to honour the eviction order passed by the Rent Controlling Authority. The Additional Government Pleader also submits that, if the people of that locality do not want the closing of the well on the ground that the entire people of the locality depend upon the well for the potable water, suffice it to provide necessary safety measures by putting parapet wall around the well and also covering the top of the well with iron grills to avoid any accident.

The apprehension of the petitioner that there will not be any safety for the children if the proposed building for the Middle School was constructed adjacent to the well, in our

6. University of Kerala v. Council of Principals of College in Kerala & Ors., AIR 2009 SC 2223.

considered opinion, is unsustainable if the municipality does not close the well and provide sufficient safeguards by constructing parapet wall around the well and covering the top of the well with iron grills. Hence, suffice it to pass the following orders:

(i) The fourth respondent municipality is at liberty to proceed with the impugned construction for the Middle School in the East Street of Lakshmipuram as resolved in the Resolution No. 90, dated 13-7-2004;

(ii) The fourth respondent shall not close the well located in the East Street of Lakshmipuram, adjacent to the site where the construction of building is proposed and accordingly, Resolution No. 213 of the 4th respondent Municipal Council is quashed.

(iii) The fourth respondent shall construct parapet wall around the well and cover it with iron grills: and

Since the petitioner has come forward with the above public interest litigation to protect the public interest, the residents of the locality shall also contribute a minimum of Rs. 250/- per house to meet the expenses for construction of parapet wall and for covering the top of the well with iron grills. In case of any excessive expenditure, the same shall be met by the fourth respondent Municipality.⁷

9. Anarchy in higher government educational institutions—modalities to be adopted for betterment of these institutes.— The Court observed that despite colossal amount allocated to the Universities in budget, students with quality academic background and merit do not turn up to take admission on account of non-productive atmosphere in such Universities and these students prefer Private Universities. It is a well-known fact that Universities/Colleges managed and controlled by the Government with the backing of the sanctioned budget by the State, the government managed/controlled institutions/Universities hire the best of faculty after due process and proper vetting but due to the non-academic environment present in most of these institutions, meritorious students avoid taking admission in them thus resulting in wastage/non-optimum utilization of the vast reservoir of knowledge at their dispense. Modalities suggested by the competent authority of the State as well as by the Vice Chancellor of the University may be adopted in its letter and spirit.⁸

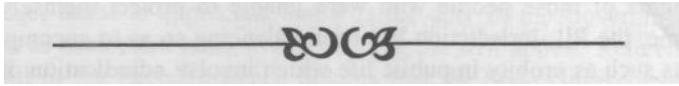
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7. A.K. Somasundaram v. The District Collector, Sivagangai, AIR 2005 Mad 213 at 213,214.

8. Lucknow University Vandalism v. State of U.P., (Allahabad)(DB), 2019(2) All WC 1471.

Chapter 23

Service Law



Synopsis

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1. Illegality and irregularities committed in selection.—So far as the allegation of illegality and irregularities committed in course of selection by the Public Service Commission in the Civil Services Examination, 1996 is concerned, it was pertinent to note that more than 3 years have elapsed in the meanwhile and it would not be just and equitable to unsettle the settled position. Even otherwise, the persons who have been selected and employed and are discharging their duties for the last four years are not impleaded in the present writ application. In their absence it would not be just and proper also to decide any of the points raised.

The U. P. S. C. is an autonomous body vested with the power and authority of conducting recruitments to the Civil Services. They have a set of rules and procedures which are followed for the last 2 decades. The process of recruitment has to be commenced and completed within a time bound schedule. The allegation of constituting several Boards for conducting the personality test has been strongly repudiated in the counter. It has been specifically averred that all steps were taken to maintain parity in assessment of candidates by the Boards. It was stated that a time tested mechanism has been evolved by the Commission and the Members who have equal powers, are briefed before commencing the assessment process. Periodical verification and security are also conducted by the Chairman to ensure equalization of standard of assessment through the mechanism of regular monitoring and exchange of information. It is stated that unanimity and consistence is ensure and the process of assessment of candidates does not get vitiated. Be that as it may the allegations levelled by the petitioner was not supported by any materials and was based more on surmisations and conjectures than on concrete evidence or facts.

Under the service jurisprudence, a third party has no *locus standi* to canvas the legality or correctness of any action or inaction, commission or omission committed in course of the selection process. It was not possible for the Court to enter into complicated questions of facts in exercise of its extraordinary jurisdiction, that too, after lapse of several years and adjudge whether ft aion Public Service Commission conducted the recruitment of 1996 Civil Services Examination property or not, in the absence of any specific allegation in respect of specific persons. Just because a petition was

termed Public Interest Litigation it does not mean that ordinary principles applicable to litigation will not apply. In absence of persons who will be affected by any order passed by this Court and in the absence of specific allegation and/or in stances, no effectual adjudication could be made.

Public Interest Litigation was an innovation essentially, to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time, the PIL jurisdiction has been balancing so as to encompass within its ambit subjects such as probity in public life which involve adjudication of complicated question of fact, which are outside the scope of writ jurisdiction. The Hon'ble Supreme Court in the case of *Narmada Bachao Andolan v. Union of India*,¹ has in substance observed that PIL should not be allowed to degenerate to becoming Publicity Interest Litigation or private inquisitiveness litigation. While exercising jurisdiction in PIL cases, the Court has not to forsake its duty and role as a Court of law dispensing justice in accordance with law. No direction can be issued which were in conflict with any legal provisions and/or in violation of principles of natural justice and equity. In other words, the balloon should not be inflated so much that it bursts.²

2. Documentary proof—source of possession unexplained.—In service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, were taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.³

3. Quo warranto.—The writ of quo warrantor in the nature of PIL is not maintainable at the instance of the person who is not unbiased proceedings is that the Court cannot prove the mind of the appointing authority in a motion for quo warrantor. The High Court erred in probing the mind of the Government and acted contrary to its own finding on the role of appointing authority in Quo Warrantor proceedings. The learned Judges are not right in quashing the appointment of the appellant as Managing Director on the misconception that he has been re-appointed to the said office. Whereas it was a fresh appointment under the provisions of the Act and in accordance with the prescribed qualification and eligibility under the Act. Further the appointee holds the

1. (2000) 7 Supreme 264: AIR 2000 SC 3 75.

2. C.P. Mathai v. Union of India, AIR 2001 Ori 118 at 121 : 2001 (92) Cut LT 94.

3. D.N. Thaware v. State of Maharashtra, AIR 2005 SC 540 at 544: 2005 AIR SCW 46: 2005 (1) SCC 590: 2004 (7) SLT 626: 2004 (10) Scale 415: 2005 (1) Supreme 9. *reported in other State Journals*-2005 (1) A11WC 569: 2005 (2) AndhLD 10: 2005 (5) Bom CR 814: 2005 (2) Bom LR 458: 2004 (5) CTC 748: 2005 (1) Cal LJ 142: 2005 (2) EastCriC 17: 2005 (1) JCR SC 205: 2004 (10) JT 561: 2005 (1) KCCR 247: 2005 (2) Mad LW 132: 2005 (2) Mah LJ 199: 2005 (1) Orissa LR 256: 2005 (1) RecCivR 231:

office during the pleasure of the Government as provided under Section 6 (1) of the Act. The learned Judges are not correct in holding that the Government is not affected by allowing the writ of Quo Warranto against the appointee and observed that the Government ought not have filed the appeal. It is unfortunate that the learned Judges observed that the Government did not file the appeal at the instance of the appointee. The learned Judge, failed to appreciate that it is the duty of the Government to justify the appointment as such there is no wrong in filing the writ appeal. Reference was made to the judgment of the Division Bench holding that the State Government and the Board could not have filed an appeal against the order of the learned single Judge.

In the case herein, appellant did not solicit or engineer his appointment, it was at the instance of the State Government in accordance with provisions of the Act and Rules.⁴

In the instant case,⁵ appointment of Chairman of Jharkhand Electricity Board was challenged by vidyut shramik leader by way of Public Interest Litigation on the ground that Chairman is 90 years of age and suspended from service during his tenure with Electricity Board as Superintending Engineer, the Apex Court held that:

(i) PIL is not maintainable in service matters, except for a writ of quo warranto.

(ii) For issuance of a writ of quo warranto, High Court has to satisfy that appointment is contrary to statutory rules.

(iii) To see suitability of a candidate for appointment to a govt. post is the function of appointing authority and not of Court unless the selection is contrary to statutory provisions or Rules.

(iv) There is no age limit prescribed in the 1960, Bihar Electricity Rules for appointment to the post of Chairman of Jharkhand Electricity Board.

(v) Appointment of appellant as Chairman of Electricity Board was not contrary to any statutory provisions.

(vi) Appellant with good qualification and service record is entitled to continue as Chairman of the State Electricity Board subject to the decision of Government in accordance with Section 5(5) of the Act and Rule 4 of the 1960 Rules.

Selection and appointment of District and Sessions Judge. Challenge made to the selection was not justified on merits and also on the ground that the Appellants had no grievance against any of the selected candidates. The challenge in the writ petition as well as in Appeals are as a pro bono publico, the appeals cannot be entertained since as per guidelines of the Court PIL in service matters cannot be entertained.⁶

4. Public Interest Litigation-Tenability.—The appellant was in service of tirumala tirupathi devasthanam, retired from the service of the temple, it appears from records that board of trustees in its resolution, resolved to utilize services of the appellant on contract

4. B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Emoloyees Association & Others, AIR 2006 SC 3106; 2006 AIR SCW 4515; 2006 CLC 1494; 2006 (6) Kant LJ 457; 2006 (8) SCJ 871; 2006 (4) SCT 268; 2006 (9) SRJ 501; 2006 (8) Scale 710; 2006 (7) Supreme 4.

5. Hari Bansh Lal v. Sahodar Prasad Mahto (SC), AIR 2010 SC 3515 : 2010(9) SCC 655 : 2010(4) S.C.T. 286 : 2010(10) SCR 561 : 2010(8) Scale 623 : 2010(2) SCC (L&S) 771.

6. Madan Lal v. High Court of Jammu & Kashmir (SC), AIR 2014 SC 3434 : 2014(4) SCR 226 : 2014(15) SCC 308 : 2014(4) Scale 512 (relied (2009) 9 SCC 655).

basis for a period of two years initially, the board to that effect duly passed an order, it appeared that subsequent resolution was passed, giving further extension to the appellant for a period of two years, again the services of the appellant have been extended for a period of two years through resolution no. 178 dated 28th July, 2009. The reason for continuing the services of the appellant are stated in the resolution itself, pursuant to the aforesaid resolution, the board passed a formal order extending the services of the appellant on contract basis on payment of monthly remuneration as per last pay drawn. The High Court nullified the resolution holding the same to be contrary to rule 13 of the 1989 rules, undoubtedly rule 13 provides that re-employment of any employee after superannuation shall in no case be beyond the completion of age of 60 years, the high court, however, failed to notice that the 1989 rules have no application to engagements made on contracts basis or when services of government servants or employees of other organizations are utilized on deputation. The High Court committed a serious error in permitting respondent No. 1 to pursue writ petition as a public interest litigation

As per Rule 6 of the High Court of Gujarat (Practise and Procedure for Public Interest Litigation) Rules, 2010, matters relating to service would not ordinarily be considered as matters of public interest.^{7 8}

Person not applied against advertisement have no locus standi to challenge advertisements and process of recruitment by instituting PIL. *Vishal Ashok Thorat v. Rajesh Shrirambapu Fate (SC)*, 2019(9) Scale 493

5. Appointment of Chief Vigilance Commissioner.—Object and purpose of CVC Act is to have an integrity institution like CVC which is in charge of vigilance administration and which constitutes an anti-corruption mechanism. In its functions, the CVC is similar to Election Commission, Comptroller and Auditor General, Parliamentary Committees etc. Thus, while making the recommendations for appointment as Central Vigilance Commissioner, the service conditions of the candidate being a public servant or civil servant in the past is not the sole criteria. The High Powered Committee (HPC) must also take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. In the instant case, entire emphasis was placed by the the Department of Personnel and Training (DoPT) and the HPC only on bio-data of empanelled candidates. None of these authorities had looked at matter from the larger perspective of institutional integrity including institutional competence and functioning of CVC. In the instant case, apart from the pending criminal proceedings, various notings of DoPT recommended disciplinary proceedings against respondent-appointee were in respect of Palmolein case. The notings had not been considered by the HPC which failed to take into consideration pendency of Palmolein case before the Special Judge, Thiruvananthapuram, the sanction accorded by the Government of Kerala under Section 197, Cr.P.C for prosecution having committed alleged offence under Section 120-B, I.P.C, read with Section 13(1)(d) of the Corruption Act and the judgment of Supreme Court. The judgment of the Supreme Court was certainly binding on the HPC and in any event required due weightage to be given while making recommendation, particularly when the said judgment had emphasised the importance of probity in high offices. Further no reason was given as to why zone of consideration stood restricted only to civil service. For these reasons, recommendation of HPC recommending name of respondent as

7. P. Seshadri v. S. Mangati Gopal Reddy & Ors., AIR 2011 SC 1883.

8. Rahul Sharma, I.P.S. (Retd.) v. State of Gujarat & 2 (Gujarat)(DB), 2017(2) GCD 1294.

Central Vigilance Commissioner under the proviso to Section 4(1) of the 2003 Act held to be *NON EST* in law and, consequently, the appointment of respondent as Central Vigilance Commissioner was quashed.

In *Ashok Kumar Yadav v. State of Haryana*,⁹ the Division Bench of the Punjab and Haryana High Court had quashed and set aside selections made by the Haryana Public Service Commission to the Haryana Civil Service and other Allied Services.

In that case some candidates who had obtained very high marks at the written examination failed to qualify as they had obtained poor marks in the viva voce test. Consequently, they were not selected. They were aggrieved by the selections made by Haryana Public Service Commission. Accordingly, Civil Writ Petition 2495 of 1983 was filed in the High Court challenging the validity of the selections and seeking a writ for quashing and setting aside the same. There were several grounds on which the validity of the selection made by the Commission was assailed. A declaration was also sought that they were entitled to be selected. A collateral attack was launched. It was alleged that the Chairperson and members of Public Service Commission were not men of high integrity, calibre, qualification, and they were appointed solely as a matter of political patronage and hence the selections made by them were invalid. This ground of challenge was sought to be repelled on behalf of the State of Haryana who contended that not only was it not competent to the Court on the existing set of pleadings to examine whether the Chairman and members of the Commission were men of high integrity, calibre and qualification but also there was no material at all on the basis of which the Court could come to the conclusion that they were men lacking in integrity, calibre or qualification.

The following directions issued by the court

- (i) It has been held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the Members of the High Powered Committee. As in the present case, if one Member of the Committee dissents, that Member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness-in-action. Since it has been held that legality of the choice or selection is open to judicial review. If the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.
- (ii) In future, the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.
- (iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.
- (iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

9. (1985) 4 SCC 417 : AIR 1987 SC 454.

- (v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the concerned Ministry.
- (vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the concerned officer/person, whether favourable or adverse. No relevant material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks is specifically brought to the notice of the Selection Committee.

The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers. There have been wide spread tremors felt due to the directions of the Apex Court in this case. In response to the order the Central Government has now selected the appropriate candidate for the coveted post by way of wide spread consultations with the opposition as well as proper verification of antecedents of the selected candidate.¹⁰

6. Extension of service—Governments' inherent power subject to certain limitations.—Though government has inherent power to grant extension of services, subject to certain limitations in public interest.¹¹

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10. Centre for PIL & Anr. v. Union of India & Anr., AIR 2011 SC 1267.

11. Laxmikant D. Kolvekar v. State of Goa, (Bombay)(DB)(Goa Bench), 2019(2) Mh.LJ 330.

Chapter 24

Environment Law



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1. "Environment" Meaning of.—"Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. (See Environment(Protection) Act, 1986, Section 2 (a)). [*Bombay Environmental Action Group v. State of Maharashtra, (Bombay)(DB), 2019(1) BCR 1*].

2. "Environmental Pollutant" Meaning of.—"Environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. (See Environment (Protection) Act, 1986, Section 2 (b)).

3. "Environmental Pollution" Meaning of.—"Environmental Pollution" means the presence in the environment of any environmental pollutant. (See Environment (Protection) Act, 1986, Section 2 (c))

4. "Hazardous substance" Meaning of.—It means any substance of preparation which, by reason of its chemical or physiochemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, microorganism, property or the environment. (See Environment (Prot.) Act, 1986 Sec. 2 (e)).

5. Legality of auction of mines of sand.—Respondent No. 4 had issued a Notification on 20-11-2002 in pursuance of Government Order dated 2-11-2002 under Rule 23 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (in short the 'Rules') for auction of mines of sand, boulders etc. located in the district of Saharanpur. As per the Notification auction was to be held on 23-12-2002, but was postponed to 30-12-2002. According to the appellant, she was permitted to take part in the auction on 23-12-2002 but subsequently not allowed to participate with a view to favour respondent No. 5, who was politically well connected. A writ petition was filed styled as PIL for direction to the authorities for investigating into the alleged irregularities. The High Court noted that one Mohd. Iqbal was the successful bidder who was not a party in the PIL. In any event, appellant cannot file PIL when she herself claimed to be an intending bidder. In support of the appeal, it has been submitted that the High Court erroneously proceeded on a highly technical basis without appreciating that the public interest was involved, the State's largess was being given for a very paltry amount and, therefore, writ application should not have been dismissed.

Counsel for the respondents on the other hand supported the order stating that the High Court rightly observed that the petition though styled as a PIL was nothing but an attempt to misguide the Court. There was no public interest involved and in fact when the

appellant was herself an intending bidder according to her own saying and as such the petition could not have been maintained. Additionally, a group of persons have challenged the legality of the auction in Writ Petition No. 349 of 2003 which is pending and the appellant is petitioner No. 11 in the said writ petition.

When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It can not also be involved by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

Held'. In the instance case, the appellant has styled the petition as PIL though it relates to a tender where she herself claims to be a tenderer. In another petition, questioning legality of the auction, she was a party. The High Court was perfectly justified in dismissing the writ petition styled as a PIL. The Apex Court make, it clear that Writ Petition No. 349/2003 which was stated to be pending shall be considered in its own perspective in accordance with law. *Kushum Lata v. Union of India*, AIR 2006 SC 2643 at 2644, 2645, 2648: 2006 (5) Supra 843: 2006 (6) JT 293: 2006 (6) SCC 180, *Ashok Kumar Pandey v. State of West Bengal*, (2004 (3) SCC 349; 2003 AIR SCW 6105; *Dr. B. Singh v. Union of India*, 2004 AIR SCW 1494: 2004(3) SCC 363; *Dattaraj Nathuji Thaware v. State of Maharashtra*, 2005 (1) SCC 590: 2005 AIR SCW 46.

6. “Polluter pays principle” Meaning of.—The “polluter pays principle” means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but, also the cost of restoring the environment degradation. Remediation of the damaged environment is part of the process of “sustainable development” and as such polluter liable to pay the cost to the individual suffers as well as the cost of reversing the damage ecology. *Indian council for Enviro-Legal Action v. Union of India*,’ quoted in AIR 1998 Journal Section at 3. See also *M.C. Mehta v. Union of India*, (1997) Com LJ 199 (SC)

7. General.—With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also densely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi, etc., are facing the impact of air pollution on a steadily increasing level.

The presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations, etc. has a detrimental effect on the health of the people as also on animal life, vegetation and property.

In the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, decisions were taken to take appropriate steps for the preservation of the quality of air and control of air pollution. The Government has decided to implement these decisions of the said conference insofar as they relate to the preservation of quality of air and control of air pollution.

It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under Water (Prevention and Control of pollution) Act, 1974, will also perform the function of the Central Board for the prevention and control of AIR Pollution and of a State Board for the Prevention and Control of AIR Pollution in the Union Territories. It is also proposed that the State Boards constituted under the said Act, will also perform the functions of State Boards in respect of Prevention, control and abatement of air pollution. However, in those states in which State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Board for the Prevention and Control of Air Pollution are proposed to be constituted. (Vide Statement of Objects and Reasons of Air (Prevention and Control of Pollution) Act, 1981)

Pollution, be that air, water or noise, is menace to the society. All the developed and developing countries are facing this hazard. With the industrialisation of a country problem of pollution comes in. If, it is allowed to go unabated there will be serious health hazard to the human community. It is true that, the High Court need industrialisation for our development. No country can prosper without industrialisation. At the same time, it should be the endeavour of all to control pollution. With the industrialisation pollution will be there. It can only be minimised so that it may not endanger the human life. The court have to overcome hazard of pollution by taking proper measure to reduce it to the extent which may not cause health hazard. This is not the problem of one country, it is the problem of all the countries. Every country years of industrialisation for further development. In the process, the entire globe faces this problem. Even, the United Nations Conference on the Human Environment which was held at Stockholm in June 1972, considered with all earned how to get rid of this menace in the civilised world. In the said conference, India also took part. It was decided in the said conference to take appropriate steps for preservation of natural resources of the earth, which among other things, included preservation of the quality of air and control of air pollution. Earlier, there were legislations so far prevention and control of water pollution. However, in the year 1981, in the light of resolution adopted in the United Nations Conference, the present Act, was made. This Act came into force on 29-3-1981. In the said Act, various devices have been prescribed to prevent and control air pollution which are very stringent in nature. Even a going industrial unit can be closed under the provisions of this Act, if the said industry or industrial unit does not take any step to conform to the requirements of the Act. As the provisions of the Act, are stringent in nature, certain safeguards have also been provided to the industrial units so that the officers entrusted with the job of control may not act arbitrarily and capriciously to the detriment of the industries or industrial units. If, the Court try to achieve that, the Court shall have to forgo the industry. Therefore, what is necessary is to take steps for growth of industries containing

pollution to such an extent so that no health hazard is caused. There should be checks and balances. With this end in view the present Act, has been enacted. Therefore, for violation of the provisions of the Act, the authority concerned will be entitled to take appropriate steps. But, such action can be taken only in accordance with law.²

The Problem of environmental pollution has been recognised as a worldwide disaster. Development without regard to the ecological equilibrium has led to an environmental crisis during the 19th and 20th centuries. Urbanisation, modernisation and the race for technological and industrial development has caused the ecological imbalance.

The environment-defined as that outer physical and biological system in which man and organisms live, is a whole, albeit a complicated one with many interacting components. (See the State of world Environment, United Nations Environment Programme, Annual Review, 1980 at p.6, quoted in AIR 1997 Journal Section at 34, 35).

The usually identified main components of the environment are soil, water and air. These components of the environment keep on interacting with each other to maintain a mutual balance called “ecological balance” This system taken as a whole, is useful to man. The “ecological balance” is being upset by misuse, abuse and extraordinary use of resources of the environment, thereby endangering the very existence of human race. The changes that men produce during this use affects his health, his comfort, his efficiency and his capacity to attain a satisfactory social adjustment. (See AIR 1997 Journal Section at 35).

A ruthless exploitation of natural resources created deserts and droughts and now the experiments with atom and the entry of nuclear weapons in the space threaten even the existence of ozone and the very atmosphere without which man cannot live at all. (See AIR 1997 Journal Section at 35).

The Indian Constitution (Forty Second Amendment) Act, 1976 has made it a fundamental duty of the State and citizens to protect and improve the environment. Article 48-A of the constitution reproduced below:—

“The State shall endeavour to protect and improve the environment and the safeguard the forests and wildlife of the country.”

Article 51-A of the Constitution, Provides:—

“To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

It is, thus, clear that the part of the shore which remains covered with water at the High Tide and gets uncovered and becomes visible at the Low tide is called “foreshore”. It is not possible to set up shrimp culture farm in the said area because, it would completely submerge in water at the High tide. It is, therefore, obvious that foreshore facilities are neither directly nor indirectly needed in the setting up of a shrimp farm. So far as “water-front” is concerned it is no doubt correct that a shrimp farm may have some relation to the water front in the sense that the farm is dependent on brackish water which can be drawn from the sea. But, on close scrutiny, the Apex Court are of the view that shrimp culture farming has no relation or connection with the “waterfront” though, it has relation with brackish water which is available from various water-bodies including sea.

2. Mahabirt Coke Industry v. Pollution Control Board, AIR 1988 Gau. 10 at 312, 313.

What is required is the “brackish water” and not the “waterfront”. The material on record shows, that the shrimp ponds constructed by the farms draw water from the sea by pipes, jetties, etc. It is not the “water front” which is needed by the industry, what is required is the brackish water which can be drawn from any source including sea and carried to any distance by pipes, etc. The purpose of CRZ Notification is to protect the ecological fragile coastal areas and to safeguard the aesthetic qualities and uses of the seacoast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure thereon is *per se* hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. The Apex Court has, therefore, no hesitation in holding that the shrimp culture industry is neither “indirectly related to water front” nor “directly needing foreshore facilities”. The setting up of shrimp culture farms within the prohibited areas under the CRZ Notification cannot be permitted.³

According to U.S. Department of Health, Education and Welfare, air pollution has been defined as, the presence in the outdoor atmosphere of one or more contaminants or combinations thereof in such quantities and of such duration as may be, or may tend to be injurious to human, plant or animal life or property or which unreasonably interfere with the comfortable enjoyment of life or property or conduct of business.” *V.S.Damodaran Nair, v. State*, AIR 1996 Ker.. 8 at 13, (K. Sreedharan and P. Shanmugam, JJ).

In 1988, the Supreme Court received complaints alleging that the operation of limestone quarries in Himalayan Region of Mussorie resulted in the degradation of the environment affecting ecological balance, The Court entertained the writ under Article 32 and held that the activities violated Article 21 of the Constitution.⁴

In Bentham’s classification of offences, environmental pollution crime can be placed in the 4th category, i.e. public offences which produce some common danger to all the members of non-assignable, individuals but the peculiarity in these crimes is that it does not appear that anyone is more likely to suffer than any Other. So in these crimes there is less alarm in society. Prof. Upendra Baxi, *“Bentham’s Theory of Legislation”* (1986 Ed.) at 148. quoted in 1997 Criminal Law Journal, Journal Section 57 at 60).

“Crime” is generic, largely signifying offences which are serious in nature and undoubtedly are problems of the society. Sociologically, it is defined as infraction or violation of established or codified custom or public opinion at a given time. (Abdul Hasant, IPS: *“Crimes and Criminal Justice”* (1939-Calcutta), pages 129). In the Indian Penal Code also the word “offence” is simply defined as any act or omission made punishable by law for the time being in force. So, from a definition of “crime”, it seems to be changing concept according to need of society and invariably moulded by public opinion. Among the existing condifed crimes, when measured in the Barometer of Public opinion, in murder, dacoity, robbery, burglary, kidnapping abduction and arson, etc. public reaction is more and widespread as the crime affects a person or group directly in body, mind, reputation or property. But, more heinous crimes like atmospheric pollution, assaults an environment and destruction of nature, etc. though are dangerous crimes against humanity, are unable to produce more alarm of crime in society. This is because pollution or nature destruction crime’s effect is neither visible on the face of the crime nor felt immediately though its dangerous canceric effects gradually lead to a disaster.

3. S. Jagannath v. Union of India, AIR 1997 SC 811 at 822, 823: 1997 (1) Crimes 189:1997 (2) SCC 87: 1997 (1) JT (SC) 160: 1997 (1) Supreme Today 575).
4. (Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P., AIR 1988 SC 2187).

Very rightly Krishna Iyer, J., has commented that today “Human survival is menaced by another equally homicidal missile euphemistically described as environmental pollution.” V.R. Krishna Iyer, J., “*Environmental Pollution and the Law*”. Vedpal Law House, Indore, page 1, See 1997 Criminal Law Journal, Journal Section 57 at 57).

Prof. Kenney was of the opinion that “So long as crime continues (as would seem inevitable) to be treated by Government Policy, the nature of crime will elude true definition. (Turner, J.W. Cecil, “Crime and Criminal Law”, Kenny’s Outline of Criminal Law at 4 (Cambridge University Press, 1952). So, it is made clear that laws are enacted by Government Policy according to public opinion and aimed to eradicate crimes by punishing the defaulting criminals. In this country according to Tewari Committee’s data, there are nearly 500 environmental laws including 17 State Laws to control the crime of pollution and nature’s destruction to prevent water pollution. The Water (prevention and Control of Pollution) Act, 1974, for air pollution, Air (Prevention and Control of Pollution) Act, 1981, to Protect Environment, Environment Protection Act of 1986, to protect forest, Forest Conservation Act, 1980 to protect from sound pollution and discharge of carbon pollutions, measures fitted in, the Motor Vehicles Act, 1988 silent Valley (Protection and Ecological Balance) Act, 1979, etc. were passed. Besides, these laws, major Act (Indian Penal Code) under the head of nuisance, Sections 277 and 278 of IPC, Law of Tort, Cr PC in Sections 133 and 144, the Atomic Energy Act, 1962, Factories Act, 1948, etc. also provide laws for environmental protection. As the law defines an “Act” to be a crime for a violation of the law only, therefore, all the violations of environmental protection laws, are crimes and violators are criminals in the eye of law.

The Indian Constitution in Articles 47, 48-A, 51(g) Union List Entry No. 31 and State List Entry No. 6 clearly speaks of environmental protection and to take health care of citizens of the State because citizens health is fundamental to the National Progress. But, in the existing polluted atmosphere, the World Health Organisation report exhibited that about 80% of sickness and diseases in India are due to lack of pure water and proper sanitation.

Today for the work of a handful of polluters the entire humanity is suffering and people are being deprived of their legitimate right of clean environment. They are forced to drink polluted water, compelled to breathe polluted air, pressed to live under abnormal sound and atmospheric pollution. It is unfortunate that man had forgotten that he is a product of his environment and all his social, moral, spiritual and economic well-being depends on his harmony with nature only.

United Nation’s Rio Declaration, Stockholm Conference, 1972, U.N. Resolution of 1986, etc., though not successful in motivating all the nations to protect their environment, yet are eye-openers and portray the dangerous effects of environmental pollution. In the Earth Summit, the large scale pollution and its adverse effect was first visualised which ultimately aroused the public opinion in support of environmental protection. It was projected in the Earth Summit that: “Each Year, as many as 50,000/- species become extinct, up to 17 million hectares of forest an area roughly the size of Saudi Arabia, disappear. More than 8.2 billions of carbon dioxide are dumped into atmosphere and some 6.5 million tones of refuse finds its way into the world’s seas, choking sea-birds and poisoning fish.

In the Global Scenario though, there is much talk of environmental protection and few big powers are advertising themselves as saviours of mankind, but they themselves are polluting the environment in large scale. To cite an example, in USA alone with just

6% of world's pollution, as an estimate made in 1970 showed, 142 million tones of smoke per year, 5,00,000 different chemicals (Plastic, antibiotics, radio-nuclides, synthetic, pesticide and detergent), 16 billion kgs. of chemicals and industrial wastes, 1.25 million kgs. of pesticides and 60 million kgs. of fertilizers are everyday drained into various waterways.

Due to the effect of environmental pollution, people are suffering and dying from environmental induced diseases, our rich cultural heritages and historical monuments are continuously subjected to erosion and badly effected. All the holy rivers are polluted and there is crisis of fresh water, in few areas. Fertile lands of the country are gradually becoming barren and climate is changing ultimately against the order of nature.

In Bhopal on December 3 and 4 of 1984 the release of highly noxious and dangerous gas from the plant of Union Carbide Company, resulted in loss of live of many and caused damage to property and person on an extensive scale. (Prof. Upendra Baxi (Ed *Mass Disasters and Multinational Liability*'), (The Bhopal Case of 1986). After this hair-raising disaster, people residing in industrial towns are now fearing for their security and in fact "public safety", is now in danger in many towns. In 1950 Patanja Shastri, J. Had interpreted "public safety" is now in danger in many towns. In 1950 Patanja Shastri, J., had interpreted "public safety" as the security of the public or their freedom from danger". (*Romesh Thaper v. State of Madras*,⁵. So, the control of crimes of accidents in factories, public nuisances, pollutions, destructions of nature, etc. lead to the maintenance of "public safety" and is quite essential as it also includes everything that effects the air we breathe, the water we drink, the surrounding in which we live and all other factors that effect the quality of human life on the earth.

As regards sound pollution, the word "noise" is defined as "unwanted sound" and by this sound pollution, the polluters are up setting the balance of nature and jeopardising human life. The notification under Environment protection Act, 1986, provides the statutory right of quiet living urban jwellers of residential area the said limit is set at 55 decibels for daytime 6 a.m. to 9 p.m. and 45 decibels at night both expressed as equivalent sound level.

A forensic science expert of Lucknow, had stated that "Noise can cause mental disturbance, deafness and a host of other disorders. Constant noise can cause mental tension and instability. People working in places like factories, garages, goldsmiths, etc. are subjected to such cerebral disorders.(See 1995 Cri LJ Journal at 145).

Water pollution today has become a major threat to the very existence of mankind on the earth. The pollution by domestic pollutants, industrial pollutants, sediments, radio active pollutants, thermal pollutants, etc. have affected the quality of the water in many rivers. World Health Organisation specified that the raw water of Hoogly has 4th grade quality of unit water. The city of Kanpur has more than 45 tanneries, textile mills, chemical pharmaceutical units, which are discharging wastewater into Ganga and polluting it.

Krishna Iyer, J. in this context has- observed that "The unconscionable - industrialisation, the unpardonable deforestation and the inhuman extermination of living species betray and exploitative brutality and antisocial appetite for profit and pleasure incompatible with humanism and conservationism. Today a bath in the "Jamuna" and "Ganga" is a sin against bodily health. So polluted and noxious are these holy water

5. 1950 (51) Cri LJ 1514 at 1516, 1517 (SC).

now.” In Bombay sea water is polluted as millions of litres of sewage and industrial effluents are being discharged into the water. In Orissa, river Mahanadi, Kathajori are polluted by the effluents of Brajarajnagar Paper Mill and Textile Mill of Chowdwar. Likewise, river Godavari of Andhra Pradesh is polluted by wastewaters of paper mills situated on the embankments of the river bed. Today the eco-systems are gradually endangered by daily discharge of oil, sewerage and effluents. The industrial wastes, sewerage and oils from ships cause damage to marine life. Likewise, within the last few decades, about half of the forest resources of India which is gift of nature has been lost. While public need at least 33% of forest reserve for proper environment and ecological balance, at present, there is only about 5.4 forest reserve in India. Due to ecological imbalance, the atmosphere is unusually changing and due to less rain, spread of desert is also continuing in India. It was very rightly observed that “The vast use of energy and conjunction of pollutant elements are leading man as a curse which can alter natural system of the planet jeopardizing mere existence of human civilization. (Sandeep Sinha; “Global Concern for Saving Environment” Sunday, “Amrit Bazar Patrika”, dated 10-12-1990). In this situation, when polluters by their dangerous crimes threaten the existence of mankind, their crimes are undoubtedly more heinous in nature than any other crime of the world, and they certainly deserve severe punishment. (See 1997 Criminal Law Journal, Journal Section at 58 and 60).

This is the duty of Government under Article 51-A (g) that it should introduce compulsory teaching of lesson at least for one hour in a week on protection and improvement of natural environment in all the education institutions.⁶

Life, Public health and ecology have priority over unemployment and loss of Revenue problem. *M.C. Mehta v. Union of India*, AIR 1988 SC 1037; 1987 (4) SCC 463; 1987 (3) JT 630.

When the application of science and technology are increasingly employed in producing goods and services to improve the quality of life under this circumstance there would be certain element or hazard or risk inherent in the very use of such science and technology. *M.C. Mehta v. Union of India*, (1986) 2 SCC 176; AIR 1987 SC 965; 1986 SCC (Cri) 722; 1986 (1) Scale 199.

Right to clean environment is an ingredient of right to life. It is directly recognised as the part of right to live. *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, 1985 SC 652; 1985 (2) SCC 431; 1985 (1) Scale 408; 1985 (3) SCR 169.

The Magistrate under Section 133 of the Cr.P.C. is empowered to remove a business enterprise from a residential locality which has become serious health hazard to the residents and the whole atmosphere. *Ajeet Mehta v. State of Rajasthan*, 1990 Cr LJ 1596.

Public Interest Litigation is a weapon. It is to be used with great care and caution. Its purpose should be to redress the public grievance. *State of H.P. v. A. Parent of Student of Medical College, Shimla*, AIR 1985 SC 910; 1985 (3) SCC 169; 1985 (3) SCR 676; 1985 (1) Scale 758.

Article 226 of the Constitution of India enables the High Courts to issue a writ for any purpose. It is not confined to enforcement of fundamental rights. *R.R. Delavai v. The Indian Overseas Bank*, AIR 1991 Mad 61.

6. *M.C. Mehta (2) v. Union of India*, (1988) 1 SCC 471; 1988 (1) JT 69; 1988 SCC (Cri) 141; AIR 1988 SC 1115; 1988 (1) Scale 54.

Where the petitioner was not a riparian owner filed a writ petition for the prevention of pollution caused to the holy river Ganga. It was held by the Apex Court that the person who filed the writ petition was interested person protecting the lives of people. *M.C. Mehta v. Union of India*, AIR 1988 SC 1115; 1988 (1) SCC 471; 1988 SCC (Cri) 141; 1988 (1) JT 69; 1988 (1) Scale 54;

Where the applications for licences to establish new industries are made in future, such application should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. *M.C. Mehta v. Union of India*, AIR 1996 SC 2715.

Life, public health and ecology have priority over unemployment and loss of revenue problem. *M.C. Mehta v. Union of India*, AIR 1988 SC 1037; 1987 (4) SCC 463; 1987 (3) JT 630.

8. Air and Water pollution by Trade or Industry.— In *Abdul Hamid v. The Gwalior Rayon Silk Mfg., (WVG) Co. Ltd.*, (1989 Cri LJ 2013 (MP). the Madhya Pradesh High Court has considered that Section 21 of the Water Pollution Act, provides for taking samples of effluents. Sub-section (2) thereof makes the result of analysis admissible in evidence in any legal proceedings in the absence of compliance with the various provisions in sub-sections (3), (4) and (5). Section 26 of the Air Pollution Act, contains similar provision. These provisions are for the protection of the industries. They are there to ensure a proper balance between the conflicting claims of nation's industrial progress and the hazards to the health of the citizens. The safeguards provided under the Acts have rational basis and without them the industrialists could be vexed day-to-day out by being dragged to the criminal Courts for variety of reasons even unconnected with the vindication of the law. The Water and Air Acts are special Acts brought on the statute-book and constitute a complete Code for prevention and control of water and air pollution by any trade industry. It has expressly been mandated therein that notwithstanding anything inconsistent therewith contained in any enactment other than the Acts their provisions have to prevail. Inconsistent provisions in any other Act cannot, therefore, be permitted to come in the way of the provisions of the special Acts and defeat them. In view of the express provisions in Section 52 of Air Act and Section 60 of the Water Act, it has to be held that to the extent of inconsistency the provisions of the Penal Code, General Clauses Act, and the Code Stand repealed. In matter relating to pollution of air or water by trade or industry recourse has to be taken to the provisions of the special Acts.⁷

9. AIR Pollutant in Industry.—Powers and Functions accordingly quashed in *K. Muniswamy Gowda v. State of Karnataka*,⁸ It was observed as follows:—

“ 18. A plain reading of Section 18(1)(b) of the Air (Prevention and Control of pollution) Act, 1981, unquestionably manifests that State Board shall be bound by only such directions issued by the State Government which pertains to the discharge of functions assigned to the State Board under Section 17 of the said Act. It is also amply clear that neither the State Government can issue any directions which has not nexus with the functions assigned to the Board nor the Board is bound to follow any such directions.

7. *Harihar Polyfibres v. Sub-Divisional Magistrate, Haveri*, 1997 Cri LJ 2731 at 2733, 2734 (Kant.)

8. AIR 1998 Kant. 281 at 286, 287: 19*** kant LJ 594).

“19. In the said background it has to be ascertained as to whether under the provisions of the Air Act, the State Board has been assigned with the functions to exempt any industrial plant from the provisions of the said Act conditionally or unconditionally. At least, on my reading of the provisions of the Act, with minute details, I do not find any provisions under which the Parliament has vested any discretion with the State Board to grant exemption to any particular industrial plant or class of plants. A reading of Section 17 of Air Act, which sets out of the functions of the State Board, clearly envisages that the functions assigned to State Board are meant for taking such, steps as may further the object of the Act, in effectively controlling the air pollution caused by the industries. No clause of the said section, or for the sake any provision of the Air Act, has empowered the State Board to keep any industrial plant out of the purview of the Act, if it causes air pollution. Any authority to grant exemption assumed by the State Board can be held only to be derogatory to the object and express provisions of the Act. Nonetheless, it has done to be exempting 115 industrial plants under its resolution, dated 7-5-1990 under purported directions of the State Government which,, had been noticed to the public on 10-3-1992. I may emphatically state here that whether any particular industrial plant falls within the purview of the Air Act or not, has to be adjudged with reference to the provisions of the Act, itself which provides that the Act will apply to only such industries which emit air pollutions. Therefore, if any industry is not emitting any air pollutant, then *ipso factor* the provisions of the Act, will have no application to it. But, if it is emitting 'air pollutants, irrespective of its extent then neither the State Government nor the State Board has any competence to keep such industries may be Cottage, Small Scale or Tiny to keep them out of the purview of the Act. Accordingly, notification dated 10-3-1992, issued by the State Board granting exemption in respect of certain industrial plants is declared as *ultra vires* powers and functions and is accordingly quashed.”

10. Air Pollution in Residential Area.—Existence and survival of industries falling within the mischief of the regulatory Statute.—The petitioner is running a grain cleaning unit. For processing the food grains, the petitioner has installed various machines. The area in which the factory is located is admittedly residential. It appears that the residents of the area being aggrieved with causing of pollution of air and environment due to running of the said industry, had lodged a complaint with respondent Board for closure/shifting of the industry. Pursuant to the said complaint, the Chairman of the respondent Board took upon himself to hear affected parties including **the** petitioner and passed the impugned order. *Held:* There was no delegation of power **in** favour of the Chairman to pass order under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981, with regard to the industry of the petitioner. Nonetheless, his submission, is that since, the order has been passed in consonance with the subject of the Act, namely to prevent and control the air pollution and to remedy the inconvenience of the residents of the area, therefore, this Court should not interfere with the order in exercise of its extraordinary writ jurisdiction. Anyhow, subsequent to completion of hearing of the case, a memo has also been filed on behalf of the respondent Board stating therein, that the impugned proceedings will be withdrawn and in that view of the matter the writ petition may be dismissed as having become infructuous.

The High Court does not propose to examine on the aspect as to whether on merits the order like the impugned one could have been justifiably passed by the Board or not. It will be essentially for the Board, after due enquiry conducted in accordance with the law,

to come to a conclusion as to whether the industry should suffer an order of closure or shifting in terms of Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 or not. But, the Chairman under no circumstance, except under due delegation of powers in his favour, could have embarked upon the enquiry against the petitioner's industry and passed the impugned prejudicial order.

To substantiate the validity of the impugned order, the practice of passing of order by the Chairman even without any delegation of powers in his favour was being continued for a long and so far nobody had objected to the competence of the Chairman, who had been undertaking the proceedings like the impugned one, whereunder the Chairman had been issued purported statutory directions to the prejudice of the industry. Such directions were meant to be complied with not only by the industry, but also by the other statutory authorities by way of stoppage of supply of electricity, water or other services. The act of passing off such orders at the hands of the Chairman in flagrant violation and misuse of statutory powers only demonstrate his arbitrary manner of functioning without having any regard to the statutory provisions under which he has been created and recognized. Section 5(2)(a) of the Air (Prevention and Control of Pollution) Act, 1981 mandates that the Chairman has to be a person having special knowledge or practical experience in respect of the matters relating to environment protection. The State Government has been empowered to nominate the person as Chairman having the said experience. Therefore, the person who is appointed as Chairman has to be presumed as having sufficient knowledge of statutory provisions as well. But, this presumption has been completely denied by the chairman by acting in an incomprehensively irresponsible manner, which is *ex facie ultra vires*. The State Government would seriously apply itself, as to whether such person could still be continued as Chairman of a statutory Board like the present one, which has been armed with stringent powers under the Act, having far reaching bearing on the competing requirements of maintaining the environment, air and water pollution preventions and controls and the existence and survival of industries falling within the mischief of the regulatory statute.⁹

Air pollution adversely affects human being as well as their atmosphere. Air pollutants cause serious health diseases like eye irritation, vegetation damage. They cause respiratory diseases and other harmful effects to human being and vegetation.¹⁰

High Powered authority should be set up by the Government in consultation with the Central Board for inspecting the functions of hazardous industries, structure or quality etc.¹¹

11. Annihilation of inhabitants by factory Effect prayer is made before Court.—

Industrial growth, Yes; but by exposing a large segment of society to the risk of losing lives, No. This apprehension is not imaginary. Bhopal disaster brought to the knowledge of all what a tragedy can be caused by chemical industries. In the wake of what happened there more than a decade ago, industrialists engaged in production of chemicals started thinking of taking precautionary and protective measures to see that if worst were to befall, how could their financial liability be taken care of.

9. Suma Traders M/s. v. Chairman, Karanataka State Pollution Control Board, Bangalore, AIR 1998 Kant. 8 at 8, 9, 10.

10. V.S. Damodaran v. State, AIR 1996 Ker 8.

11. M.C. Mehta v. Union of India, (1986) 2 SCC 176; AIR 1987 SC 965; 1986 SCC (Cri) 122; 1986 (1) Scale 199.

It has been felt by this Court that courts have neither the expertise nor are in possession of various information, which shall be required, to decide one way or the other so far as the question of relocation is concerned. In such a situation what has appealed to this Court is to leave this matter to be examined by an Authority which Court would require the Central Government to constitute, as visualised by Section 3(3) of the Environment Protection Act, 1986. It is not necessary to deal at length as to what is visualised by this Act and why? This has been explained in detail in a judgement delivered by Judge of Apex Court reported in AIR 1996 SCW 3399. The concept of “sustainable development”, whose salient points have been noted in the aforesaid judgement, does call upon one and all to see to the maintenance of balance between development and its sustenance in future.

In the appeals at hand, the Apex Court are confronted with a problem which has more serious consequences and which touches the core of Article 21 of the Constitution inasmuch as the very lives of the inhabitants living around the factories in question are in great jeopardy so much so that any probable accident in the factories may see annihilation of large number of inhabitants. May be the accident does not take place. There is, however, no ruling out of the same altogether as Bhopal has shown. No risk can, therefore, be taken. But, then relocation does need a deeper probe because of the various factors which would be required to be gone into. Such, an exercise can usefully be taken by an Authority.

The Apex Court, therefore, direct the constitution of an authority under Section 3 (3) of the Environment Protection Act, 1986, by the Central Government who shall confer all the necessary powers under the Act, on the authority, which shall be constituted within one month from the receipt of this order. The authority shall submit its report to the Central Government within months after examining and deciding all the relevant issues including those mentioned by Court. This would be done by affording reasonable opportunity of hearing to the concerned parties. Follow up actions shall be taken by all concerned as per the recommendations of the authority within reasonable time.

As, the constitution and deliberation of the authority would take time, and its ultimate result cannot be foreseen at this stage, the Apex Court has thought it fit to direct the Bombay Municipal Corporation to proceed further with the plans which had been submitted by the appellants, some of which also came to be sanctioned. But then, as sanctioning in some cases was about a decade back and as the scenario and thinking on the subject has since then changed a lot, so also the building bye-laws, the Apex Court has thought it fit to direct the corporation to re-examine the question of grant of sanction on the basis of the existing rules and bye-laws. The corporation may proceed with this exercise, but it would await the result of the report of the aforesaid authority. The Apex Court has desired the Corporation to undertake this work at this stage itself because, the matter has been delayed already and authority's deliberation would not be available for quite some time.

In the aforesaid view of the matter, the review petitions filed before the High Court by the respondents are not required to be kept alive and they would stand dismissed on withdrawal, to which effect prayer was made before Court.¹²

12. F.B. Taraporawala v. Bayer India Ltd., AIR 1997 SC 1846 at 1847, 1848: 1996 (6) SCC 58: 1996 (3) SCJ 499).

12. Ban on limestone quarries is a right of people to live in healthy atmosphere.—The losses of limestone quarries which have been directed to be closed down permanently under this order or which may be directed to be closed down permanently after consideration of the report of the Bandopadhyaya Committee, would be thrown out of business in which they have invested large sums of money and expended considerable time and effort. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with nominal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment.¹³

13. Ban on manufacture of few fireworks Prohibited which creates noise beyond permissible limit.—The order passed by the Commissioner of police, pursuant to the purported directions issued by the Court and the Pollution Control Board of West Bengal have not banned the manufacturing, selling or dealing or using all types of fire work, but only few fireworks have been picked up and prohibited with creates noise beyond permissible limit. *Burrabazar Fireworks Dealers Association v. Commissioner of Police, Calcutta*, AIR 1998 Cal. 121 at 134).

14. Cause of environment degradation.—Article 21, 47, 48-A and 51-A (g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is 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. The “Precautionary principle” makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. (See AIR 1998 Journal Section 1 at 2).

15. Check on polluted atmosphere Prevention and control of crimily.—In a singly city only, i.e., Delhi, as Indian Journal of Environmental Protection exhibited, about 11,000 slum clusters, 94,000 industrial units, over 22 lakh vehicles and 4,400 metric tones of Municipal solid wastes have thrown the city’s environmental health out of gear. (Published in “Times of India”, p.3, dated 16-7-1996, quoted in 1997 Criminal Law Journal, Journal Section 57 at 57, 58). It is also visualised by V.R. Krishna Iyer, J., that every year 16,000 million tones of Oxygen are burned up and that between 21,000 and 24,000 million tones of carbon dioxide are discharged into the atmosphere, in this prevailing polluted atmosphere, now even the common man in society has started to predict that in near future destruction of this beautiful civilisation is destined, but in this changed scenario still no adequate importance is given to prevention and control of the crimes. (See 1997 Criminal Law Journal, Journal Section 57 at 48).

16. Closure of workshop for livelihood Constitutionally recognised values, cannot be ignored.—In *Madhavi v. Thailakan*, (1989 Cri LJ 499: 1988 (2) Ker LT 730, quoted in *M.R. Pillai v. Executive Officer*, AIR 1997 Ker. 162 at 163), the Kerala High Court referred to Articles 47, 51-A(g) and 21 of the Constitution and held that:—

“To say that a workshop or factory should not be closed down, as it provides livelihood to some persons, unmindful of the consequences to others, would be to say the untenable, Constitutionally recognised values, cannot be ignored.”

13. Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P., AIR 1985 SC 652 at 656).

17. Compensation by Industry.—The industries are absolutely liable to compensate for the harm caused by them to villagers in the aforesaid area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. *Indian Council for Envior-Legal Action v. Union of India*, AIR 1996 SC 1446, quoted in AIR 1998 Journal Section at 3.)

18. Compulsory exposure of unwilling persons to dangerous and disastrous noise violative of Article 21.—In *Jacob v. Superintendent of Police*, (AIR 1963 Ker 1: ILR 1993 (1) Ker 248, quoted in *M.R. Pillai v. Executive Officer*, AIR 1997 Ker. 162 at 163), it was held that:—

“....Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Article 21 of the Constitution. Right to life, comprehends right to a safe environment including safe air quality, safe from noise.”

19. Conscious decision after taking them into account.—Where the Government has been aware of the problem of environment and arrived at conscious decision after taking them into account, it may not be for the Courts to interfere in the absence of *mala fides*.¹⁴

20. Consciousness for environmental protection.—The United Nations Conference on world Environment held in Stockholm in June 1972 and the follow-up action, thereafter, is spreading the awareness. Over thousands of years man had been successfully exploiting the ecological system for his sustenance but, with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets.¹⁵ In our country the Pollution Control Boards and environmental protection measures are only confined to intellectual deliberations on a higher platform. Due to lack of public support all the enactments for environmental protection, show poor result and also the enforcement of the law is lax. (See 1997 Criminal Law Journal, Journal Section 57 at 62).

In Rural Litigation and Entitlement *Kendra v. State of U.P.* (AIR 1987 SC 359, quoted in *Obbayya Pujari v. Member Secretary, K.S.P.C.B., Bangalore*, AIR 1999 Kant 157 at 162), it was observed:—

Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have not come to be realised, It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. We had commended earlier to the State of Uttar Pradesh as also to the Union of India that afforestation activity may be carried out in the whole valley and the hills. We have been told that such activity has been undertaken. We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way, there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national

14. *Shri Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109 at 1114).

15. *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359 at 363, 364).

wealth It has always to be remembered that these permanent assets of mankind and are not intended to be exhausted in one generation”

21. Consumerism of Plastic and its effect.—This petition was basically brought to Court as the residents of the hills, particularly of Garhwal, and more particularly of the district Chamoli, felt threatened by the invasion by State Organisations and the erosion of the sanctity and the peace and tranquility of the bugiyal Bugiyal, in Garhwal, basically means meadows and pasture land which exists above a certain altitude in the mountains no different than the alpine meadows of Switzerland and Australia. Closer to home in the meadows at Khilanmarg above Gulmarg in Kashmir are called “marg”. The complaint to the Court was that these areas are pasture lands to the sheep and the shepherd. It was said that the bugiyal is basically an ecosystem in itself and this delicate balance between ecology and environment has to be understood and respected. It cannot be defiled and the intricate balance of nature does not suffer the presence of aliens on these pasture lands as it keeps away the sheep and shepherd, thus, disturbing the ecology. This living phenomenon may be watched but cannot be tread upon.

The complaint is that the Garhwal Mandal Vikas Nigam had put up pre-fabricated lodging houses as a hotel for tourist on the slopes of a bugiyal which is below the peak of the temple of “Tungnath”. This has happened at Chopta. Tungnath incidentally, is tration as on of the highest temples in India.

That indiscriminate import of plastic and non-biodegradable material is playing havoc with the environment of the hills as each seasons plastic collects on the slopes of the hills to be covered by autumn leaves of one season and this exercise is repeated year by year with plastic being sandwiched between leaves preventing rain water from seeping and percolating into the hill slopes and causing another ecological disbalance; the disappearance of little streams and water resources on which the hill people rely upon. This depos t of plastic materials also kills the green life on the slopes of the mountains.

The th rd aspect is about the tourist and trekking pilgrimage routes, where the tourist, the pilgrim and the trekker devoid of all civic sense with no respect of the environment throw non-biodegradable material on the slopes of the hills and the mountain routes are being littered with indiscriminate evidence of deliberately created garbage. Besides on these mountain routes commercial activity, like kiosks and tea shops at places where they ought not to be, has been encouraged by the State administration. Court’s attention was drawn to the garbage strewn on the slopes of the hills right upto the glacier of Gomukh and of man-made deposits of synthetic and non-biodegradeables materials at the source of the river Ganga at above 14,000 feet, Environmentalists have voiced concern on the receding glacier at Gomukh, the source of the river Ganga. A leading news agency reported that the glacier at Gomukh was drying up. Discussion on this dangerous retardation of the glacier at Gomukh has even been broadcast on the British Broadcasting Corporation. (See United News of India, New Delhi, 9 October, 1996). Today, as this matter is being considered by the Court, a national daily reports summarized in effect, that the glacier at Gomukh is receiving the harmful impact of spreading deforestation and urbanisation and ill-mannered anti-environment recreational visits of city dwellers to these regions. This newspaper highlights the worry of scientists of the glacier at Gomukh receding, reducing and shrinking, (see The Pioneer, Lucknow, 27 October, 1996). The “Warming up” phenomenon is one factor, but this itself is related to many others.

Held: Merely because money has been spent is no ground to degrade ecology and environment. While confirming uses in urban planning were not permitted to be

compromised by the Supreme Court, when was held that such violations were illegalities which were no) curable. *K. Ramdas Sheney v. The Chief Officers. Town Municipal Council, Udipi*, AIR 1974 SC 2177. The violation of environment cannot continue and upsetting an ecological balance will be judged with even mere strict standards. That money has been spent by the Nigam on putting prefabricated structures and tents on the bugiyal was a misplaced expenditure.

The bugiyal belongs to the people. It is an eco-system in itself. Nature has tailored it. It is not for man to erode the sanctity of this area. It must be returned to nature to provide for whom it was meant, the sheep, the shepherd, the wild flowers the micro-organisers and the plant and insect life below the turf and in the shrubs at that altitude. Clearly, putting a tourist lodging house on a bugiyal was a mistake. The Court had during the seasons 1994-95 and 1995-96 not interfere with the Nigam's occupation with this sensitive area. As the Court has expected that by this time the Nigam would see the reality and unwind its occupation of running a camp tourist resort there. There is a danger looming on the horizon. If a State financed tourist camp has been planted on the bugiyal, there are other five star hotel groups waiting encroach on this beautiful and tranquil area nestling in the mountains. The Court is afraid that the Nigam will have to unwind its occupation of the bugiyal next season before the end of March 1997. The Chief Conservator of Forests (Mills) will ensure that this will be done. Further, no allotment should be made in respect of occupation of the pasture lands and the meadows that are the bugiyals. This eco-system is to be preserved.¹⁶

The dumping of non-bio-degradable materials, regard being had to the projection with which the State of U.P. advertises. These regions as tourist centres it makes the hills as part of a consumer's economy. On the mass consumption of fast consumer snacks or items classified as packaged fast foods, it is accepted even by the administration that there is no concerted all out effort, at present, to keep throw away plastics and metals away from the hills. Though, both the Commissioners of Kumaon and Garhwal submitted that they have initiated steps in pilot areas for the collection of plastic from being thrown all over the hillside.

Locally, the Commissioner, Kumaon, was of the view that he is making the area of Nainital as a model area to induct consciousness that plastic packets and packaging materials are to be collected instead of being thrown so that it is recycled for other purposes. The Commissioner, has collected statistics on how the plastic finds itself in unscheduled-garbage dumps and the source from where it originates. The special survey was targeted to areas like Dehradun and Mussoorie. The summing up of this random survey is that this plastic throwing spree is part of mass consumption and by far the largest mass of it comes from institutions like schools and colleges Government institutions and hotels. The survey is on record identifying the source and areas of plastic dumps.

But, there is another dangerous phenomenon to be tackled. It is the scattering of plastics deep in the higher reaches of the mountains. There, retrieving it for recycling may be a difficult exercise. In this context steps need to be taken as a matter of urgency. This strewing of plastic on the higher reaches of the mountains and valleys, either by tourists or by residents of hamlets and villages as a result of mass consumption is gradually and slowly creating an ecological imbalance. Layers of plastic get sandwiched between falling leaves and forest biodegradable materials. Plastic prevents nature from

16. Om Prakash Bhatt v. State of U.P., AIR 1997 All 259 at 260, 261, 262: 1997 All LJ 1263

returning to earth nutrients, which enrich it. It prevents rainwater from percolating into the ground and preventing the trees from receiving it and natural streams and spring from being bom. This delicate mountain ecological balance is being lost by an alien phenomenon of consumerism. *Om Prakash Bhatt v. State of U.P.*, AIR 1997 All 259 at 262; 1997 All LJ 1263.

The tourists from the plains consume and throw aluminum cans, plastic water bottles and glass bottles, etc. on the hillside. This traffic comes in busloads and packed cars which is difficult to monitor as also the items of mass consumption they bring with them. The officials present are agreed that as a first step a model answer has to be provided so that the message goes home that the delicate ecology of the mountains is to be protected not jeopardised. This message can best be conveyed from a trekking or a pilgrimage route. A beginning has to be made somewhere, so that similar preventive measures for other areas can be adopted. *Om Prakash Bhatt v. State of U.P.*, AIR 1997 All 259 at 262; 1997 All LJ 1263.

The chalking out of a garbage cleaning exercise and the indiscriminate throwing of it will have to begin by educating the local population and regulating the tourist, the pilgrim and the trekkers to selectively retain these non-biodegradable materials and throw only at specified points. To facilitate this arrangements will need to be made by the local administration and the State. Arrangements also will have to be made for public conveniences and for toilets. Mountains and fresh water streams are to be kept free of garbage, fifth and open defecation. Rarely one finds public toilets on these pilgrimages or trekking routes. This causes extreme inconvenience to the trekkers and the pilgrims, the girls and the women especially. In the absence of public conveniences and toilets, the pilgrims, the tourist and the tracker alike use the mountain pathways as open toilets. This disturbs the aesthetics of a pilgrimage or the concept of a mountain trek. Neither a pilgrimage nor a trek are meant to attract a mountain environment. Thus, an effort has to be made to clean these ancient rivers which are otherwise the harbingers in India of a continuing but, ancient civilisatation on its banks. The cleaning effort must begin from its source. *Om Prakash Bhatt v. State of U.P.*, AIR 1997 ALL 259 at 262, 263; 1997 ALL LJ 1263.

In the matter of Indian Council for *Enviro-Legal Action v. Union of India*,¹⁷ the Supreme Court was concerned than an industry and affected the water of the wells, streams and aquifers in village in Rajasthan. The Supreme Court posed and answered a question on environmental degradation. The question, Pursuit of profit has absolutely drained them of any feeling for fellow human beings, for that matter anything also. And the law seems to have been helpless. Systematic defects?" In the answer, as a preface to the judgment, the Supreme Court said, "It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregards will never be visited upon them, particularly if they are men with means. Strong words indeed, but nothing less would reflect the deep sense of hurt, the hearing of this case, has instilled in us. The facts of the case will bear out these opening remarks."

The Supreme Court reiterated the intent of the constitution in Articles 48-A and 51-A (g), *Indian Council for Enviro-Legal Action v. Union of India*,¹⁸ committed.

17. AIR 1996 SC 1446: 1996 (2) JT (SC) 196: AIR 1996 SCW 1069.

18. Ibid.

On the aspect of a depleting forest cover in the State of Madhya Pradesh, the Supreme Court in the case of *Pradeep Kishen v. Union of India*, AIR 1996 SC 2040: 1996 (5) JT (SC) 181: AIR 1996 SCW 2445, *commentsd* “If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas.” On its concern and placing its concern on its constitutional obligations to protect the environment and prevent its pollution and degradation, the Supreme Court in yet another matter of *Indian Council for Enviro-Legal Action v. Union of India*,^{19 20} spelled out an obligation on these matters of environment and ecology on the High Courts also. It observed:—

“The High Court would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in case, which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be affected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complains, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.”

Then a new jurisprudence emerges at the end of deliberations at the 1987 meet,— the world Commission on Environment and Development. The deliberations are known as the Brundland Report (after the Prime Minister of Norway). The Supreme Court has referred on this international meeting on environment and the above report. Principles on environment protection have been adopted by the Supreme Court, one the main is the Principle of “Sustainable Development. The other two follow from the first: “The Precautionary Principle” and “The polluter pays”. Noticing these measures in safeguarding the ecological balance and environment the observations of the Supreme Court in *Vellore Citizens Welfare Forum n. Union of India*,¹⁰ are relevant:—

“...We are, however, of the view that “The Precautionary Principle” and “The Polluter Pays’ Principle are essential features of ‘Sustainable Development’. The ‘Precautionary Principle’, in the context of the municipal law, means:—

(i) Environment measures,- by the State Government and the statutory authorities, must anticipate, prevent and attack the causes of environment degradation.

(ii) 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.

“The Polluter Pays’ Principle has been held to be a sound Principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446: 1996 (2) JT (SC) 196. The Apex Court observed:

“We are of the opinion that any Principle evolved in this behalf should be simple practical and suited to the conditions obtained in this country”. The Court rules that ‘Once the activity carried on it hazardous or inherently dangerous, the person carrying on such

19. 1996 (4) JT (SC) 263.

20. AIR 1996 SC 2715: 1996 (7) JT (SC) 375: AIR 1996 SCW 3399.

activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care, while carrying on his activity. The rule is promise upon the very nature of the activity carried on'. Consequently, the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas.' The 'Polluter Pays' Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology."²¹

Matters concerning prohibiting the use, sale and disposal of plastic bags in all municipalities and municipal corporations. Door to door garbage collection and to ensure that waste storage facilities are built and managed such that animals are not allowed to move around in the vicinity of such facilities. Segregation of all plastic waste across the municipal solid waste collection and disposal chain/systems. State Governments to issue appropriate directions prohibiting the use, sale and disposal of plastic bags in all municipalities and municipal corporations within their territory. *Karuna Society for Animals and Nature v. Union of India (SC)*, 2015(2) SCC 355 : 2014(13) Scale 85.

22. Damages caused by pollution be recovered from who pollutes.—The "Polluter Pays Principle", demands that the financial costs of preventing or remedying damages caused by pollution should lie with the undertakings which cause pollution. Under the Principle, it is not the role of Government to meet the cost involved in either prevention of such damages, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incidence to the tax-payers.

Industrial Units were not observing norms prescribed by State Pollution control Board. But no finding was given by High Court that such lapse had caused damage to environment. It was held that payment of turnover as compensation ordered by High Court was not proper. High Court was directed to further investigate in each of these cases and find out broadly whether there had been any damage caused by any of industrial units and that exercise need not be undertaking by High Court as if present proceeding was an action in tort but an action in public Law.²²

23. Dangerous activity to pay compensation loss. Nature of activity carried on.—Once, the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is promised upon the very nature of the activity carried on. See AIR 1998 Journal Section at 3, *also see*, *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446).

24. Death in illness of thousand persons and pollution crime. A Casual media without proper response.—In contemporary society while people are shocked hearing news of a murder case, they take disasters like illness of thousands of common men, mass blindness incidents or deaths in distress due to pollution crimes a casual media news without proper response. (See 1997 Criminal Journal, Journal Section 57).

21. *Om Prakash Bhatt v. State of U.P.*, AIR 1997 All 259 at 266, 267: 1997 All LJ 1263.

22. *Deepak nitrate Ltd. v. State of Gujarat*, 2004(6) SCC 402.

25. Degradation due to pollution.—Taj Mahal (The Taj) is the “Ing Emperor” amongst the world-wonders. The Taj is the final achievement and some of the Moghul Article. It represents the most refined aesthetic values. It is fantasy like grandeur. It is the perfect culmination and artistic interplay of the architects’ skill and the jewellers inspiration. The marble-in-lay walls of the Taj are amongst the most outstanding examples of decorative workmanship. The elegant symmetry of its exterior and the aerial grace of its domes and minarets impress the beholder in a manner never to be forgotten. It stands out as a one of the most priceless national monument, of surpassing beauty and worth, a glorious tribute to man’s achievement in Architecture and Engineering.

Lord Roberts in his work “Forty one years in India” describes The Taj as under:—

“Neither words nor pencil could give to the most imaginative render the lightest idea of all the satisfying beauty and purity of this glorious conception. To those who have not seen it, it would say, go to India’ the Taj alone is well-worth the Journey.”

A post describes the Taj as under:

“It is too pure, too holy to be the work of human hands. Angels must have brought it from heaven and a glass case should be thrown over it to preserve it from each breach of air.”

Samuel Smith in his book about The Taj explains the impact as under:—

“We stood spell-bound for a few minutes at this lovely apparition; it hardly seems of the earth. It is more like a dream of Celestial beauty, no words can describe it. We felt that all previous sights were damned in comparison. No such effect is produced by the first view of St. Peter’ or Milan Cologne Cathedrals. They are all majestic, but this is enchantment itself. So perfect is its form that all other structures seem clumsy.”

The Taj is threatened with deterioration and damaged not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction. A private section preservation organisation called “World Monuments Fund”. American Express Company has published a list of 100 most endangered sites (1996) in the world. The Taj has been included in the list by stating as under:—

“The Taj Mahal, Agra, India” The Taj Mahal, Marble Tomb for Mumtaz Mahal, wife of emperor Shah Jahan, is considered the epitome of Mughal monumental domes tombs set in a garden. The environment of Agra is today beset with problems relating to the inadequacy of its urban infrastructure for transportation, water and electricity. The densest pollution near the Taj Mahal is caused by residential fuel combustion, diesel trains and buses, and back-up generators, Construction of the proposed Agra Ring Road and Bypass that would divert the estimated daily 6,50,000/- tonnes of trans-India Truck traffic await financing. Strict controls on industrial pollution established in 1982 are being intensively enforced following a 1993 Supreme Court Order. The Asian Development Banks proposed 300 million loan to the Indian Government to finance infrastructure improvements would provide the opportunity to solve the chronic problems. Agra contains three world Heritage Sites, including the Taj Mahal.”

According to the petitioner, the foundries, chemical/hazardous industries and the refinery at Mathura are the major sources of damage to The Taj. The sulphur dioxide emitted by the Mathura Refinery and the industries when combined with Oxygen, with the aid of moisture, in the atmosphere forms sulphuric acid called "Acid rain" which has a corroding effect on the gleaming white marble. Industrial/Refinery emissions, brick-kilns, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air around Taj Trapezium (TTZ). The petition states that the white marble has yellowed and blackened in places. It is inside The Taj that the decay is more apparent. Yellow pallor pervades the entire monument. In places the yellow hue is magnified by ugly brown and black spots. Fungal deterioration is worst in the inner chamber where the original graves of Shah Jahan and Mumtaz Mahal lie. According to the petitioner the Taj a monument of International repute, is on its way to degradation due to atmospheric pollution and it is imperative that preventive steps are taken and soon. The petitioner has finally sought appropriate directions to the authorities concerned to take immediate steps to stop air pollution in the TTZ and save The Taj.

The report of the Expert Committee called "Report on Environmental impact of Mathura Refinery"(Varadharajan Committee) published by the Government of India in 1978 has been annexed along with the writ petition. Para 4.1 of the conclusions therein is as under:—

"There is substantial level of pollution of sulphur dioxide and particular matter in the Agra region. The possible sources are all coal users consisting mainly foundries (approximately 250) and a Railway Shunting Yard. As far as suspended particulate matters are concerned, because of use of coal, contribution will be substantial. Even though, the total amount of emissions of sulphur dioxide from these sources may be small, on account of their proximity to the monuments, their contribution to the air quality of the zone will be considerably high."

Vardharajan Committee made, among others, the following recommendations:—

"Steps may be taken to ensure that no new industry including small industries or other units which can cause pollution are located north-west of the Taj Mahal.....Efforts may be made to relocate the existing small industries particularly the foundries, in an area south-east of Agra beyond the Taj Mahal so that emission from these industries will not be in the direction of the monuments..... Similar considerations may apply to large industries such as Fertilizer and Petrochemicals. Such industries which are likely to cause environmental pollution may not be located in the neighborhood of the refinery. The Committee further recommends that no large industry in the Agra region and its neighborhood as established without conducting appropriate detailed studies to assess the environmental effect of such industries on the monuments. Location should be so chosen as to exclude any increase in environmental pollution in the area..... The Committee wishes to record its deep concern regarding the existing level of pollution in Agra. It recommends that an appropriate authority be created which could monitor emissions by industries as well as the air quality at Agra on a continuous basis. This authority should be vested with powers to direct industries causing pollution to limit the level of omission and specify such measures as are necessary to reduce the omission whenever the pollutant level at the monument exceeds acceptable limits. The Committee particularly desires that recommendations made in regard to reduction of existing pollution levels at Agra should be converted to a time-bound programme and should be implemented with utmost speed....The Committee also

recommends that studies should be undertaken by competent agencies to explore the possibility of protecting the monument by measures such as provision of a green belt around Agra in the region between Mathura and Agra..... Even though assurances have been obtained from IOC that adequate precautions would be taken to contain the pollution on account of using coal in the power plant, the Committee is of the opinion that still such time this problem is studied in depth and suitable technologies have been found to be satisfactorily in use elsewhere, the use of coal in the refinery power plant should be deferred.”

The Central Board for the Prevention and Control of Water Pollution, New Delhi, published a report (Control of Urban Pollution Series CUPS/u/1981-82) under the title “*Inventory and Assessment of Pollution Emission in and around Agra-Mathura Region* (Abridged).” The relevant findings are as under:—

“The Industrial activities which are in operation in Agra City and its outskirts could be categorised as (i) Ferrous Meta Casting using Cupolas (Foundry; (ii) Ferro-alloy and Non-Ferrous Castings using Crucibles, Rotary Furnaces, etc., (iii) Rubber Processing; (iv) Lime Oxidation and Pulversing; (v) Engineering; (vi) Chemical; and (vii) Brick and Refractory kilns (Table 4-1)....The contribution of sulphur dioxide through emission primarily from the combustion fuels comprising hard coke, steam coal, wood and fuel oil is estimated as 3.64 tones per day from industrial activities in the Agra City and its outskirts (Table 5-3). The vehicular contribution as estimated from traffic census in 6 road crossing is only 65 kgs. a day or 0.065 tones a day and should be considered negligible for the present (Para 7.4)..... The contribution of sulphur dioxide from the 5 recognised distinct discrete source in tones per day are 2.28, 2.28, 1.36, 1.21 and 0.065 from (i) two thermal power stations, (ii) foundries, (iii) other industries in Agra, (iv) two railway marshalling Yards, and (v) vehicular traffic as because it is considered negligible, the relative contributions from the other 4 distinct sources are 32, 19 and 16.9 percent. With elimination of the first and the fourth sources by closing down the two thermal power station and replacing coals fired steam engines by diesel engines in the two railway marshalling yards about 50 percent (48.9 to be exact) cut down of sulphur dioxide emission is expected.” The National Environment Engineering Research Institute (NCERT) gave “Over-view report” regarding status of air pollution around the Taj in 1990. Relevant part of the report is as under:—

“The sources of pollution, including small and medium scale industrial units, are scattered all around Taj Mahal. High air pollution load is thus, pumped into the Taj air shed. Sudden rises in concentration level are often recorded in all directions gaseous as well as particulate pollutant depending upon the local micro climatic conditions...On fourth occasion during the five year air quality monitoring, the hourly average values of 802 at Taj Mahal were observed to be higher than 300 ug/m³, i.e., 10 folds of the promulgated CPCB standard 30 ug/m³ for sensitive areas. The values exceeded even the standard of 120 ug/m³ set from industrial zones. Statistical analysis of the recorded data indicate that 40% (Cumulative percentage level) has crossed the standard set for sensitive receptors/zones..... The SPM levels at Taj Mahal were invariably high (more than 200 ug/m³) and exceeded the national ambient air quality standard of 100 ug/m³ for 8PM for sensitive locations barring a few days in monsoon months...Another study during

1985-1987 brought to fore that the overall status of the ambient air quality within the trapezium has significantly deteriorated over this period.”

The impact of the air quality on the Taj has been stated as under:—

“The rapid industrial development of Agra-Mathura region has resulted in acidic emissions into the atmosphere at an alarming rate. This causes serious concern on the well-being of Taj Mahal....The gaseous pollutants being acidic in nature, significantly impact both the biotic as well as the biotic components of the ecosystem like plants and building material like marble and red stone.”

Various orders passed by this Court from time to time (quoted above) clearly indicate that the relocation of the industries from TTZ is to be resorted to only if the natural gas which has been brought at the doorstep of TTZ is not acceptable by/to the industries as a substitute for coke/coal. The Gail has already invited the industries in TTZ to apply for gas connections. Before us Mr. Kapil Sibal and Mr. Sanjay Parikh, learned counsel for the industries have clearly stated that all the industries would accept gas as an industrial-fuel. The industries operating in TTZ tries need not relocate. The whole purpose is to stop air pollution by banishing coke/coal from TTZ.

This court in *Vellore Citizens Welfare Forum v. Union of India*,²³ has defined “The Precautionary Principle” and the “Polluter pays principles” as under:— (At pp. 3405-06 of AIR).

“11 We are however, of the view that “the precautionary Principle are essential features of “Sustainable Development”. The “precautionary Principle” in the context of the municipal law means:

- (i) Environmental measures, by the State Government and the statutory authorities, must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are the threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The “Onus of proof” is on the actor or the developer/ industrialist to show that his action is environmentally.

“12. “The Polluter Pays” Principle has been held to be sound Principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*,²⁴ The Court observed, “We are of the opinion that any Principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country”. The Court ruled that” once the activity carried on is hazardous or inherently dangerous, the persons carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.” Consequently, the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas.” The

23. 1996 (7) JT (SC) 375: AIR 1996 SCW 3399.

24. 1996 (2) JT (SC) 96: AIR 1996 SCW 1069.

“Polluter Pays” Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but, also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology.

“13. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 221 of the Constitution of India guarantees protection of life and personal liberty. Article 47, 48-A and 51-A (g) of the Constitution are as under:—

“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 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.

“48-A. Protection and improvement of environment and safeguarding of forest and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

“51-A(g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Apart from constitutional mandate to protect and improve the environment there are plenty of posts independence legislation on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act, provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act, prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which includes sentence of imprisonment. The Air Act, provides that the Central Pollution Control Board constituted under the Water Act, shall also perform the powers and functions under the Water Act, shall also perform the powers and functions under the Air Act. The main function of the Boards under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act, in the later part of this judgment.

“14. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle the polluter.pays principle are part of the environmental law of the country.”

Based on the reports of various technical authorities mentioned in the judgment, this Court has already reached the finding that the emissions generated by the coke/coal consuming industries are air-pollutants and have damaging effect of the Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any

cost. Not even one percent chance can be taken when, human life apart, the preservation of a prestigious monument like the Taj is involved. In any case, in view of the precautionary principle is defined by this Court, the environmental measures must anticipate, prevent and attack the causes of environmental degradation. The “onus of proof” is on an industry to show, that its operation with the aid or coke/coal is environmentally benign. It is, rather, proved beyond doubt that the omissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air.

Held, that the abovementioned 292 industries shall as per the schedule, indicated hereunder change over to the natural gas as an industrial-fuel. The industries which are not in a position to obtain gas connections, for any reason, shall stop functioning with the aid of coke/coal in the TTZ and may predicate themselves as per the directions given by the Court hereunder.²⁵ In pursuance to direction issued, Commissioner Agra Division filed affidavit proposing several steps not only to beautify cremation ground but also improvements and development of electric crematorium. Direction issued to Nagar Nigam and Development Authority to examine possibility of reducing emission of carbon by of compensatory afforestation.

26. Discharge of effluents in river Ganga.—Notwithstanding comprehensive provisions contained in the ? Act no effective steps appear to have been taken by the State Board so far to prevent the discharge of effluents of the Jajamu near Kanpur to the River Ganga. *M.C Mehta v. Union of India*, AIR 1998 SC 1037 at 1041.

Issue relating to enforcement of the provisions of the statutes touching environment and its preservation arising out of discharge of industrial effluents into river Ganga entrusted to the National Green Tribunal which has several experts as its members and the advantage of assistance from agencies from outside will spare no efforts to effectively address all the questions arising out of industrial effluents being discharged into the river. The Tribunal shall file an interim report every six months to give progress made to enable Apex Court to remove such difficulties as can be removed within judicially manageable dimensions. *M.C. Mehta v. Union of India (SC)*, 2014(13) Scale 491.

27. Discharge of environmental pollutants and hazardous substances.—The Environment (Protection) Act, 1986 contains useful provisions for controlling pollution. The main purpose of the Act, is to create an authority or authorities with adequate powers for environmental protection regulating of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger environment, safety and health. (See AIR 1998 Journal Section at 4).

28. Duty of the Government to prevent hazardous and inherently dangerous activities causing health hazards and creating pollution.—It is well-settled that it is the duty of the Government to prevent hazardous and inherently dangerous activities causing health hazards and creating pollution. There is, no doubt, that noise is also one of the pollutants. It is, therefore, obligatory for the government to protect the people from such activities. The people have to be protected not only from water and air pollution but also

25. *M.C. Mehta v. Union of India*, AIR 1997 SC 734 at 736, 737, 738 and 760, 761, 762: 1997(2) SCC 353:1997 All LJ 254: AIR 1997 SCW 552: 1997(1) Supreme Today 418: 1997(1) Cur CC 127). (see also *M.C. Mehta v. Union of India (SC)*, 2016(3) Scale 645, 659).

from the pollution of atmosphere by noise. (*See Indian Council for Enviro Legal Action v. Union of India*, (1996) 5 SCC 281 8cN.C. Mehanav. Kamal Nath, (1997) 1 SCC 388).

There is no dispute so far as the principles of law are concerned. Whether the present case calls for interference by the Court, was a question regarding which there was a serious dispute between the parties. Although the petitioner has made allegations in its writ petition to the effect that holding of exhibition will cause health hazards, create traffic and law and order problem and will also cause noise pollution, but these allegations are vague lacking particulars. That apart, as regards traffic and law and order problems, the impugned order itself contains specific conditions and directions in connection therewith. The exhibition has already started. There was nothing on the record to indicate that there was any traffic and law and order problem.

Sometime, exhibition do cause some noise but it was not every noise, exception to which can be taken. Noise becomes objectionable if it exceeds the tolerable limit. No specific direction on the basis of the averments made in the writ petition can, therefore, be issued. In view of the serious dispute about the facts and nature of pleadings, interference by the Court under Article 226 of the Constitution of India was not warranted. Moreover, at the time, when the writ petition was heard, the exhibition has already commenced and it was expected that it might have been over now.²⁶

In this connection, it was appropriate to quote the following extracts from the Supreme Court decision in *Indian Council for Enviro-Legal Action v. Union of India*, (1996)5 SCC 281:

“.... A law is usually enacted because the legislature feels that it is necessary, it is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, AIR Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notifications issued there under contain provisions, which prohibition and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but was not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”

29. Ecology and environment.—Natural resources have got to be tapped for the purposes of social development but, one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that there are permanent assets of mankind and are not intended to be exhausted in one generation.

Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such, interference

26. Citizens Council, Jamshedpur v. State of Bihar, (1999)1 BLJ 184 at 185. 186 (Pat) (Ranchi Bench) (R.A. Sharma and B.P. Sharma, JJ.): AIR 1999 Pat 1: (1998)3 BLJR 2756: (1998) 3 PLJR 302).

with ecology and environment have now come to be realised. It is necessary that Himalayas and the forest growth on the mountains range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact.²⁷

30. Effects of noise sleep and rest. Lack of Concentration.—Interference with rest or sleep and the factor associating with it, lack of concentration, irritability reduced efficiency, is one of the most obvious and annoying effects of noise. Sleep is a physiological necessity and therefore, health may be adversely affected by insufficient sleep. Apart from health, apart from deafness it affects the digestive system. Cardiovascular system etc. So, this is the only view of all the authorities on the subject including Christopher N. Phenn and other Medical Journals.²⁸

31. Environmental conservation Sustainable development can be achieved only by an environmental management with the active public participation.—It is clear that caring for environment is essentially a desire to see that national development should proceed along rational sustainable lines. Environmental conservation is, in fact, the very basis of development. Thus, the “sustainable development” can be achieved only by an environmental management with the active public participation. (See AIR 1998 Journal Section, at 5).

32. Environmental Courts.—Suggestion by the Supreme Court to set up Environmental Court to set up Environmental Courts on the regional basis and an Ecological Sciences Research Group.²⁹

33. Environmental Courts/Tribunals Problems of complex technology problem when scientific knowledge is institutionalised in policy making or used as a basis for decision making by agencies and Courts.—The difficulty faced by environmental courts in dealing with highly technological or scientific data appears to be a global phenomenon.

Lord Woolf, in his Gomer Lecture to UKELA, on the theme “Are the Judiciary Environmentally Myopic?” (See 1992 J. Envtl. Law Vol. 4, No.1 Pl) commented upon the problem of increasing specialisation in environmental law and on the difficulty of the Courts, in their present form, moving beyond their traditional role of detached “Wednesbury” review. He pointed out the need for a Court or Tribunal :—

“Having a general responsibility for overseeing and enforcing the safeguards provided for the protection of the environment..... The Tribunal could be granted a wider discretion to determine its procedure so that it is able to bring to bear its specialist experience of environmental issues in the most effective way.”

Lord Woolf pointed out the need for.—

“A multi-faceted, multi-skilled body which would combine the services provided in existing Courts, Tribunals and Inspectors in the environmental field. It would be a ‘one stop shop’, which should lead to faster, cheaper and the more effective resolution of disputes in the environmental area. It would avoid increasing the load and already over-burdened lay institutions by trying to compel

27. Rural Litigation and Entitlement Kendra v. State of U.P., AIR 1987 SC 359 at 364.

28. Burabazar Fireworks Dealers Association v. Commissioner of Police, Calcutta, AIR 1998 Cal 121 at 136).

29. M.C. Mehta v. Union of India, AIR 1987 SC 965 at 982).

them to resolve issue with which they are not designed to deal. It could be a forum in which the Judges could play a different role. A role which enabled them not to examine environmental problems with limited vision. It could, however, be based on our existing experience, combining the skills of the existing inspectorate, the land Tribunal and other administrative bodies. It could be an existing project.”

According to Lord Woolf, “While environmental law, is now clearly a permanent feature of the legal scene, it still lacks clear boundaries”. It might be “preferable that the boundaries are left to be established by judicial decision as the law developed. After all, the great strength of the English Law has been its pragmatic approach”. Further, where urgent decisions are required, there are often no easy options for preserving the status quo pending the resolution of the dispute. If the project is allowed to go ahead, there may be irreparable damage to the environment; if it is stopped, there may be irreparable damage to an important economic interest. (See *Environmental Enforcement: The need for a specialised Court*, by Robert Cranworth OC *Journal of Planning and Environment*, 1992, 798 at 806).

In the USA, the position is not different. It is accepted that when the adversely process yields conflicting testimony on complicated and unfamiliar issues and the participants cannot fully understand the nature of the dispute, Courts may not be competent to make reasoned and participle decisions. Concern over this problem led the Carnegie Commission of Science and Technology (1993) and the Government to undertake a study of the problems of Science and Technology in judicial decision-making. In the introduction to its final report, the Commission concluded.

“The Courts ability to handle complex science rich cases has recently been called into question, with widespread allegations that the judicial system is increasingly unable to manage and adjudicate Science and Technology (S&T) issues. Critics have objected that Judges cannot make appropriate decisions because they lack technical training, that the jurors do not comprehend the complexity of the evidence they are supposed to analyse, and that the expert witnesses on whom the system relies are mercenaries whose biased testimony frequently produces erroneous and inconsistent determinations. If, these claims go unanswered, or are not dealt with, confidence in the Judiciary will be undermined as the public becomes convinced that the Courts as now constituted are incapable of correctly resolving some of the more pressing legal issues of our day.”

In the environment field, the uncertainty of scientific opinions has created serious problems for the Courts. In regard to the different goals of science and the law in the ascertainment of truth, the U.S. Supreme Court observed in *Daubert v. Merrel Dow Pharmaceuticals Inc.*,³⁰ as follows:—

“These are important differences between the quest for truth in the Court room and the quest for the truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly.”

It has also been stated in Brian Wynne in *Uncertainty and Environmental Learning*, (2 Global Envnt.l Change 111, 1992 Ec.):—

30. 1993 (113) S Ct. 2786.

“Uncertainty, resulting from inadequate data, ignorance and indeterminacy, as an inherent part of science.”

Uncertainty becomes a problem when scientific knowledge is institutionalised in policy-making or used as a basis for decision-making by agencies and Courts. Scientists may refine, modify or discard variables or models when more information is available; however, agencies and Courts must take choices based on existing scientific knowledge. In addition, agency decision-making evidence is generally presented in a scientific form that cannot be easily tested. Therefore, inadequacies in the record due to uncertainty or insufficient knowledge may not be properly considered. (The Status of the Precautionary Principle in Australia by Chairman Bartaon (Vol. 22) (1998) (Harv. Envtt. Law Review, 509 at 510-511).

The inadequacies of science result from identification of adverse effects of a hazard and men working backwards to find the causes. Secondly, clinical tests are performed, particularly where toxins are involved, on animals studies or short-term cell testing. Thirdly, conclusions based on epidemiological studies are flawed by the scientist's inability to control or even accurately assess past exposure of the subjects. Moreover, these studies do not permit the scientist to isolate the effects of the substance of concern. The latency period of many carcinogens and other toxins exacerbates problems of later interpretation. The timing between exposure and observable effect creates intolerable delays before regulation occurs. (See Scientific Uncertainty in Protective Environmental Decision-making by Alyson C. Flournay (Vol. 15) Harv. Entt. Law Review, 327 at 333-335).

It is the above uncertainty of science in the environmental context, that has led inter rational Conferences to formulate new legal theories and rules or evidence. (See *A.P. Polluti m Control Board v. M.V. Nayudu*, AIR 1999 SC 812 at 818-819: 1999 (1) UJ (SC) 426: 1999 (2) SCC 718).

34. Environmental Protection is a Constitution Mandate.— In *Charanlal Sahu v. Union of India*, (AIR 1990 SC 1480, quoted in 1997 Criminal Law Journal, Journal Section 57 at 61), it was held that “State should not play a passive role...when assaults on environment caused by adverse socio-economic policies, pose a threat to the ecology, Courts cannot sit with their eyes closed...environmental protection is a constitutional mandate...It is the commitment of the country wedded to welfare...”

35. Environmental questions affecting humanity.—In *Sri Sachidanand Pandey n. State of Bihar*, (AIR 1987 SC 1109, quoted in *Obayya Pujari v. Member Secretary, K.S.P.C.B., Bangalore*, AIR 1999 Kant 157 at 162) the Supreme Court had held:—

“Today society's interaction in with nature is so extensive that the environmental question has assumed proportion affecting all humanity. Industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the Scientific and technological progress of man has invested him with immense power nature, it has also resulted in unthinking use of the power, encroaching endlessly on nature, if man is able to transform deserts into cases, he is also leaving behind deserts in the place of cases. In the last century great German materialist philosopher warned mankind: “Let us

not, however, flatter ourselves overmuch on account of our human victories over nature. For each of such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different unforeseen effects which only too often cancel the first.” Ecologists are of the opinion that the most important ecological and social problem is the widespread disappearance all over the world of certain “species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half of the species which became extinct over the last 2,000 years did so after 1900. The International Association for the protection of Nature and Natural Resources calculates that now, on average, one species or subspecies is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So, it is that the environmental question has become urgent and it has to be properly understood and squarely met by man, Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

“In India, as elsewhere in the world uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by Court, Obviously, if the Government is alive to the various consideration requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for Court to interfere in the absence of *mala fides*. On the other hand, if relevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whether a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution. Directive Principle which enjoins that “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country’ and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India’ to protect and improve the natural environmental including forests, lakes, rivers and wildlife and to have compassion for living creatures.” When the Court is called upon to give effect to the directive principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions.”

The petitioner brought a Public Interest Litigation before the Court of law for appropriate direction in regard of prevention of Ganga Water Pollution. The Court gave direction to all Mahapalikas and Municipalities to prevent the river Ganga from water pollution.³¹

31. M.C. Mehta v. Union of India, 1988 (1) SCC 471; 1988 (1) JT 69; 1988 SCC (Cri) 141; AIR 1988 SC 1115; 1988 (1) Scale 54.

In another case the Supreme Court directed the shifting of 168 hazardous industries which were running in Delhi because they were causing danger to the life of people as well as ecology.⁵⁷

The Court considered the problem of ecology. In this case the petition was filed by way of public interest litigation. In this case industries established in various places of Tamil Nadu were causing harm to the ecology. In this case the Court gave directions in regard of environmental protection.^{32 33}

The water pollution was caused due to entrance of untreated effluent by tanneries the water of river became very harmful for the consumption of human. The Court directed that reasonable steps should be taken to prevent the problem.³⁴

The petitioner was a voluntary organisation by way of P.I.L. this petition was filed seeking the enforcement of coastal zone Regulation Notification of the Government of India the Court held that the sea coast and beaches are gifts of the nature to the mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading the environment cannot be permitted. Apart from that the right of the fishermen and framers living in the coastal areas to eke out their living by ways of fishing and farming cannot be denied to them.³⁵

This is the duty of State to protect the ecology and to prevent the environment from pollution. Where at certain time stone quarries had serious deficiencies regarding safety and hazards the Court ordered the closure of them.³⁶

The Court gave direction to maintain the ecological balance and also the health and security of workers. In this case company was manufacturing hazardous and lethal chemicals and poisonous gases. The health and life of workmen and people living surroundings were affected. There was leakage of chlorine gas, which was very hazardous to the life of people. This matter was brought to the Court of law through Public Interest Litigation. The Court directed the management of company to deposit Rs. 20 lakhs for the purpose of compensation claim.³⁷

36. Extent of Air Pollution.—Air Pollution adversely effects human being and their environment. The extent of Air Pollution depends heavily on how weather disposes of the pollutants. The ability of the atmosphere to dilute and disperse them is limited to two factors, wind speed and the depth in the atmosphere to which air near the surface can be mixed. Although, considerable variation occurs from day-to-day in the extent to which these factors disperse air pollution, the same patterns tend to repeat themselves over months or years. On some few days in a year, strong winds and highly atmospheric conditions may disperse even the heaviest blanket of pollution. On many

32. M.C. Mehta v. Union of India, 1996 (3) SCC 212; 1996 (5) JT 209; 1996 (7) Scale 427; AIR 1996 SC 669.
33. Council for Enviro-legal Action v. Union of India, 1996 (5) SCC 281.
34. Vellore Citizen's v. Welfare Forum Union of India, 1996 (5) SCC 650; 1996 (6) Scale 427; 1996 (6) Supreme 729.
35. S. Jagannath v. Union of India, AIR 1997 SC 811; 1997 (2) SCC 87; 1997 (1) JT 160; 1996 (9) Scale 167; 1997 (1) Supreme 575.
36. Rural Litigation and Entitlement Kendra v. State of U.P., 1985 (2) SCC 431; AIR 1985 SC 652; 1985 (1) Scale 408; 1985 (3) SCR 169.
37. Shri Ram Food v. Fertilizer, 1986 (2) SCC 176.

other days, weak winds and highly stable conditions let small quantities of pollutants accumulate and build up to serious proportions. It is stated that many cities like in natural basins at the confluence of rivers, around bays, or in flat areas backed against mountains, such basins are natural gathering places for low-lying masses of warm, air, which trap pollutants in the familiar phenomenon known as “inversion”. The Kochi City and surrounding area are situated in such a way that the possibility of inversions taking place is quite often and natural. Consequently, the pollution in Cochin and other adjoining areas should be considered in the light of its position. The various sources of air pollution caused in Cochin are from industrial plants, motor vehicles, sewers and domestic drains emanating foul gases. Some of the major pollutants are ammonia, sulphur dioxide, carbon monoxide, nitrogen dioxide, etc. The main sources for these pollutants are ammonia manufacturing plants, fertilizer plants, sulphuric acid manufacturing plants, fuel burning processes, metallurgical industry, petrochemical industry, nitric acid manufacturing, nitration processes, combustion processes and metallurgical industries, respectively. Air pollutants are in the form of smoke, fume, dust, odour, gas, etc. of these the main classification that it is alleged in this case are smoke, fume, dust, odour and gases. It is an admitted case that Air Pollutants are causing serious health hazards like eye irritation, vegetation damage, further causing respiratory diseases and other harmful effects to human being and vegetation.³⁸

37. Functions of Central Board Effect and purpose of the Act.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions under the Water (Prevention and Control of Pollution) Act, 1974, the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.

(2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may—

- (a) advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;
- (b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;
- (c) co-ordinate the activities of the State Boards and resolve disputes among them;
- (d) Provide technical assistance and guidance to the State Board, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;
- (dd) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of Section 18;
- (e) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;
- (f) organise through mass media a comprehensive programme regarding the prevention control or abatement of air pollution;

38. V.S. Damodaran Nair v. State, AIR 1996 Ker. 8 at 14.

- (g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;
 - (h) lay down standards for the quality of air;
 - (i) collect and disseminate information in respect of matters relating to air pollution;
 - (j) perform such other functions as may be prescribed.
- (3) The Central Board may establish or recognise a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently.
- (4) The Control Board may-
- (a) delegate any of its functions under this Act, generally or specially to any of the committees appointed by it;
 - (b) do such other things and perform such other acts as it may think necessary for the proper discharge of its function and generally for the purpose of carrying into effect the purposes of this Act. (See Air (Prevention and Control of Pollution) Act, 1981. Section 16).

38. Functions of State Boards Effect and purpose of the Act.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control Pollution) Act, 1974, the functions of a State Board shall be.

- (a) to plan comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
- (b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
- (c) to collect and disseminate information relating to air pollution;
- (d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;
- (e) to inspect, at all reasonable times any control equipment industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
- (f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
- (g) to lay down, in consultation with the Central Board and having regard to the standard for the quality of air laid down by the Central Board, standards for omission of air pollutions into the atmosphere from industrial plants and automobiles or for the discharge of any air pollution into the atmosphere from any other source whatsoever not being a ship or an aircraft;

Provided that different standards for omission may be laid down under this clause for different industrial plants having regard to the quantity and composition of omission of air pollutants into the atmosphere from such industrial plants;

- (h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
- (i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
- (j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently. (See Air (Prevention and Control of Pollution) Act, 1981 Section 17).

State Board under Air Act could issue guidelines restricting operation of industrial Stone Crushing unit within prescribed battery limit. Further it could direct petitioners industry to shift location of its stone crushing unit 200 meters from National / State Highway and on failure to shift closure could be directed u/s. 31-A. The fact the Industrial Stone Crushing Unit was not discharging suspended particulate beyond 600 micro gram per cubic metre air irrespective. Provision of both AIR Act and water Act not superseded by Provisions of Environment Protection Act.³⁹

39. Furnishing of information to State Board and other agencies in certain cases.—(1) Where in any area the emission of any pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event the person in charge of the premises from where such emission occurs or is apprehended to occur shall forthwith intimate (the fact of such occurrence or the apprehension of such occurrence) to the State Board and to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measures to be taken as are necessary to mitigate the emission of such air pollutants.

(3) Expenses, if any incurred by the State Board, authority or agency with respect to the remedial measures referred to in sub-section (2) together with interest (at such reasonable rate, as the State Government may, by order, fix) from the date when a demand for the expenses is made until is paid, may be recovered by the Board, authority or agency from the person, concerned, as arrears or land revenue, or of public demand. See Air (Prevention and Control of Pollution) Act, 1981, Section 23).

40. Ground of environmental and health hazard and nuisance.—Rapid industrialisation gives rise to fierce competition and such fierce competition brooks various attempts to launch their products in the market and manner and mode of such

39. Bihar State Pollution Control Board v. Hiranand, AIR 2005 Pat 62.

launching of the products has assumed multifacet dimension in the developing society. It is a fact globally accepted that advertisement of a product is indispensable part of this competitive industrial world. Of late, putting up hoarding along the busy streets was one of the sophisticated ways. Petitions were filed complaining of environmental damage and spoiling skyline of city. Petitions were entertained by the Courts at various stages and necessary directions were given. The present petition seeks to highlight yet another aspect of the environmental and health hazard likely to be caused by illuminated hoardings and the advertisements by neon lights.

Considering the assertions in the petition and since the petition was treated as Public Interest Litigation, the matter was adjourned from time to time. On one of the dates, the Court was extended the benefit of going through the report compiled by International Institute for Sustainable Future, dated 11th January 1997. The extract from the said report was noted by this Court in its order dated 8th October 1997. It would be useful to reproduce here the relevant paragraph as noted and observed by this Court from the said report which reads as under:—

“The report, *inter alia*, is to the effect that,”We identified the following psychological impacts insomnia, irritation, depression, tiredness, short temper, performance reduction and mood changes. Of the people surveyed between 50 and 60% of the people complained about the lack of freshness due to either sleeplessness or incomplete sleep. About 62% felt irritated and frustrated during their waking hours and almost 75% complained about performance reduction in their work”. The report also indicates that only recently, the Scanvandinian countries have put restrictions on such lights in the residential areas.”

Under the heading of “Harmful Effects”, the Committee has noted the conclusions arrived at the 1974 Hiosh symposium on illumination, which read as follows:—

- “(1) High levels of lighting can cause damage to the eye i.e., retinal ormuscular degeneration
- (2)
- (3)“

Thus, the Committee appointed by the Government as also the Committee of which the report was taken note of by this Court, have one thing in common that there is adverse effect of illuminated neon signs advertisement board on the human health as also on the environment. The Committee, therefore, recommended the following terms:—

- “1. The Corporation should put restriction and issue guidelines for the levels or luminance of the advertising lights. A source limit of 1 cd/cm 2 which represents the TLV suggested by ACGIH (1997) can perhaps be enforced on these lamps with an operational limit of not more than 5 hrs. in a day.
2. The neon light signboards should not be allowed on the residential premises to avoid nuisance to the occupants of the buildings. The signs in residential localities should not be blinking add to the irritant effects and increase the nuisance value.
3. Since, the bright light are a deterrent to peaceful sleep at night, the illuminated signs should be put off after midnight.”

Held, that this would almost amount to denial of right to advertise by using neon signs and such recommendations, if accepted, would be violative of the rights which

citizens enjoy of having free trade. We do not agree with the submission. Keeping in view, the environmental and health hazard and nuisance value, it is always open to the authorities to regulate the advertisement in a reasonable manner to the extent permissible. The recommendations of the Committee only seek to achieve this object.^{40 41}

41. Liberal View.—In areas like Environmental Law, courts all over the world have adopted a very liberal view on the question of locus *standi*.[^]

42. Nature destruction crimes and its effect.—All the pollution and nature-destruction crimes are having long-term effect but immediately after pollution or nature-destruction, there is no scope to calculate or exhibit the injury caused by the crime. Starting from small vehicles to factories of different sizes, which release fumes and persons destroying the nature, etc. pollute the atmosphere, but severity of their crimes and its effect on public health needs to be measured to prove the gravity of their crimes. Due to lack of devices for monitoring quantum of pollution and for want of proper method to exhibit injuries of nature-destruction crimes and its effect on humanity, the defaulters are easily escaping from the clutches of prosecutions. (See 1997 Criminal Law Journal, Journal Section 57 at 61).

43. Nature of allegations Protect the society from the so-called protectors.—There was no fundamental right violation or could be violative if the allegations of the so-called champions on behalf of the society are scrutinized. The Apex Court must protect the society from the so-called “protectors”.⁴²

44. Precautionary principle Onus of Proof.—The “Precautionary principle”, in the context of municipal law, means.

- (i) Environmental measures, by the State Government and the statutory authorities, must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of service and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The “Onus of proof” is on the actor or the developer/ industrialist to show, that his action is environmentally being. (See AIR 1998 Journal Section at 2).

45. Responsive Law Court must take cognizance of the fact and act accordingly.—In *Pomal Kanji Govindji v. Vrajlal Karsandas Purohit*, (AIR 1989 SC 436), quoted in AIR 1998 Cal. 121 at 127, it has been held by the Supreme Court that the law must respond and be responsive to be felt and compulsions of circumstances that would be equitable, fair and just and unless there is anything to the contrary in the statute, Court must take cognizance of the fact and act accordingly.⁴³

40. Ashwin Jajal v. Municipal Corporation of Greater Mumbai, AIR 1999 Bom. 35 at 35, 36, 37).

41. Saina v. Konderi, 1984 (2) Civil LJ 377 at 386 (Ker.).

42. Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P., AIR 1990 SC 2060 at 2062, 2063).

43. Bunabazar Fire Works Dealers Association v. Commissioner of Police, Calcutta, AIR 1998 Cal. 121 at 127.

46. Rigour of Order—Ban old Vehicle.—An affidavit has been filed by ‘S’, Principal Secretary-cum-Commissioner Transport, Government of National Capital Territory of Delhi on 28th August, 1998. The Solicitor General appearing for the Administration submits that phasing out and banning all commercial vehicles which are more than 15 years’ old by October 2, 1998 would lead to great hardship to the owners of those vehicles in particular and to the general public which makes use of those vehicles in general. It is, therefore, submitted by him that the Apex Court may relax the rigour of the order regarding banning of 15 years commercial/transport vehicles with effect from 2nd October, 1998 and he assures the Court that the Administration itself is keen to phase out all such vehicles gradually to cease the pollution level in the city. It is submitted that the ban order may be applied in phases. *Held:* The Apex Court direct that all such commercial/transport vehicles which are being plied without payment of road tax or registration, shall not be allowed to ply in the National Capital Territory forthwith and in any event not with effect from 2nd October, 1998.⁴⁴

47. Salient principle of sustainable development—Polluter pays principle are essential feature of sustainable development.—Some of the salient Principles of “sustainable development” as called out from Brundtland and Report and other International documents are inter-generational equity, use and conservation of natural recourses, environmental protection, the precautionary Principle, “polluter pays” principle, obligation to assist and co-operate, eradication of poverty and financial assistance of the developing countries. However, the “precautionary principle” and the “polluter pays principle” are essential feature of “sustainable development”.⁴⁵

48. Pollution— A curse to mankind.—The petitioners, who were the residents of Banashankari Extension I Staye, Block-I, have embarked on public interest litigation actuated by common cause in defence of public interest. The petitioners were aggrieved by the location and operation of industries and industrial enterprises in a residential area in alleged gross violation of the provisions of the Karnataka Town and Country Planning Act. The petitioners were questioning industrial activity in residential locality by establishing and running factories, workshops, factory sheds, manufacture of greases and lubricating oils by distillation process and also production of inflammable products by respondents-17 to 49. According to the petitioners, these questionable activities were being carried out on in the area comprising of Sy. Nos. 39/1, 39/2-A and 3/9/28 of Yediyur Nagasandra village, Bangalore. The land situate in Sy. No. 39/1 is called “Vajapeyam Terrace Gardens” and the land in Sy. Nos. 39/2-A and 3/2-B are known as “Kalyani Gardens”. It appears that in respect of these areas, agreements were executed between the erstwhile City Improvement Trust Board (C.I.T.B.) and their owners and successors for the purpose of formation of a lay-out in accordance with law, but the agreements were not implemented for reasons best known to the said Board. It was stated that the Health and Municipal Administration Department of the State of Karnataka issued a direction to the erstwhile C.I.T.B. to handover the said areas to the Corporation of the City of Bangalore (Respondent-14 herein). However, it appears that the direction was not acted upon and these areas were not handed over to the Corporation. Nevertheless in spite of the fact that the said areas were not handed over to the Corporation, taxes as being imposed and collected by the Corporation. The petitioners

44. M.C. Mehta v. Union of India, 1999 (1) SRJ 122 at 123, 124).

45. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 at 2720, 2721, quoted in AIR 1998 Journal Section at 2).

have stated that there were portions which were not converted though they were reserved Kharab land granted in accordance with the Land Grant Rules falling within the jurisdiction of the revenue authorities and strongly enough the revenue authorities have failed to exercise jurisdiction and control over these portions and have not enforced the provisions of relevant law, rules and regulations in respect of these lands. In other words, the entire area became virtually “no man’s land” because of alleged inaction and abdication of power and control by the development authority including the erstwhile C.I.T.B., the Bangalore Development Authority, the Corporation of the City of Bangalore and the revenue authorities of the State Government thereby resulting in betrayal of public interest on account of imperviousness to duty, callousness, non-feasance and utter lack of supervisory, administrative and regulatory control over the area in question. The petitioners have also complained of the serious threat to public health on account of environmental hazards posed by the industries and industrial activity. According to the petitioners, the provisions of the Karnataka Town and Country Planning Act, 1961 have been violated and the establishment and running of the industries in the area were contrary to the outline Development Plan and zoning of land use as dictated by statute.⁴⁶ It is specifically alleged that some of the industries have been floated under licences Panchayat of Kathiraguppe even though the said area falls within the village Yediur Nagasandra beyond the limits of Kathiraguppe village and, therefore, beyond jurisdiction. However, it is pointed out these industrial units have succeeded in securing public services and utilities such as electricity, water etc., from respondents 12 and 13 to which they were not legally entitled. It is also stated that in the light of Section 14 of the Karnataka Town and Country Planning Act, there could be no change in land use contrary to the act and no authority could grant any licence for user of the land contrary to what the said provision earmarks. In short, the allegation is that the establishment of these industrial units is *ab initio* illegal. In regard to Sy. No. 39/1, the petitioners have impeached that various orders and directions issued by the competent authorities for the purpose of execution of agreements with the erstwhile C.I.T.B. in order to obtain sanction of building plans etc., have been flagrantly flouted and transfer of lands have been effected by the jugglery of dissolution and reconstitution of partnerships from time to time for the purpose of manoeuvring in order to locate industries contrary to law, by devious methods circumventing Outline Development Plan and Comprehensive Development plan. The petitioners have taken strong exception to extensive area of lands reserved by Government being appropriated for private use and activities not consistent with law without a check. A case on hand is specifically mentioned by the petitioners wherein one ‘S’ executed an agreement in favour of the erstwhile C.I.T.B. On 22-10-1973 in respect of lands in Sy. Nos. 39/2-A and 39/2-B based on an alleged sanction of layout for industrial purpose, the sanction being subsequent to 4-7-1972 when the Health and Municipal Administration Department of the Government of Karnataka had directed the erstwhile C.I.T.B. to handover the area *vide* Order No. HMA 35 MNX 72 dated 4-7-1972. The petitioners have pointed out the sanction for industrial purpose is itself *ab initio* illegal since it was in contravention of the provisions of the Town and Country Planning Act as well as the Outline Development Plan which declared the said area as residential zone. It is also pointed out that none of the conditions incorporated in the aforesaid agreement dated 22-10-1973 were complied with] the conditions being: (a) maintenance of open space as required and in accordance with the sanctioned plans; (b) prohibition on use of sites without the approval of the erstwhile C.I.T.B.; (c) prohibition

46. See V. Lakshmiopathy v. State, AIR 1992 Kant 57 at 57, 58.

on alteration of the dimensions approved in the plan; (d) intimation of date of commencement and programme of execution of layout work under the supervision of the Engineers of the erstwhile C.I.T.B. ; and (e) due compliance with the rules, regulations, bye-laws and standing orders regarding obtaining of licences.⁴⁷

Non-compliance with the said conditions entail by virtue of a penal clause in the said agreement, withdrawal of the sanction and acquisition of the property and dealing with the same in accordance with rules.⁴⁸

It is alleged that in a part of the 'Kalyani Garden' exists a temple dedicated to Sri Raghavendra Swamy Brindavana under a deed of trust dated 29-7-1974 to be run by a trust called 'Sathyabhamamma Seethamma Kalyani Raghavendra Ashrama.' For the purpose of access to the said temple, the entire area of Sy. No. 39/2-B was required to be reserved; but it was encroached upon by various industries thereby preventing access to the residents and devotees. The result is that they have to wend their way through a labyrinth of industries. It is alleged that the onward course for passage running through Sy. No. 39/2-B towards 6th Cross Road of Ashokanagar is via 30 road running within Sy. No. 39/1 as set out in the plan approved by the erstwhile C.I.T.B. vide its resolution No. 776 dated 12-2-1969 and resolution No. 492 dated 3-3-1971. But the said road is not properly laid out by the C.I.T.B./B.D.A. nor is it maintained properly by the said bodies and, on the other hand, the passage has been treated as a private road in disregard of the approved plan as well as the resolutions and to cap it all the road was closed on its southern side. It is alleged that constructions have been put up even in the road portion contrary to law and all this has happened with impunity at the hands of the concerned authorities who are enjoined with the responsibility of enforcement of law'. This has resulted in detriment to public interest since it is the only road leading to the temple. The petitioners in particular have complained of acute pollution affecting the environment on account of persistent, offensive and unwholesome escape of pollutants such as smoke, vapour and noxious emanations posing danger to health and hygiene of the residents. According to the petitioners, noise pollution is added to the misery of the residents of the locality day in and day out depriving them of a clean environment, quality of life, peace and tranquillity reasonably expected in a residential area.⁴⁹

Another grievance articulated was that the decadence contributed by pollution has affected the value of the properties in the entire area.⁵⁰

According to Section 32 of the Bangalore Development Authority Act, 1976, notwithstanding anything to the contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the Authority may specify and where any such extension or layout lies within the local limits of the Corporation, the Authority shall not sanction the formation of such extension or layout without the concurrence of the Corporation. There was no material to substantiate that there was due compliance with the requirements of this provision.

47. See V. Lakshmipathy v. State, AIR 1992 Kant 57 at 58, 59.

48. Ibid.

49. Ibid.

50. Ibid.

Even in the matter of transfer of land to the industrialists who are respondents herein, there is no proof of satisfaction of the requirements of Section 6 to 10 of the Urban Land (Ceiling and Regulation) Act, 1976, nor the fulfilments of the requirements of Sections 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act 1927.

The last Act referred to above is in relation to the temple lands of which encroachment has been committed and industries set up. In these circumstances, Court was of the opinion that the writ petition deserves to be allowed.

The petitioners have made out a strong case in regard to the preservation of environment which calls for consideration.⁵¹

The movement for restoration and maintenance of a livable environment requires curbing the power of narrowly oriented administrative agencies in the appropriate of the dwindling acreage of land and water not already irrevocably appropriated. There have been several proposed and discussed means of easing of burdens and handicaps of the substantial evidence—rational basis rule in environmental cases involving judicial review of administrative agency determinations. Some were based upon concepts found in environmental cases and other cases and also explained and analysed by the acknowledged critical authorities. Others were based not upon authorities but on the sheer importance of the interests affected, for *e.g.* as documented in the National Environment Policy of India.

In a sense the problem is a part of a larger problem—that of rendering big Government more responsive to the needs of the individuals whom it governs.⁵²

The onus is on the authorities concerned to establish by demonstrable evidence and not by undisclosed measures that action has been taken to control and hold pollution within reasonable limits. The pollution alleged by the petitioners consists of both air pollution and noise pollution. Desecration of the quality of environment is impermissible as is evident from a series of legislations enacted by the Parliament from time to time in the interest of clean air and clean environment in general. As already pointed out, none of the authorities concerned who have been impleaded as respondents in this writ petition have either denied the existence of pollution or have come forward with any explanation as to what measures have been taken in order to curtail the pollution. In these circumstances, there is sufficient basis to hold that the grievance of the petitioners as to the existence of air pollution and noise pollution affecting the environment to the detriment of the members of the public is substantiated, on that score also, the writ petition is to be allowed.⁵³

The remarks of Justice Felix Frankfurter addressed to the problems of the thirties are relevant to 21st century India which is still in a developing stage:

“It is idle to feel either blind resentment against ‘Government of Commission’ or sterile longing for the golden past that never was. Profound new forces call for new social inventions or fresh adaptations of old experience. The ‘great society’ with its permeating influence of technology, large scale industry and progressive urbanisation, presses its problems; the history of political and social liberty

51. See *V. Lakshmiopathy v. State*, AIR 1992 Kant 57 at 65.

52. *Ibid.*

53. *Ibid.*

admonishes us of its lessons. Nothing less is our task than fashioning instruments and processes at once adequate for social needs and the protection of individual freedom.⁵⁴

The explosion of grave concern for environment at any private and Government level is the great political phenomenon of recent times. The sporadic and unorganised struggle of environment stragglers, the wildlife and bird lovers, wilderness wanderers have identified the conservation movement of the environment and are focusing their attention on denuded forests, balding hills, disappearing praline, extinct species of rare fish, thinning wild life, and vanishing birds. The movement has become the crusade of anyone almost everywhere for a "livable environment". There is an increasing awareness that in cleansing up our environment, if not in wilderness, lies the preservation of the world.⁵⁵

"At the movement we are looking into a decade in which most of the people are living in metropolitan or urban areas checked by traffic, poisoned by water, suffocated by among, deafened by noise and terrorised by crime."⁵⁶

"Restoring nature to the natural state is a cause beyond party and beyond factions. It has become a common cause of all the people. It is a cause of particular concern to young Indians because, they, more than us, will reap the grim consequences of our failure to act on the programmes which are needed now if we are to prevent disaster later. An onerous obligation which we owe to posterity is clean air, clean water, greenery and open spaces. These ought to be elevated to the status of birth rights of every citizen."⁵⁷

Commenting on Business Corporations and environment protection, Robert Reinow a Professor of Political Science at the State University of Newyork, Albany observed:—

"But worse than Corporation funding is the subversion of Government agencies to the role of environmental exploiter. The public interest which should be championed by the agencies with their regulations is ignored or perverted, as the iron trainable of special interests, bureaucrats and committee chair-person form their unholy alliance. This means that the public conscience is entrusted to volunteers in public interest groups, a sacrificial burden of weighty dimensions

The outstanding feature of modem political life is the shifting of the burden of defence of public interest to civic volunteers. Organised, they must dig into their pockets to hold their groups together; they must respond to calls for protests, launch petition drives, simulate letter writing campaigns, conduct rallies, attend hearings and in general, mortgage the time of their personal lives to an unprecedented extent. Keepers of the social conscience, they express themselves openly and aggressively. When the record of the environmental movement is finally registered, the emphasis will be on the new breed of citizenship it fostered. And it will contrast mightily with the sordid strategy of the Corporate Board rooms where they scoff at do-gooders and belittle nobility of purpose."

He added:

54. See "The Task of Administrative Law"—Frankfurter.

55. Ibid.

56. Ibid.

57. Ibid.

“What is becoming clear is that the restructuring of the democratic process has altered the pattern of citizenship. Where once the public official as in the days of Washington or Jefferson had a deep and honest sense of public sacrifice, we are today witnessing the close collaboration of special interests with governmental agencies and elected officials. In the environmental field, Government too often emerges as the advocate the exploitation. This is in large part due to the subtle private and usually corporate pressures. Pressure has become a science that destroys the Governmental shield the citizens have erected to protect themselves. It is necessary for the Government to guard against such pitfalls. The choice is between technological progress which proceeds without adequate regard of its consequences and technological change that is influenced by a deeper concern for the interaction between man’s tools and the human environment in which they do their work.”

The mandate of Indian Constitution is to build a welfare society and legislations made in that behalf to give effect to Directive Principles of State Policy have to be respected. If the constitutional obligations are not discharged by due enforcement by the administrative agencies, the Court cannot turn a Nelson’s eye. The fundamental duties are intended to promote peoples participation in restructuring and building a welfare society and the Directive Principles under Part IV are intended to build the edifice of welfare State. Environment and its preservation is a subject-matter of both, thus emphasising the importance given to it by Indian Constitution. Protection of environment is a matter of constitutional priority. Neglect of it is an invitation to disaster. The problem is the concern of every citizen and action brought cannot be dismissed on the ground of *locus standi*. The right to sue in this regard is inherent in the petitioners. When administrators do not mend their ways, the Courts become the battle ground of social upheaval. The paradigm of bureaucracy conducive to public welfare features standard operating procedures, humane outlook, hierarchical authority, prompt law enforcement besides job specialisation and personnel rules among others. If the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book, and public interest will be the casualty. Entitlement to a clean environment is one of the recognised basic human rights and human rights jurisprudence cannot be permitted to be thwarted by status quoism on the basis of unfounded apprehensions.

Article 226 of the Constitution of India enables the citizens to move the High Court to enforce the performance of statutory obligations of any authority coming within the sweep of Article 21 of the Constitution in particular, or for e.g., under the anti-pollution laws of the land like the Pollution Control Act etc. Hence, it has to be regarded as a constitutional right of the petitioners responded by constitutional remedies of a wide repertoire under Article 226.⁵⁸

In *M.C. Mehta v. Union of India*,⁵⁹ the Supreme Court posited (at p. 1126, para 16 of AIR 1988):—

“He (petitioner) is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petitioner cannot be disputed.”

58. See *V. Lakshmiopathy v. State*, AIR 1992 Kant 57 at 66, 67.

59. AIR 1988 SC 1115: (1988) 1 SCC 471.

In another decision in *M.C. Mehta v. Union of India*,^w delivered subsequent to the earlier ruling referred to above, the Court observed:

“Life, public health and ecology have priority over unemployment and loss of revenue problem.”

In another landmark judgment, a Bench of five Judges of the Supreme Court held in *M.C. Mehta v. Union of India*,^{60 61} familiarly known as *Sriram Mills* case of oleum gas leakage from the Fertiliser and Chemical factory run by a private enterprise, that a creative and innovative interpretation in consonance with Indian constitutional jurisprudence is commended. The Court observed (at p. 1097, para 29 of AIR 1987):

“However, the principle behind the doctrine of state aid, control, and regulation so impregnating a private activity as to give it the colour of state action can be applied to the limited extent to which it can be Indianised and harmoniously blended with Indian constitutional jurisprudence.”

James B. White in “When words lose their meaning” observed:—

“Behind all the theoretical talk of Government and legitimacy, behind the systems and projects, behind even the forms of Government itself there is a culture, a living organisation of mankind upon which all the talk of system and mechanism depends, both for its intelligibility and for its effects. In all its complexity and interconnectedness, it is our substantive and actual constitution.”⁶²

Professor Abraham Chayes of Harvard Law School has this to say:—

“The characteristic features of the public law model are very different from those of the traditional models. The party structure is sprawling and amorphous and subject to change over the course of litigation. The traditional adversary relationship is suffused and intermixed with negotiating and mediating process at every point. The Judge is the dominant figure in organising and guiding the case and he draws for support not only on the parties and their counsel but on a wide range of outsiders—masters, experts and oversight personnel. Most important, the trial Judge has increasingly become the creator and manager of complex forms of ongoing relief which have wide spread effects on persons not before the Court and require the Judge’s continuing involvement in administration and implementation.”^{63 64}

Often cited decisions of the British Courts which are of persuasive value call for consideration.

In *R. n. Thornes Magistrate's Court ex. p. Greenbaum*^M—

“Anybody can apply for it—a member of the public who has been inconvenienced or a particular party to person who has a particular grievance of his

60. AIR 1988 SC 1037: (1987)4 SCC 463.

61. AIR 1987 SC 1086.

62. See *Constitutional Cultures—The Mentality and Consequences of Judicial Review*—Robert F. Nagel.

63. See ‘The Role of the Judge in Public Law Litigation’ 87 Har Law Rev 1281 (1284) 1976, Chayes.

64. (1957) 55 LGR 129.

own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito justitiae*. ‘—Parker L.J.

In *P. v. Paddington Valuation Officer Ex. P. Peachey Property Corporation Limited*⁶⁵.—

“Every citizen has standing to invite the Court to prevent some abuse of power and in doing so, he may claim to be regarded not as a meddling busybody but as a public benefactor.

A rate-payer, likewise, has a particular grievance if the rating list is invalidly made, even though the defects will make no difference to him financially.”

Lord Denning M.R. observed:—

“If he has not sufficient interest, no other citizen has.

Unless any citizen has standing therefore, there is often no means of keeping public authorities within the law unless the Attorney-General will act—which frequently he will not. That private persons should be able to obtain some remedy was therefore ‘a matter of high constitutional principle’.

The Court will not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to any one whose interests are affected by what has been done.”

Lord Diplock affirmed the principle when he said:—

“It would, in my view, be a grave lacuna in our a system of public law if a pressure group, like the federation, or even a single public-spirited tax-payer were prevented by out-dated technical rules of locus *standi* from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.”

As enunciated by Lord Diplock:—

“The Court has not only the power but also the duty to weigh the public interest of justice to litigants the public interest asserted by the public authority contrary to its actual conduct. Considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest immunity could be attached to such bodies.”

Lord Denning M.R. reiterated:—

“I regard to it as a matter of high constitutional principle that if there is a good ground for supposing that a Government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty’s subjects, then anyone of those offended or injured can draw it to the attention of the Court of law and seek to have the law enforced, and the Courts in their discretion can grant whatever remedy is appropriate.”

By judicial inactivism, the dice will be loaded heavily against the citizen who challenges state action or inaction of the public authorities and there is a fear that Courts ⁶⁵

65. (1966) 1 QB 380 (400).

may in the process become cheer-leaders for the Government in the dock, rather than guardians of public interest and individual's rights. The real thrust stems from a jurisprudence of public duties and faith that the rule of law is used as a formula for expressing the fact that the laws of the Constitution are not the source but the consequences of the rights of the individuals as defined and expressed by Courts.

According to *Dr. Vein, Khudsen*, a physicist and former founder of the Acoustical Society of America and also a former Chancellor of the University of California:—

“Noise is a slow agent of death.”

Another expert in the field *Dr. Fabian Rouke* of U.S. reporting to the Newyork Committee for a Quiet City said:—

“One of the insidious aspects of excessive noise is the fact that an individual may be unconsciously building up nervous tension due to noise expousers. This may cause a person thus exposed to noise suddenly to be catapulted into an act of violence of mental collapse by some seemingly minor sounds which drive him beyond the point of endurance. Many persons who are using tranquilisers may be treating the symptoms rather than the disease.”

In the continuing deterioration of man's habital demands a revaluation of the present approach to eco-management. *Dr. Wanger* who is an authority on the subject of Air Pollution while referring to the adverse effected of air pollution said:—

“We are experiencing disease today from hazards we didn't control yesterday. What we don't take care of today will be there for our children to handle tomorrow.”

It would not be inappropriate in the context of Human Rights to reproduce an illustration given by *Shue 1979 : 72-5* in regard to the consequence of inaction:—

“A man is stranded on an about-of-the-way desert island with neither feed nor water. A sailor from a passing ship comes ashore, but leaves the man to die (an act of omission). This is as serious as violation of his rights as strangling him (an act of commission). It is killing him, plain and simple—indirectly, through ‘inaction’, but just as surely perhaps even more cruelly.”

The broad question of containment of pollution cannot be oversimplified and dismissed as routine nuisance of which no person of ordinary sense and temper would complain or because rightly or wrongly industries have been permitted to be set up. In the case on hand, the public authorities most closely associated with the issue have chosen to maintain silence and mysterious aloofness failing to meet the allegations made by the petitioners, for reasons best known to them. The State of those authorities who are the concerned respondents in this case, presents a baffling enigma. They do not respond to the grievances of the petitioners and do not lay bare before the Court information either denying or admitting the existence of pollution and the extent of pollution such as emission of noxious gases, toxic wastes, assault on the senses by noise pollution and the like which are imputed by the petitioners in the way they could express. Terminological inexactitude cannot bar legal redress.

What is alleged in substance is persistent pollution which is offensive and detrimental to public health. These allegations have gone without repudiation by the public authorities.

Environment protection is not a pre-occupation of the educated and the affluent. It has socio-political dimensions. The disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. The effective implementation of environmental legislation is a social learning process which could fundamentally change the character of public administration in the country. From a Global perspective, the struggle to preserve a 'livable environment' is a part of a broader struggle to create a more just Global society both within and between nations. The impact of the human dimensions on the economically arid educationally disadvantaged who inhabit the developing areas cannot be underscored.

Examples are not wanting of valiant efforts made by public spirited individuals and groups around the world to repair and restore the damaged natural resources that are crucial to the present and future well being of the nationals relating to essentials such as water, land, wild-life and environment in general, as well as quality of life in particular in cities and towns. In the United States of America, mentioned by Berger, John. J in his book "Restoring the Earth" are illuminating instances:

- (a) A house-wife who led a crusade to clean up a river in Massachusetts;
- (b) A California Pharmacist who saved a Red-Wood forest;
- (c) A Pennsylvania Mine-Inspector who repaired a strip-mined land;
- (d) A Wisconsin architect who saved a town affected by floods and redesigned it as a flood-proof solar villages.
- (e) A plumber from Cape Cod who transformed a brushshoked ditch into a Trout stream.

He observed that their yeoman services have made human settlements more ecological sound as well as more enjoyable places to live in and that environmentalism is a truly popular movement. Court was of the view that it would be incongruous to stifle the present public interest action by applying truncated standards.

The right to life inherent in Article 21 of the Constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote to public interest. Specific guarantees in Article 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance. In the circumstantial context and factual back-drop, judicial intervention is warranted especially since the Supreme Court of India has already laid the foundation of juristic activism in unmistakable language of certainty and deep concern.

By allowing the writ petition, if calamitous consequences visit the concerned respondents as a result of non-feasance or malfeasance or misfeasance on the part of public authorities or public officials, the doors of justice are open to them to sue the public authorities for pecuniary relief by enforcing the principle of accountability.

In the light of the above discussion, it was held that the change in land use in Sy. Nos. 39/1, 39/2-A and 39/2-B of Ydeiur-Nagasandra village, Bangalore, from residential to industrial is in contravention of the Karnataka Town and Country Planning Act, the

Outline Development Plan, the Comprehensive Development Plan and Regulations thereunder and that the writ petition is maintainable.⁶⁶

49. Jurisdiction of High Court to Constitute Special Bench for Pollution matter.—Instant petition public interest under Article 32 of the Constitution of India was filed by Vellore Citizens Welfare Forum and was directed against the pollution which was being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was stated that the tanneries were discharging untreated effluent into agricultural fields, roadsides, water-ways and open lands. The untreated effluent was finally discharged in river Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and sub-soil water of river Palar has been polluted resulting in non-availability of potable water to the residents of the area. It was stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre Vellore nearly 35,000 hectares of agricultural land in the Tannereis Belt, has become either partially or totally unfit for cultivation. It was further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime sodium sulphate, chlorium sulphate, fat liquor Amonia and Sulphuric acid besides dyes which are used in large quantities, nearly litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physicochemical properties of the soil, and have contaminated ground water by percolation. According to the petitioner an independent survey conducted by Peace Members, a nongovernmental organisation, covering 13 villages of Dindigal and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal aid and Advice Board of Tamil Nadu requested two lawyers namely, 'M' t nd 'P to visit the area and submit a report indicating the extent of pollution caused by the ianneries.

Held, The Board has the power under the Environment it and the rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permit the Board to specify more stringent standards from those provided under the Rules. The NEERI have justified the standards stipulated by the Board, this Court direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu.

The apex Court has issued comprehensive directions for achieving the end result in this case. The Madras High Court would be in a better position to monitor these matters hereinafter. The Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. This Court make

66. V. Lakshmiopathy v. State, AIR 1992 Kam. 57 at pp. 68, 69, 70, 71 (H. G. Balakrishna, J.)

it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by Supreme Court⁶⁷:—

50. Petition alleging environmental pollution—Whether every citizen has fundamental right?—A letter written to Supreme Court was treated as a writ petition under Article 32 of the Constitution of India. The letter written by Chhetriya Pardushan Mukti Sangharsh Samiti, Samath, alleged environmental pollution in the area. It was also alleged therein that the Jhunjhunwala Oil Mills and refinery plant are located in the green belt area, touching three villages and the Samath temple of international fame. The smoke and dust emitted from the chimneys of the mills and the effluents discharged from these plants were alleged to be causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke and foul smell and the highly polluted water. It was further alleged that the lands in the area had become waste, affecting crops and the orchards damaged. Diseases like TB, Jaundice and other ailments were stated to be spreading in an epidemic form. The growth of children was affected. It was further alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one kilometre long belt touching the oil mills and the plant were adversely affected. It was stated that licences had been issued to one richman 'D' for these industrial units thereby risking the lives of thousands of people without enforcing any safety measure either to cure the effluents discharged from the plants or to check the smoke and the foul smell emitted from the chimneys. The whole area was expected to be ruined due to any explosion or gas leakage.

In the background, the petitioner prayed for necessary directions to check the pollution, and also enclosed a printed leaflet allowing malpractices and corruption on the part of the proprietor of these industrial units apart from polluting the atmosphere.

As mentioned hereinbefore, the complaint was made by the said Samiti stated to be a social organisation about environmental pollution and ecological imbalance being caused by the two plants and thereby exposing the population to health hazards and life risk which was, therefore, considered to be a matter of great public importance. It is necessary to recognise the danger in order to strike a balance between the quality of life to be preserved and the economic development to be encouraged. Dealing with this aspect in *M.C. Mehta v. Union of India*,^{68 69} it has been stated that whenever applications for licences to establish new industries are made in future, such applications should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. So, letter was treated as a writ petition and notice was issued, counter-affidavit was filed on behalf of respondent No. 3 being the proprietor of Jhunjhunwala Oil Mills, Reference was made to the decision of this Court *Bandhua Mukti Morcha v. Union of India*,^w wherein Supreme Court underlined the importance of satisfactory verification of allegations. The Court was asked to be ever vigilant against abuse of its process and there was need for appropriate verification. There is a statute for controlling pollution.

67. *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715 at 2716, 2726, 2727: (1996) 5 SCC 647: (1996) 5 Com LJ 40: 1996 AIR SCW 3399.

68. AIR 1984 SC 802: (1984) 2 SCR 57.

69. AIR 1988 SC 1037 : (1988) 1 SCR 279.

It is well-settled that if there is a statute prescribing a judicial procedure governing a particular case, the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance with it. It is further asserted on behalf of the respondents that between the petitioner 'S' and respondent No. 3, there was a long rivalry. According to respondent No. 3, the petitioner is an anti-social element and his only aim was to extract money from the people like respondent No. 3 as in the instant case.

It has further been stated that there has been criminal proceeding against the petitioner and several items have been marked in the affidavit in opposition. The particulars make out a rather disgraceful state of affairs. It has been alleged that 'S' for the last so many years was blackmailing the people, and a case under Section 500 of the IPC being Case No. 121/88 was filed. It has been further averred that respondent No. 3 has complied with the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and of the Water (Prevention and Control of Pollution) Act, 1974 and there is no complaint of any kind from any person, body or authority. The correspondence, in this connection, has been set out.⁷⁰

As early as 1980, the petitioner had made various complaints to the A.D.M. (Supply), District Varanasi, alleging that respondent No. 3 was accused of smuggling of coal and diesel blackmailing. It was dismissed. There was no complaint from anybody apart from the present petitioner by any authority as to the non-compliance of any statute by respondent No. 3. The orders passed by the Pollution Control Board which had been annexed, also indicate that there are no instances of violation of the said Acts.

Time was sought on behalf of respondents for filing a rejoinder which, unfortunately, has not been filed, and no satisfactory explanation has been given therefore. Certain letters alleged to have been written on behalf of the petitioners were sought to be placed before the Court.

Having considered the facts, circumstances, nature the allegations and the long history of enmity and animosity, this Court was of the relevant view that the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent No. 3 herein leading to pollution of air or ecological imbalances calling for interference by Court.

Article 32 of the Constitution of India is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizens has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 32 of the Constitution of India. Anything which endanges or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 of the Constitution should not be misused or permitted to be misused creating a bottleneck in the superior

70. See *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of UP.*, AIR 1990 SC 2060 at 2061,2062.

Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.

Having regard to the ugly rivalry here, this Court have no doubt that between the contestants the Court was misled and Court must, therefore, proceed with caution. There was no violation of fundamental right or could be violative if the allegations of the so-called champions on behalf of the society are scrutinised. This Court must protect the society from the so-called 'protectors'. Petition was legally devoid of any merit or principles of public interest and public protection. Instant application certainly created bottlenecks in Courts, which is an abuse of process of this Court.^{71 72}

In *State of H.P. v. Ganesh Wood Products*,¹² it was observed as follows:—

'The High Court was not right in observing that Y' cannot be accepted as a public spirited citizen approaching the Court to protect public interest., .more so, when it has recorded as simultaneous finding that there is no evidence of collusion between him and Shankar Trading Company (Mahesh Udyog) The credentials of 'y' appear to be impeccable. He is not only a member of the Himachal Pradesh Legislative Assembly but also the Convenor of the Indian National Trust for Art and Cultural Heritage. He is also the President of the Himalayan WildLife and Environment Preservation Society. The said organizations may be big or small, may be well-established ones or recently started ones—that is immaterial. Once it is found that he was not acting at the instance of or at the behest of or protecting the interest of Shankar Trading Company, there was no reason to hold that he was not acting *bona fide* in approaching the Court to preserve the forest wealth of the State in the interest of environment and ecology. His inability to produce material in support of his allegation of licit felling in the State does not tell upon his *bona fide*."

51. Air and water pollution.—The petitioner, a Society of the residents of the Shastri Nagar, Ambala, City, filed the present writ petition in public interest. The petitioner alleged that the Shastri Nagar "is in existence since 1960 in the Ambala City." Initially, a separate industrial area had been carved out. In the year 1994, Swastik Oil Mill, Hissar Road was installed in the vicinity of the residential area. According to the petitioner, respondent No. 6 had set up the Oil Mill in an unauthorised manner on account of his influence and political connections. It is further alleged that boilers of huge capacity and volume have been installed in the factory premises "which could be fatal for the residents....." According to the petitioner, no licence under the "Explosive Act" had been obtained by Respondent No.6. The Mill releases gases full of foul smell polluting the whole atmosphere. The Boilers release gas-steam with very loud noise throughout the day and night and vapours of the steam engulf the whole atmosphere like clouds. Poisonous gaseous substances which irritates the eyes and lead to respiratory problems are released. As a result, the residents find it difficult to breathe in open air. These disturb the life of the residents of the locality. It has been further alleged that the Mill has thrown and on the municipal passage and blocked the drainage of the area. As a consequence dirty water has accumulated on the passage near the Mill. A pond has been formed on the shallow land. The drainage made by the Municipal Committee has been blocked. It

71. *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, AIR 1990 SC 2060 at 2062, 2063: (1990) 3 JT (SC) 685.

72. AIR 1996 SC 149 at 164: 1996 AIR SCW 3847.

remains full of 'filthy water'. It can cause diseases in the area. The effluent discharged by the Mill pollutes the drinking water. The residents of the area made complaints to the official respondents and requested them to stop the further functioning of the factory. Respondents Nos. 1 to 5 having failed to take any action, the petitioner has approached this Court through the present writ petition. The petitioner maintains that the Mill has been established without taking care of the ecology. In pursuance to the complaint submitted by the petitioner, Respondent No.3, the Director, Department of Industries had called the petitioner on Oct. 20, 1994. The representative of the Society had appeared before the General Manager, District Industries Centre, Ambala a number of times but nothing fruitful was done. The respondents have failed to carry out their constitutional and legal duties consequently, the petitioner prays for the issue of a direction restraining respondent No. 6 from running the factory.

Separate written statements have been filed by different respondents. In the written statement filed on behalf of the Haryana State Pollution Control Board (Respondent No. 2) it has been *inter alia* mentioned that the Unit was established without obtaining 'consent'. Letters dated Sept.2, 1994 and May 3, 1995 had been written to respondent No. 6 to apply for 'consent'. Since the Unit had not applied for 'consent', it had been declared as a 'non-applicant'. Allegations of connivance with of favoritism of to the unit have been denied. It has been further pointed out that the Deputy Commissioner, Ambala has been requested to initiate action under Section 133, Cr.P.C, against the Unit. Action under Sections 31-(A)(a), A(b) and 33-A(b) has been initiated against the Unit by directing the Haryana State Electricity Board to disconnect the electric supply. Copies of the communications addressed to respondent No. 6 and the Board etc. have also been produced with the written statement.

In the written statement filed on behalf of respondent No.5 of a Municipal Committee, it has been *inter alia* stated that the Mill was established without obtaining any permission and as such, it has been challenged under section of the Haryana Municipal Act, 1973. It was also challenged under Section 158 for discharging water on the road. Both the proceedings are pending before the Chief Judicial Magistrate Ambala, with regard to the allegation that the drinking water has been polluted, it has been mentioned that no such instance "has come to the notice of the "respondents. Rest of the allegation have been controverted.

The bye-product is spent earth which is collected in the plot and sold. The tanks were there in the factory premises facts where the spent earth is settled. Water is used only for the cooling system. It has been specifically stated that the dirty water which has settled at one side of the factory is on account of the domestic sewerage of the colony. It has been further found that there is no visible drainage system.

These findings have not been controverted by the petitioner even by filing an affidavit. No evidence has been produced to show that these were wrong. Still further, even with regard to air pollution, nothing has been pointed out to show that the factory is causing any objectionable pollution. Even in the report at mark 'A' besides observing that the Unit has not provided sampling facility or installed any air pollution control measures, it has been stated that in fact there is any pollution. 'B's report shows that except for the initial half an hour, the smoke is colourless. His observations were amply borne out or at least fully corroborated by the seventeen coloured pictures attached with the report.

‘B’ was not a layman. He is an Engineering Graduate. He has worked as an Electrical Engineer in the Navy. He has taught in the Engineering College for a few year before taking to the profession of a law. He has taken meticulous care to give details. He has produced 17 photographs with his report. These support the observations as given by him in the report. A perusal of the report shows that the sixth respondent is not causing any objectionable pollution. Even the Haryana State Pollution Control Board has filed no objections.

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In this situation this Court found no ground to order that the Oil Mill should be closed. In any case, the Municipal Committee as well as the Board have already initiated certain proceedings under the relevant statutes. No interference under Article 226 of the Constitution was called for.⁷³

52. Right to life—Negligence by Government.—This was a public interest litigation filed by one ‘H’ who was a practising Advocate of Mandla for the apathy of the State Government, or rather a gross negligence on the part of the State Government in not taking proper measure before supplying drinking water from hand-pumps which has resulted in colossal damage to the population of Mandla District.

The hand-pumps which have been sunk by the State Government for supply of drinking water had excessive fluoride contents and on account of that, thousand of persons who consumed water have suffered major set-back in their life either in terms of deformity of various nature, like skeletal fluorosis or dental fluorosis. Therefore, this cause has been brought by a public spirited Advocate before this Court and notices were issued to the respondents.

In their return, the respondents have pointed out that the matter came to their light that water of certain tube-wells had excessive fluoride which has caused great damage to the population by way of deformities in hands, legs and dental problem and immediate measures were taken for sealing of these tube-wells and certain medical facilities were provided to the affected persons. It is pointed out that District Mandla comprises J_3,269 sq. kilometers and its population is about 12,91,000. According to the census of 1991, Mandla District has total number of 2160 rural villages. It is pointed out that for the last 25 years, Public Health Engineering Department of Madhya Pradesh, with the help of Central Government Rural Development Department, is providing drinking water by drilling tube-wells in the villages of Mandla District. It is alleged that before drinking water is supplied, quality of water is to be tested and certain guidelines are prescribed for testing of water. But in all those guidelines, no fluoride test has been provided and therefore, such fluoride test was not undertaken. When adverse reports were received, then an enquiry was conducted and the Assistant an enquiry was conducted and the Assistant Surgeon posted at Primary Health Centre, Mohania Patpara in District Mandla submitted a report to the Chief Medical Officer Mandla on 10-2-1995 and on that basis a team of experts consisting of Child Specialist and Orthopedic Specialist headed by Chief Medical and Health Officer Mandla was deputed and it was found that 29 children were suffering from bone diseases and were having deformity in legs. The team of experts also examined their eating habits as well as drinking water and some treatment was given. Thereafter, the Chief Medical and Health Officer *vide* his letter dated 30th March, 1995 to I.C.M.R. Jabalpur reported this matter and the I.C.M.R. deputed a team of experts headed by Dr. Tapas Chakma who visited the village on 10th May, 1995 to 17th May

73. Shastri Nagar Kanchghar Sudhar Sabha v. State of Haryana, AIR 1997 Punjab & Haryana 172 at pp. 171, 172, 175, 176.

1995 and took water of five hand-pumps of village Talaipani and in that, it was found that fluoride contents were at a high level 0.10 mg. per litre. The team of experts recommended that these hand-pumps, should be immediately closed and alternative arrangement for drinking water should be made, it was also found that water contained excessive fluoride. Consequently, hand-pumps were closed of the said village Talaipani. The Executive Engineer, P.H.E. Mandla in the meanwhile also sent a sample of water to the Pollution Control Board, Jabalpur and the Pollution Control Board submitted its report that fluoride contents in the water were 0.96 mg. per litre which is a normal content and was not abnormal. After receipt of this report, again two experts were sent and the two experts advised the State to continue treatment of the affected children.

Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. State in present case has failed to discharge its primary responsibility. It is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water, as has been held by their Lordships of the Hon'ble Supreme Court in the case of *Subhash Kumar v. State of Bihar*,⁷⁴ that a right to life includes right to live properly and have the benefit of all natural resources i.e. unpolluted air and water. It was observed at page 424 (of AIR):—

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have resource to Article 32 of the Constitution for removing the pollution of water or Air which may be detrimental to the quality of life.”

Therefore, it was the duty of the State towards every citizen of India to provide pure drinking water. In the present case, it is the State which is responsible for not taking proper precaution to provide proper drinking water to the citizens.

There are various persons.... some are minor children some major and some females who are suffering from this deformity. Therefore, it is directed that persons given in list Annexure A shall be given free medical treatment, whether, it be by way of surgery or by way of calipers and shoes. In case surgery is required, then, the same shall be undertaken at the expense of the State and each person whose surgery is done shall be paid Rs. 3,000/- (three thousand) over and above free medical treatment at the expense of the State. If these persons even after surgery, require necessary artificial appliances like limbs or calipers, the same should be provided.⁷⁵

53. Impleadment of Parties.—In case of Public Litigation there is no question of invoking the principle of Order 1, Rule 8, CPC. It was a public interest litigation. There are Aqua Culture farms all over India along the coast-line. A large number of them appeared and the case was argued at great length for very many days and the decision was ultimately given. Now, a few persons cannot come up and say that they were not made parties in that case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. If this practice is allowed, there will be no end to litigation.

74. AIR 1991 SC 420: 1991 AIR SCW 121.

75. Hamid Khan v. State, AIR 1997 MP 191 at pp. 192, 193.

Pursuant to this order, individual notices were given and also widest possible publicity was given about this case. The persons affected were directed to appear in Court to place their case. Public Notices were also issued in large number of newspapers all over India in English and also in local language informing the aqua farms about the pendency of the litigation and the date of next hearing *i.e.* on 17-10-1995. In view of these facts it is difficult to believe that the writ petitioners did not receive any notice or were unaware of the pendency of the case of Jagannath,⁷⁶ before this Court or that the aqua farms were actually involved in that case. Because of all these reasons this Court are of the view that now that the judgment has been pronounced.⁷⁷

54. Escaping of Chlorine Gas.—The chlorine gas is a dangerous to the life and health of the community and if it escapes either from the storage tanks or from the filled cylinders or from any other point in the course of production, it is likely to affect the health and well-being of the workmen and the people living in the vicinity. There was some controversy before Court as to what is the concentration of chlorine in the air which is dangerous to life and health. Aggarwal Committee in its report stated that concentration of chlorine in the air above 25 parts per million (PPM) is recognised by Occupational Safety and Health Act (USA) as immediately dangerous to life and health, but this was disputed on behalf of the management of Shriram relying on the report of Manmohan Singh Committee which opined that it is only where concentration of chlorine in the air is between 40 to 60 parts per million (PPM) that exposure for 30 minutes would be dangerous to life. It was not necessary for the Court to go into this controversy and decide as to which view was correct, whether the one expressed by Aggarwal Committee or the one expressed by Manmohan Singh Committee. Fortunately, both committees were agreed that chlorine is a hazardous gas and though smaller concentrations of chlorine in the air may cause only irritation and coughing larger concentrations, whether above 25 parts per million (PPM) or above 40 parts per million (PPM) are likely to cause serious danger to life. There can therefore be no doubt that there would be hazard to the life and health of the community, if there is escape of chlorine gas from the caustic chlorine plant, whether by reason of negligence of the management or due to accidental release. In fact the Issue of the Journal Scavenger for January, 1985 enumerates some major accidents which have occurred in different parts of the world in the process industries and this enumeration shows that not less than 25 accidents have been caused by escape of chlorine gas in the last about 70 years and many of these accidents have resulted in death of quite a few persons. To take only a few examples, the escape of chlorine from storage tank in Wilsum Germany in 1952 resulted in death of seven persons and similarly release of chlorine gas in Bankstown, Australia in 1967 resulted in gassing of five persons and on account of escape of chlorine gas in Baton Rouge in 1976, about 10,000 persons had to be evacuated. It is true that quite a few of these accidents arose on account of escape of chlorine gas in course of transport by rail tank cars but some accidents did occur on account of escape of chlorine gas from storage tanks. It cannot therefore be ignored that the possible hazard to the health and well-being of the workmen and the people living in the vicinity on account of escape of chlorine gas. It cannot be over looked that the old and worn out state of machinery and equipment, the negligence of the management in the maintenance and operation of the caustic chlorine plant and the indifference shown by the management in installing proper safety devices and safest instruments and taking proper and adequate measures for ensuring safety of the workmen and the people living in the

76. AIR 1997 SCW 635.

77. Gopi Aqua Farms v. Union of India, AIR 1997 SC 3519 at 3520.

vicinity. These were considerations which were relevant in deciding whether the caustic chlorine plant should be allowed to be restarted. But as against these considerations, Court must also take into account the proven fact that all the recommendations made in the Reports of Manmohan Singh Committee and Nilay Choudhary Committee have been carried out by the management of Shriram and it is the opinion of not only Manmohan Singh Committee and Nilay Choudhary Committee but also of the last Committee appointed by Court, that since all these recommendations have been complied with by the management in satisfactory manner, Shriram may be allowed to restart the caustic chlorine plant. There can be no doubt, particularly having regard to the opinion of Manmohan Singh Committee, Nilay Choudhary Committee and the last Committee appointed by the Court that the possibility of hazard or risk to the community is considerably minimised and there is now no appreciable risk or danger to the community if the caustic chlorine plant is allowed to be restarted. It cannot also be ignored that the interests of the workmen while deciding this delicate and complex question. It could not be disputed either by the Government of India or by the Delhi Administration or even by the petitioner that the effect of permanently closing down the caustic chlorine plant would be throw about 4,000 workmen out of employment and that such closure would lead to their utter improvement. The Delhi Water Supply Undertaking which gets its supply of chlorine from Shriram would also have to find alternative sources of supply and it was common ground between the parties that such sources may be quite distant from Delhi. The production of down streams products would also be seriously affected resulting to some extent in short supply of these products. These various considerations on both sides have to be weighed and balanced and a decision has to be made as to on which side the considerations preponderate and tilt the balance. It is none too easy task, for the decision either way may entail serious consequences. The Court have therefore reflected over the various aspects of this rather difficult and complex question with great anxiety and care and taking an overall view of the diverse considerations, with considerable hesitation, bordering almost on trepidations reached the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management of Shriram, subject to certain stringent conditions which Court propose to specify.

Held, That a high powered Authority should be set up by the Government of India in consultation with the Central Board for overseeing functioning of hazardous industries with a view to ensuring that there are no defects or deficiencies in the design, structure or quality of their plant and machinery, there is no negligence in maintenance and operation of the plant and equipment and necessary safety devices and instruments are installed and are in operation and proper and adequate safety standards and procedures were strictly followed. This was a question which needed serious attention of the Government of India and the Court requested the Government of India to take the necessary steps at the earliest, because the problem of danger to the health and well- being of the community on account of chemical and other hazardous industries has become a pressing problem in modern industrial society. It is also necessary to point that when Science and Technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and Technology and it is not possible to totally eliminate such hazard or risk altogether. A policy of not having any chemical or other hazardous industries cannot be adopted merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if

hazardous, have to be set up since they are essential for economic development and advancement of well-being of the people. It can be hoped to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or danger to the community and maximising safety requirements in such industries. Court would therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. There should perfectly be a green belt of 1 to 5 k.m. width around such hazardous industries.⁷⁸

55. Harmful Gas—Issuance of.—In a case it was held that petitioner has rendered signal service to the community by bringing this public interest litigation and he has produced before the Court considerable material bearing on the issues arising in the litigation. He has argued his case with great sincerity and dedication and the people of Delhi must be grateful to him for espousing Such a public cause. But for this public interest litigation brought by the petitioner, there would have been improvement in the design, structure and quality of the machinery and equipment in the caustic chlorine plant nor would any proper and adequate safety devices and instruments have been installed nor would there have been any pressure on the management to observe safety standards and procedures and the possibility cannot be ruled out that perhaps some day oleum gas tragedy might have been repeated but this time with chlorine gas which is admittedly more dangerous than oleum gas. Though one and single, he has fought a valiant battle against a giant enterprise and achieved substantial success. Supreme Court, therefore, as a token of its appreciation of the work done by the petitioner directed that a sum of Rs. 10,000/- be paid by Shriram to the petitioner by way of costs.⁷⁹

56. Lease of reserved Forest—Grant of.—The District Forest Officer, has granted quarry lease in respect of 18-60 acres in Bit V of Badanavadi Reserve Forest for a period of two years and thereafter by G.O. Ms. No.. 382 Industries Department dated 21-3-1977 the second respondent has granted lease for a period of five years and necessary lease agreement was executed. Though the petitioner has applied for 10 years lease, the second respondent has granted lease only for five years which expired by 1982. Thereafter he filed a writ petition for renewal of the said lease and the same was still pending. As per G.O. 1273 Industries Department the Tamil Nadu Minor Mineral Concession Rules were amended and as per the then amended rules, leases in respect of Government Pramboke lands can be granted only for the persons who were having an existing Industry within the State of Tamil Nadu, or having programme to set up an industry within the State of Tamil Nadu. By G.O. 608 Industries Rule 39 was amended to the Tamil Nadu Minor Mineral Concession Rules, 1959. The first respondent by exercising powers under the said Rules, has granted renewal for the lease expired 10 years back.

It was further contended that Parliament has enacted Forest (Conservation) Act, 1980. As per Section 2 of the Forest (Conservation) Act, 1980 (herein referred to as “the Act”), an application for land containing quarrying lease or renewal of the lease of forest land containing minor minerals cannot be allowed without seeking prior approval of the

78. MC. Mehta v. Union of India, AIR 1987 SC 965 at pp. 974, 975, 976, 981 : 1986 SCC (Cri) 122 : (1986) ‘2 SCC 176 : (1986) 1 SCJ 383 (P.N. Bhagwati. C.J., D.P. Madon and G.O. Oza, JJ.).

79. Ibid

Central Government. In view of the above enactment the petitioner by letter requested the District Forest Officer, Dharampuri for necessary permission. The District Forest Officer after inspection of the alternative lands provided by the petitioner has estimated the value for reforestation and sent a proposal to the fourth respondent. While such is the position, the first respondent by the impugned order dated 5-5-1985 has granted lease in favour of fifth respondent in respect of 5.50 acres in the said Survey Number without obtaining any approval for the Central Government and without passing orders on the petitioner's renewal application is contended that the approval of the Central Government is mandatory and the State Government does not have power to grant lease in reserve forest without sending the proposal in specific for prior approval by the Central Government as per Rule 4 of the Forest (Conservation) Rules, 1981 as amended. In those circumstance, they approached the Court for necessary relief as claimed above.

The very same petitioner has filed another writ petition seeking a writ of declaration, declaring that the lease agreement dated 19-5-1995 executed by the second respondent in favour of the third respondent in respect of quarry measuring 6.6. acres in Bit V of Badavadi Revenue Forest, Sunjalnatham village, Pennagaram taluk, Dharmapuri District, registered as a document No. 662/95 in the Sub-Registrar's Office, Pennagaram is null and void. If the petitioner is able to succeed in W.P. No. 8505 of 1995 and if the impugned Government order therein is quashed, automatically the lease agreement which was executed subsequent to the impugned order in the said writ petition is also liable to be held as invalid.

Writ Petition No. 8845 of 1995 was a petition filed by a member of Tamil Nadu Legislative Assembly and he was one of the General Secretaries of the Tamil Nadu Congress Committee (I). He filed the said writ petition in public interest. The facts narrated therein were briefly stated hereunder. Ever since the introduction of Rule 39, the Government of Tamil Nadu have been granting lease to certain interested person to quarry granite for extraneous considerations. In the matter of grant of lease to quarry granite there is abuse of power. The 1st respondent has no power to grant lease in favour of the third respondent to exploit granite in a reserved forest. Under Section 2 of the Forest Conservation Act the State Government or any other authority shall not make any orders relating to use of forest land for any non-forest purpose. Notwithstanding the Forest Conservation Act, 1980 the Government of Tamil Nadu have been passing orders granting lease in favour of private parties even with respect to A Forest Act. The Central Government have also not taken any action though the State Government have been passing periodically such illegal orders. The impugned order namely G.O. Ms. No. 119 Industries Department dated 5-5-1995 has been issued for extraneous consideration. It was not a case of genuine exercise of power under Rule 39. It was further contended that indiscriminately leases were granted to quarry granite even in reserved forest and this would affect the country and ecology of the region. In those circumstance, he has approached this Court for issue of a writ of *certiorari*, calling for the records relating to the proceedings of the first respondent in G.O. Ms. No. 119 of Industries (E2) Department dated 5-5-1995 and to quash the said Government order.

The fifth respondent namely M/s. Golden Granites has also filed a counter-affidavit wherein he has raised the following defence. The petitioner had made several incorrect and false statements and made such statements in his affidavit deliberately to create an image as if he is a total stranger unconnected with the fifth respondent-firm, Golden Granite at any time. He has abused the process of law and action was liable to be taken against the petitioner for suppression of material facts. The petitioner has not made any

application whatsoever to the first respondent, who is the lease granting authority under Tamil Nadu Mines and Mineral Concession Rules, 1959. The petitioner has fabricated the original letter dated 9-5-1994 to create an appearance of having been addressed to the first respondent and submitted through the District Forest Officer, Dharmapuri and filed the same into this Court. He has also explained the relationship of the petitioner who was none-else than the elder brother of the managing partner of the firm Golden Granites, and his connection with the fifth respondent-firm Golden Granites in various paragraphs. It was also explained that the Government order issued in favour of fifth respondent firm clearly states that the grant of lease is subject to obtaining concurrence from Government of India, Ministry of Environment and Forests, New Delhi and the Government order clearly specified that actual quarrying operations i.e., the activity of non-forest purpose, by the respondent-firm in the subject forest lands shall be permitted only after obtaining the mandatory approval of the Government of India under Forest Conservation Act, 1980. The impugned Government order was only a grant of quarrying a minor mineral under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959. It could not be misconstrued in any way that the impugned grant of quarrying permission amount to grant of permission to cut and clear the forest growth in the subject quarry lands in the Reserved Forest in violation of the objectives of the Forest Conservation Act, 1980.

The third respondent filed a counter-affidavit wherein it was contended that the petitioner does not have any *bona fide* in filing the present writ petition in public interest, and the same has been filed only to obligate the private interest of K.V. Shanmugam who has filed writ petition on an identical ground. It was also contended that even though the Government have passed identical orders, the petitioners has not chosen to challenge the same and he has filed the present writ petition only on the direction and request made by the petitioner in W.P. No. 8505 of 1995. It was also contended that the provisions of Tamil Nadu Minor Mineral Concession Rules, 1959 and Section 2 of Forest Conservation Act, 1980 though operate on a separate field tend to overlap when the leasehold rights are granted to Minor Minerals in forest areas. Both the enactments cannot be read in isolation but will have to be read into, harmoniously taking into consideration the object and intent of the Legislature. The first respondent in the impugned Government order has clearly stated that before the commencement of non-forest purpose activity of quarrying operation, concurrence of Central Government should be obtained for the operation of the impugned Government order. Thus what is material is only the date of concurrence of Central Government before permitting the third respondent to enter upon the subject area to resume the non-forest purpose of quarrying operations, in the idling quarry lands.

The contention based on the aforesaid Full Bench judgment of the Andhra Pradesh High Court that is prior permission of the Central Government would be necessary for breaking open the land for non-forest purpose cannot be countenanced since such a contention will run counter to Section 2 (ii) of the Act as interpreted by the Apex Court.

The impugned Government Order granting lease in favour of the fifth respondent in W.P. No. 8505 of 1995 subject to the concurrence of the Central Government was therefore violative of the provisions of Section 2 (ii) of the Forest (Conservation) Act, 1980 as interpreted by the aforesaid decisions.

Even at the out-set, it was held that both the petitioners were entitled to challenge the impugned order, more particularly the petitioner in the first case also was an applicant for the grant of lease for the same grant in question, when such violation is brought to the notice of the Court, the Public Trust Doctrine propounded by the Supreme Court in the

decision reported in *H.C. Mehta v. Kamalnath*^{*1} at the other decision of the Supreme Court reported in *T.N. Godawarman Thirumulkapad v. Union of India*,^{80 81} comes into play and makes the question of *locus standi* wholly irrelevant and immaterial.

The impugned Government order granting lease in favour of the fifth respondent according to the petitioners was vitiated by total non-application of mind. The very application that was granted which was stated to have been granted in the impugned Government Order stands to have been altered as the application of the 5th respondent according to the counter-affidavit filed by the first respondent. Except stating that the application of the fifth respondent was disposed of under Rule 39 nothing has been explained in the impugned order. On the other hand, the fifth respondent in the counter would clarify the action of the first respondent stating that by clerical mistake the first respondent has issued the impugned Government order in which the application of the fifth respondent is stated as made on 9-9-1994. According to the petitioner, the application of the petitioner made to the District Forest Officer and as such was earlier to the application of the fifth respondent. Rule 39 itself came into force on 9-3-1994. It is also seen that the fifth respondent Managing Partner has made an application for grant of lease to quarry black granite in the very same land namely Bilt No. 5 over an extent of 18.60 acres and after Rule 39 came into force the said application was rejected by the Government. In those circumstances, it is highly doubtful whether the application could have still kept pending anticipating Rule 39. By showing the documents filed in the typed set of papers, the counsel for the petitioner brought to notice of the court that the petitioner has made an application before proper channel that is through the District Forest Officer. As rightly pointed out by the senior counsel for the petitioner *inter se* dispute between the petitioner and the respondent were quite immaterial for the purpose of granting or refusing the lease applied for by either petitioner or the fifth respondent. The other factual position brought to notice of the Court was that there was an order of injunction against the petitioner. However, it was brought to notice of the Court that ultimately the CMA itself is withdrawn and therefore, there would be no claim of any interim order since the DMA itself has been dismissed as withdrawn. In those circumstances, the objection regarding merits of the petitioner's case could not be countenanced.

During the hearing of the case, on direction the Court, the Additional Government Pleader has also placed the files relating to the impugned Government Order. A perusal of the file clearly shows that the Government was sounded and cautioned the implication of Section 2 of the Forest (Conservation) Act and as a matter of the fact, the Forest Department has prepared a notes that prior approval of the Central Government is to be obtained before taking any decision in respect of the application of the 5th respondent. Unfortunately that suggestion has not been followed before passing the impugned order.

In view of the quashing the impugned order it was made clear that in all the cases in which the Government desire to grant lease of reserve forest lands for mining operations, the mandatory provisions of Section 2 Forest (Conservation) Act, 1980 has to be strictly complied with. In this view the writ petitions were allowed to the extent indicated above.⁸²

80. (1997) 1 SCC 388.

81. (1997) 2 SCC 267; 1997 AIR SCW 1263.

82. *K.V. Shanmugam v. State of Tamil Nadu*, AIR 1997 Madras 338 at pp. 339, 340, 341, 343, 344, 345, 346.

57. Depletion of Cattle Wealth.—The relief claimed in the instant writ petition was an injunction restraining the respondents 1 to 5 from making any type of killing of animals for any purpose. After the filing of the writ petition, a petition was filed for amending the prayer in the writ petition by adding the additional prayer, namely, to set aside the industrial licence granted to the 5th respondent by the Union of India, Industrial Department and to declare the same as illegal.

It is necessary briefly to refer to the facts which led to the filing of the writ petition:

M/s. Al-Kabeer Exports Ltd., 5th respondent in the writ petition is a public limited company incorporated under the Indian Companies Act, 1956. It carries on business of processing meat and supply of exporting the frozen meat. They applied for industrial licence on 30th January, 1989 under Section 11-A of the Industries (Development and Regulation) Act, 1951, seeking permission for the establishment of a modern Buffalo and Mutton Meat Processing Food Project to be located at Rudraram village, Patancheru Mandal, Medak district. The scheme envisaged the processing of about 15,000 tons of buffalo meat, 3,500 tons of mutton meat and about 300 tons of fruits and vegetables. The scheme expected to generate a net foreign exchange inflow of about 72 crores of rupees during the first five years. They have obtained permission from the District Revenue Officer, Medak on 15-3-1989 to appropriate agricultural land to non-agricultural purpose. The Gram Panchayat, Rudraram, issued No Objection Certificate (hereinafter referred to as 'NOC') on 24th March, 1989 for establishment modern abattoir. Andhra Pradesh Pollution Control Board also issued 'NOC' on 13-4-1989 for setting up the unit at Rudraram village subject to the condition that the trade and domestic effluents should be treated to the standards laid down in the concerned I.S.I. norms and that the industry should submit the detailed proposals on the effluent treatment and air pollution control measures along with the commissioning of the industry. District Medical and Health Officer, Medak district accorded permission for the project on 3-5-1989 subject to conditions laid down for the construction of the plant. Director of Town and Country Planning approved the layout on 31-5-1989. Gram Panchayat Rudraram in its proceedings dated 26-6-89 accorded sanction of lay out of factory building as per the plan enclosed by the 5th respondent. Director of Animal Husbandry issued NOC on 13-7-1989 to establish the factory at Rudraram. Director of Factories approved the plans of the factory on 2-9-1989, subject to the conditions laid down for such construction under the Factories Act. The National Airports Authority cleared the proposal on 16-10-1989. In view of the above, the State Government recommended for grant of industrial licence to the 5th respondent on 4-5-1989. The Government of India in turn issued the Industrial Licence on 18-7-1989. The Gram Panchayat, Rudraram, accorded sanction for construction of factory building on 26-9-1989. The permission was further extended for a period of one year from 29-6-1989 in G.O. Rt. Nos. 1455, Panchayat Raj and Rural Development Dept, dated. 15-9-1990. The Gram Panchayat Rudraram accorded renewal permission on 3-6-1991 for construction of buildings from 26-6-1991 for construction of buildings from 29-6-1991 to 28-6-1992. The State Government also accorded environmental clearance after enquiry on 22-7-1991 for locating the industry at Rudraram village. In pursuance of the NOC and the building plan approval issued by the Gram Panchayat, Rudraram, the 5th respondent commenced construction of the factory buildings. The Executive Officer of the Gram Panchayat at that stage issued a notice on 24-7-1990 to the 5th respondent directing them not to proceed with the construction and to stop all further work till further orders. The 5th respondent then filed a revision petition before the Government of Andhra Pradesh in P.R. and R.D. Department. The

said revision was allowed by the Government setting aside the notice issued by the Gram Panchayat dated 24-7-1990. The Government also renewed the building permission for a further period of one year from 29-6-1990. During the hearing before the Government on the revision, seven organisations filed their objections to the establishment of the Industry by the 5th respondent in Rudraram. Against the order of the Government setting aside the notice dated 24-7-1990, Jeeva Rakshaka Pracharak Mandal and others filed W.P. Nos. 13763 and 13808 of 1990, 1041/91, seeking cancellation of the various licences and permissions granted by the different authorities of the State and Central Government. The said Writ Petitions were dismissed by this Court on 16-11-1991, along with Writ Appeals 1281, 1282, 1325 and 1359 of 1990. While dismissing the writ petitions, the learned Judges observed that under the Industries (Development and Regulation) Act, 1951, it is for the Central Government to determine the location of the undertakings. It determined the location of the unit and granted permission in favour of the 5th respondent M/s. AI-Kabeer. Since it is the Central Government which is the competent authority about the location of industrial undertaking under the Industries (Development and Regulation) Act, 1951, the State Government cannot decide about the location of an industrial undertaking in respect of which Letter of Intent (hereinafter referred to as LOI) had already been granted by the Central Government. The learned Judges noticed that before granting LOI, the 5th respondent approached the A.P. Pollution Control Board which has granted NOC on 15-4-89 subject to certain conditions and the Agricultural and processing Food Export Development Authority in its letter dated 28-8-1991 observed that according to 1982 Live-stock census of the Ministry of Agriculture, buffalo population in Andhra Pradesh was estimated at 8.7 million and therefore the area was suitable for setting up the proposed unit. The learned Judges also noticed that the Government of Andhra Pradesh also issued environment Clearance Certificate on 22-7-1991 for setting up the unit at Rudraram village. It was also noticed that the food processing industry does not require any licence under the Industries (Development and Regulation) Act, 1951 under the liberalised industrial licencing policy taken in 1991. However, having regard to the apprehension expressed by the petitioners that the establishment of mechanised slaughterhouse at Rudraram village would result in total depletion of the cattle population and that the surrounding areas have already been badly affected by water, air and environmental pollution and it is one of the fundamental principles in the governance of the country enunciated in Article 48-A of the Constitution of India that the State shall endeavour to protect the environment and it is one of the fundamental duties of every citizen of the country to protect and improve the natural environment and to have compassion for living creatures, directed the State Government to prepare a detailed report regarding the water, air and environmental pollution, if any, as at present in Rudraram village and surrounding villages of Patancheru Mandal, Medak district, having regard to the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986 and the rules made thereunder, the likely effect of the setting up of the mechanised slaughter house at Rudraram village on the prevailing environment, and also its likely effect of the setting up of the mechanised slaughter house at Rudraram village on the prevailing environment, and also, its likely effect on the cattle wealth in the area, after considering the representations which the petitioners in the writ petitions and other interested parties may submit in writing in the matter. The Bench also observed that the State Government shall prepare and submit a detailed report to the Central Government within eight weeks from the date of receipt of the copy of the judgment and on receipt of the report, the Central Government shall consider the same, having regard to the provisions of the water (Prevention and Control of Pollution) Act,

1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and the Industries (Development and Regulation) Act, 1951 and pass appropriate orders in relation to the establishment of the mechanised slaughter-house (abattoir) At Rudram village, Patancheru Mandal, Medak district, within eight weeks from the date of the receipt of the report.

The Jeeva Rakshak Pracharak Mandal and other organisations also made representation to the Government against the establishment of the factory. On the basis of the representation, the Director of Animal Husbandry was asked to reassess the impact of establishing the slaughter house on the cattle wealth. The Animal Husbandry Department after conducting a survey presented a report suggesting that the modern slaughter house will have negligible effect on the cattle population. Thereafter, the Cabinet considered the report on 3-9-90 and resolved that no decision is required from the Cabinet.

In pursuance of the directions issued by the High Court in the writ petitions referred to supra, Principal Secretary, Energy, Forest Environmental Science and Technology Department made a report on the pollution and environmental and other aspects of the proposed slaughter house. While submitting his report, Mr. Krishnan considered:

- (1) the representations made by 27 organisations,
- (2) representation of the 5th respondent,
- (3) views expressed by the Member-Secretary, A.P. Pollution Control Board on environmental aspect,
- (4) views expressed by Sri T.S. Murthy Environmental Expert, on air and water pollution,
- (5) depletion of cattle wealth,
- (6) Views of the journalists,
- (7) views of the Industries and Commerce Department and the views expressed by the Food and Agriculture Department.

In his report Sri Krishnan found that water and air pollution can be effectively controlled if adequate anti-pollution equipment are installed and operate, as most of the waste material is biodegradable in nature and leaves very little by way of residue. The Secretary, A.P. Pollution Control Board has inspected the Pollution control arrangements put up and proposed to be put up by the factory and has given the opinion that they are substantially adequate to control air and water pollution if they are operated regularly.... Industry may be requested to install additional water pollution control facilities such as provision of exudation ponds and pisciculture ponds, in addition to the treatment facility proposed by the industry. It must be stipulated that the effluent after treatment shall be utilised for growing vegetation inside the factory. Under no circumstances, it should be allowed to reach any water course, it may also be stipulated to provide at least ten meters of green belt around the factory and vegetation inside the factory in open spaces. The Pollution Control Board should periodically inspect the factory to ensure that the pollution control equipment is properly operated to eliminate water and air pollution.

The industry may be requested to submit a detailed Environmental Impact study and also Environment Management Plan as agreed to by the representatives during their representation. The decision to give second NOC by the Pollution Control Board may be

taken on the basis of the equipment installed by the company for control of pollution and conclusions of the Environment Impact study and Environment Management Plan.

On the question of depletion of cattle wealth, he found. “.....to start with, the capacity of the plant is so large that with the existing cattle wealth and possible increases thereto will not be able to provide adequate input to this factory for more than a year or two unless drastic action is taken to increase the cattle wealth in the surrounding areas.”

He, therefore, advised that “..... it is essential to insist on the company to ensure that there is an effective programme to raise feed cattle on their own initiative for not less than 50% of the capacity so that the impact on the surrounding area is limited to this extent at least. Further increases in capacity can be considered only if the company increases its own feed cattle. Eventually the Company will have to produce feed cattle for their entire extent of operations so as to minimise the impact on the existing cattle wealth.”

The report was dated 22nd July, 1992.

One K. Prushottam Reddy and Mr. P.K. Jain also filed W.P. No. 6704 of 1991 against the Hyderabad Metropolitan Water Supply and Sewerage Board and four others. This Court by order dated 27.5.1992 issued notice to the respondents and in the meantime stopped the Board from considering all proposals for sale of water to the fifth respondent's factory.

Dr. Kishanrao, 2nd petitioner herein alongwith Ahimsa Trust filed another W.P. No. 8193/92 against A.P. Pollution Control Board and four others. This Court directed that objection certificate if any granted by the A.P. Pollution Control Board in the meanwhile shall be subject to further orders in the W.P.M.P.

Akhil Bharat Goseva Sangh filed a fresh Writ Petition No. 10454/92 against the State of Andhra Pradesh. The A.P. Pollution Control Board on an application made by the 5th respondent granted permission to the 5th respondent's unit to conduct test run of the machinery and equipment of as foreign technicians had arrived at the project site and the imported machinery and equipment were in warranty period.

Dr. Krishnarao along with Satyavani again filed the present W.P. No. 1306/92. Though interim directions were issued, they were, however, vacated by order dated 3 b 12-1992.

Before considering the arguments of Sri Ramchandrarao, learned counsel for the petitions, we may refer to the conditions subject to which the LOI was granted on 18.7.1989 by the Government of India. It provides for manufacture of the following :—

Item (s) manufacture	Annual Capacity
1. Frozen buffalo meat.	14775 tonnefs.
2. Frozen buffalo meat Added products such as curry, burgers, sausages etc.	225 tonnes.
3. Frozen mutton meat.	3240 tonnes.
4. Frozen mutton meat Added products such as curry, burgers, sausages etc.	360 tonnes.

The conditions stipulated in the LOI are :—

- (1) Buffaloes to be slaughtered shall be subject to anti-mortem and post-mortem examination by the concerned authorities;
- (2) Only old and useless buffaloes shall be slaughtered and, for this purpose, their production and processing shall be subject to continuous inspection by the municipal authorities, Animal Husbandry and Health Department of the State Government or any other arrangement which the Central or State Government may evolve for ensuring this;
- (3) Slaughter of cows of all ages and calves of cows and of buffaloes male or female, shall be prohibited;
- (4) Factory shall undertake measures for preserving / improving the breeds of the buffaloes by adoption of suitable animal husbandry practices in consultation with the State Government; and
- (5) At least 90% production of frozen buffalo meat would be exported for a period of ten years which may be extended by another five years at the discretion of the government.

The relevant conditions in the annexure attached to the LOI are as follows :—

Adequate steps shall be taken to the satisfaction of the Government to prevent air, water and soil pollution. Such anti-pollution measures to be installed should conform to the fulfillment and emission standards prescribed by the State Government in which the factory of the industrial undertaking is located.....

Further adequate safety measures as provided the Factories Act shall be made to the satisfaction of State Government in which the factory of the industrial undertaking is located;

The new industrial undertaking of the industrial activity for effecting substantial expansion or for manufacture.....shall not be located within 50 kilometers from the boundary of the standard urban area limits of any city having a population of more than 25 lakhs according to the 1991 census.”

Before grant of LOI to the 5th respondent, 5th respondent obtained clearance from the Directorate of Animal Husbandry and Andhra Pradesh Pollution Control Board. It is necessary to refer to the conditions subject to which, the Animal Husbandry Dept, gave clearance to the project.

“....No Objection Certificate to establish an abattoir at Rudraram village of Medak district is hereby issued to M/s. Alkabeer Exports Ltd., Hyderabad, subject to fulfillment of provisions under Sections 5 and 6(1) of Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 and also subject to fulfilment of conditions prescribed under para 123 of Animal Husbandry Department Manual.”

‘The Deputy Director (AH) Medak at Sangareddy is requested to make periodical visits to this proposed abattoir, and ensure that all the above conditions are being followed scrupulously.”

Paragraph 123 of the Animal Husbandry Manual stipulates the following conditions:

“123. Categories of animals prohibited from being slaughtered:—

- (1) The slaughter of the following categories of cattle for purposes of consumption either by civil or military authorities is prohibited;

- (i) Cattle below three years of age;
- (ii) Male cattle between three and ten years of age which are used for or likely to be used as working cattle;
- (iii) All cows between three and ten years of age capable of producing milk other than cows which are unsuitable for bearing off-spring; and
- (iv) All cows which are pregnant or in milk.

Explanation.—The terms ‘Cattle’ and ‘Cows’ include buffaloes.”

Section 5 of Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (hereinafter referred to as ‘Act 11 of 1977’) prohibits slaughtering of cows or calves or she-buffaloes.

Sub-Section (1) of Section 6 of the said Act provides for slaughters of animals subject to the condition of obtaining certificate from the competent authority appointed for the area that the animal is fit for slaughter. Sub-section (2) of Section 6 provides for grant of certificate in respect of the animals referred to under sub-section (1) of Section 6. Sub-section (2) of Section 6 provides that no certificate shall be granted under subsection (1), if in the opinion of the competent authority, the animal, is or is likely to become economical for the purpose of., .breeding of draught or any kind of agricultural operations; or giving milk or bearing offspring. However, the refusal for grant of certificate should be accompanied by reasons.

In other words, the Animal Husbandry Dept, while giving NOC imposed conditions to be fulfilled not only under Act 11 of 1977, but also under paragraph 123 of the Animal Husbandary Manual. Persons who violate the provisions of the Act are liable for conviction with imprisonment for a term which may extend to six months or with fine and the violation is a cognizable offence.

The Andhra Pradesh Pollution Control Board by their letter dated 13-4-1989, while granting NOC to the 5th respondent imposed the following conditions:

- “1. The industry shall treat the trade and domestic effluents to the standards laid down in IS 2490 Part I, 1981 2nd revision and shall use the treated effluent in their own land for irrigation.
2. The Industry shall submit the detailed proposals on effluent treatment and Air Pollution Control for Board’s perusal within two months from the date of issue of this letter. If the proposals are found to be unsuitable the NOC issued will be cancelled.
3. The industry shall construct and commission the effluent treatment plant and air pollution control measures; along with the commissioning of the industry.
4. The industry shall carry out the necessary measures to control air pollution so as to meet the following standards;
 1. SPM—115 mg/Nm³
 2. 502—800”
5. The industry shall install the stack after suitably designing the height and diameter of stack strictly adhering to the ground level concentrations (enclosed) and other meterological factors.”

The A.P. Pollution Control Board by their letter dated 25-7-1989 clarified the conditions imposed in the NOC dated 13-4-1989 in the following manner:—

The domestic wastes can be mixed with industrial effluents and treated in the proposed treatment plant to the prescribed standards. However, if it is proposed to treat in septic tanks, the same shall be followed with subsurface open joined filed drain for proper disension.

It was mentioned that the industry shall comply with the second NOC of the Board before the factory goes into trial production.

From the above, it is clear that before the LOI was issued by the Government of India, the Animal Husbandry Department as well as the A.P. Pollution Control Board had granted clearance to the project in question.

The purpose of the project is to earn foreign exchange; and therefore the establishment of the same is incidentally in the national interest as well. According to the project report of the 5th respondent, the Chernobyl nuclear disaster forced Russia and East European countries to look for meat outside. Indian animals are raised on green and natural fodder unlike in advanced countries where they are fed on artificial harmones and synthetic nutrients. The buffaloes meat is far superio to beaf, cow and ox meat in quality and taste and is considered to be the healthiest meat for human consumption because it is low in calories and cholesterol and high in protein. The project would generate direct employment of around 300 local people besides giving boost to ancillary industries like leather, pharmaceuticals, mutton tallow etc., thus generating indirect employment.

The Supreme Court in *M.H. Quareshi v. State of Bihar*,⁸³ while upholding the validity of Bihar Preservation and Improvement of Animals Act and other enactments held that a total ban on the slaughter of she-buffalo after they cease to be capable of yielding milk or of breeding, or working as draught animals cannot be supported as reasonable in the interest of the general public, thus recognising it is a fundamental right under Article 19(1) (g) of the Constitution of India.

According to the Supreme Court. 'The country is in short supply of milch cattle, breeding bulls and working bullocks. If the nation is to maintain itself in health and nourishment and get adequate food, our cattle must be improved. In order to achieve this objective our cattle population fit for breeding and work must be properly fed and whatever cattle food is now at our disposal and whatever more we can produce must be made available to the useful cattle which are in praesenti or will in future be capable of yielding milk or doing work. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed. To maintain them is to deprive the useful cattle of the much needed nourishment. The presence of so many useless animals tends to deteriorate the breed. Total ban on the slaughter of the cattle, useful or otherwise, is calculated to bring about a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are, by occupation, butchers (Kasais), hide merchants so on. Such a ban will also deprive a large section of the people of what may be their staple food. At any rate, they will have not forgo the little protein food which may be within their means to take once or twice in the week. Preservation of useless cattle by establishment of Gosadans is not, for reasons already indicated, a practical proposition. Preservation of these useless animals by sending them to concentration

83. AIR 1958 SC 731.

camps to fend for themselves is to leave them to a process of slow death and does not do good to them. On the contrary, it hurts the best interests of the nation in that the useless cattle deprive food, deteriorate the breed and eventually affect the production of milk and breeding bulls and working bullocks, besides involving an enormous expense which could be better utilised for more urgent national needs.” While holding as above, the learned judges have taken note of the following circumstances, namely:—

“.....Drastic and stringent regulations have been imposed by municipal laws and have been tried but experience shows that they are not sufficient at least to protect the cow. It has been found to be extremely difficult to enforce the regulations for inadequacy of staff and veterinary inspectors, little or no check on the veterinary inspectors who succumb to the pressure or inducement of the butchers and pass animals not really useless as and for useless and aged animals. A large percentage of the animals not fit for slaughter are slaughtered surreptitiously outside the municipal limits.....”

In other words, maintenance of useless cattle involves a wasteful drain on the nation is cattle feed. To maintain them is to deprive the useful cattle of the much needed nourishment. Further, the fact that it is extremely difficult to enforce the regulations for inadequacy of staff and veterinary inspectors, little or no check on the veterinary inspectors who succumb to the pressure or inducement of butchers is not a relevant consideration in holding that the total ban on the slaughter of she-buffaloes etc. is not a reasonable restriction in the interest of general public.

The argument of Sri Ramchandra Rao was that the LOI was a licence to commit crime and is in violation of the provisions of Act 11 of 1977. Section 6 of the Act 11 of 1977 imposed prohibition on slaughtering of animals without a certificate from the competent authority. The competent authority cannot grant a certificate, the animal is likely to become economical for the purpose of breeding or draught or any kind of agricultural operations or giving milk or bearing off-spring. If the authority refuses to issue a certificate, it has to give reasons for such refusal. The provisions imposed a check on the slaughter of the animals and in the absence of a certificate, animals cannot be subjected to slaughter.

The Court has already extracted the conditions subject to which the LOI was granted, according to which, only useless buffaloes shall be slaughtered and the project shall be subject to continuous inspection by the municipal authorities. Animal Husbandry and Health Department of the State Government or any other arrangement which the Central or State Government may evolve. In other words, before the animal is subjected to slaughter, the certificate of the competent authority is mandatory. In view of the judgment of the Supreme Court referred to above, and when slaughter is subject to fulfilment of the State laws and when State Act itself permits slaughter of animals, subject to certain conditions. It can not be to appreciate how the LOI would amount to granting a licence to commit crime or constitute a cognizable offence.

The proceedings for the grant NOC by the A.P. Pollution Control Board were started from 30th August, 1988 and the 5th respondent submitted its report along with the effluent treatment plan for the treatment of the waste water emanating from the sheep and cattle slaughter factory. The environmental engineer inspected the spot, water pollution and treatment proposals and air pollution from the industry and recommended for grant of NOC. The Pollution Control Board after examining the recommendations and the treatment proposals granted the first NOC in 13-4-1989. After discussing the matter with

the 5th respondent, the Pollution Control Board imposed further conditions in their letter dated 25-7-1989. The 5th respondent submitted its project report on Effluent Treatment Plant for the treatment of waste water emanating from the sheep and cattle slaughter factory.

It may also be pointed out that matter was also examined by the Energy, Forest, Environment, Science and Technology Department (E.F.E.S. & T.) of Government of Andhra Pradesh and by their letter dated 22-7-1991, Environmental Clearance Certificate was granted in favour of the 5th respondent subject to the following conditions:

- “1. To provide green belt to a width of 25 metres all around the boundary on either side.
2. To strictly implement pollution control measures regarding solid and liquid waste disposal and for controlling odour as laid down by A.P. Pollution Control Board from time to time.
3. The industry should take up sufficient measures to safeguard the environment by utilising all the bio-products and not let out any of the effluents and prevent discharge of effluents outside their premises. The treated effluents should be used on their land for agriculture.
4. The clearance accorded is laible to be revoked as per Section 5 of the Environment (Protection) Act, if the conditions stated in the Environmental Clearance are not strictly complied with.”

It follows from the above, that the Directorate of Animal Husbandry Department considered the effect of depletion of cattle wealth before the NOC was issued and the A.P. Pollution Control Board also had considered all the relevant aspects before granting the first NOC. Further, the environmental clearance certificate was issued by the Government of Andhra Pradesh, subject to the conditions, referred to above. From these, it is clear that the Government was alive to various consideration requiring thought and deliberations and has arrived at a conscious decision after taking them into account.

It was next contended that the entire future of the State would result in depletion of cattle wealth. In support of his contention, he relied upon the comments made by the Secretary, Department of Food and Agriculture, State Report on Livestock Census, 1987, and the Report of All India Survey on Raw Hides and Skins, prepared by the Central Leather Research Institute, Madras indicating the depletion of cattle population. He also brought to our notice the Mysore Prevention of Cow Slaughter and Cattle Preservation Act and also the enactments passed by the Madhya Pradesh and other States, prohibiting the transport of cattle from one State to another. Therefore, in view of the livestock census report and in view of the prohibition of transport of cattle from the one State to another, buffaloes may not be available to reach the required target of the 5th respondent, with the result that, the 5th respondent would adopt measures to violate the provisions of Act 11 of 1977.

According to the report of All India Survey on Raw Hides and Skins, ‘The availability of the livestock in India in relation to give human population is much lower compared to many livestock holding countries and hence it may not be correct to say India holds more than what it requires.’ The State Report on Livestock Census 1987 states ‘There were 27,535 he-buffaloes in the States which were not used either for breeding or for work. This category which formed 1.7 per cent of the total male buffaloes, declined by 42.3 per cent in the present census as compared to 1983 census.

Non-descript and useless males (stray) buffaloes formed this category. Large numbers of this category were recorded in Nalgonda, Cuddapah and Warangal districts.”

It is true that Secretary, Department of Food and Agriculture, gave a dissenting note on the issue of depletion of cattle wealth. It is also true that Sri R.V. Krishnan in his report stated that it will have an effect on depletion of cattle wealth.

Commenting on the dissenting note of the Agriculture Secretary and Krishnan’s report, the Chief Secretary observed that depletion of cattle wealth is a disputable area and that no figures have been given as the total figure for A. P. to substantiate the claim and that district figures alone is not enough. He also pointed out that earlier the Department of Food and Agriculture has cleared the project.

On the question of depletion of cattle wealth the 5th respondent is relying on the report of the Central Institute for Research on Buffaloes and the report of Agricultural processed Food Products Export Development Authority, which are in their favour to the effect that the project will not have any effect on the cattle wealth of the State.

The argument of Sri Ramchandrarao was that in view of the depletion of cattle population in the State, the 5th respondent may adopt measures to acquire the animals which are prohibited for slaughter under the Act, thus violating the provisions of the Act. Court has already referred to the observations of the Supreme Court in *M.H. Quareshi v. State of Bihar (supra)* made while considering a similar argument. At the post of repetition, Court repeated the said observations:

“...It has been found to be extremely difficult to enforce the regulations for inadequacy of staff and veterinary inspectors, little or no check on the veterinary inspectors who succumb to the pressure or inducements of the butchers and pass animals not really useless as and for useless and aged animals. A large percentage of the animals not fit for slaughter are slaughtered surreptitiously outside the municipal limits...”

Therefore, the fact that the 5th respondent may adopt measures and acquire animals in violation of the provisions of the Act was held not a ground either for not granting the No Objection Certificate or for canceling the licence, in view of the observations of the Supreme Court that possible violation of the Act was not a ground depriving the fundamental right of the persons who are engaged in the said business.

Conditions have changed considerably since then-Violations of statutory obligations by industry or business do not escape public scrutiny that easily now as it would have over thirty-five years ago. Public are more enlightened about the impact of such violations...thanks to the popular movements against environmental degradation and exploitation of consumers and the general awareness of the people of the need for stricter enforcement of laws are meant to safeguard their interests. It is not as if violation of restrictive conditions may escape the regulatory machinery as easily in a large industrial undertaking as it may with a stray butcher somewhere the industry is more exposed to the public gaze. The more effective guarantee for strict enforcement of the norms subject to which the licence, permissions and certificates have been granted is an ever vigilant public opinion, even if attempts may perhaps be made to influence the regulators to condone such lapses. It was found from the antecedent facts of this case that, if at all, there is only a surfeit, and not in any lack of awakened and enlightened public opinion which can function as sentinel to guard against any violation on the industry.

The next issue relates to the environmental pollution.

In this connection it was necessary to quote the relevant paras of the counter-affidavit filed by the 5th respondent:—

“.....In a modern abattoir and meat processing plant, there are 2 types of wastes generated which need to be neutralized. These are solid waste such as bones trimmings, and the liquid waste which is waste water from the floor of the abattoir. There is no air pollution as neither there is incineration of any kind nor is there any utilization of chemical in the entire process. The company has ensured that both solid and liquid waste is completely neutralised and has no adverse impact on the environment.

The solid wastes from the abattoir is transported in closed trolleys to the rendering plant..... The sole purpose of this plant is completely to neutralise all trimmings; bones, etc. by converting them into ‘meal’ which is an essential ingredient in the manufacture of poultry feed. Briefly, the process (Which is a closed process) consists of mincing-up all the raw materials in a large tank under high temperatures, and then putting the minced materials through a centrifuge which separates out the liquid and leaves behind dry, flaky and odourless pellete called meal. The liquid is sent to the Effluent Treatment Plant for further treatment. The waste water from the floor of the abattoir and processing plant undergoes several stages of treatment before final discharge. Firstly, on the floor of the abattoir and processing hall, several stages of treatment before final discharge. Firstly, on the floor of the abattoir and processing hall, several hundred stainless steel traps are placed which block all trimmings larger than 1/2 a cm. from going through the drainage. These trimmings are sent to the rendering plant. The water is then pumped through underground pipes to the Effluent Treatment Plant imported from Holland at a cost of Rs.54.5 lakhs. Here the water is once again passed through stainless steel rotary screen with a very fine mesh where all suspended impurities are captured and sent to the rendering plant.

The waste water is then dosed with sodium hydroxide and ferric chloride. The heavier particles settle towards the bottom of the first tank and are cleared out to the rendering plant. The waste water is then passed to the flocculation tank where microscopic air bubbles are released which adhere to the remaining particles and float to the top of the tank. Here these solid particles are scrapped off the top and once again sent to the rendering plant. The entire treatment is called the Coagulation, flocculation and Floation system and is specially designed for treatment of abattoir meat processing waste water. This technology is not indigenously available and is thus imported specially by the Company at significant expense. The equipment has already been installed at site.

While the water is now fit for discharge into the fields for irrigation, the Company does not stop here. The water is further pumped through pipes to large aeration tanks where the aerobic treatment of the water takes place. This process involved use of microscopic bacteria that consumes all the dissolved impurities in the water and enables the purity to reach below the 100 BOD level. The equipment for this process has been supplied by Thermax India.

Although not fit for human consumption, the water will be discharged on 210 acres of land, purchased specifically for this purpose. Approximately 100 acres of these 210 acres has already been planted with maize, palm, mango, groundnuts etc. solely for utilisation of this water. In fact the treated effluent -samples have been

analysed in an approved laboratory of the A.P. Pollution Control Board and found that the B.O.D. in the discharge was only 8 which is lower than the prescribed level.”

The 5th respondent applied to the Pollution Control Board on 17-7 1992 for grant of second NOC on the ground that the project was completely ready to commence trial production and that the foreign technicians (whose schedules all over the world are fixed well in advance) are on the site to test the equipment. In reply to the same, the member Secretary of the Pollution Control Board stated that there is no necessity for any specific approval from Pollution Control Board to get the equipment tested by the foreign technicians. In the said letter, he also observed “that this is neither any permission nor approval for any clearance of trial production or frozen meat or transporting or movement of any finished goods outside the factory.” In the meantime, there were some complaints by some Members of Parliament. On 19-8-1992 the Environmental Engineer inspected the project and he made the following observations:—

1. Smell is perceptible near rendering plant and inside Slaughter House.
2. Industry has planted about 5,000 small trees all around the boundary and also developed 14 acres of land as mini forestry.
3. Industry has kept 120 acres of land separately for irrigation purpose.
4. The industry has installed air pollution control equipments in rendering plant to control air pollution being emanated from bone crushing unit.”

On the basis of the above report, the Pollution Control Board directed the 5th respondent to furnish the up-to-date copy of the project report, a detailed statement of works and estimate in support of escalation of the project from Rs. 7.00 crores to over Rs. 40.00 crores, a complete document on Pollution Control (both air and water and solid wastes etc.) EIA and EMP report and the method of financing and the names of the financial institution and the amounts released so far. The 5th respondent in its reply explained the reasons for escalation of cost of the project. According to the 5th respondent, in addition to the increase in the cost in other areas, originally the effluent was to be processed at a chemical treatment system, but in order to meet the stringent revised pollution control standards, they have introduced biological effluent treatment equipment and hands the increase in the cost. They have furnished the details of effluent treatment plan and the process along with the catalogues and other material.

Thereafter, the Technical Committee of the Board met consisting of Prof. T. Shivaji Rao, Sri M. Vittal Rao, Sri Krishna Ahsrit, Addl. Director, Animal Husbandry and Sri R.P. Vatal were present. The Chairman of the Technical Committee presided over the meeting. The Committee agreed to grant the second No Objection Certificate subject to certain conditions, and also subject to order of this Court.

One of the members, observed that “In order to evaluate the adequacy of Effluent Treatment Plant either in the industry has to furnish all the detailed designs and drawing of the Effluent Treatment Plant or the Technical Committee members of Pollution Control Board have to visit to the industry to satisfy themselves regarding the adequacy of Effluent Treatment Plant.”

The experts did not therefore concur that the deliberations made till then were sufficient to clear the project from the environmental pollution angle. One of them wanted a second and a closer look to ensure adequacy of the anti-pollution devices.

In pursuance of the recommendations of the Technical Committee, the Pollution Control Board granted the second NOC to the 5th respondent on 1-10- 1992, subject to the following conditions:

- “1. This NOC is issued for trial production for a period of two months only, from the date of issue, to evaluate the adequacy of the E.T.P. constructed by you.
2. In plant study of the E.T.P. will be done by the technical committee members when the plant is in trial production, to evaluate the adequacy of the E.T.P.
3. If it is found that the E.T.P. is inadequate the industry shall immediately stop the trial production and shall modify the existing ETP suitably.
4. The treated effluent shall chlorinated to kill the harmful bacteria if any for this suitable arrangements shall be made even before going into the trial production.
5. At the time of trial production week analysis reports of waste water samples collected before and after treatment shall furnished.
6. The industry shall comply all the conditions stipulated in 1st NOC.
7. The 2nd NOC order is subject to the Court order to be delivered in W.P.M.P. No. 10101 of 1992 of W.P. No. 8193/92.”

From the record, it was found that Pollution Control Board was very cautious in granting the second NOC. At every stage, they were asking the 5th respondent to furnish the necessary particulars relating to the project and it was only after they were satisfied that the first and second NOCs were granted. It is true before granting the second NOC, Prof. Shivaji Rao expressed that they should visit the plant.

As regards the effect the project on ‘depletion of cattle population’, the Director of Animal Husbandry granted NOC on the ground that the effect of project on cattle growth is negligible. *Sri R. V. Krishnan*’s report without considering the report of Animal Husbandry Dept. Supported the comments made by the Secretary, Food and Agriculture Dept, who expressed the view that it will have enormous effect on ‘depletion of cattle wealth’. According to the Chief Secretary, the Agriculture Department expressed their view without taking into account the total figures of Andhra Pradesh and reliance on district figures alone is not enough. The effect of the project on the cattle wealth is a disputable area. The best judge for making the correct assessment is the Department of Animal Husbandry.

The Pollution Control Board was taking steps that are necessary and at every stage they were asking the 5th respondent to furnish the necessary materials. It is true that under Article 48-A of the Constitution of India, the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country and Article 51-A (g) declares it to be a fundamental duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.” However, after going through the record and the facts of the case, the Court was satisfied that the Government is alive to the various considerations requiring thought an deliberation and has arrived at a conscious decision after taking them into account. The Court was also satisfied that the decision arrived at by

the Government in relation to the effect of project on the depletion of cattle wealth, and the Pollution Control Board on the question of the effect of the project on environment, have taken into account all the relevant aspects, including the dissenting views expressed by some of the members. In this context, Court referred the judgment of the Supreme Court in *Sri Sachidanand Pandey v. State of West Bengal* wherein it was held as follows at page 114:—

“Where an administrative action or order of the Government involves the problem of environment and the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for the Court to interfere in the absence of *mala fides*. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution, the Directive principle which enjoins that ‘The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life to the country’, and Article 51-A (g) which proclaims it to be the fundamental duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”. When the Court is called upon to give effect to the Directive principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind irrelevancies excluded.

In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority.”

“.....It is true that even an administrative decision must be arrived at after taking into account all relevant considerations and eschewing all irrelevant considerations. However, the entire course of events revealed that the Government had taken into account the relevant considerations and therefore it could not be said that what was not said in the final decision could not be supplemented by giving fresh reason later. AIR 1986 SC 1158 distinguished.”

The Supreme Court observed in *State of Uttar Pradesh v. Maharaja Dharmender Prasad Singh*,^{84 85 86} wherein it was observed that ‘judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. The learned judges referred to the observations in *Chief Constables of the North Wales Police v. Evans f*’ which are as follows:—

84. AIR 1987 SC 1109.

85. (1982) 2 SCC 505; AIR 1989 SC 997.

86. (1982) 1 SLR 1155; (1982) 3 All ER (HL) 141.

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court.

The learned Judges also referred to the observations made by Lord Brightman, “..... Judicial review, as the words imply, is not an appeal from decision, but a review of the matter in which the decision was made.....”

In the present case, the Government as well as the A.P. Pollution Control Board, while arriving at their respective decisions, have taken into account the relevant considerations and were very cautious in arriving at the decisions. The observations of the Supreme Court in *State of Himachal Pradesh v. Student's Parent, Medical College, Shmla*,[^] are relevant in the context of the present case :—

“Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.”

The sentimental aversion of a group of persons cannot be the only criterion to judge the correctness of decisions affecting the fundamental rights of others. If fundamental rights are pitted against sentimental objections, choice of the Courts can only be in favour of the former. In any case, Courts shall be loathe to interfere only because some individuals or groups of persons with more than ordinary sensitivity would like to prevent at any cost the exercise of fundamental rights by other citizens.

As per the Gazette notification dated 3rd February, 1992, issued by the Government, which published the areas which are within 25 kms from the periphery of the standard urban area, Patancharif is a mandal within 25 kms from the periphery of the standard urban area of Medak. . . .Therefore, licence is essential although meat and processing industry is a non-schedule industry. He, therefore, submitted that there was a misrepresentation before the Government of India. It is true that the LOI was granted subject to the condition that the industrial establishment should not be within 50 kms. from the boundary of the standard urban area limits of any city having a population of more than 25 lakhs, according to the 1981 census.

The Government of India in its notification No. 477(E) dt. 25-7-1991 under the Industries (Development and Regulation) Act, 1951 provided that:

“Licensing is exempted for industrial undertakings (including MRTTP/FERA companies) other than those in the small scale/ ancillary sector, if

- (1)
- (2) the proposed project is not located within 25 kms. from the periphery of the standard urban area limits of a city having a population of more than 10 lakhs according to the 1991 Census (litet enclosed).”

In the “list of cities with the population of 10 lakhs and above according to the provisional results. If the 1991 Census”, Hyderabad Urban Area is item No. 5 with a population of 42,80,261. The State Government followed the same by notification No. 47 dated 3-2-1992 of G.O. Ms. No. 49, Industries and Commerce (I.P.) Department dated 1st

February, 1992 publishing the list of villages in the respective mandals in the Districts of Visakhapatnam, Vizianagaram and Hyderabad falling within and outside 25 kms from the periphery of standard urban area and declaration of survey numbers falling under the notified industrial area in Visakhapatnam and Hyderabad. Item-B of Annexure-III .mentioned... . 'Mandals and villages within 25 kms from the periphery of the standard urban area'. Patancheru mandal in Ranga Reddy District is one of the mandals fully covered in Hyderabad District.

It is true that the letter of intent was sanctioned in 1989 with a stipulation that the industry should not be established within 50 kms. from the boundary of standard urban area. The liberalisation of industrial licensing which took place subsequently is reflected in the above two notifications. The present requirement is that for establishing industries within 25 kms. from the standard urban area, licence is required. Necessarily, such licensing is conditioned by the requirement of environmental and industrial clearance. There was considerable force in the submission urged by counsel for the respondents that the strict conditions contained in the Letter of Intent are relaxed by the statutory notifications issued by the Government of India; and thereafter, the present requirement is that the industrial undertakings shall obtain licence subject to stringent conditions to be imposed by the respective authorities. It was found that the 5th respondent has taken license on the ground that the project is within 25 kilometers periphery of standard urban area of Medak and 45 kilomete i from Hyderabad.

The counsel appearing for Oe Central Government Submitted that in pursuance of the application made by the fifth respondents for the grant of Letter of Intent (LOI), S.I.A. (Secretariat for Industrial Approvals), convened the meeting of the Licensing Committee on 11th April, 1989 to consider the case of the 5th respondent. The matter was deferred due to non-availability of comments from the Administrative Ministry, i.e. Ministry of Food Processing Industries and other agencies. The Ministry of Food Processing Industries received comments from the Development Commissioner, Small Scale Industries and Directorate General of Technical Development through 'Secretariat for Industrial Approvals' (S.I.A.). Both the agencies had given their no objection and supported the case. The Government of Andhra Pradesh also recommended the case of the 5th respondent. The Ministry of Food Processing Industries recommended the case subject to the conditions mentioned in the LOL On 14-8-1991, 5th respondent applied for amendment of the LOI to include hides and skins and animals fat with a capacity of buffalo hides 600 per day sheep/goat 2500 per day and animal fat 35 tonnes per day. The amendment was allowed. The 5th respondent indicated the site of the project is approximately at a distance of 45 kms. from Hyderabad city. The application was circulated by the SIA to the concerned Departments of the Central Government and State Government including the Director of Industries, Andhra Pradesh, Hyderabad. After the comments were received from different agencies, the proposal was considered by the Licensing Committee. On recommendation of the Licencing Committee and on approval of the concerned Minister, the LOI was granted to the 5th respondent, which indicates that the distance norm was taken into account. As regards the capacity of the factory, it is given in terms of tonnage and not in terms of number of animals. The Ministry of Food Processing Industries recommended for the inclusion of hides and skins as these items are industrial by-products of the project of the 5th respondent and not involving any separate activities. The overall availability of animals for meat production has been taken into consideration and special conditions in this regard have been imposed as part of the LOI and these conditions would adequately ensure non-depletion of animals. On receipt of

second NOC from the A.P. Pollution Control Board, allowing trial production for two months, and was satisfied that the party had taken adequate steps for implementation of the project. The Ministry of Food processing Industries recommended the conversion of the LOI into Industrial Licence after receiving the second NOC issued by the Pollution Control Board. He also submitted that the decision to grant LOI and the conversion into and industrial licence is a conscious decision taken after taking into account the various relevant aspects.

The 5th respondent could not commence trial production as authorised by the second 'No Objection Certificate' from the A.P. Pollution Control Board, because of the interim orders issued by this Court. That interim order in W.P. M.P. No. 16421 of 1992 was vacated in W.V.M.P. No. 2046 of 1992 by order dated 31-12-1992 to the effect that the order will be operative for a period of one week from 6th to 12th January, 1993 to enable trial production of the plaint subject to the condition that the test killings must be confined to 50 buffaloes which are not yielding milk and 100 sheep/goats per day, after giving notice to various authorities. The second 'No Objection Certificate' for trial production for two months has not thus become fully operative. There was force in the submission of counsel for the respondents that the exact impact of the industrial activity on environment and industrial pollution can be assessed fully only if trial production continues for the stipulated period of two months. Court was not informed that the trial production for a period of one week which was permitted by order dated 31-12-1992 has had any adverse effect in creating air or water or other atmospheric pollution or on the environment. It can not be proposed to venture an opinion as to what is likely to happen if trial production continues for a period of two months. It is for the authorities concerned to closely monitor the functioning of the industry during the period of trial production, and take final decision in the matter, as the exigencies may demand on the basis of facts which emerge as consequence of the trial production. Court confined its consideration only to the grant of the Letter of Intent, its modifications issue of industrial licence and the No Objection Certificates. What may emerge in the future may go matter for speculation. Court proposed to rule on the correctness of the impugned determination, on the basis of any such speculation. It was found that respondents 1 to 4 and 6 had not acted in violation of any statutory duty or contrary to any public-law obligations in allowing the 5th respondent to establish the industry and commence trial production.

It is unfortunate that though the LOI was issued in the year 1989, the project has to face many hurdles at every stage, not because, the LOI was given in violation of any of the provisions of the Act and rules or the fundamental or legal rights of the petitioners are violated, but because a section of the public claim to have sentimental objection to slaughter of animals. It is true that under Article 48-A and Article 51-A (g) of the Constitution of India, the State shall endeavour to protect and improve the natural environment, including the forest, lakes, rivers, wildlife and to have compassion for living creatures. However, found that both the State and Central Governments have taken conscious and cautious decisions after taking into account all the relevant considerations, while granting and amending the LOA converting that into industrial license and in granting first and Second NOCs. Therefore, what is involved in this litigation is a conflict between the sentiments of a section of the public on the one hand and the Fundamental Rights of an industrial undertaking which incidentally promotes national interest. It was already referred to the observations of the Supreme Court made as long ago as in AIR 1958 SC 731 (supra) that the maintenance of useless cattle involves a wasteful drain on the nation's cattle feed. Ban on slaughter deprives a large section of the people of what may be their staple food and people will have to forgo the little protein food which may

be within their means to take once or twice in the week. Besides, the project would have earned some much needed foreign exchange when the nation is facing financial crisis. It is true that the Supreme Court in *R.L. and E. Kendra Dehradun v. State of Uttar Pradesh*,^{88 89} directed closure of some mining operations. But, such closure was ordered by the Supreme Court due to the devastating impact on environment and the lives of the people around. No such environmental degradation is proved to be likely in this case. On the other hand, it is manifest that sufficient care has been taken at every stage, to neutralise any adverse impact on environment by insisting upon installation of additional equipment at considerable cost to treat the liquid effluents and reduce the same into water which can be used for purposes of irrigation within the area around the factory in its land itself. In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court had laid down parameters for public interest litigation; According to the Supreme Court, where, however, the fundamental right of a person or class of persons is violated but who cannot have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position, the Court can and must allow any member of the public acting *bona fide* to espouse the cause of such person or class of persons and move the Court for judicial enforcement of the fundamental right of such person or class of persons. Therefore, it is ordinarily for enforcement of fundamental rights, that too on behalf of person who are in a disadvantageous position on account of poverty or socially or economically disadvantaged position that public interest litigation can be entertained. It is also clear that an assumed affront to the sentiments of a group of people by an attempted exercise of his fundamental right by another person will not justify invocation of this special jurisdiction which Courts have assumed for themselves. In the present case, the petitioners are powerful organisations not of persons who cannot have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position. They cannot resort to public interest litigation to vindicate sentimental objections to legitimate industrial activities. It was already stated that the project may make significant contributions to the national interest by providing employment and earning much needed foreign exchange as also providing staple food to those needy and poor. In such a conflict between national interest and the sentiments of a section of the public, the options for the Court are limited but definite. In this context, observations of the Supreme Court was referred in AIR 1987 SC 1109 (supra), which are quoted below:—

“My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move Courts. Public interest litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the Courts of Law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

“It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, espe

88. AIR 1985 SC 652.

89. AIR 1984 SC 802: 1984 Lab IC 560.

-cially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants”.

It was noted that there has been no unanimity in expert opinion over availability of cattle wealth and environmental impact of the polluting effluents of the industry. Court was not in a position to choose between these conflicting opinions of Experts which both sides have produced in profusion. If a question is raised before this Court which involves a factual dispute, the resolution of which involves substantial expertise of technicians and scientists, the Court shall ordinarily leave the dispute to be decided by other statutory agencies, subject, of course, to the caution that such agencies shall adhere to the procedural safeguards which may have impact on the environment or the lives of citizens. If an analysis of the relevant documents requires a high level of technical expertise we must defer to the informed discretion of the responsible State agencies, unless it is shown that such agencies acted for collateral purposes or ignored relevant data or were influenced by extraneous considerations. The Supreme Court of the United States of America in *Baltimore Gas and Electric Co. v. Natural Resources Defence Council, INC.*^{90 91} observed that:—

“When examining this kind of scientific determination, a reviewing Court must generally be at its most deferential”.

It is true that review of a legal question deserves no defence to anybody else, but decisions of the relevant statutory authorities charged with scientific determinations can not ordinarily be supplemented or supplanted, unless they are shown to be arbitrary or capricious. In deciding as to whether the decision of the Pollution Control Board was arbitrary or capricious. It have to examine by the Court whether that decision was based on a consideration of irrelevant factors and whether there has been a clear error of judgment. Though the enquiry must be searching, we must remember that “the ultimate standard of review is a very narrow one.”

In *March v. Oregon Natural Resources Council*,⁹¹ the Supreme Court of the United States observed:—

“When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts, even if, as an original matter, a Court might find contrary views more persuasive. On the other hand, in the context of reviewing a decision not to supplement an EIS (Environment Impact Study), Courts should not automatically defer to the agency’s express reliance on an interest in finality without carefully reviewing the record and satisfying themselves that the agency has made a reasoned decision based on its evaluation of the significance.... or lack of significance... of the new information. A contrary approach would not simply render judicial review generally meaningless, but would be contrary to the demand that Courts ensure that agency decisions are founded on a reasoned evaluation “of the relevant factors”.

90. (162 US 87): 76 L Ed 2d 437.

91. 1989 (490) US 360: 104 L Ed 2d 377.

It is difficult to conclude that the views of the various agencies involved in the final decision-making were capricious in the final decision-making were capricious or arbitrary or were informed by extraneous or irrelevant considerations or were the result of non consideration of relevant facts. Nor of the varying scientific opinions induces any inference that the result and decisions vitiated by non application of mind or *mala fides*.

The Court was not unaware of the contention of counsel for the petitioners that the Pollution Control Board did not really consist of scientific experts, and that in that sense, issue of No Objection Certificate by that body may not be considered as a result of informed expert opinion. That brush can as well paint the opinion of Sri H.K.. Babu, Secretary, Food and Agriculture, as also that of Sri R.V. Krishnan, Secretary, Energy, Forest, Environment, Science and Technology in the same hues. The Court was informed that some, at least of the members of the Pollution Control Board was renowned scientists and there was some variance of opinion among them. It is difficult for us to choose between the two. The grant of second No Objection Certificate' by the Pollution Control Board only enables test production in the factory for a period of two months so that the Pollution Control Board will monitor the effects on the environment more closely during that period. The authorities concerned have not abdicated their power to review the entire matter either during the period of two months, or even later, if deleterious effects of the industry on environment manifest themselves. The grant of 'No Objection Certificate' for a limited period of two months by the Pollution Control Board does not have the effect of conferring finality on the proceedings for all times. The impugned decisions are tentative in that sense and may be subject to review as a result of what manifests during the period of trial production.

The observations of the Supreme Court was referred in *Subhash Kumar v. State of Bihar*,⁹² wherein it was observed that public interest litigation cannot be invoked by person or group of persons to satisfy his or its personal grudge and enmity. Public interest litigation cannot be invoked by persons or body of persons to vindicate their sentiments. The petitioners were held not entitled to approach this Court for relief to vindicate their sentimental objection to the industry in a public interest litigation.

In paragraph 6 of the affidavit which was sworn to by *Sri Kishan Rao* it was stated that:

"I submit that we have not instituted any other proceedings before any Tribunal or filed writ petition questioning the action of the respondents."

The Court that this assertion is contrary to facts. The above assertion may amounts to prejudice in the context of the fact that second petitioner had already filed W.P. No. 8193 of 1992 and had sought an interim order virtually of the same nature as he sought in this writ petition. In view of the above, Court directed the Registrar (Judicial) of the High Court to file complaint under Section 195 of the Code of Criminal Procedure against the second petitioner for an offence under Section 191 of the Indian Penal Code before the Magistrate having jurisdiction.^{92 93}

The petition was under Article 32 of the Constitution by 'S' for the issue of a writ or direction directing the Director of Collieries West Bokaro Collieries at Ghatotand,

92. AIR 1991 SC 420.

93. *Satvavatil v. A.P. Pollution Control Board*, AIR 1993 AP 237 at pp. 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277 (*Sivaraman Nair and Ms. S. V. Mariuthi, J.J.*)

District Hazaribagh in the State of Bihar and the Tata Iron & Steel Co. Ltd. to stop forthwith discharge of slurry/sludge from its washeries at Ghatotnand in the District of Hazaribagh into Bokaro river. This petition was by way of public interest litigation for discharged from the washeries of the Tata Iron & Steel Co. Ltd. The petitioner has alleged that Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1974 providing for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment of Board for the prevention and control of Water Pollution. Under the Provisions of the Act the State Pollution Control Board constituted to carry out functions prescribed under Section 17 of Water (Prevention and Control of Pollution) Act, 1974 which among other things provide that the Board shall inspect sewage or trade effluents and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data set up for the treatment of water and to lay down standards to be complied with by the persons while causing discharge of sewage or sullage. Section 24 of the said Act provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter to enter into any stream or well which may lead to a substantial aggravation of pollution. The petitioner has asserted that Tata Iron and Steel Co. respondent No. 5 carries on mining operation in coal mines *I* washeries in the town of Jamshedpur. These coal mines and collieries are known as West Bokaro Collieries and the Collieries have two coal washeries where the coal after its extraction from the mines was brought and broken into graded pieces and thereafter it was processed for the purpose of reducing its ash contents. A chemical process was carried out which was known as "Iroth floatation process". Under this process the graded coal was mixed with diesel oil, pine oil and many other chemical ingredients and thereafter it was washed with the lacs of gallons of water. The end water was washed coal with reduced quantity of ash content fit for the high graded metallurgical process for the purposes of manufacture of steel. In one process of washing large quantity of water was discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water, small particles of coal are carried away to the pond where the coal particles settle down on the surface of the pond, and the same was collected after the pond was de-watered. The coal particles which are carried away by the water was called the slurry which was ash free, it contains fine quality of coal which was used as fuel.

The petitioner has alleged that the surplus waste in the form of sludge/slurry was discharged as an effluent from the washeries into the Bokaro river which gets deposited in the bed of the river and it also gets settled on land including the petitioner's land bearing Plot No. 170. He has further alleged that the sludge or slurry which gets deposited on the agricultural land, was absorbed by the land leaving on the top a fine carbonaceous product or film on the soil, which adversely affects the fertility of the land. The petitioner has further alleged that the effluent in the share of slurry was flown into the Bokaro river which was carried out by the river to the distant places polluting the river water as a result of which the river was not fit for drinking purposes nor it was fit for irrigation purposes. The continuous discharge of slurry in heavy quality by the Tata Iron & Steel Co. from its washeries posing risks to the health of people living in the surrounding areas and as a result of such discharge the problem of pure drinking water has become acute. The petitioner has asserted that inspite of several representations, the State of Bihar and State Pollution Control Board have failed to take any action against the company instead they have permitted the pollution of the river water. He has further averred that the State of Bihar instead of taking any action against the Company has been granting leases on payment of royalty to various persons for the collection of slurry. He

has, accordingly, claimed relief for issue of direction directing the respondents which include the State of Bihar, the Bihar Pollution Control Board, Union of India and Tata Iron & Steel Co. to take immediate steps prohibiting the pollution of the Bokaro river water from the discharge of slurry into the Bokaro river and to take further action under provisions of the Act against the Tata Iron & Steel Co.

The respondents have contested the petition and counter-affidavits have been filed on behalf of the respondent Nos. 2, 4 and 5 State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron & Steel Co. Ltd. In the counter affidavits filed on behalf of the respondents, the petitioner's main allegation that the sludge slurry was being discharged into the river Bokaro causing pollution to the water and the land and the Bihar State Pollution Board has not taken steps to prevent the same was denied. In the counter—affidavit filed on behalf of the Bihar State Pollution Board it was asserted that the Tata Iron & Steel Co. operates open case and underground mining. The company in accordance to Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 applied for sanction from the Board to discharge their effluent from their outlets. The Board before granting sanction analysed their effluent which was being watched constantly and monitored to see that discharge does not affect the water quality of the Bokaro river adversely. In order to prevent the pollution the Board issues direction to the Director of the Collieries to take effective steps for improving the quality of the effluent going into the Bokaro river. The State Pollution Board imposed conditions requiring the Company to construct two settling tanks for settlement of solids and rewashing the same. The Board directed for the regular samples being taken and tested for suspended solids and for the communication of the results of the tests to the Board each month. The State Board has asserted that the Company has constructed four ponds ensuring more storing capacity of effluent. The Pollution Board has been monitoring the effluent. It is further stated that on the receipt of the notice of the instant writ petition the Board carried out an inspection of the settling tanks regarding the treatment of the effluent from the washeries on 20th June, 1998, On inspection it was found that all the four settling tanks had already been completed and work for further strengthening of the embankment of the tanks was in progress, and there was no discharge of effluent from the washeries into the river Bokaro except that there was negligible see page from the embankment. (*See Subhash Kumar v. State of Bihar*, (1991) 1 BLJ 381 at 382, 383, 384 (SC)).

It was further stated that the Board considered all the aspects and for further improvement it directed the management of the collieries for removal of the settled slurry from the tanks. The Board has directed that the washeries shall perform dislodging of the settling tanks at regular intervals to achieve the proper required retention time for the separation of solids and to achieve discharge of effluents within the standards prescribed by the Board. It was further asserted that at present there was no discharge from any of the tanks to the Bokaro river and there was no question of pollution of the river water or affecting the fertility of land. (*Ibid*)

It was stated that in fact river Bokaro remains dry during months in a year and the question of Pollution of water by discharge of slurry into the river does not arise. However, the management of the washeries have constructed four different ponds to store the slurry. The slurry which settles in the ponds was collected for sale. The slurry contains highly carbonaceous materials and it was considered very valuable for the purpose of fuel as the ash contents are almost nil in the coal particles found in the slurry. Since, it has high market value, the Company would not like it to go in the river water.

The Company has taken effective steps to ascertain that no slurry escapes from its ponds as the slurry was highly valuable.

On the facts as appearing from the pleadings and the specific averments contained in the counter-affidavit filed on behalf of the State Pollution Control Board of Bihar, *prima facie* the Court did not find any good reason to accept the petitioner's allegation that the water of the river Bokaro was being polluted by the discharge of sludge or slurry into it from the washeries of the respondent-company. On the other hand the Court finds that the State Pollution Control Board has taken effective steps to check the pollution.⁹⁴

Article 32 of the Constitution was designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live was a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 of the Constitution for the prevention of pollution was maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court preventing speedy remedy to other genuine petitioners from the Court. Personal interest cannot be enforced through the process of the Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of the Apex Court under Article 32 of the Constitution must approach the Apex Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It was duty of this Court to discourage such petitions and to ensure that the course of justice was not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of the Apex Court for personal matters under the garb of the public interest litigation. {See *Bandhua Mukti Morcha v. Union of India*, (1984) 2 SCR 67; *Sachindanand Pandey v. State of West Bengal*, (1987) 2 SCR 295 at 331; *Ramsharan Autyanuprasi v. Union of India*, (1989) 1 Supp SCC 251; *Chhetiria Pardashan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449; *Subhash Kumar v. State of Bihar*, (1991) 1 BLJ 381 at 386 (SC).

58. Acquisition of land by Railways.—A few people are fortunate to see their dreams fulfilled and people residing on the west coast saw fulfilment of their dream when the Central Government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend to the State of Kerala. It was a long-standing demand of the people in the region for a cheap and fast transport to improve the economic conditions and to make accessible the hinterland in the State of Maharashtra, State of Goa and State of Karnataka. The Central Government was considering providing a railway

94. Suresh Kumar v. State of Bihar, (1991) 1 BLJ 381 at 384 (SC).

line for a considerable length time but the project was postponed from time to time due to lack of requisite funds. Ultimately the Central Government took a decision to provide the line and to achieve that purpose. The Konkan Railway Corporation Ltd., a public limited Company, was set up. The length of the line from Bombay to Mangalore along the west coast is to be 760 kilometres and out of that 106 kilometres line runs through the State of Goa. The cost of the project was envisaged at Rs. 1391 crores in the year 1991-92. The Central Government set up a Corporation as the total allocation of the Planning Commission was only to the order of Rs. 300 crores and, therefore, it was incumbent for the Corporation to raise the funds for seeking equity contribution from the Ministry of railways and the beneficiary States of Maharashtra, Goa, Karnataka and Kerala. The Corporation was also conferred with powers to raise money with issuance of 9% tax-free bonds from financial institutions and public borrowings. The Konkan Railway alignment passes through different terrain in different States and the Corporation is required to construct large number of tunnels and projects over rivers. The railway line has 136 major bridges and 1670 minor bridges and there will be 71 tunnels with a total length of 75 Kms. The Konkan Railway is the biggest railway project undertaken in the Indian sub-continent in the preceding century. The project was approved after detailed and long-drawn survey of various aspects of the matter and the Corporation was constituted in July, 1990 to undertake the exercise which is of an extensive magnitude. The project commenced on October 15, 1990 and the Government of Goa approved the alignment passing through the State of Goa on December 17, 1990.

The petitioner No. 1 was society registered under the Societies Registration Act and claims to protect and improve the natural environment including forests, lakes, river and wild life and to have compassion for living creatures. The petitioners approached High Court by filing the present petition under Article 226 of the Constitution with the prayer that the Corporation should be compelled to procure environment clearance for the alignment passing through the State of Goa from the Ministry of Environment and Forests, Government of India, and until such clearance is secured all the work in respect of providing railway line should be withheld. The grievance of the petitioners is that the proposed alignment has been planned and undertaken without an adequate Environment Impact Assessment (E.I.A.) and an Environment Management Plan (E.M.P.). The petitioners claim that the proposed alignment is wholly destructive of the environment and the eco-system and violates the citizens rights under Article 21 of the Constitution. The petitioners also claim that even though the ecological damage will not be felt immediately, such damage will be gradual and will lead to the deterioration of the land quality and will affect large number of people. The petitioners further claim that as the proposed alignment passes across the rivers, creeks, basins and backwaters, the Corporation cannot proceed to carry out the work without obtaining the statutory clearance required under the provisions of the Environment (Protection) Act, 1986. The petitioner claimed that under the provisions of Section 3(2)(v) the Ministry of Environment had issued Notification dated February 19, 1991 and restrictions on the setting up or extension of industries, operations or processes in the coastal regulation zone (C.R.Z.) are prescribed the petitioners claim that the Corporation cannot ignore the activities prohibited or regulated under the Notification and in the absence of clear sanction of approval from the Ministry of Environment it is not permissible to proceed with the project undertaken within the State of Goa. The petitioners further claim that certain correspondence which has transpired between Inter-Ministerial Departments reflects that the Environment Ministry is not inclined to permit the Corporation to

undertake the project without examining the objections raised by various organisations to the proposed alignment.

The Corporation has filed return sworn by Chief Engineer of Konkan Railway Corporation for Goa Sector and it is pointed out that after the Corporation was constituted the entire route was surveyed and the line required for the project was demarcated and the land acquisition process was commenced. The Corporation has already secured possession of 80% of the required land by applying urgency clause under Section 17 of the Land Acquisition Act. The Corporation also awarded several contracts for construction of bridges, tunnels and work commenced all along the line. Several Engineers were posted on the field and the physical progress achieved was about 20% of the total length of line. The Corporation had chalked out the programme to complete the line by October, 1994. The Corporation pointed out that an amount of Rs. 300 crores has been invested and the projected investment for the current year is Rs. 400 crores. The Corporation points out that the maximum length from north to south of State of Goa is 105 kms. and the terrain is interrupted by hilly spurs running down from the Western ghats and a number of streams which together form an important network of waterways for inland navigation. The Corporation further points out that the alignment for Goa Sector was finalised in December, 1990 and when a few Goans raised objection to the proposed alignment, the Railway Ministry appointed Mr. M. an eminent Goan Engineer and retired Chairman of the Railway Board to consider the objections and submit an investigation report. The report was submitted and Mr. M. recommended a few alterations with a view to avoid the alignment passing through the crowded villages. The recommendations made by Mr. M. were accepted by the Railway Ministry and the Corporation accordingly altered the initial alignment. The Corporation further points out that to ascertain whether there would be an adverse effect on the environment and ecology and, if so, to suggest mitigative steps, the Corporation commissioned services of a Government Enterprise known as Rail India Technical and Economical Services (RITES). The services commissioned by the Corporation are of an internationally recognised consultancy organization and is manned by eminent persons expert in the field of ecology, environment and allied subjects. The Project Team reported that there will be no air pollution, no significant noise produced by the Railway are not even the green forest will be disturbed or the marine/fish life would be affected. The Project Team considered alternative alignments suggested and came to the conclusion that the proposed alignment by the Corporation and which was approved by the Government of Goa and Central Government is a preferable to all other suggestions. The Corporation then points out that an area of 216 hectares of land taken possession of by the Corporation in the State of Goa and contracts for construction of major and minor bridges to the tune of Rs. 137 crores over rivers Zuari and Mandovi were awarded and work was commenced at ten locations. The total expenditure incurred to Goa Sector is to the order of Rs. 22 crores and that is about 10% of the entire project cost in Goa. The Corporation then points out that the claims of the petitioners that the alignment would adversely affect the environment and ecology of the State of Goa is nothing but a figment of imagination and objections were raised with ulterior motives. The Corporation points out that the provisions of the Environment Act and Notifications issued thereunder are not binding upon the Railway Administration and Corporation apart from the fact that all requisite steps for ensuring that the environment will not be adversely affected are already undertaken. The corporation further points out that the alleged breach or violation of the provisions of Forests (Conservation) Act and Regulation about cutting of trees under the Trees Act without any merit.

The Government of Goa and the Conservator of Forests supported the claim of the Corporation while the Ministry of Environment through their counsel made it clear that the Ministry is fully conscious of the mitigative steps taken by the Corporation and necessary precaution will be taken to ensure that the ecology and the environment of the places from where the alignment passes is not disturbed.

Counsel appearing on behalf of the petitioners, submitted that though the petitioners were not opposing the project undertaken by the Corporation their challenge is only to the proposed Railway alignment as it violates the provisions of the Environment (Protection) Act and Regulations and Notifications thereunder. The Counsel submitted that the proposed alignment would destroy the natural environment in many areas and undermine the ingenious centuries old man-made environment of the Khazan lands. The counsel urged that the geology of Goa consists essentially of reddish iron and manganese bearing rocky strata which gets softened in the process of monsoon lateritization. It was contended that the softer rocks of Goa have been eroded over the ages to a base level of erosion much below the sea level and due to this geological reason, Zuari, Mandovi and Chapora are the three rivers on the West coast in which the ocean tides sweep inland for several kilometres. The counsel submitted that the agriculturists in this region have erected timber sluice gates which operate under tidal power to control the inflow of tides. The low-lying Khazan paddy fields which lies below the sea level in the estuaries of the three rivers had created a unique natural biological eco-system of mangrove and fish life. The khazan lands, claims the counsel, have richest and most fertile nurseries of fish life and fish breeding grounds and any embankment which the Corporation is bound to construct through the Khazan land will destabilise the drainage of the tidal basin which will cause devastating and irreversible damage to the area. The Court inquired from the counsel as to what is the extent of the Khazan land existing in Goa and the answer was the approximate area is about 227 hectares and the proposed alignment would affect the land admeasuring only 30 hectares.

The counsel for the Corporation, submitted that the assumption that the Khazan lands would be adversely affected is without any basis. The counsel pointed out that the Corporation has taken adequate precaution to ensure that the biological eco-system is not disturbed. Counsel for the corporation pointed out that there will not be any interference with the natural tides and adequate drainage works are provided to avoid any stagnation of tidal flow. The entire water management through the utilisation of sluice gates and bunds system remains unaffected.

The claim of the petitioners that the alignment would have devastating and irreversible impact upon the Khazan lands was without any foundation and even otherwise, the extent of damage is extremely negligible and a public project of such a magnitude which is undertaken for meeting the aspirations of the people on the west coast cannot be defeated on such considerations. It is not open to frustrate the project of public importance to safeguard the interest of few persons. It cannot be over looked that while examining the grievance about adverse impact upon a small area of 30 hectares of Khazan lands, the benefit which will be derived by large number of people by construction of rail line cannot be brushed aside. The Courts were bound to take into consideration the comparative hardship which the people in the region will suffer by stalling the project of great public utility. The cost of the project escalates from day to day and, as pointed out by the Corporation, the extent of the interest and cost which will be suffered by the Corporation every day is to the tune of Rs. 45 lakhs. No development is possible without some adverse effect on the ecology and environment but the pro, ¹

of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialized in the field. The Corporation has set up not only a specialized committee but has also engaged the service of a renowned engineer from Goa and who is practical not only in experience of the surroundings in Goa and when both of them gave green signal to the project, the Court was deacon to exercise writ jurisdiction to frustrate the project of such magnitude on the alleged damage to the ecology and environment of Khazan lands.

It was submitted that under Section 2 of the Forests (Conservation) Act, no authority can use forest land or any portion thereof for any non-forest purpose except with the prior approval of the Central Government. The grievance is that the alignment passes through the forest land and the Corporation has not secured prior approval for the use of the land for non-forest purpose. There is no merit in the submission because the project has been approved by the Central Government and the Railway Ministry which is carrying out the exercise is a part of the Central Government. The use of forest land for providing railway line is not going to affect or damage the existence of forests and the complaint of the petitioners of this count is devoid of any merit. The counsel also submitted that the alignment required cutting of several trees inside as well as outside the forests and such destruction of existing trees is not permissible in view of the provisions of the Trees Act. The submission is misconceived because the trees are cut for a public purpose to provide a rail line. Apart from this consideration, the Corporation pointed out that a project has been undertaken to plant double the number of trees which will be required to cut down for providing the rail line. Again, the project of such magnitude of providing the rail line passing through more than three States cannot be held back by catering to the alleged grievance of the petitioners that the trees are indiscriminately cut. It would not be out of place to mention that the avemment on this count made in the petition is extremely vague. Advocate General appearing on behalf of the Conservator of Forests, Government of Goa, pointed out that there is no breach whatsoever of any of the provisions of the Forest Act of the Goa Preservation of Trees Act, 1984. The counsel also submitted that the alignment will extinguish ecologically sensitive areas like Carambolim wetlands where the migratory birds visit during the course of year. The counsel sounded an apprehension that a small lake at Carambolim will be filled up by the Corporation and that would prevent the migratory birds from reaching the State of Goa. Counsel for Corporation submitted that the apprehension sounded is entirely imaginary and that the alignment is not going to affect the wetlands. There was no merit in the objections raised to the proposed alignment in the State of Goa by the Corporation. The challenge to the continuation of the project on the ground that the alignment is likely to affect the environment and disturb the ecological balance is without any substance and is, therefore, required to be turned down.

The Counsel then submitted that whatever may be the apprehensions of the petitioners and even if the Court comes to the conclusion that the apprehensions sounded by the petitioners are without any substance, still it is not permissible for the Corporation to continue with the exercise undertaken without prior clearance from the Environment Ministry of the Central Government. The Counsel submitted that the work cannot proceed in view of the provisions of the Environment (Protection) Act, 1986. It was also submitted that the Corporation is guilty of statutory violation in ignoring the specific directions given by the Ministry in exercise of powers under the Act and, therefore, the Corporation should be restrained from carrying out any work until the clearance is

secured from the Ministry. The Environment Act was enacted to provide for the protection and improvement of the environment and for the matters connected therewith. Section 3 of the Act, *inter alia*, confers power on the Central Government to take all measures for the purpose of protecting and improving the quality of the environment and preventing environmental pollution. Sub-section (2) prescribes that such measures may include steps for restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In exercise of powers under Section 3 (2) (v) of the Act of Ministry of Environment issued Notification dated February 19, 1991. The Notification declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 metres from the High Tide Line and the land between the Low Tide Line and the High Tide Line as Coastal Regulation Zone. The Notification prescribes that there will be restrictions on the setting up and expansion of industries, operations or processes in the said Coastal Regulation Zone. The Notification then provides that land reclamation, bunding or disturbing the natural course of water will be prohibited activities. The Notification further provides that it may be permissible to carry out the operations beyond 100 metres and up to 500 metres provided clearance for such activities is obtained. Relying on the Notification it was contended on behalf of the petitioners that the activity of bunding undertaken by the Corporation for the alignment is a prohibited activity. In the alternative, it was contended that even if the activity is permissible such permission has not been sought. In judgment both the submissions are misconceived and are required to be turned down for more than one reason. In the first instance, the assumption of the petitioners that the exercise undertaken by the Corporation for providing a rail line is an industry is entirely unjustified. The expression "industries, operations or processes etc." cannot bring within its sweep the activities of providing a rail line. The contention that the activities of bunding undertaken by the Corporation are prohibited activities is fallacious. The reference to the bunding in the Notification must be read in the context of setting up industries or any operation or processes in respect of such industries. Once it is found that providing rail line is not an industry, then it is not possible to jump to the conclusion that the work of bunding is a prohibited activity and, therefore, the Corporation should be prevented from proceeding with the work. The alternate submission that even if the activity is permitted within the stipulated limit beyond 100 metres from the High Tide Line but within the distance of 500 metres the clearance is required from the Ministry, is without any substance. Apart from the fact that the Notification has no application to the work undertaken by the Corporation, the activities in respect of which clearance is regulated are those where permanent buildings or workshops or harbours or thermal power plants are erected and not for the purpose of providing a rail line. The rail line or a public road is provided for access to the public to the seas, bays, estuaries, creeks and backwaters and either a public road or a rail line is not a construction which demands clearance. It is beyond our comprehension to appreciate as to how a rail line can be or a road can be constructed without travelling over the bridges constructed over the rivers, creeks or seas. The Notification on which reliance is placed has no application whatsoever to the work undertaken by the Corporation.

The Corporation was also right in the contention that the provisions of the Environment Act have no application in respect of work undertaken in exercise of powers conferred under Section 11 of the Railways Act, 1989. Section 11, *inter alia*, provides that notwithstanding anything contained in any other law, the Railway Administration may, for the purposes of constructing or maintaining a railway, make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, streams, or other

waters, rivers as it thinks proper. The wide ambit of the provisions of Section 11 and the *non-obstante* clause makes it extremely clear that the provisions of the Environment Act do not bind the construction or maintenance of railway line. The Railways Act is a legislation enacted subsequent to the Environment Act and the Corporation is right in claiming that for the purpose of providing railway line, clearance is not required even though the line passes over the railways, rivers, creeks, etc. in view of the specific provisions of Section 11 of the Railways Act.

A faint attempt was made by Counsel to suggest that the Ministry of Environment has issued a draft Notification inviting objections and the draft Notification intends to prescribe that environment contract from the Central Government is required for providing railway lines. It is not possible to take any notice of such draft Notification is issued.

It is necessary to make reference to the complaints made in the petition. The petitioners claim that the alignment is going to adversely affect and which were in existence over centuries and are of great religious interest to the citizens. It is hoped and trusted that the projects undertaken for the benefit of a large number of people are not defeated or stalled by appealing to the religious sentiments of a few or by indulging in street agitations. Such attempts may temporarily help a particular group but would permanently cause damage to the interest of the common citizen. In this context reference must be made to the inter Ministerial correspondence to which attention of Court was invited Counsel. It appears that persons holding high offices in Central Government are addressing letters and making representations to the Ministry of Environment suggesting that the grievances of a group or an organization should be accepted and the proposed alignment should be given up or shifted eastwards. It seems that representations are forwarded to appears the feelings of a section of people who desired to raise obstruction to the proposed alignment of rail line through the State of Goa. As expected the correspondence passed between the two Ministries, Railway and Environment, indicated that without taking any decision, efforts are made not to displease anyone and by recommending that a small group or committee should be constituted to examine the representation such exercise should not have been undertaken because it results into postponing the much-needed and long-awaited railway line and would lead to escalation of cost and put pressure on the public exchequer. It is hoped and trusted that everyone will realise that providing a rail line is neither a political nor a religious issue but is undertaken for providing basic necessity of cheap and quick mode of transport. It hardly requires to be stated that the cheap and fast mode of transport would lead to speedy development of backward areas in four States and which has immense potential in terms of human and material resources. The rail line running through the four States would confer immense benefit upon the citizens in the carrying passengers and goods from the backward areas. The State of Goa has abundant natural resources and the railway line would assist in setting up main grove and mineral base and sea food leading to the prosperity of the common man. The existing transport facilities by road are entirely inadequate to cater to the needs of the people in transporting their goods to the large towns. It is hoped and trusted that unnecessary obstructions are raised to the project of such huge public utility and which will have the prosperity for the poor people on the western coast. It should be remembered that the project of such gigantic magnitude has become available after the people fought for over a century and the petty interest of a local area should not defeat the project in respect of which the Central Government has already spent a huge amount.

Court declined to exercise its writ jurisdiction in such cases because the writ jurisdiction is meant to advance the cause of justice and not to defeat exercises undertaken by the Government for the public benefit. The machinery of the Court should not be used for subserving the private interest or the interest of a local area to the detriment of the public at large. For these reasons High Court refused to grant any relief to the petitioners.⁹⁵

59. Cutting of Bamboo.—A picture was presented through the petition as if bamboo reeds are spread over a long tract of 4 kilometers and are being allowed to be indiscriminately felled from their roots and that bamboo worth Rs. 15 lakhs are sold away for Rs. 4,60,000/- in favour of the contractor. It is revealed from the counters that the bamboo clusters are only in an area of 7.016 hectares and that the land was acquired by the State much earlier after paying heavy compensation under the Land Acquisition Act. The land was, in fact, acquired for the Attappady Valley Irrigation Project. No details of the project were referred to in the writ petition.

The right to cut the bamboo was auctioned initially on for Rs. 2,01,000/- in favour of another person. There were higher offers later. Therefore, a re-auction was conducted, then the original bidder filed writ petition and the same was dismissed. Then the present re-auction was notified by notice, and the re-auction was held and the appellant became the highest bidder. He paid Rs. 4,00,000/- towards the bid amount and Rs. 61,000/- towards the taxes, in all Rs. 4,61,000/-. He had to cut and remove the bamboo within 60 days from the date of getting possession. He started emitting the bamboos and continued the same on the date the copy of the present writ petition was served on him. On 2-12-1989 cutting was stopped. The contractor said that he spent about Rs. 1,86,000/- for the cutting operations by the time.

This would mean that the respondent-writ petitioner waited till the land occupied by the bamboo clusters was acquired by the Government for the purpose of the Project and huge compensation was paid to the land owners. Auction of bamboos after some dispute about the bid amount went to High Court, after the contractor had paid Rs. 4,61,000/- and cut the bamboo for more than two months and had spent about Rs. 1,86,000/- for such cutting.

The single Judge directed appointment by the Government of an expert committee to go into the question of environmental degradation and the three-member Committee appointed by the Government submitted a report. Arguments were heard on various dates and judgment was delivered allowing the writ petition, directing the appellants (respondents in the writ petition) in both appeals to forbear from cutting and removing bamboo clusters and other vegetation standing on Surveys of Agali Village on the banks of Siruvani.

No direction was given in respect of the refund of the sum of Rs. 4,60,000/- paid by the contractor nor in respect of the expenditure of Rs. 1,86,000/- said to have been incurred by the contractor during the period of two months and odd of his cutting. The expert committee had stated in its report thus:—

“The stacked bamboo poles may be roughly about 40 lorry loads, *i.e.* about 400 metric tonnes. The collected bamboos have dried and deterioration will set in shortly. Hence it is advisable to remove this produce at the earliest.”

95. Goa Foundation v. Konkan Railway Corporation, AIR 1992 Bom 471 at pp. 471, 472, 473, 474, 475, 476, 477 (M.L. Pendse and G.D. Kamat, JJ.).

Even so, no directions were given in the judgment dated for removal of these 40 lorry loads of bamboo.

When the contractor filed writ petition against the appeal filed by the State for disbursement of certain amounts due to him, the respondent-writ petitioner opposed the same on the ground that the contractor, not having by then filed any appeal could not be given any relief in the appeal preferred by the State. The CMP was dismissed without prejudice to any appeal being filed by the contractor. Then the contractor filed WA 25 of 1993, Court passed an order allowing the contractor to remove the cut bamboo for whatever it is worth, after getting its present condition recorded by any officer of the Forest Department, should be 'contractor desires to seek recompense for any loss incurred by him from such persons may be responsible for such loss'.

The points for consideration in these appeals were:—

- (1) What is the scope of the jurisdiction of this Court in matters pertaining to environmental protection in public interest litigation?
- (2) Whether a writ of prohibition or other similar direction could be issued when the writ petition, as a public interest case is filed at a belated stage?
- (3) Is the Committee report, Ext. C-1 dated 19-2-1990 fundamentally defective and is Ext. C-2 report relevant?
- (4) Whether interference by this Court is called for and if so, in what manner?
- (5) How are the equities to be worked out particularly when the contractor had paid Rs. 4,60,000/- as per Ext. R-2(F) on 7-9-1989 and claims to have spent Rs. 1,86,000/- for cutting the bamboo for more than two months out of the three-months-period allotted for cutting?

Points Nos. 1 and 2.—It is true that Article 48-A lays down a Directive Principle and Article 51-A (g) imposes a fundamental duty to protect environment. These provisions were introduced in 1976. Article 48-A reads thus:

“Art. 48-A.—Protection and improvement of environment and safeguarding of forests and wild life.. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Article 51-A (g) read thus:—

“Art. 51-A.—Fundamental Duties It shall be the duty of every citizen of India:—

(A)

- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. “

Parliament has enacted various statutes such as the Forest (Conservation) Act, 1980, the Water (Prevention and Control of Pollution) Act, 1979, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 etc.

The counsel for the respondent writ petitioner conceded that neither the provisions of the Forest (Conservation) Act, 1980 nor the provisions of the Environment (Protection) Act, 1986 nor any other provision of the above statutes applies. His contention is that Article 21 alone is attracted to the facts of the case.

It is also to be noticed that the bamboo clusters in question were lying in the land which is plain land privately owned by various persons and was acquired for purposes of the project under the Land Acquisition Act, 1894, Counsel for the respondent-writ petitioner conceded that these clusters are not located in any reserve forest land or other land to which the Forest (Conservation) Act, 1980 clusters are described, may be inaccurately, as looking like a forest.

Another important fact to be noticed is that in the bamboo clusters, only those which have become ripe are to be cut and not the tender ones. Even the ripe ones, which are nearly 30 years old now, are to be cut leaving the stumps. Paragraph 4 of the Counter-affidavit of the Government states that what was auctioned was:

“the felling of bamboo clusters (excluding uprooting of stumps) for a total purchase amount of Rs. 4 lakhs.”

Taxes are an additional Rs. 60,000/-. Admittedly Rs. 4,60,000/- was paid by the contractor.

The Supreme Court, in *Sachidanand Pandey v. State of West Bengal*,⁹⁶ had occasion to consider a writ petition belatedly filed by a person alleging environmental damage. While ultimately observing (See paragraph 62) “Is there something more than what meets the eye in this case?”, the learned Judges referred to the duty of Courts in the context of Article 48-A and Article 51-A (g). After referring at length to the importance of environment and maintenance of ecological balance, Chinnappa Reddy, J. added words of caution to the Courts as follows:—

“Where an administrative action or order of the Government involves the problem of environment and the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for the Court to interfere in the absence of *mala fides*. On the other hand, if relevant considerations were not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public.”

The Court also observed, referring to problems of ecology.

“Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution, the Directive Principle.....And Article 51-A (g) which proclaims the fundamental duty....the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the authority.”

Khalid, J. made the following found observations regarding the Public Interest Cases:—

“I wish to delineate the parameters of public interest litigation concisely, against the background of the facts of the case. Today public spirited litigants rush to the Courts to file cases in profusion under this attractive name. They must inspire confidence in Court’s and among the public. They must be above suspicions. See the facts of this case and the end result.”

The learned Judge observed that the petitioners therein “did not take any steps to get the matter heard expeditiously, after they obtained an interim order to get all the work stopped; two, that the State Government made available to the Court all the materials to prove that its decision was taken after mature consideration at all levels”.

The Court pointed out (*See* paragraph 54) that during the course of the arguments, “we sared high along with the migratory birds into the realms of ecology, environmental protection, public interest, natural justice, arbitrariness, eminent domain and the like and “ultimately, from these ethereal regions descended on the tera firma faced with the reality that this case is devoid of any merits and has only to be dismissed.

Khalid, J. observed (paragraph 58, 60) that he only intended “to highlight the need for restraint on the part of the public interest litigants when they move the Courts. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without rhyme or reason If Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the Courts of Law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. It is necessary to have some self-imposed restraint on public interest litigants.”

Much earlier Pathak, J (as he then was) warned in *Bandhua Mukti Morcha n. Union of India*,⁹⁷ that (paragraph 62), in Public Interest Litigation, there is always the possibility “of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the Executive Government.” The Court can “easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one. The following passage is a classic (Paragraph 63).

“An excessively political role identifiable with political governance betrays the Court into functions alien to its fundamental character and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutional. The Judge, conceived in the true classical mould, is an impartial arbiter, beyond and above political bias and prejudice, functioning silently in accordance with the Constitution and his Judicial conscience.”

and finally, Pathak, J. (as he then was) stated (para 65) that examples cases in other countries can afford little support if there are no Indian precedents. An activist Court (*See* Para 66) must move with a degree of judicial circumspection. In that task.

“the Court must even be conscious of the constitutional truism that it possesses the sanction of neither the sword nor the purse.....”

These two cases referred to above have again been followed by the Supreme Court in *Ramsharan Autyanuprasi v. Union of India*,^{97 98} by Sabyasachi Mukerjee, J. (as he then was).

97. AIR 1984 SC 802.

98. 1989 Supp. (1) SCC 251 : AIR 1989 SC 549.

High Court referred to the above observations of the Supreme Court for two reasons. One is that High Court was here dealing with a case of a belated resort to Court under the garb of public interest litigation. The other reason was to remind ourselves, that in view of the continuous and increasing number of a public interest cases coming up now before High Court, High Court should act with great restraint and circumspection.

Summarising the position, environmental protection cases coming under the class of Public Interest Litigation must be handled carefully by the Courts both at the stage of granting interim orders and when the matters are finally disposed of. If say is granted against the State or other public bodies, care must be taken to see that public monies or public funds or public property is not put in jeopardy. Nor can the private parties whose rights are affected be made to suffer. If possible, conditional orders could be issued and if there was no alternative, the main case could itself be taken up. The Court must ensure that the petitioner in public interest litigation is a *bona fide* litigant really interested in public welfare and not a merely busybody seeking publicity. Courts must see that there are proper pleadings and that adequate facts are set out in the petition. Interference in writ jurisdiction in environmental matters can be resorted to only if the Court is satisfied that the Government or other body has not taken note or considered the relevant factors or parameters or if they have omitted to notice or failed to consider relevant factors. Courts must note that they can go only up to a limit and not beyond that. What that limit should be would depend upon the facts and circumstances of the case. The Court cannot itself attempt to nicely balance relevant considerations. Ultimately, if the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority. While the Courts could do a lot in this area within their true limits, they should not allow themselves to be abused by publicity... interested persons or those who attempt to blackmail and try to make some pecuniary gain. There may be cases where there is more than what meets the eye.

If writ of prohibition or *mandamus* is asked belatedly, the Court must also see, before any orders are passed as to the causes for the delay, whether granting a stay or stopping a scheme or work would, while not helping public interest, might cause financial loss to the State or body or other individuals. Point Nos. 1 and 2 were held accordingly.

So far as Committee Report is concerned, it must be stated that they have not gone into the question as to what is the ecology existing in the area and as to how the cutting of the bamboo clusters in about 15 acres will affect the said ecology. The report, with great respect, is very short and does not give reasons backed by scientific data. The age of the mature bamboos estimated as 25 years in 1990 is based, according to them, on hearsay and no effort has been made to receive the statement of the erstwhile landowners, whose lands were acquired, to find out even approximately the age of the bamboos. After all the age of 32 years given in some books is also an approximation. As on today, even on the finding of the Committee the mature bamboos must be at least 28 years in age. In specific evidence of those who planted these bamboos is taken it is likely that the age of the clusters will be more. Another aspect on which emphasis was placed by the Government Pleader and the counsel for the contractor is that the stumps counsel for the contractor is that the stumps of the bamboo plants are not going to be removed as stated in the Government's counter. The Committee has assumed that the clusters will be uprooted from their roots and this appeared to us to be one of the relevant factors omitted to be considered by the Committee. Above all, if the environment in the neighborhood is all barren as per the photographs produced by learned counsel for the respondent-writ petitioner, cutting and removing of the

bamboos is not going to affect the ecology adversely. If the stumps are not removed whether soil erosion will occur is also a matter to be considered. The only point urged before Court being one based on Article 21 of the Constitution of India which deals with dangers to human life and the cutting of the bamboo cluster is not to affect human life in an area which is already barren all around. Further, the Committee appeared to us to have come to its conclusions without having the benefit of the material on which the governmental decision to have bamboos cut was itself based. Admittedly the bamboo clusters are not in any area which is a reserve forest or such other land which can come under the provisions of the Forest (Conservation) Act, 1980. Learned counsel for the writ petitioner conceded before Court that neither the said Act nor the Environment (Protection) Act, 1986 is attracted to the facts of the case. The Committee did not find that the governmental decision to have the bamboos cut was based upon irrelevant considerations or upon omission to take into account relevant considerations. Nor has the Committee given enough and cogent reasons as to which particular ecological system will be protected if the bamboos are not cut.

Further, the bamboos were auctioned on 6-9-1989, and the contractor had to cut and remove the cut bamboo within two months. The contractor had paid Rs. 4,60,000/- to Government. According to him, he had employed hundreds of labourers and spent about Rs. 1,86,000/- by 2-12-1989 (4 days short of 3 months) for cutting was stopped under stay orders from this Court. If perhaps the mature or clusters had already been cut, in fact 40 lorry loads as found by the Committee, whether there was any point in directing the contractor to stop his work, was also a matter for serious consideration. Unfortunately, though in its report dated 19-2-1990 the Committee said that the cut bamboo could be allowed to be were granted therefor in the writ petition nor in the final judgment and Court could pass an order in that behalf in the present writ appeal for all the above reasons must be held to be seriously defective. Point No. 3 was found accordingly.

So far as report was concerned, it concerned the Silent Valley Project and did not deal with the bamboo clusters in these survey numbers. No effort was made by the Committee which submitted report (in regard to these bamboo clusters).

In view of finding of the Court that Ext. C-1 is defective and a fresh look at the matter is necessary and the long lapse of time. The age of the bamboo has not gone up by another 3 years and it is to be examined whether the uncut bamboos can be allowed to be cut at least now. These are matters which, are to be left to the Government to decide, in the light of any further expert opinion that Government might take into consideration. It will also be for the Government to consider the relevance of the Attappady Valley Irrigation Project and it is not for this Court nor to the expert committee to think that project will never materialise.

If Government is taking any opinion in favour of further cutting and removal of the bamboo clusters, it will be appropriate for the Government to issue a notice to the writ petitioner and to the contractor to make their submissions. It will be for the Government to consider whether a personal hearing is to be given or an opportunity to file a reply is to be given, to the said persons.

It will be for the Government to decide how to work out the equities that may be available in favour of the contractor for he has already paid Rs. 4,60,000/- apart from spending other 'large amounts' for cutting the bamboos."

60. Public Interest Litigation—Entertainability of.—In *M.C. Mehta v. Union of India*,⁹⁹¹⁰⁰ the petitioner, who was not a riparian owner, filed a writ petition for prevention of pollution caused to the river Ganga. The Supreme Court held that he was a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and the right of the petitioner to maintain the petition cannot be disputed. It was observed that the petition was, therefore, entertained as a Public Interest Litigation and the petitioner was entitled to move the Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act.

Article 226 of the Constitution of India is wide enough to enable this Court to issue a writ for any purpose and it is not confined to enforcement of Fundamental Rights. There is no need to say anything further in this regard. High Court has jurisdiction under Article 226 of the Constitution of India to entertain writ petition.¹⁰¹

61. Public Interest Litigation—Its limitations.—A practising Advocate of Bangalore averred in the petition that the writ petition which is filed under Article 226 of the Constitution is in public interest and the reliefs he has prayed for also in public interest.

In paragraph 3 of the statement of facts in respect of the prayers, he has alleged that the intention of filing the writ petition had arisen in view of the absence of the provisions in the Forest Act, 1963 (apparently Karnataka Forest Act, 1963) to keep a check on the action of the respondents in order to achieve the intent of the Karnataka Preservation of Trees Act, 1976. He has further averred that the Rules made under Forest Act, 1963 has resulted in defeating the very intent of the legislature to bring the Forest Act, 1962 and the Karnataka Preservation of Trees Act, 1976 into force as a result of which the action of the respondent-State of Karnataka, has caused loss to the forest wealth, resulting in environmental imbalance, affecting the subjects of the State and as such the writ petition should be entertained as a Public Interest Litigation.

In the course of the averments contained in the statement of facts, he has succinctly narrated the history of the various enactments governing the regulation, administration and preservation of forests in the State of Karnataka and Western Ghats in particulars. He had stated the historical background in which the Karnataka Forest Act of 1963 came to be enacted as well as the Karnataka Preservation of Trees Act, 1976. He has also set out the scheme of the Act as well as the objects sought to be achieved by the Act. His complaint (which is of general nature) is that the provisions made under the Forests. Enactments in Karnataka and the Rules framed thereunder do not make provisions for declaring certain areas as "Core Forest" or Virgin Forest, particularly in the hill ranges on the Western side of the Karnataka State, where the rain fall is definitely higher than in the rest of the State of Karnataka. He has made general

99. Executive Engineer, A.V.I Project, Agali v. E.& E. Protection Samithy, AIR 1993 Ker 320 at pp. 321, 322, 323, 324, 325, 326, 327: (1993) 1 Ker LT 800 (M. Jagannadha Rao, C.J. and K. Sreedharan. J.).

100. AIR 1988 SC 1115.

101. R.R. Delaval v. The Indian Overseas Bank, AIR 1991 Mad 61 at p. 71 (Srinivsan, J.).

avermments that the forest produce has been allowed to be exploited by forest based industries, without sufficient precaution being taken by the State Government to preserve the lost forest wealth in allowing such exploitation. He has further averred that on account of the ill regulated exploitation of the forests and non-marking of the survey of the forest area coverage in the State Periodical by the State Government has seriously affected the flora and fauna of the State thereby causing erosion, lack or shortage of water on account of lack of sufficient rainfall and thereby upsetting the ecological balance in the State, particularly in the Western Ghats, i.e., hilly ranges on the Western side along the costs.

The petitioner's chief grievance was that the allegation governing the subject of preservation of forests and protection of animals therein falls short of the requirements of cultivation and scientific exploitation of the forests. In fact there were averments to the effect that the exploitation of forests should be totally stopped and the forests produce based industries must be de-licenced and prevented from utilising the forest produces.

He has produced several Annexures to the petition giving the types of trees grown in the forests of Karnataka, the indiscriminate exploitation by the Forest Department of the permission granted by it to private individuals to cut trees of smaller girth than would be prudent thereby increasing the requirement of the forest produce by the industries instead of allowing the growth of the trees to its proper girth to mature and adequate for utilisation and exploitation, he has generally averred that no provision is made by the State Government to take steps for sufficient aforestation to compensate for the loss due to ill-planned exploitation of the forests by the State Government as well as by the individuals and licensees in exploiting the forest produce.

He has enumerated certain industries which use forest produce, statistics in regard to forest coverage in the State, types of trees grown and the trees which are on the verge of extinction and the resultant loss in the preservation of the flora and fauna in the forests.

The narration of the statements of facts was excellent on how ecology is to be maintained in the forests, the rainfall and utilisation of forests and forest produce. In that background he has asked for the following reliefs, set out in the prayer column as follows:—

‘Wherefore the petitioner most respectfully prayer that this Hon’ble Court may be pleased to issue a writ of *mandamus*, prohibition and any other appropriate writ, order or direction.

Directing the respondent to declare forest of any nature in the catchment areas, watershed zones in the State and Western Ghats in particular as Virgin Forest not to be subjected for any exploitation in any way whatsoever excepting supervision and maintenance.

Directing the Reserved Forest where wildlife, rich flora and fauna prevails, not to be subjected for encroachment for Revenue benefits and even for deriving Forest produce for industries, excepting for minor forest produce to rural population under the governing rules and regulations.

To cancel licence and permits of the established forest based industries whose products for the consumers have substitute in the nature of metals, iron, steel, aluminum, cotton etc.

To grant the forest produce to industries such as paper mills depending on the availability of raw material without exploitation of Reserved forests, virgin forest, further on the capacity of recharging the forest product without decreasing the existing forest coverage.

Prohibit the respondent from felling of timber and storing in the Timber depots.

Directing the respondent to amend the Forest Act, 1963 to express the intent of the legislation is Preamble and strict execution of the same.

Strike down the Rules of grant of permit and licence to forest based industries as *ultra vires* in view of the Karnataka Preservation of Trees Act, 1976.

To identify, preserve, protect conserve the rich flora and fauna and other Medicinal plants in all forests.

To restrain the plantation of Eucalypts in Western Ghat regions and other forest watershed zones.

To restrain from spending revenue on expensive advertisement and divert the same for afforestation projects by proper implementation.

To achieve the coverage of forest area to a minimum of 35% in the State of Karnataka and pass such reliefs as this Hon'ble Court may think fit to grant in the circumstances of the case including the cost of the petition."

The petition was admitted by the single Judge an application for impleading as many as 28 respondents came to be allowed and notice was directed to be taken out by paper publication in respect of those respondents and others who were interested to support or oppose the petition, in the view that the petition be maintained as a public interest litigation. Government Advocate was also directed to take notice for the first respondent.

Though in 1977 forests became a concurrent subject, falling in entry 17 in List-3 of the VIIth Schedule of the Constitution, the Union of India has not been impleaded as a party. On account of forests being included in the concurrent list. Government of India has passed Forest (Conservation) Act, 1980 as well as Environment Protection Act of 1986, in the light of general depreciation of forest wealth both in flora and fauna and on account of various activities ranging from rigid industrialisation to increasing land demand for cultivation for greater food production.

The respondent-State of Karnataka has filed its statement of objections on 29-5-1989 as also the second respondent Harihar Polifibres Limited, one of the major wood based industries in the State of Karnataka.

The sum and substance of the resistance by the State to this writ petition was that the reliefs asked for were not tenable; that the State Government has taken adequate precaution to protect and preserve its forest wealth, both in flora and fauna; that the enactments made, particularly, Karnataka Forest Act, 1963, the Rules framed thereunder as well as the Karnataka Preservation of Trees Act and the Rules framed thereunder, the Forests (Conservation) Act, 1980 and the Environment Protection Act, 1986, passed by the Union of Legislature were adequate to meet all requirements in respect of which the petitioner complains.

It would be useful to extract few of the averments paragraph 2 of the Statement of Objections filed on behalf of the State. The allegations were that adequate provisions

were not made to preserve and protect the forests in catchment areas and Western Ghats were not correct. Likewise, the allegations that the Rules framed under the Kanataka Forest Act give unlimited power to the authorities to exploit any forest and the allegation that there were no guidelines to grant sanction for a forest based industry in the State were not correct. Further, the allegation that there was no check on the forest authorities and, therefore, there were no measures to prevent the destruction of forest was baseless. Forest was a renewable resource available to mankind not only for protection purposes but for productive purposes as well. Forest Management all over world is 400 years old. In no country, all the forests are preserved totally in prime conditionally for the purpose of maintenance of ecological balance. Forests in the State are managed in a scientific manner on the principle of sustained yield in perpetuity. For this purpose, before any working is allowed in the forest, a working plan is prepared based on detailed inventory of the area which includes data regarding the growing stock, the growth rate, the regeneration status, the densities, the capacity of the soil to take any treatment and the silvicultural requirement of the trees standing; the area felling prescriptions are given taking into consideration the regeneration capacity of the forests. It is the total extent of good forests cleared for the above purposes in the State since independence is about 2 lakhs hectares. The priority given was for attaining self sufficiency in food production and increasing capacity for power generation and irrigation. This could not be helped. It was further stated by the State that in order to mitigate the above situation arising out of loss of forest area, to compensate for the loss of good forest area, the State Government introduced number of measures, such as surrendering its power to disreserve forests to the Legislature, not to release any forest areas for cultivation purposes, forest development fund created by levying taxes on the sale of forest produce to finance afforestation projects, the State accepting Government of India's suggestion to bring the subject 'Forest' under the concurrent list in the VIIth Schedule to the Constitution of India, the procedure established for selected removal of over matured trees from the forests, system of sale of standing trees to contractors being abandoned, and income from the forest produce going up in recent years.

To summarise, the State contends that by intestifying its activities in the conservation of forests in general and particularly to strike a balance between industrialisation in production as well as preservation of forests and development of irrigation and allied projects as a comprehensive development plan, it has done its duty and the provisions of law in that behalf were adequate.

The second respondent being a wood based industry has long held contract with the State Government in order to sustain its investment and protect the labour force, it has to continuously receive the permitted quota of wood contractually obtained from the Government and other private sources. Therefore, the Court should not merely on the plea of the petitioner in the guise of public interest look at only one side of the case ignoring the need for industrilisation in the State.

After hearing the Counsel for the petitioner as well as the government pleader, Court was satisfied that the questions raised were no longer *res Integra* despite an attempt made by the Counsel to distinguish the decided cases of the Supreme Court, particularly the case of *Rural Litigation and Entitlement Kendra v. State of UP*.¹⁰²

The petitioner before the Supreme Court under Article 32 of the approached that Court in public interest as it was observed that in certain areas of U.P., particularly

102. See AIR 1988 SC 2187.

Deradun forest area a number of limestone quarries operated by several lessees were being so operated unlawfully long after the expiry of the leases, illegally in some cases and as a result of such indiscriminate and illegal quarrying for limestone, forest wealth in the Doon Valley and its surrounding region had been deemed causing soil erosion, depreciation of water resources and total ecological imbalance resulting in the killing of several species of fauna, which had inhabited the area. That case was presented in the Supreme Court in 1983. It was heard in stages by the Supreme Court over a period of 6 years. Having regard to the importance of the questions raised by the petitioner therein, the Court chose to appoint Special Committee to go into various aspects of the question and in the course of hearing took notice of the passing of Environment Protection Act, 1976, and the provisions made by the Central Legislature. The Parliament, in that behalf from time to time. The Court gave directions to ensure, quarrying did not affect the existing forest wealth as on the date of the petition and the various dates of hearing and issued guidelines and recommended by the Expert Committees.

In the course of its judgment at para 58, as reported in AIR 1988 SC 2187, the Court has stated as follows:—

“In the order of 12th March, 1985 reported in AIR 1985 SC 652, a three Judges Bench this Court had indicated that the mine owners who had been displaced should be rehabilitated. There is no material on record if any alternate provision has been made either by the State of Uttar Pradesh or the Union of India. On going lessees (sic) have been terminated under orders of this Court without provision for compensation. Indisputably displacement has been suffered by these lessees and the sudden displacement must have upset their activities and brought about substantial inconvenience to them. The Court has no other option but to close down the mining activity in the broad interests of the community. This, however, does not mean that the displaced mine owners should not be provided with alternative occupation. Pious observation or even a direction in that regard may not be adequate, what is necessary is a time frame functioning if rehabilitation is to be made not be adequate, what is necessary is a time frame functioning if rehabilitation is to be made effective. It is, therefore, necessary that a Committee should be set up to oversee the rehabilitation of the displaced mine owners. The Uttar Pradesh Government as apprehended by many of these mine owners, by itself may not be able to meet the requirements of the situation. It may be that all the displaced mine owners may not find suitable placement within the State of Uttar Pradesh. It is, therefore, necessary to associate some other States in the programme. Unless a High Powered Committee is set up wherein Union of India is also represented, the Committee is to be constituted may not be effective and there may be lack of coordination. There is material that lime-stone quarries are available in Rajasthan and Gujarat. It is, therefore, necessary that representatives of these State Governments are also on the Committee. No accordingly direct a Committee to be set up with representatives of the Union of India, the State Governments of Uttar Pradesh, Rajasthan and Gujarat. While effecting rehabilitation by giving alternate mining sites, ecology and environment will have to be considered. It is, therefore, necessary that on such Committee Ministry of Environment should also be represented. Apart from them there should at least be two experts. We direct Constitution of Rehabilitation Committee with the following members.”

The Supreme Court in the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,¹⁰³ Act an earlier stage of that case, certain directions issued as extracted in same case, repeated later. Earlier in the course of its order, Supreme Court had this to say¹⁰⁴:—

“The limestone quarries in this area are estimated to satisfy roughly three per cent of the country’s demand for such raw material and we were told during the hearing that the Tata Iron and Steel Company is the largest consumer of this limestone for manufacture of a special kind of steel. At the present rate of mining, the deposits are likely to last some 50 years. It is for the Government and the Nation and not for the Court, to decide whether the deposits should be explicated at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operations and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and firmly implement the same.

Governments—both at the Centre and the State must realise and remain cognizant of the fact that the stake involved in the matter is large and far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not possible. The greenery of India, as some doubt, may persist and that desert may expand its limits.”

From the above it is clear that under the scheme of separation of powers envisaged by the founding fathers of the Indian Constitution, the three wings of the Government function in the respective spheres independently of each other, unfettered by the other wings of the Government. Petitioner’s request could not be so construed as to conferment of powers by the Constitution to interfere with the daily routine administration of the State or in the making of laws by the Legislature. Judicial review must be strictly understood to protect the rights of the citizens, when their legal or constitutional rights are affected by any order or Legislative Enactment and not otherwise. Where it relates to matters of policy of the Government, where it relates to making of laws, the Court has no role whatsoever to play. It must be always left to the executive will and the wisdom of the Legislature. In paragraph 60 in *Rural Litigation and Entitlement Kendra’s case*,¹⁰⁵ (supra), the Supreme Court observed as follows:—

“It is not our intention to continue control over these matters. Once this Court is satisfied that the Committees are operating on the right lines as shall consider whether it is any longer necessary for the Court supervise their activity.”

That clearly indicates the parametres within which the judiciary has to function.

On record the statement of objections filed by the State, in regard to the steps it has taken to protect the various forests in the State and to enhance it wherever necessary. There was no reason to doubt the corrections of the assertions in the statement of objections filed.

103. AIR 1988 SC 2187.

104. See AIR 1985 SC 652 and AIR 1987 SC 359.

105. AIR 1988 SC 2187.

In this regard, having regard to the prayers, it would be useful to notice what Supreme Court has said in yet another public interest litigation case, in *State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla* (Paras 1 and 4)^{106 107}:—

“Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved the Constitution to the Executive and the Legislature.

On the basis of a letter written by a guardian of a student of Medical College in Shimla, which was treated as a petition, the High Court issued notices to the College authorities and the Government. The High Court gave various directions including a direction to constitute committee for reporting in the matter. On the submission of the report which contained a recommendation for legislation the High Court directed the Chief Secretary to inform the Court as to what action the Government proposed to take on the recommendation to institute legislation for curbing ragging. This direction was given in spite of the Chief Secretary’s categorical assurance in that regard.

Held, that the direction given by High Court was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again given the same direction. This the Division Bench was clearly not entitled to do.”

From the above, it is clear, in the light of the discussion and the ruling of the Supreme Court that High Court cannot hardly grant any of the prayers, nor the Court is in a position to mould the reliefs in any other form. Even on technicality which normally should not deter the Court while dealing with public interest litigation, the petitioner has not made a written demand calling upon the Government to do what it is statutorily bound to do, when such demand has been made and on failure on the part of the Government to perform its statutory duties, he petitioner or the like of him would acquire locus standi to seek a writ of mandamus or a direction in the nature of mandamus.

Judgment of Court is not to discourage the petitioner of the like of him, to evince interest in environment protection and protection of the flora and fauna of the forests in Karnataka in particular and forests in general in the country as well as the World. Those who move the Court in the name of public interest litigation must be equally aware of the limitations the Court have imposed on themselves in order to work within the framework of the Constitution and in harmony with the either wings of the Government.

High Court can only advise the petitioner to move the concerned Legislators who come from the arrears of the Western Ghat to take initiative and to fill up the lacuna, if any, pointed out by any Expert Committee and get the relief which the Court is unable to give.¹⁰⁷

106. See AIR 1985 SC 910.

107. K.K. Vasant v. State, AIR 1992 Kam, 256 at pp. 257, 258, 259, 260, 261, 262, 263 : (1991) 2 Kant LJ 518 (M.P. Chandrakantaraj URs and B. Jagannathaj lagde J.).

62. Procedural Law—Applicability of.—The controversy before the Court was as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. Supreme Court may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of *resjudicata*. ”

The Court ultimately came to hold that mining activity in the area has to be stopped but taking into consideration the adverse consequences of total stoppage immediately, it observed (Para 44):—

“It is the accepted position by all parties that low silica content limestone is necessary for manufacturing class steel. The earlier LC process is being abandoned by new factories and even some are switching over to new methods but for quite some time there would be demand for [pw silica content limestone for manufacture of steel by the LD process. The alternate source which has been indicated in these two affidavits of the Union of India is not readily available to the fullest extent. The Gotan-Jaisalmer belt has to be worked out in full swing and that would take some time. The main difficulty for the Jaisalmer production to reach the consumers is the location of the mining area. It has no broad-gauge rail connection and admittedly the location is in the interior. The consumer would immediately face transport difficulty until there is conversion of the railway track of broad-gauge and surface transport facility improves. Even if these facilities are made available, the distant location is bound to reflect itself in the cost factor.”

Objection has been raised by Counsel that the request for modification in the present form was not maintainable and if at all, a review petition should have been filed. Since this was not a dispute inter party, it was held that the Court would not be technical in dealing with a matter of this magnitude. Supreme Court entertained it as the miscellaneous petition.^{108 109 110}

63. Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48 A of the constitution.—In *Sachidanand Pandey v. State of West Bengal*,^m quoted in *M.R. Pillai v. Executive Officer*,¹¹¹ considered how the Court should act when there is a problem of ecology and held as follows:—

“Whenever a problem of ecology is brought before the Court, the court is bound to bear in mind Article 48-A of the Constitution, the Directive Principle which enjoins that “The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India ‘to protect and improve the natural environment including forest, lakes, rivers and wildlife, to have compassion for living creatures.’ When the Court is called upon

108. *Rural Litigation & Entitlement Kendra v. State of U.P.*, AIR 1989 SC 594 at pp. 595, 596, 597 (Ranganath Misra and M.N. Venkatachaliah, JJ.).

109. AIR 1987 SC 1109; 1987(2) SCC 295; 1987(1) Com LJ 211; 1987 JT 425; 1987(2) SCJ 70; 1987(1) Supreme 492; 1987(1) UJ (SC) 641

110. AIR 1997 Ker. 162 at 163, 164).

to give effect to the Directive principle and the Fundamental duty, the Court is not to shrug its shoulders and say, that priorities are a matter of policy and so it is a matter for the policy making authority.”

64. Construction of dam on Narmada river.—The allegation that the project was not in the national or public interest is not correct seeing to the need of water for burgeoning population which is most critical and important. The population of India, which is now one billion, is expected to reach a figure between 1.5 billion and 1.8 billion in the year 2050, would necessitate the need of 2788 billion cubic meter of water annually in India to be above water stress zone and 1650 billion cubic meter to avoid being water scarce country. The main source of water in India is rainfall which occurs in about 4 months in a year and the temporal distribution of rainfall is so uneven that the annual averages have very little significance for all practical purposes. According to the Union of India, one third of the country is always under threat of drought not necessarily due to deficient rainfall but many times due to its uneven occurrence. To feed the increasing population, more food grain is required and effort has to be made to provide safe drinking water, which, at present, is distant reality for most of the population 'specially in the rural areas. Keeping in view the need to augment water supply, it is necessary that water storage capacities have to be increased adequately in order to ward off the difficulties in the event of monsoon failure as well as to meet the demand during dry season. It is estimated that by the year 2050 the country needs to create storage of at least 600 billion cubic meter against the existing storage of 174 billion cubic meter.

Dams play a vital role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood waters back. On full development, the Narmada has a potential of irrigating over 6 million hectares of land and generating 3000 mw of power. The present stage of development is very low with only 3 to 4 Maf of waters being used by the party States for irrigation and drinking water against 28 Maf availability of water at 75% dependability as fixed by NWDT and about 100 MW power developed. 85% of the waters are estimated as flowing water to sea. The project will provide safe and; clean drinking water to 8215 villages and 135 towns in Gujarat and 131 villages in desert areas of Jalore District of Rajasthan, though against these only 241 villages are getting submerged partially and only 4 villages fully due to the project.

There would be a positive impact on preservation of ecology as a result from the project. The SSP would be making positive contribution for preservation of environment in several ways. The project by taking water to drought prone and arid parts of Gujarat and Rajasthan would effectively arrest ecological degradation which was returning to make these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, flouride and nitrite affected water and vanishing green cover. The ecology of water scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread green cover. The ecology of water scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread of green cover. There will also be improvement of fodder availability which will reduce pressure on biodiversity and vegetation. The SSP by generating clean eco-friendly hydropower will save the air

pollution which would otherwise take place by thermal generation power of similar capacity.¹¹¹

65. Levy of Water cess Validity of.—Where the Petitioner was producing torches, batteries and miniature lamp which comes under electrical industry held that petitioner's Industry was not liable to pay cess on water consumed by it as the said Industry had not been mentioned in Schedule I of the Act.¹¹²

66. Right to get pollution free water and air.—Right to get pollution free water and air is the fundamental right guaranteed under Article 21 of the Constitution. Public Interest Litigation is maintainable for ensuring the enjoyment of pollution free air and water, which by way of law has been included into right to life under Article 21 of the Constitution.¹¹³

Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that of life in derogation of laws, a citizen has right to have resource to Article 32 of the Constitution for removing the pollution of water or Air which may be detrimental to the quality of life not only for the present generation but even for generations to come.¹¹⁴

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Where the company was manufacturing hazardous and lethal chemicals. The gases passing from there became dangerous to the health and life of workmen and people living surrounding. The matter was brought before the Court through Public Interest Litigation. The Court directed the company to take necessary safety measures.¹¹⁵

67. Enforcement of laws made for prevention of pollution.—Even in case which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology in their area.”¹¹⁶

68. Duty of Court to weigh the Public Interest of Litigants.—The Court has not only the power but also the duty to weigh the Public Interest of Justice to litigants. The Public Interest asserted by the public authority contrary to its actual conduct considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest community could be attached to such bodies.¹¹⁷

111. *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751 AT 3787: 2000 (7) Scale 34: 2000 (2) JT (SC) (Supp) 6.

112. *Geep Industrial Syndicate Ltd. v. Cess Officer UP WPP and C. Board*, AIR 2004 All 271.

113. *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420; *Murlis S. Deora v. Union of India*, 2002 (1) JCR 5 (SC): 2002 (1) SRJ 216: 2001 (8) Supreme 326.

114. *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420; 1991 (1) JT 77; 1991 (1) Scale 8; 1991 (1) SCC 598; 1991 (1) SCR 5.

115. *Shri Ram Food and Fertilizer case*, (1986) 2 SCC 176.

116. *Indian Council for Enviro. Legal Action v. Union of India*, 1996 (4) JT (SC) 263: 1996 (3) Scale 579: 1996 (5) SCC 281: 1996 (3) Supreme 741.

117 *R. v. Paddington Valuation Officer*, 1966 (1) QB 380 (400).

69. Ban on smoking in public places.—Union of India shall take necessary effective steps to give wide publicity to this order by electronic as well as print media to make the general public aware of this order of prohibition of smoking in public places.¹¹⁸

70. Environment Vehicular pollution in Delhi.—Precautionary principle. It is directed that a similar financing scheme be framed by the Union of India jointly with the NCT of Delhi whereby those, of the permits of owners of diesel buses are cancelled due to non-conversion to CNG the same, should, in the first instance, be allotted to SC/ST and to the other weaker sections of the society. Such a scheme should be prepared and implemented and a compliance report be filed within four weeks. The costs deposited under direction (4) above shall be utilised in implementing the proposed scheme.¹¹⁹

71. Taj Heritage Corridor Project.—Judiciary may step in where it finds the actions on the part of the Legislature or the Executive were illegal or unconstitutional but the same by itself would not mean that public interest litigation, in a case of this nature, should be converted into an adversarial litigation. The jurisdiction of the court to issue a writ of continuous mandamus was only to see that proper investigation was carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order, which would interfere with its judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it was the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If it errs while passing a judicial order, the same may be a subject matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on the Court to step in. A judicial order passed by a Magistrate may be right or wrong, but having regard to the hierarchy of the courts, the matter, which would fall for consideration before the higher court, should not be a subject matter of a decision of this bench. In an unlikely event of the interested parties not questioning such orders before the higher forum, independent public interest litigation may be filed.¹²⁰

72. Construction of Stadium and Marriage Pandals on historic park.—Construction of a double stoned air conditioned indoor stadium at the historic park with historic values dating back to 20th century aesthetics. Authority also permitting setting up of marriage pandals in the park use of parts for such purpose not permissible in terms of MPD-2021. Provisions of MPD do not permit sports facilities in a Distt. Park without a change of user as specified in the MPD 2021 in accordance with due process of law, MCD cannot justify the legal basis for construction of stadium got approved. Directions issued for removal of structures already built and restoration of the area as a Park.¹²¹

118. *Murli S. Deora v. Union of India*, 2001(8) Supreme 326 : AIR 2002 SC 40 : 2001(8) SCC 765 : 2001(8) Scale 6 : 2001(9) JT 364.

119. *M.C. Mehta v. Union of India*, (2002) 3 SCJ 11.

120. *M.C. Mehta v. Union of India & Ors.*, AIR 2008 SC 180.

121. *Paryavaran Avam Janathan Mission (Regd. Society) v. Ltd. Governor*, 2010(7) RCR (Civil) 1509 (Delhi).

73. Running of pathological lab in residential area.—The running of Pathological Lab in the building by respondent amounts to violation of the rule of law and affects the public interest, thereby, it is public interest litigation even though the appellant herein is a resident of the second floor of the concerned building. The Court observed that issuance of Regularisation Certificate to run the Pathological Lab in the building is totally impermissible in law and was directed to close down their establishment of running ‘Dr. Dang’s Diagnostic Centre’ by shifting the same to alternative premises.¹²²

74. Cancellation of project—Jal Mahal Tourism Project.—The object of the project was to restore the Lake, Monument and develop the prescient area, particular policy decision was taken to develop a particular project supported by extensive research and study by the experts in preparing the project. Although Courts are expected very often to enter into the technical and administrative aspects of the matter, but it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State Authorities specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the Court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. The Court observed that this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers.¹²³

75. “Forest”—Meaning.—Land covered by mangroves irrespective of its ownership is a forest within the meaning of the said Forest Act, 1927.¹²⁴

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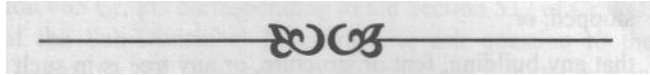
122. Anirudh Kumar v. Municipal Corporation of Delhi (SC), 2015(3) Scale 698 : 2015(7) SCC 779: 2015(3) JT 287.

123 Jal Mahal Resorts P. Ltd. v. K.P. Sharma (SC), 2014(7) JT 134 : 2014(8) SCC 804 : 2014(7) Scale 336 : 2014(2) All India NGT (SC) 95.

124. Bombay Environmental Action Group v. State of Maharashtra, (Bombay)(DB), 2019(1) BCR

Chapter 25

Public Nuisances



Synopsis

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1. Conditional order for removal of nuisance.—Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate especially empowered in this behalf by the State Government, on receiving the report of a Police Officer of other information and on taking such evidence (if any) as he thinks fit, considers.

- (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
- (b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the

community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

- (c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
- (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree is necessary; or
- (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed or,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order.

- (i) to remove such obstruction or nuisance; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise or to regulate the keeping thereof in such manner as may be directed; or
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
- (iv) to remove, repair or support such building, tent or structure, or to remove of support such trees; or
- (v) to fence such tank, well or excavation; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if the objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order, and show cause, in the manner herein after provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A “Public Place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or re-creative purposes. (See Code of Criminal Procedure, 1973, Section 133)

2. Conditional order to remove public nuisance.—Where it is found that against

whom conditional order was passed under Section 133(1) of Cr. PC put in appearance under Section 137(1) of Cr. PC and the Magistrate did not question them about existence of public way but they themselves denied the existence of the public way, in such a situation failure to ask question under Section 137(1) of Cr. PC by the Magistrate is not mandatory. It is mere irregularity which is curable and is to be ignored as contemplated under Section 465 Cr. PC corresponding to old Section 537 of Cr. PC. In such a situation omission of the Sub-Divisional Magistrate, to ask question to the petitioners under Section 137(1) of Cr. PC is a mere irregularity which is curable and to be ignored as contemplated under Section 465 of Cr. PC.¹

3. Consequences of his falling to do so.—If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code (45 of 1860), and the order shall be made absolute. (See Cr. PC, 1973, Section 136).

4. Continuous noise on account of cutting of fodder.—Once the noise and dust wind is considered to be a nuisance of the require degree, it is no defence to contend that it was in consequence of the lawful trade or business. There is not, and possibly there cannot be a device to control the noise or the sandladen wind spreading when the 'fodder-tals' are being run on open land with no mechanical device or contrivance to prevent the dust from spreading in the air and reaching the houses in the neighbourhood. Any inadvertent dropping of lighted match stick can engulf the locality in disastrous fire which may cause loss to persons and property of those who are living in colony. Thus there is danger to the lives, safety and comfort to a fairly large section of the public in the neighbourhood. Carrying on trades causing intolerable noises, emanating of offensive smells and spreading of dust containing particulars of fodder out while (sic) public nuisance which interferes with health, safety and comfort of the public.²

5. Demolition order for dilapidated building.—In the instant case, the Magistrate passed the conditional order asking the owner of the building to remove it. It has been said in the second order of the Magistrate that the opposite parties did not say anything about the preliminary order, that is the opposite parties did not show cause. So only Section 136, Cr PC was applicable in this case and the Magistrate could take action only under Section 136 of Cr PC. Action that could be taken under Section 136, Cr PC was that the order could be made absolute he could not take any other action. The Magistrate did not make the conditional order that he issued earlier absolute, rather he took the representations, varied the order and made an order of repair instead of order of removal. This was not possible when the Magistrate asked the owner to demolish the building, where the owner had no objection to it, he could neglect to appear before the Magistrate. But if, the Magistrate instead of making that order absolute to which the owner had no objection and on account of which he did not appear, passes a different order that will be against the natural justice, as well as against provisions of Section 136, Cr PC. The order passed by the Magistrate was quashed.³

6. Denial of Public right.—The Pendency of a suit being accepted by the Court below, it should be deemed to be reliable evidence in support of denial of public right. In such a

1. Budh Singh v. Hapu Ram, 1996 Cri LJ 1576 (Raj).
2. Himmat Singh v. Bhagwana Ram, 1988 Cri. L.J 614 at 618; 1987 Cri LR (Raj) 356: 1987 Raj LW 230.
3. Mirza Moin Beg v. State of U.P., (1989) 2 All WC 1354 (All).

circumstance, the proceedings under Section 133 of Cr. PC should remain stayed till final disposal of the civil suit.⁴⁵

7. Existence of open drains, pits and public excretions by humans for want of lavatories.—It is open to the Court to direct the Officers of Municipality to abate the public nuisance by affirmative action on time bound basis. Breach of the orders will be visited with the penalty under Section 188 of IPC?

8. Final Order.—Final order passed beyond the terms of conditional order was modified.⁶

9. Injunction pending inquiry.—(1) If a Magistrate making an order under Section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the manner.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) no suit shall lie in respect of anything done in good faith by a Magistrate under this Section. (See Code of Criminal Procedure, 1973, Section 142).

10. Magistrate may prohibit repetition or continuance of public nuisance.—A Division Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860) or any special or local law. (See Code of Criminal Procedure, 1973, Section 143).

11. No length of usage or obstruction can legalise public nuisance.—It is true that no length of user or obstruction can legalise public nuisance and that the alleged nuisance is an existence for several years then all of that sudden and abruptly the provisions Section 133, Cr PC should not be pressed into service.⁷⁸

12. Nuisance by stone crusher.—The aspect which needs to be monitored very carefully is whether the stone crusher is upsetting the balance of the ecology of the area. If the indication is positive, only two options are available to the petitioner either to fall in line and ensure that environmental standards for this industry are adhered to so that no pollution is caused to the area in and around the industry of if this is not possible, then, the District Magistrate, Haridwar will ensure that this industry is relocated and even at the place of relocation the petitioner will have to adhere to norms so that neither the environment of the area nor the ecology suffers from pollution?

13. Nuisance by Tea Factory.—It cannot be said that there is an imminent danger to

4. Brahmanand Rai v. State of U.P., 1991 All Cri Cas 259; 1991 All Cri R 150.
5. Municipal Council, Ratlam v. Vardhichand, 1980 Cri LJ 1075 at 1082, 1083: AIR 1980 SC 1622.
6. Gobind Singh v. Shanti Sarup, (1963) 1 Cri. LJ 14).
7. Jagdish v. State of Rajasthan, 1997 Cri LJ 3634 at 3638 (Raj).
8. Usha Jain v. Additional District Magistrate, Haridwar, 1997 All Cri R 91: 1997 All Cri Cas 479.

the health physical comfort of the community in the locality at present. The act of the petitioners must be injurious in *praesenti*. The mere manufacturing of tea powder suspected to be adulterated would not be construed to be an act of causing imminent injury to the health or physical comfort of the community.⁹

14. Order for the removal of nuisance.—To (name description and address).

Whereas: It has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which etc., (Describe the road or public place). By, etc., (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists;

OR

Whereas: it has been made to appear to me that you are carrying on, as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is earned on), and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to a different place;

OR

Whereas: It has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence (or insecurely fenced);

OR

Whereas: etc., etc., (as the case may be); I do hereby direct and require you within (state the time allowed) (State what is required to be done to abate the nuisance) or to appear at... in the..... Court of..... day of..... next, and to show cause why this order should not be enforced;

OR

I do hereby direct and require you, within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.

OR

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced); or to appear etc.;

OR

I do hereby direct and require you, etc., etc., (as the case may be). Dated this..... day of..... 20.

(Seal of the Court)

(Signature)

9. Donnington Tea Factory v. Sub-Divisional Magistrate and Sub Collector, Connoor, 1998 Cri. LJ 3585 (Mad).

1. See Code of Criminal Procedure 1973, Form No. 20. The recent schedule.

15. Person to whom order is addressed to obey or show cause.—The person against whom such order is made shall.

- (a) perform, within the time and in the manner specified in the order, the act directed thereby; or
- (b) appear in accordance with such order and show cause against the same. (See Code of Criminal procedure, 1973, Section 135)

16. Power of Magistrate to direct local investigation and examination of an expert.—The Magistrate may, for the purposes of an inquiry under Section 137. for Section 138.

- (a) direct a local investigation to be made by such person as he thinks fit; or
- (b) summon and examine an expert. (See Code of Criminal Procedure, 1973, Section 139)

17. Power of magistrate to furnish written instructions, etc.—(1) Where the Magistrate directs a local investigation by any person under Section 139, the Magistrate may.

- (a) furnish such person with such written instructions as may seem necessary for his guidance;
- (b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.
- (2) The report of such person may be read as evidence in the case.
- (3) Where the Magistrate summons and examines an expert under Section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid. (See Code of Criminal Procedure, 1973, Section 140).

18. Procedure on order being made absolute and consequences of disobedience.—When an order has been made absolute under Section 136 or Section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall furnish require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by Section 188 of the Indian Penal Code, (45 of 1860).

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section. (See Code of Criminal Procedure, 1973, Section 141).

19. Procedure where existence of public rights is denied.—(1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the

appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under Section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until a competent Court has decided the matter of the existence of such right, and, if he finds that there is no such evidence, he shall proceed as laid down in Section 138.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial. (See Code of Criminal Procedure, 1973, Section 137).

20. Procedure where he appears to show cause.—(1) If the person against whom an order under Section 133 is made appears and shows cause against the order, the magistrate shall take evidence in the matter as in a summons cause.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case. (See Code of Criminal Procedure, 1973, Section 138).

21. Removal of obstruction to public passage.—Section 137 of Cr. PC, stands fulfilled if in a removal of obstruction in public passage, order was passed after receiving 'on the spot' report of concerned officer.¹⁰

22. Noise pollution. — Article 21 of the Constitution guarantees life and personal liberty, to all persons. It is well settled by repeated pronouncements of the Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises, which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise, which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man, is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time.

Those who make noise often take shelter behind Article ' 9(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. If anyone increases his volume of

10. Ram Kishor Prasad v. State of Bihar, 2000 Cri. LJ 2046 (Pat).

speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, Comfortable and pollution free life guaranteed by Article 21. Article 19(1)A, cannot be pressed into service for defeating the fundamental right guaranteed by Article 21.

The word noise was derived from the Latin term 'nausea'. It has been defined as 'unwanted sound, a potential hazard to health and communication dumped into the environment with regard to the adverse effect it may have on unwilling ears' Noise was defined as unwanted sound. Sound, which pleases the listeners, was music and that which causes pain and annoyance was noise. At times, what was music for some, it could be noise for others.

Most leading noise sources will fall into the following categories : road traffic,, aircraft, railroads, construction, industry, noise in building and consumer products (Dr. Alice H. Suter, Noise and its Effects : Administrative Conference of the United States).

1. Road Traffic Noise.

Noise from the motors and exhaust systems of large trucks provides the major portion of highway noise impact, and provides a potential noise hazard to the driver as well. In addition, trucks, buses, and private autos generated noise from the interaction of tyres with the roadway. In the city, main sources of traffic noise were motors, exhaust systems of autos, smaller trucks, buses, and motorcycles. This type of noise can be augmented by narrow streets and tall buildings, which produce a 'canyon' in which traffic noise reverberates.

2. Aircraft Noise.

Now days, the problem of low flying military aircraft has added a new dimension to community annoyance, as the nation seeks to improve its "nap-of-the earth" warfare capabilities. In addition, the issue of aircraft operations over national parks, wilderness areas, and other areas previously unaffected by aircraft noise has claimed national attention over recent years.

3. Noise From Rail works.

The noise from locomotive engines, horns and whistles and switching and shunting operations in rail yards can impact neighbouring communities and railroad workers. For example, rail car retarders can produce high frequency, high-level screech that can reach peak levels of 120 dB at a distance of 100 feet, which translates to levels as high as 138, or 140 dB at the railroad worker's ear.

4. Construction Noise.

The noise from construction of highways, city streets, and buildings was a major contributor to the urban scene. Construction noise sources include pneumatic hammers, air compressors, bulldozers, loaders, dump trucks (and their back-up signals) and pavement breakers.

5. Noise in Industry.

Although industrial noise was one of the less prevalent community noise problems, neighbours of noisy manufacturing plants can be disturbed by sources such as fans, motors, and compressors mounted on the outside of buildings. Interior noise can also be transmitted to the community through open windows and doors, and even through

building walls. These noise sources have significant impacts on industrial workers, among whom hearing loss was unfortunately common.

6. Noise in Buildings.

Apartment dwellers were often annoyed by noise in their homes, especially when the building was not well designed and constructed. In this case, internal building noise from plumbing, boilers, generators, air conditioners, fans, the sound of amplified music, voices, footfalls, and noisy activities from neighbouring units. External noise from emergency vehicles, traffic, refuse collection and other city noises can be a problem for urban residents especially when windows were open or insufficiently glazed.

7. Noise From Consumer Products.

Certain household equipment, such as vacuum cleaners and some kitchen appliances have been and continue to be noise-makers, although their contribution to the daily noise dose was usually not very large.

Noise pollution in the special context of Fireworks.

Fireworks are used all over the world to celebrate special occasions. In India fireworks burst on festivals like Dussehra, Diwali and on special occasions like social gatherings, marriages, Independence day, Republic day, New year day, etc. In other countries of the world, fireworks were generally burst either on the New Year day or on the birthday of their respective countries. However, bursting of fire crackers is a health hazard since it is responsible for both air pollution and noise pollution”.

The use of Fireworks has led to air pollution in the form of noise and smoke. Their excessive use has started to be a public hazard and violation of fundamental rights as enshrined in the Constitution of India.

Diwali is the most important festival of India. The bursting of firecrackers during this period is a wide spread practice. The unpredictable, intermittent and impulsive noise produced by bursting of crackers all around, turns the festival of lights into cacophony of noise (Ambient noise level and air quality status in Delhi during Diwali festival days 1999-2002, published by Central Pollution Control Board, October 2003). People are unable to even sleep due to this excessive noise pollution. Several people are injured due to the noise produced by every year. Firecrackers not only increase the ambient noise level but also contribute significantly in increasing the air pollution by means of ‘toxic’ gases and particles due to their blast wave resulting from a rapid release of energy. In order to assess the situation of noise pollution caused by firecrackers at the time of Diwali, the Central Pollution Control Board (CPCB) has been conducting ambient noise level monitoring during Diwali festival regularly at various locations in Delhi since 1993, to find increased ambient noise level caused by intensive burning of crackers. As in the past, the noise and air quality monitoring have been carried out in the year 1999, 2000, 2001 and 2002. The noise monitoring locations have been selected to cover almost all areas of Delhi.

Different countries of the World have enacted different legislations to control the noise pollution. For Example, in England there is a Noise Abatement Act, 1960. Section 3 of this Act provides that loudspeakers should not be operated between the hours of 9 :00 in the evening and 8 : 00 in the following morning for any purpose and at any other time for any purpose and at any other time for purpose of advertisement and entertainment, trade or business. Control on Pollution Act of 1974, contains provisions for controlling noise pollution and it provides noise to be actionable must amount to nuisance in the

ordinary legal sense. Section 62 of the English Control of Pollution Act, 1974, operates as perfect control for 'Street Noise'. This provision has been defined as a highway and any other road, footway or square or court which is for the time being open to public. In Japan there is Anti Pollution Basic Law, which helps to control the pollution including noise pollution.

The Noise Control (Miscellaneous Articles) Regulation, 1995 was introduced to cover community noise issues not covered by previous legislation. It includes limitations on burglar alarms for both residential and commercial premises. Changes have been made to the night time control of common domestic noise sources such as power tools, air conditioners, amplified music and lawn movers. Under the new regulation only one warning to the offender is required and the warning is valid for 28 days. If an offence is committed within this period, a fine can be issued without further warnings. The previous regulation warning was only active for 12 hours, which meant it was not effective with repetitious offences typical in suburban areas. The Noise Control (Motor Vehicles and Motor Vehicle Accessories) Regulation, 1995 controls the noise from individual motor vehicles. It includes a provision to control noise from a range of accessories including horns, alarms, refrigeration units and sound systems. It also places responsibility to ensure compliance of repairs/modifications of vehicles on the vehicle repairers.

The Legislature and the Executive in India are completely aware of the menace of noise pollution. Laws have been enacted and Rules have been framed but the real issue is with the implementation of these laws. What is needed is the will to implement these laws. It would be useful to have a brief resume of some of the laws which are largely available on the Statute Book. Treatment of the problem of noise pollution can be dealt under the law of crimes and civil law. Civil law can be divided under two heads (i) The Law of Torts (ii) The General Civil Law. The cases regarding noise have not come before the law Courts in large quantity. The reason behind this is that many people in India did not consider noise as a sort of pollution and they are not very much conscious about the evil consequences of noise pollution. The level of noise pollution is relative and depend upon a person and a particular place. The law will not take care of a super sensitive person but the standard is of an average and rational human being in the society.

Ultimately court issued following directions:

1. Firecrackers.

1. On a comparison of the two systems, i.e. the present system of evaluating firecrackers on the basis of noise levels, and the other where the firecrackers shall be evaluated on the basis of chemical composition, held latter method is more practical and workable in Indian circumstances. It shall be followed unless and until replaced by a better system. The Department of Explosives (DOE) shall undertake necessary research activity for the purpose and come out with the chemical formula for each type or category or class of firecrackers. The DOE shall specify the proportion/composition as well as the maximum permissible weight of every chemical used in manufacturing firecrackers. The Department of Explosives may divide the firecrackers into two categories (i) sound emitting firecrackers, and (ii) Colour/light emitting firecrackers. There shall be a complete ban on bursting sound emitting firecrackers between 10 pm and 6 a.m. It is not necessary to impose restrictions as to time on bursting of colour/light emitting firecrackers. Every manufacturer shall on the box of each

firecracker mention details of its chemical contents and that it satisfies the requirement as laid down by DOE. In case of a failure on the part of the manufacturer to mention the details or in cases where the contents of the box do not match the chemical formula as stated on the box, the manufacturer may be held liable.

Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the following conditions;

- (i) The manufacturer should be permitted to do so only when he has an export order with him and not otherwise;
- (ii) The noise levels for these firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order;
- (iii) These firecrackers should have a different colour packing from those intended to be sold in India; (iv) They must carry a declaration printed thereon something like 'not for sale in India' or 'only for export to country AB' and so on.

II Loudspeakers.

The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 db (A) above the ambient noise standards for the area or 75 db(SA) whichever is lower.

2. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 p.m. and 6 a.m.) except in public emergencies.

3. The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place to be taken care of.

III Vehicular Noise.

No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential area except in exceptional circumstances.

IV Awareness.

1. There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text-books which teach civic sense to the children and youth at the initial/early level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution the role of the children and younger generation in preventing it. Police and civil administration should be trained to understand the various methods to curb the problem and also the laws on the subject.

2. The State must play an active role in this process. Resident Welfare Associations, Service Clubs and Societies engaged in preventing noise pollution as a part of their projects need to be encouraged and actively involved by the local administration so that the process of prevention and cure of noise pollution

can be taken care of.

3. Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions where firecrackers are likely to be used, need to be carried out, in order to make public understand the menace of pollution and ways to tackle it.¹¹

23. Removal of unauthorized cutouts, flexi boards & banners.—Municipality was directed by the High Court not to allow any unauthorized banners of any kind and should continue monitoring of removal by its subordinates.¹²



11. Forum, Prevention of Env'n. & Sound Pollution v, Union of India and another, AIR 2005 SC 3136: 2005 AIR SCW 3525: 2005 (5) SCC 733: 2005 (5) SCJ 165: 2005 (5) SLT 403: 2005 (5) Scale 475: 2005 (5) Supreme 77. *Reported in other state Journals.*- 2005 (3) A11WC 2685: 2005 (5) Bom CR 553: ILR(ker) 2005 (3) SC 675: 2005 (4) ICR SC 4: 2005 (6) JT 210: 2005 (32) OCR 102: 2005 (4) PatLJR 14: 2005 (3) RecCivR 449: 2005 (3) RecCriR 801.
12. Y.V. Murali Krishna v. State of Andhra Pradesh, (Andhra Pradesh)(DB), 2019(3) ALT 104 : 2019(3.) AndhLD 435.

Chapter 26

Lawyering constructive & adverse



Synopsis

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1. Petition by Advocate.—Challenging establishment of Court of Joint District Judge and Additional Sessions Judge—*Locus standi*.—Petition filed by Bar Association challenging establishment of Court of Joint District Judge and Additional Sessions Judge at place ‘£>’ is maintainable. **Held** Since lawyers are both “officers of Court” and “persons having fiduciary relationship with consumers of justice” they may ventilate their grievances in relation to establishment of Courts and conferment or curtailment of powers of Court.¹²

2. Role of lawyers.—Lawyers, as they are the part of the instrumentality of the Court as Judges are and it is their duty as to see that no act of their nor any act of any other person be allowed to adversely affect the dignity and the majesty of the Courts as well as to further see that the faith of the people with reference to the administration of justice by the Court is not marred in any manner and so it is beyond doubt their duty to abstain from such an act which may adversely affect the prestige of Court on one hand and on the other hand to bring to the notice of the Court such things which have tendency to mar or to adversely affect the prestige of the Court and the judicial system or which have the tendency to adversely affect the faith of the people in the justice administered by the Court and so they can approach the Court and seek such reliefs which may prevent the doing of such acts, which may betray faith of people from the Courts and justice imparted by it. They have also got responsibility to see that honour of the nation is also not adversely affected by the acts of the people, but all that they are expected or entitled to do is to act in accordance with law and by approach to Legal Forum as well.

The Supreme Court in this respect, in the case of **S.R. Gupta v. President of India**,¹ observed as under:—

1. Palanpur Bar Association v. High Court of Gujarat, AIR 2010 (NOC) 346 (Guj).
2. AIR 1982 SC 149.

‘There can be no doubt that the petitioners have a vital interest in the independence of the judiciary and if an unconstitutional or illegal action is taken by the State or any public authority which has the effect of imparting the independence of the judiciary, the petitioners would certainly be interested in challenging the constitutionality or legality of such action. The profession of lawyers is an essential and integral pan of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the Court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the Court to administer justice. They are really and truly officers of the Court in which they daily sit and practice. They have, therefore, a special interest in preserving the integrity and independence of the judicial system and if the integrity or independence of the judiciary is threatened by any act of the State or any public authority, they would naturally be concerned about it, because they are equal partners with the Judges in the administration of justice’

Justice Tulzapurkar, another Judge in the same decision dealing with the role of lawyers has been pleased to observe as under (at para 390 of AIR 1982 SC)

“In fact, in the task of administration of justice the role of Judges and the role of lawyers are complementary to each other and the practising lawyers as a class are in integral part of justicing machinery rendering assistance to the Judge in the discharge of their function of reaching justice to the litigants appearing before the Courts; in other words, the practising lawyers, who are nothing short of partners in the task of administration of justice undertaken by the Judges are vitally interested in the maintenance of a fearless and independent judiciary to ensure fair and fearless justice to the litigants.”

The above observations of their Lordships of the Supreme Court and Allahabad High Court hold that even where the counsel find or reasonably believe that there is likelihood of the prestige or dignity of the Courts or the judicial system is going to be adversely affected by some act likely to be done by some agency, even by some individuals, even after obtaining certain licences, they are entitled to approach the Court, for seeking suitable orders, restraining the doing of such acts which have tendency of adversely affecting the prestige or dignity of the Court or which has tendency to adversely affect the faith of people in the judiciary or where they feel that the honour of Nation or the National Flag is likely to be adversely affected. It is another thing that in the final-resort after examination of the facts, Court may on merits come to its conclusion other than the apprehension of the petitioners as alleged and dismiss the petition, but that would not be a dismissal on account of maintainability thereof, instead it may be a dismissal of petition merits. Thus the petitioners held entitled to maintain the petition.

Brief Synopsis and the story of the film “KONA EEDAITE”.

Having thus applied its mind and having thus considered the issues raised before it in the light of contentions made before it, Court arrived at the following conclusion:

- (i) That the present writ petition filed under Article 226 of the Constitution of India by the two public spirited advocates of this High Court, has been and is maintainable, irrespective of the fact they might not be suffering personally any injury or loss by the release of the film “KONA EEDAITE”, due to (sic) being part of the machinery of the administration of justice and being equal partners with the Judges in administration of justice they are naturally concerned about the threat or apprehension of any act, of any person, likely to cause any damages or injury to the dignity and honour of Court in the

eyes of people and to justice administered by it, so they can maintain and file the petition before this Hon'ble Court for the prohibition of such act or exhibition of such act or film by grant and issuance of proper order or direction.

(ii) That story and basic theme of the film cannot be termed nor can be held to be derogatory of honour or dignity of the Court or administrations of justice by Courts, instead judged in the context of the entire picture and its theme, the film 'KONA EEDAITE' is the one which enhances and highlights the justice, the concept of justice and the role of lawyer, devoted to the cause for which our tricolour stands and speaks of our Constitution that is justice—social, economic and political and it communicates the message that this goal of justice' to people can be attained by true devotion and by a truly devoted lawyer—devoted to nation, its ideals etc., for the symbol of our nation, which is our tricolour flag. It communicates that darkness of untruth, injustice is bound to make room or place for justice and virtue provided the devotee on the path of justice is truly devoted to goal, so there is no question of its being prohibited from being released.

(iii-a) That the scheme and ideal behind the National tricolour Flag and concept of honour and respect of tricolour flag and for all which it represents, coupled with the scheme of Article 51-A of the Constitution of India, its scheme read with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insult to National Honours Act 1971 do not reveal nor provide for any provision prohibiting the use National Flag (The Tricolour Flag) which keeps pace with the dignity and honour of India, its sovereignty and its cultural heritage and the ideals for which it stands and the honour of National Tricolour Flag, as well as its user as a conscious keeping of all the citizen specially those who are fastened with the duty of exercising the sovereign power of the country as part and parcel of one of the three wings or branches of the State, is not prohibited, nor its user to inculcate and inspire in the citizens and children the confidence and sense of honour and respect for it and for all that it represents, is prohibited under any law in operation.

(iii-b) That use of Tricolour National Flag or any Emblem referred to in Schedule of the Act of 1950, if and when the use is improper within the four corners of language of Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 or if and when it amounts to be an act of Insult to national honour within the framework of the provisions of the Prevention of Insult to National Honour Act, 1971, in those cases and situations only the user thereof is prohibited and amounts to be an offence only, the depiction of scene along with National Tricolour in the film does, in context of theme of the picture, not come within prohibition prohibitory clause.

(iv) The depiction or exhibition of scene relating to National Tricolour Flag and that of lawyer who falls down flatly before the National Flag after having thrown his hand, coat etc., in utter frustration and dejection after having lost (sic) his mind like a man of inaction and later on the rise up as a man of action, depicts nothing but the idea that complete surrender of self, ego, self-interest (be it individual, communal, provincial, castes or regional) for the honour and maintenance of honour of the Nation and National Flag and ideals and causes it represents give a new light, new insight, courage and strength to one who had become disheartened once to work with new zeal and insight and that fellow can bring change in the order of day and attain the goal of justice as had been said by Pandit Jawaharlal Nehru in Constituent Assembly on 18-7-1947. How when we were sometimes down and out then again the sight of this flag gave us courage to go". Depiction of such idea is neither derogatory of tricolour flag nor the use of tricolour to depict such idea appears to be prohibited by law.

(v) The scene relating to presence of Jamadar on the dias of Court by the side of the Judge and interfering with the Judge in the course of recording of evidence, hearing and decision, i.e., in the course of administration of justice and Judge being shown as taking consultation from the Jamadar and giving ears and nodding his head thereon and the like is damaging to the institution that is Courts and judiciary, and works as an eclipse on the entire theme of picture 'Kona Eedaite' and this scene deserves condemnation and its deletion or cut off or removed from the picture without deletion and cutting thereof, the opposite parties must be prevented from releasing and exhibiting the said film.

(vi) That writ petition is to be allowed partly by issuance of writ of preventive nature, i.e., by issue of writ or order or direction in, the nature of writ of *mandamus* directing them not to release as well as not to allow the release and exhibition of the film KONA EEDAITE" until and unless the respondents 3 to 5 delete and cut off the position of real wherein Jamadar of Court is being shown on the dias by the side of the Judge and appears to be in any manner interfering with the working of Judge in the course of administration of justice and as soon as this cut is done, the respondents 3 to 4 may be allowed to release the film.

Held, This writ petition has been filed under Article 226 of the Constitution of India by the two petitioners, who are Advocates of this Court, as public interest litigation seeking the issuance of (a) writ of prohibition or order or direction against respondents 3 to 4 directing them not to exhibit Kannada film 'Kona Eedaite' (which means in English that he Buffalo gives birth to a calf), on 2-2- 1995, or on any subsequent dates in any film Cinema, theatre and Celluloid for general public either in the State of Karnataka, or anywhere within the territory of India, as well as, for directing respondents 1 and 2 take back/withdraw the certificate permission for exhibition of the aforesaid Kannada film and for costs.

While, moving the writ petition, the petitioners also prayed for an *ex parte* interim order directing respondents not to exhibit the film on 2-2-1995 or on subsequent dates pending decision or disposal of this writ petition by the Court after witnessing and examining finding, if it is fit for being released for exhibition.

The petitioners case has been that the petitioners have been practising as Lawyers in the High Court of Karnataka and Court subordinate to it and have always been interested in maintenance and upholding of the dignity and sovereignty of the nation and the Courts including the High Court forming part of judicial system of our country of which the petitioners considered themselves to be the part and parcel as the officers of the Courts being the Advocates. The petitioners have asserted that they are interested in taking recourse to the law Courts seeking relief of prohibition and curbing, of the exhibition of films, by the Courts which depict Courts and judicial system in an indecent manner. The petitioners have further alleged that they are not seeking any relief in their individual capacity, but, have got common interest to save the judicial system from being maligned and degenerated, as such they have filed this writ petition.

Whereas, in this writ petition, it has been alleged by the petitioners (sic) were pained to see and mark scene disgracing as well containing sets, dialogues or things tending to mislead the people about working in Courts and thereby adversely affect the judicial system by depiction of that Kannada film aforesaid which is to be released on 2nd of Feb., 1995. The whole judicial system starting from the Lowest Court up to the Highest Court of the country has been brought down in the film, making a mockery of it, in the eye of the public when the public may have the view of the film. The petitioners have further mentioned that Respondent No. 1, is the Licensing Authority permitting the

exhibition of the film in the State of Karnataka, while, Respondent No. 2, is the Censoring Authority granting censor's certification and that the 3rd respondent in this writ petition is the producer of the film under the banner's Ballata International Films and the 4th respondent is the film story writer and Director of the film, while, respondent No. 5, is the Distributor of the film. That the petitioners had actually seen and witnessed the Kannada movie aforesaid at Basant Coloured Laboratories, K.H. Road, Bangalore, in a preview show conducted in a range by the Producer and Director.

The petitioners state that the story of the film begins from Law College environment, where a poor brilliant law college student is prosecuting his studies, who becomes victim of the circumstances by intervention of the two lady students and their respective fathers, who are depicted to be the leading Advocates practising mainly on the criminal and civil sides. That on illegal gratification extended by both the lady students and their respective fathers in the purchasing of the ranks and gold medals from the Vice-Chancellor of the University, against the norms and values or merits of that brilliant rank student and a gold medalist in his career feels frustrated. It shows that the Law Degrees are being sold to the lady persons and that one can purchase Law Degrees and gold medals by money or by use of their political influences irrespective of the fact that they happened to be not eligible for such degrees. It is further depicted that the two lawyers in the picture, while acting under the influence of their respective daughters are competing with each other in their efforts to win over with that brilliant student as the son-in-law. It is contended by the petitioners that it has been depicted in the picture that for the sake of the daughters and their selfish motive of getting that poor but meritorious law student married, they made hectic efforts in that regard by filing two false cases which are mainly hosted against the said poor student for their oblique motives, cases filed against the poor law student by one of the two Advocates father is based on allegations of rape alleged to have been committed by the poor law student on his daughters. While, in another case filed by the father of another girl, namely, the second lawyer, that poor student had been charged and alleged to be impotent and seeks a declaration, in that cases sought that he is impotent. Thereafter, both the cases were tried separately and the witnesses were examined. The Hon'ble Judge or the Presiding Officer of the Court indeed has been depicted as a person under the control of his Jawali/Jamadar/Dafedar, who is standing on the dias of the Court by the side of the Judge every rhythm interfering, and dictating terms to the Hon'ble Judge in the matter of hearing, taking of evidence and the matter of hearing, taking of evidence and the pronouncement of orders, that is, in the performance and discharge of this judicial duty. The Dafedar has always been shown to be instrumental in threatening and blackmailing the Hon'ble Judge by saying that his secret deals, acts and affairs of the Judge will be made known to his wife at home, if he (Judge) does not act on his advice. That in the film it is shown that tutored and ready-made witnesses are always available to the needy clients and the Advocates in order to enable them to win the cases. The petitioners have also asserted that all these have been shown in and around the building of this Hon'ble High Court. One lady character named as Shashi Satyavati, who presents herself in the witness-box in a vulgar manner in endowed/double meaning criticising the judiciary by making a statement that she has given evidence before various Courts at the convenience of litigants and their Advocates, at the same time, her name 'Sullovari'. The whole procedure of recording the statements on the facts and the judgment is shown as a mockery. The petitioners have tried to illustrate the same by further asserting as under:

'The doctor, who gives evidence in the rape case says that rape has taken place on the victim girl by that poor law student depicted by name as Krishna and the very same doctor in the other case is shown to have stated him to be an impotent. In the

first sitting of the Court, the judgment is being delivered in the first case, in which that very law student is held to be guilty of having committed the rape of the daughter of the first lawyer as per evidence of the witnesses and the documents therein and on the same day in the afternoon in the other case, the very same Court passed another judgment declaring the law student to be impotent as pleaded in the other case. This whole story has got tendencies of giving a false impression to the general public, who may witness the said film that decision and justice can be purchased by creating and producing of false and concocted evidence of purchased witness and making the Judge yield to the influences and threats.”³

Lawyers take important part in the administration of justice they are the part of the Court as Judges are the Supreme Court.⁴

3. Petition for constructing building of Judicial Complex for advocates.—

Petitioners in their capacity as President and Secretary of District Bar Association, Jalandhar, have filed the present writ petition by way of public interest litigation as it concerns the general public, that is the litigants, Judiciary and Advocates for issuance of a writ of *mandamus* directing the respondents to construct the building of the New Judicial Complex having all the modern facilities like big Court rooms having air cooled/air conditioning facility, Bar Room along with spacious library, Chambers for the Advocates, space for litigants along with canteen, parking facility and other facilities immediately without any loss of time.

For the reasons stated above, High Court accepted writ petition and directed the respondents to start the construction work of the New Judicial Complex at Jalandhar as per the approved plan within four months from the date of receipt/production of a certified copy of this order and complete the construction work within the next two years. Sufficient funds be allocated for raising the construction in the next two financial years.⁵

The petitioners who were President and Secretary of Bar Association District Jalandhar filed a Writ Petition in P. I. L. for issuance of a writ of *mandamus* directing the respondents to construct the building of New Judicial Complex with modern facilities. The High Court accepted writ petition and directed respondents to construct the New Judicial Complex.⁶

4. Rajasthan High Court direction for making land available for the facility of Courts and advocates.—There is total dearth of building and space in the Court premises. Recently for five newly constituted Courts even the building could not be made available. Besides this other Courts are continuing in private building away from Court premises. There is dearth of space and building for advocates and litigants also. That advocate to the Court premises in this very area in the east of it a big plot of Farras Khas owned by P.W.D. is virtually vacant. It is not being used for any fruitful purpose. That in the April, 1999 during the visit of Bikaner Hon’ble Chief Justice Sh. Shivraj V. Patil made detailed inspection of this land of Farras Khana and after finding it appropriate for the extension of Courts etc. He directed Divisional Commissioner and District Collector,

3. NP. Amrutesh v. State, AIR 1995 Kam. 290 at pp. 291, 292, 293, 301, 303, 325, 326 (Hari Nath Tilhari, J.)
4. S. P. Gupta v. President of India, AIR 1982 149.
5. Naresh Kumar Aggarwal v. State of Punjab, AIR 1997 P&H 303 at 303, 306 (Ashok Bhan and N.K. Agrawal, JJ.).
6. *Ibid.*

who were present on plot that this land should be made available for the facility of Courts, advocates etc. That thereafter the Divisional Commissioner, Bikaner made correspondent with concerned department of state government for giving this 7 bigha of land to the judicial premises and he also endeavoured for it. That Divisional Commissioner has got the decision from the concerned Department to give some part of land and building in exchange to P.W.D. out of the premises of State Wollen mill situated at Ganganager Road, Bikaner. But it has been learnt that at the final stage of this process this matter was pending before Secretary. P.W.D. Government of Rajasthan. Jaipur and respected Secretary was not in a position to take a positive attitude for relinquishing this land of Farras Khana and matter was pending there.

In fact as per the direction of the then Hon'ble Chief Justice, at the time or spot inspection, the Divisional Commissioner, Bikaner entered into correspondence with the concerned Department of the State Government for giving 7 bighas of Farras Khana's land to the District Judge, Bikaner. Not only that, the concerned Department also gave its consent to part with the land in exchange to P.W.D. In fact, the Counsel 'S' for the respondents has produced relevant correspondence regarding the same which was a ordered to be taken on record.

It must be impressed upon one and all that whenever any suggestion was made by the Hon'ble Chief Justice of the Court on administrative side, the same must be respected and accepted in its letter and spirit. In fact, the recommendations made by the then Hon'ble Chief Justice of the Court way back in April, 1999 was immediately accepted by the Divisional Commissioner and the concerned Department, but only snag was at the secretary level of PWD. It was accepted from the Secretary, P.W.D. State of Rajasthan, Jc'pur to take positive attitude in the matter and take decision as early as possible. There is genuin grievance from the members of Bikaner Bar association. Time, and again the Court am. the Hon'ble Supreme Court emphasised that all Courts should be at one place, which war in the interest not only for the judicial officers, but also in the interest of public at large. It was submitted by the learned Senior advocate for the petitioner that there are already three courts outside the District Court premises at Bikaner and two more Courts are newly constituted. If the Secretary, P.W.D. had taken decision early in the matter, then hardship suffered by the Judges of the subordinate Courts, advocates and public at large, would have been minimized, but unfortunately because of the inaction on the part of the Secretary, PWD, the problem could not be solved.

Time and again grievance was made by the State Government and others that the Courts were interfering and trying to run the Government and administration, but it was only when there was failure on the part of the State Government, then only the Court has to interfere. In fact it was the duty of the Secretary concerned to take decision immediately not only in this matter, but this type of any important matters pending before him.

In view of the above discussion, this petition was allowed and the Secretary, PWD, Government of Rajasthan, Jaipur was directed to consider the matter objectively and take final decision in the matter as recommended by the then Hon'ble Chief Justice of this Court as early as possible and in any case not later than 31-12-2000 for relinquishing the land of Farras Khana to the District Judge, Bikaner for the Court purposes. After the decision was taken, the State Government shall take immediate steps for construction of Court premises on the land in question and it shall see to it that the Court rooms are constructed on it as early as possible preferably by the end of Dec. 2001. The Court also directed the State

Government to take positive steps in the matter for construction of Lawyer's chambers on self-finance basis on being approached by the Bikaner Bar Association.⁷

5. Frivolous PIL by Member of the Bar.—A disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Association to see that the process of law is not abused and polluted by its member. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "Public Interest Litigation." That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession.⁸⁹

The petitioners filed a writ petition but did not remain present in the Court. The Court vehemently stated that this petition being vexatious and in fact an expression of pervert proclivity, thereby debarring the said petitioners from filing any kind of public interest litigation in any constitutional court and further none of their petition under Article 226 or Article 32 of Constitution shall be entertained unless they are personally grieved. If petitioners deviate from this direction, they shall be liable to contempt of this Court/

6. Abuse of process of the Court—penalized by monetary compensation.—Petitioner abusing process of Court in the name of Public Interest Litigation, dismissed and petitioners to pay cost of Rs. One lakhs. A person appointed as Advocate General by the State Government. Appointment challenged by petitioners (one of whom was practicing lawyer) by filing PIL that the person was ineligible for appointment under Article 165 read with Article 217 of Constitution of India as he was more than 62 years of age. Held, appointment not bad, the law has already been settled that Advocate General for the State can be appointed after he/she attains the age of 62 years. Similarly, the Attorney General for India can be appointed after he/she attains the age of 65 years. PIL dismissed and petitioners directed to pay a cost of Rs. One lakh, held that it was expected from a Hon'ble members of the noble profession not to invoke jurisdiction of the Court in a matter where the controversy itself is no longer *res Integra*. It is clear case of the abuse of process of court in the name of Public Interest Litigation.¹⁰

The petitioner filed 64 petitions levelling baseless allegations against Supreme Court and High Courts Judges. The Court imposed a cost of L 25 lakhs on petitioner for wasting judicial time.^{11 12}

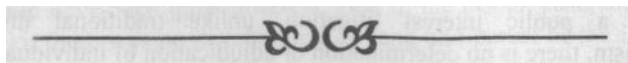
7. Strike by Advocate—restriction of litigants entry to court—interference in administration of justice.—Litigants have a right to access Court where their matter is pending, any denial shall amount to interference in due administration of justice. ‘

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7. B.K. Das Gupta v. State of Rajasthan, AIR 2001 Raj 74 at 74 ,75, 76: 2001(1) WLC 227: 2000 (3) Raj LR 725 (B.J. Shethna and Sunil Kumar Garg, JJ).
8. D.N. Thaware v. State of Maharashtra, AIR 2005 SC 540 : 2005 AIR SCW 544, 545
9. Anindita v. Pranab Kumar Mukhejee (SC), 2017(2) Scale 76.
10. State of Uttranchal v. Balwant Singh Chauhal 2010 (3) SCC 402 (SC). [AIR 1952 Nagpur 330 approved, 1962 Supp. (3) SCR 89 relied.]
11. Suraz India Trust v. Union of India, (SC), 2017(3) R.C.R.(Civil) 721 : 2017(4) Recent Apex Judgments (R.A.J.) 288 : 2017(7) Scale 101.
12. Court on its own motion v. State of Haryana (P&H)(F.B.), CWP-PIL No. 154 of 2019, dt. 13.8.2019.

Chapter 27

Miscellaneous



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1. Public Interest Litigation—Scope.—High Court has to weigh on the one hand the public interest that would be served by issuing a writ as prayed for and on the other the public interest that will be served by refusing to issue the same. In view of the express admissions made by the petitioner that it is possible to recover the amounts from the persons who had taken loans as they are not in affluent circumstances, the public interest in

refusing to grant the relief will be served better than the public interest in granting the direction.¹

In *Janta Dal v. H.S. Chowdhury*,^{2,3} the entire relevant portion of the aforesaid para, 11 of the said judgment may be quoted hereunder:—

“In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an equalitarian social order and a welfare State. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a *dominus litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court. The “rights” of those who bring the action on behalf of the other must necessarily be subordinate to the ‘interests’ of those whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of Government action’ in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct and Government policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted on the case may be, *ad hoc*, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exigently determined by variations of the theme.”

In *Sheela Barse v. Union of India*,^{2'} wherein it has been observed that:—

“the grievance in a public interest action, generally speaking, is about the content and conduct of the governmental action in relation to the constitutional or statutory rights or segments of society and in certain circumstances the conduct of Governmental policies.”

2. Early Disposal of PIL.—It is in public interest that there should be early disposal of cases. Public Interest Litigation should, therefore, be disposed of at the earliest as any delay will be contrary to public interest and thus become counter productive. (*BALCO Employees Union (Regd.) v. Union of India*,⁴ The delay in the filing of the writ petition thus remains unexplained, casting a cloud over the *bona fides* of the petitioners belated attempt to invoke the process of this Court in the name of

1. R. Delaval v. The Indian Overseas Bank, AIR 1991 Mad 61 at p. 80 (Srinivasan. J.).
2. AIR 1993 SC 892; (1992) 4 SCC 305 quoted in State v. Union of India, AIR 1996 Cal 181 at 199; (1996) 1 Com LJ 258.
3. AIR 1988 SC 2211, para 6 quoted in State v. Union of India, AIR 1996 Cal 181 at 190 (1996) 1 Com LJ 258.
4. AIR 2002 SC 350 at 382.

public interest. Held, that the present writ petition is not a *bona fide* proceeding instituted in public interest.⁵

It was contended that there was inordinate delay in filing the petition; therefore, the Court should not entertain the petition. Had it been the case that the respondent after allotment made use of the land, erected building and commenced publishing daily, then the situation would have been quite different. But, in the instant case, after execution of document in 1995, there was no development of land and parcel of the land stands as it was. Therefore, the Court did not think just and proper to give importance to such a contention as the respondent itself has not utilised the land for the purpose for which it was given.⁶

As regards the lapse of time, that would be considered as constituting delay, no hard and fast rule can be laid down in a matter and each case is required to be decided according to its circumstances without adhering to any fixed period, long or short, especially when the order complained of is manifestly erroneous or without jurisdiction. The Court would be loath to reject the petition simply on the ground of delay unless owing to laches inconsistent, legal or equitable considerations have arisen which cannot be ignored as for example where the other party is induced to alter its position. The Court cannot be precluded from rectifying a grave injustice simply because the petitioner did not move in the matter earlier.^{7,8}

In *Dehri Rohtas Right Railway Company Ltd. v. District Board, Bhojpur?* the Supreme Court observed as follows:—

“The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to. physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.”

It is in public interest that there should be early disposal of cases, public interest litigation should, therefore be disposal of at the earliest as .any delay will be contrary to public interest and thus become counter productive.⁹

3. Free access of public to public amenities.—The petitioner, Secretary, All India Lawyers' Union has filed writ petition by way of public interest litigation, seeking for the relief of mandamus forbearing the respondents from interfering in any manner with the

5. Lalithamma v. State. AIR 1996 Kant 112 at 120, 121: (1996) 1 Kant LJ 1.
6. Kanchanbhai Kanbhai Tadv v. Municipal Corporation of the City of Vadodara, AIR 2002 Guj. 31 at 37 (B.C. Patel and P.B. Majumdar, JJ).
7. Bonbehari v. Nimbkar v. State, AIR 1996 Bom. 261 at 272: (1996) 2 Man LR 298 (1996) 2 Mah LJ 361: (1996) 2 Bom CR 555 (KG. Shah and N.D.Vyas, JJ.).
8. AIR 1993 SC 802: 1992 AIR SCW 3181 quoted in Bonbehari v. Nimbkar v. State, AIR 1996 Bom 261 at 271 (1996) 2 Mah LR 298: (1996) 2 Mah. L.J 361: (1996) 2 Bom CR 555 (K.G. Shah and N.D. Vyas, JJ.).
9. BALCO Employees Union (Regd.) v. Union of India, AIR 2002 SC 350 at 382: 2002 (2) SCC 333: 2001 (10) JT 466: 2001 (8) SCW 541:2002(2) SRJ 45.

free access of the public to public amenities and utilities like electricity, roads, pavements, water, transport (public and private) or misuse of official machinery for private functions of persons holding public office and other acts in contravention of law.

The petitioner has stated in the affidavit that the fifth respondent herein, the Chief Minister of Tamil Nadu is celebrating the marriage of her foster son 'S' on 7-9-1995 at Madras and the said function is purely a private family affair. But unfortunately the State's resources are being exploited by the fifth respondent and deployed extensively to facilities celebration of the function in medieval splendour. The petitioner narrated as to what are all the arrangements being made for the said marriage.

The further case of the petitioner was that for the purpose of marriage number of arches, cut-outs, fixtures and other structures are being put up on the road and pavements from Taramani to Santhome and beyond. The first and second respondents have a statutory duty under Sections 220, 223 and 226 of the Madras Municipal Corporation Act to ensure that there are no obstructions or encroachments on any streets and pavements. The respondents 1 and 2 failed to take any steps to remove these encroachments. Further on the arches, fixtures, cut-outs and other structures, electric lighting, fittings have been installed and obviously the electric supply for these connections have been lifted from the existing street lights and other public electric connection sources. The fourth respondent have failed in their statutory duty to stop these public electricity sources and connections from being misused. On account of the heavy consumption of electricity likely to take place on 6th and 7th Sept, on which dates the marriage celebrations are to be held, the fourth respondent has decided to deny electric supply to Santhome, Mylapor and certain other areas which are in the immediate vicinity of the site of the marriage and thus causing the residents of the locality, extreme agony and hardship. Moreover there has been large deployment of police force to carry out fixtures and structures and to attend to other aspects of this private function. The act of putting up the structures, arches and fixtures is contrary to law. Section 220 of the Madras Municipal Corporation Act provides that no one shall build up or erect any obstruction or projection or make any encroachment in' over any street. Section 222 of the said Act casts a duty on the Commissioner of Corporation to remove such encroachment or obstruction on any street. Section 222 (3) of the said Act envisages that no licence can be granted if such projection or construction causes public inconvenience or otherwise materially interfere with the use of the road. On the ground of public policy as well as law, the erection of such arches as well as other fixtures and structures is not permissible. It appears as though the authorities have no control over the situation. It also appears that no procedure exists for checking these erections from the point of view of stability and safety and having proper warning systems. The arches, cut-outs, fixtures and structures have been put up without the necessary permission being obtained from the authorities. The erection of these fixtures and structures would result in grave and irreparable loss to the members of the public in addition to being in gross violation of the statutory provisions of the Madras Municipal Corporation and the Tamil Nadu Open Places (Prevention of Disfigurement) Act.

The Chairman, Slum Clearance Board have erected all the arches, structures, boards, cut-outs etc., without any valid permission from the Corporation Authorities, this Court direct the second respondent as well as the third respondent to remove all the structures put up in the main roads referred to in the application.¹⁰

10. G. Chambi Raj v. State, AIR 1996 Mad 56 at 56, 57, 61: 1996 Writ LR 43.

The petitioner was a member of the Madras Bar. He filed this public interest litigation for the issue of a writ of mandamus under Article 226 of the Constitution of India. The following are his prayers in the writ petition:—

- (a) To direct the 3rd respondent to release 89 TMC of the surplus water from its west flowing rivers of Kerala State as shown in the Table Annexure I;
- (b) To direct the 2nd respondent to apply to the National Water Resources Council reportedly set up by the 1st respondent to lay down; broad, technical, economic and financial policy for irrigation and drinking water as between the States of Kerala and Tamil Nadu; suggest priorities for accelerated development of the water resources of each State, Kerala and Tamil Nadu; priorities for use of water as between irrigation, power generation, industrial and domestic purposes of each State or region; and to evolve a policy of transfer of water from surplus to deficit areas conforming to highest national interest of the Union and the concerned States.

The petitioner in his affidavit furnished a detailed account of the topography, physical features and water resources of each State, geographical area and the population of the country. According to the petitioner, the present Kerala State came into existence upon reorganisation of former State of Travancore Cochin. Malabar District and Kasargod Taluk of erstwhile State of Madras in the year 1956. On the eastern side, western ghats are located which area is densely forested and surrounded by streams and rivers. The central plains, which stretch towards westwards from the hills to the coastal areas, are fairly cultivated and intersected by a large number of rivers flowing westwards into the Arabian Sea. Most of these rivers are tidal in nature. Kerala gets fairly heavy rainfall ranging between 162 and 510 cm, average being more than 500 CM. Kerala gets rain both from South-West and North-West monsoons and its rivers hold water throughout the periods from June to December and January to June.

Back to Tamil Nadu, the petitioner states that the State has exhausted practically all its available surplus water resources and that the State depends upon supply of water from other sources and neighbouring States. The petitioner also furnished details in regard to the population of the City of Madras and the history in regard to the evaluation of the metropolis of State by an English adventurer during the 17th Century, population of the City and the particulars regarding the rainfall. The petitioner has contended that the Central Government is apathetic is not assisting in sharing of utilisation of the river waters of the neighbouring States and that even though the Union Government has set up a National Water Resources Council to resolve inter-State disputes, the Union Minister for Irrigation has paradoxically advised the State Governments to resolve their river water disputes through mutual negotiations. It is further contended that even though the Central Government have enacted the River Boards Act, 1956, no River Board has been set up in pursuance of the Act.

Held, the writ petition as against the 3rd respondent held not maintainable in this Court as no part of the cause of action has arisen within the jurisdiction of this Court against the 3rd respondent. The petitioner has no right whatever to seek the relief prayed for against the 3rd respondent. Hence, the prayer was rejected.¹¹

The public interest litigation came to be filed on 19-5-1999 knocking the doors of the High Court when it was closed for summer vacation. The high Court felt that the issue raised in the petition calls for its attention. Notices were issued to CIDCO (City and Industrial Development Corporation and other respondents. By an interim order proceedings for acceptance of the tenders and thereafter were directed to remain stayed. The High Court soon realised that the issue of public interest raised in the writ petition required the conduct of the case not to be left in the hands of the writ petition alone, and therefore, by its order dated 7-12-1999 appointed an *amicus curiae* to assist the Court. However, a little later it was brought to the notice of the High Court that the original writ petitioner was not carrying on well the *amicus curiae* and to avoid the conflict the High Court chose to proceed with the hearing of the petition dispensing with the assistance of the *amicus curiae*. The fact remains that the litigation had assumed the character of a public interest litigation of wider scope, not necessarily confined to grievance raised by the writ petitioner and the High Court was intervening to bring under its scrutiny, on the well settled parameters of public interest, the proceedings of CIDCO relating to attempted disposal of developable land. While hearing a public interest litigation the constitutional court acts as the sentinal on the *qui vive* discharging its obligation as custodian of the constitutional morals, ethics and code of conduct-well defined by series of judicial pronouncements. The Court is obliged to see while scrutinising the conduct and activities of a public body constituted with the avowed object of serving the our except being transparent, are guided with the object of public good are within the four corners of law governing the same. The holder of every public office hold a trust for public good and therefore his actions should all be above board. Whatever may have been the grievance raised in the writ petition filed by the original writ petitioner *vide* its order dated 28-4-2000 the High Court framed the following four questions laying down its scope of hearing before it:

- (a) Whether CIDCO should be allowed to resort of bluk hand sale as a moral course of its activities?
- (b) Whether such an action by CIDCO is permissible in the public interest *vis-a-vis* its objectives?
- (c) Whether the bulk sale transaction made in the recent past and more particularly after the petitioner has approached this court have been dubious in nature and they have been made by giving a go-bye to the Rules and Regulations as well as objectives of CIDCO?
- (d) Whether the plots have been allotted at a price much lower than the base price and this has resulted in a substantial loss to CIDCO?

The above said part of the High Court proceedings to meet the plea: raised by the appellants before Court which complains of want of pleadings and denial of necessary _____ opportunity of defending themselves at the hearing in the writ petition. The High Court had, by having framed the above said questions, put all the parties before it on notice that it proposed to enter into issues wider than what may have, been.raised in the writ petition filed.before it. The non-petitioners in the High Court, including the'appellants before Court, were put on notice of the issues on which the High Court proposed to dwell upon and they were allowed full opportunities of defending themselves by bringing in such pleadings.and documents as.they proposed to do in their defence. The High Court called for the record of. CIDCO and subjected the same to scrutiny under its magnifying glass of judicial review. The non-petitioners in the High Court were well

aware of CIDCO record of proceedings and the findings of the High Court are based on the facts discernible from the records and the factual inferences necessarily and inevitably flowing therefrom. In public litigation jurisdiction the Constitutional Court was mobilized and acts for redressal of public injury, enforcement of public duty, protection of social rights and upholding constitutional and democratic values. Technicalities do not deter the Court in wielding its power to do justice, enforcing the law and balancing the equities.¹²

4. Allotment of House.—The petitioner K.G. Verma was an IAS officer posted as Secretary to Government of Haryana, Food and Civil Supplies Department, Chandigarh. He sought mandamus directing the respondents to allot House No. 3408, Sector 24, or any of the House Nos. 4,11 or 25 in Sector 7, Chandigarh, with a further direction to the respondents to follow Chandigarh Administration Pool Allotment Rules, 1972, strictly. In July 1992 he was posted as above in Chandigarh. He applied for allotment of V-Type house to the Chandigarh Administration out of Pool of Houses under the Rules aforesaid. Thereafter he met Advisor to the Administrator. It was pointed out that IV-Type house should be allotted to him if specific recommendation is received from the Chief Secretary to Government of Haryana. Thus, the petitioner requested the Chief Secretary to make such a recommendation which was accordingly done with the request to the Chandigarh Administration to allot house No. 57, Sector 5, Chandigarh to the petitioner *vide* Chief Secretary's letter dated March 16, 1993. The aforesaid house was not allotted to the petitioner. Subsequently the petitioner represented that in 1986 when the petitioner represented that in 1986 when the petitioner left Chandigarh he was occupying VI-Type House No. 509, Sector 16, Chandigarh, allotted to him after a long wait under the Rules. At that time the aforesaid Rules were strictly being followed. It was also pointed out that several officers junior to the petitioner, who applied later, were accommodated in the matter of allotment of houses. Particular reference was made to the allotment of House No. 25, Sector 7. He requested for allotment of any of the two houses to be vacated by the PGI doctors in Sector 5 and Sector 7, Chandigarh, Annexure P. 1 is the letter of the petitioner dated April 21, 1993. A reply to the same was reviewed that the matter was being looked into. In June 1993 the petitioner again wrote to the Chandigarh Administration that in an arbitrary manner House No. 25, Sector 7, was allotted to the SSP, U.T., Chandigarh, who was not entitled to that category of House, House No. 520, Sector 16, A V-Type house was allotted to 'R' of 1978 batch belonging to Punjab Cadre who was not even eligible for VI-Type house. He was already residing in VII-Type House in Sector 16. Thus the petitioner requested for allotment of House No. 14, Sector 7 or any other House in Sector 5 which may fall vacant. Further reference was also made to House No. 502 -of. Sector 16, which was earlier occupied by Chief Secretary to Government of Haryana and on his retirement was allotted to Hon'ble Judge of the High Court. Subsequently when Judges Houses were completed in Sector 24, House No. 502, Sector 16 was allotted to Special Principal Secretary to the Chief Minister of Haryana who was also an IAS officer of 1968 Batch. Since Hon'ble Judge desired to continue staying in House No. 502, Sector 16, House No. 3407, Sector 24 (Judges House) was allotted to L.

The Chandigarh Administration constructed the Houses in Sector 7 for the Deputy Commissioner and the Senior Superintendent of Police, Union Territory. One of the houses on completion of construction was allotted to Chairman, Chandigarh Housing

12. Padma v. Hiralal Motilal Desarda, AIR 2002 SC 3252 at 3256. 3257.

Board. He is also an IAS Officer of 1975 Batch. In September 1993, the Finance Secretary, Chandigarh, informed the petitioner that House No. 3408, Sector 24 (Judges House) was being allotted to him as L' wanted another House in Sector 7. As per information conveyed to the petitioner by the Home Secretary and the Assistant Estate Officer, the aforesaid house stood allotted to him and the formal letter was to issue. But subsequently on September 24, 1993 it came to the notice of the petitioner that the aforesaid house was handed over his charge on September 24, 1993, 25th and 26th September being Government holidays. This was termed as an arbitrary action on his part. Further reference was made to the allotment of three houses within a span of two years to persons who were not eligible for allotment under the Rules *i.e.* House No. 78, Sector 7, allotted to Collector of Customs. Out of 100 houses, 65 were placed at the disposal of the Chandigarh Industrial and Tourism Development Corporation. Many houses were allotted to the journalists. A general grievance was also made that the officers allocated to the Union Territory were getting 4-tier benefits *i.e.*

- (i) Getting a house on out of turn basis:
- (ii) Getting a house on out of turn allotment of a higher category house than the entitlement;
- (iii) Retaining the same house even after reversion back to the parent State; and
- (iv) Not paying the 3 times standard rent envisaged in the instructions.

It was on these facts that ultimately the petitioner claimed a direction to the respondents to allot Judges House No. 3408 of Sector 24 or in the alternative House No. 11, Sector 7 or any Type V or IV House or any Type VI house acceptable to the petitioner. The Motion Bench, on October 14, 1993, while issuing notice of motion directed status *quo* regarding possession of Houses Nos. 4, 11, 25 in Sector 7 and 3408 in Sector 24 till further orders. Subsequently on October 21, 1993, a direction was given to the counsel for the Chandigarh Administration to place on the records the relevant Rules of allotment along with statement showing allotment of houses of categories IV to VII from 1990 and further, if any of such houses were allotted otherwise than in accordance with the relevant Rules, the reasons for it, as also for allotments, if any, of higher category of houses than the entitlement of the allottees to be Indicated.

Written statement was filed on behalf of the Chandigarh Administration along with copy of the relevant Rules and the date asked for, while controverting the allegations of the petitioner.

When the matter came up for hearing, on the concession given by counsel for the Chandigarh Administration an order was sought to be passed to allot Judges House No. 3408, Sector 24 to the petitioner with the condition that as and when the same would be required by an Hon'ble Judge of the High Court another house would be allotted to the petitioner. Before the order could be signed, the petitioner requested for hearing of the case, hence opportunity was given to both the parties to address arguments. The petitioner addressed the arguments in person.

Iii one of the prayer clauses the petitioner made a claim for allotment of House No. 3408, Sector 24 Chandigarh, as the said house was in lieu of house No. 502, Sector 16, Chandigarh (a V Type House). Since no objection was raised on behalf of the Chandigarh Administration to grant the aforesaid relief, it was also asserted that as and when any V-

Type house would become available, the same would be allotted to the petitioner if he is not willing to accept allotment of House No. 3408, Sector 24, Chandigarh. As a matter of fact, after grant of such concession it was not necessary to refer to the other arguments addressed. Still the question involved relates to allotment of houses in Chandigarh, a brief reference to the arguments is being raised as the Motion Bench had called for information of allotments made of house since 1990 out to turn and reasons thereof.

It was argued by the petitioner that the present writ petition should be treated as a public interest litigation and the entire process of allotment of different types of houses by the Chandigarh Administration should be scanned through. According to him the Rules framed were never strictly followed in the matter of allotment in all categories of houses in routine. Always power was invoked to allot houses by relaxation of the Rules. In this manner such a power was abused. A direction need be issued to the Administration to strictly follow Rules of allotment of houses on the basis of eligibility seniority as contemplated under the Rules. Controverting the aforesaid contention of Senior Advocate, appearing on behalf of the respondent administration, had argued that no case is made out for treating the petition as a public interest litigation. In the writ petition the petitioner claims only allotment of a house. No other Government servant is aggrieved by orders of the Chandigarh Administration. Three States are functioning in Chandigarh and none of the States has grouse in that respect. Rather, as per written statement a policy has been adopted with the concurrence of the three States, the Union Territory Administration, Punjab and Haryana States, that the houses in possession of Government servants of the respective Governments would continue to be allotted to the Governments servants of the respective State which policy is in consonance and not in contravention of the Rules.

This was not a case which should be converted a public interest litigation. A perusal of the Rules shows that Government houses under the control of the Chandigarh Administration were of different categories which were allotted by two allotment committees; upper and lower. Lower category house also includes houses to be allotted to class IV employees, who of course are not expected to approach the Court on account of financial restraint, as has been argued by the petitioner. It is in this context that it was argued by the petitioner that the present petition should be treated as a public interest litigation. It may be observed that allotment of lower category houses is not at all in dispute. Furthermore as pointed out by the counsel for the Chandigarh Administration, the allotment of such houses are made in routine following the Rules of eligibility seniority strictly. Upper categories of houses are required to be allotted by the Upper Allotment Committee. Such houses are allotted to Government Officers who are in the higher-pay scales. For them, it cannot be said that they are incapacitated to approach the Court if they are aggrieved in the matter of allotment of houses for redressal of their grievances. The decision of the Supreme Court in the *State of Bihar v. Kamlesh Jain*,¹³ may be referred to in this connection. Dr. 'D' a Government servant, had gone abroad and on account of his absence action was sought to be taken to terminate his services. Like Dr. D' there were several other Government employees who had gone abroad and had not returned. The writ petition was tiled by Ms. 'K' as a public interest litigation for providing medical assistance compensation to Dr. 'D' who was stated to be getting medical treatment in the hospital of Bihar. In a short order passed by the High Court a sum of Rs. 2000/- was directed to be paid to Dr. 'D' treating the petition as a public inter-

est litigation. The decision was upset by the Supreme Court on appeal. A request was made to the Supreme Court to deliver the cheque in the name of writ petitioner Ms. 'K' as Dr. 'D' was unable to encash the amount. This request was also declined. It was observed as under:—

“A judicial process should not be allowed to be used for the satisfaction of an individual's whims, pious, though, they may apparently look. Since we do not find any reason in the, impugned order or in the writ petition which may justify the relief granted in the present case, we are of the view that the writ petition should have been dismissed.”

Held, in the present case as already observed above, no specific relief is claimed for other Government servants, rather the relief claimed is only with respect to the petitioner for allotment of one of the Government houses. The contention of the petitioner to convert this petition as public interest litigation is repelled. A judicial process cannot be allowed to be used for the satisfaction of an individual whims, pious though they may apparent look, as held by the Supreme Court in *State of Bihar v. Kamlesh Jain*.¹⁴

5. Liquor house should be not be surrounded by residential places, temples, schools, etc.—The petitioner prayed for issuance of an appropriate writ for closure of the country liquor godown surrounded by residential areas, government buildings, schools temples and several other institutions, it causes nuisance to the inhabitants, the Court held that a place surrounded by residential areas, government buildings schools, temple and other institution like girl school is not a convenient place for establishment of a warehouse.¹⁵

6. Management of Temples—Principle of Equal Pay for equal work.—Malabar, that part of the west coast between mala (hill) and bar (sea), was a neglected area while it was part of the erstwhile State of Madras. After the formation of the Kerala State, Malabar merged in that State, from thereafter the neglect continued. The temples in Malabar and their employees are no exception. Though the temple employees in the erstwhile Travancore and Cochin areas of the State receive reasonable remuneration, the temple employees in Malabar are getting only a pittance. The plight of the employees was highlighted in a news item which appeared in the Hindu daily dated 27-12-1991 under the caption “A raw deal for temple staff.

A Division Bench of this Court treated this news item as a public interest litigation and by order dt. 3-1-1992 this Court directed notice to be issued to the State of Kerala represented by the Chief Secretary and the Commissioner, Hindu Religious Endowments Commission, to show cause why the above matter should not be taken as a public interest litigation and appropriate orders passed thereon as remedial measures. The matter was directed to be numbered as an original petition.

The pitiable and pathetic state of affairs existing in the temples in the erstwhile Malabar area and also the poor living conditions of the employees in those temples were highlighted in the above mentioned news item. Since the grievances voiced in the

14. JT 1992 (6) SC 257; K.G. Verma v. Union Territory of Chandigarh, AIR 1994 P&H 214 at p. 214, 215, 216, 217 (AL. Bahri and N.K. Kapoor, JJ.).

15. Jharudih Polytechnic Area Development Committee Dhanbad v. State of Bihar, 2002 (2) JCR 413 (Jhr).

news item are incorporated in the order dt. 3-1-1992, it is only appropriate to extract that order.

The order reads:—

“The leading English Daily, ‘The Hindu’, dated 27th December 1991, Friday, at page 3, contains a news item captioned under the heading “A raw deal for temple staff?”. It is seen there from that there are nearly 1300 temples in the erstwhile Malabar area having 9000 employees, governed by the Hindu Religious and Endowments Act. Of the above, only 60 temples are financially viable far as daily poojas and living standards are concerned. The employees are getting as low salary of Rs. 6/- per month, whereas the Manager of a temple gets Rs. 2000/- per month. It is further seen that though this matter was highlighted, and the poor and pitiable condition of the temples and also the low salary of the employees were also brought to the notice of successive Governments, no effective action has been taken with regard to the problems of the temples of the employees. It is highlighted in the said news item that whereas the employees of the Travancore and Cochin Devaswoms enjoy regular salary, welfare, funds and pension, their counterparts in the erstwhile Malabar area, doing the same work, and placed in the same condition, are not getting a living wage and many of them are getting a low salary of Rs. 5/- per month. In the same page of the Daily, the President of the Kerala Thanthry Samajam is seen to have stated that many temples in Kerala are in the even the daily poojas are not conducted. We find from the issue of the Hindu dated 31st December, 1991, page 3, that Sri T’. T’. Raman Bhattathiripped , President of the Travancore Devaswom Board, had also stated that in order to look after the temples in the erstwhile Malabar area on the lines of the temples under the Travancore and Cochin Devaswom Boards, a separate Board should be set up and then only it will improve the conditions of the temples and better the service conditions of the employees of the temples.

The above news item, appearing in a leading Daily, highlights the pitiable and pathetic state of affairs existing in the temples in the erstwhile Malabar area and also the poor living conditions of the employees in the said temples. The matter centres round a “human problem”.

Public interest requires that the administration of the temples in the erstwhile Malabar area and the living conditions of the employees of those temples require a probe and appropriate steps should be taken to remedy the evil and injustice. Therefore, in exercise of the powers vested in High Court under Article 226 of the Constitution of India, Court issued notice (1) of the State of Kerala, represented by the Chief Secretary to Government, and (2) the Commissioner, Hindu Religious Endowments Commission, Kerala State, Trivandrum, to show cause why the above matter should not be taken as a public interest litigation and appropriate orders passed by this Court as remedial measures.

The function of the Department is only to see that the income is properly accounted for and is utilised for the welfare of the temple. It is therefore pointed out that the Supreme Court decision aforementioned has no application to the present case. On hearing counsel on both sides and on a perusal of the relevant provisions contained in the Wakf Act and the Hindu Religious and Charitable Endowments Act, Court was of the view that there is practically no difference between the two legislations whereas the powers conferred on the Department under the Hindu Religious and Charitable

Endowments Act are wider than those conferred on the Wakf Board under the Wakf Act.

The preamble to the Wakf Act, 1954 (Act 29 of 1954) states that it is an Act to provide for the better administration and supervision of the Wakfs. In the statement of objects and reasons it is mentioned that the management of Wakfs, though it vests immediately in a *Mutawalli* is a subject which requires the supervision of the State. The need for supervision has been felt and in addition to various enactments dealing with the subject of charitable endowments, the Musalman Wakf Act of 1923 was enacted for the whole of India. Enactments were introduced in some of the State also. The working of these Acts has brought out the necessity of amendments. Some of the States had no Act at all for the purpose. The necessity of a uniform and consolidated legislation resulted in the passing of the Wakf Act, 1954. The Preamble to the Madras Hindu Religious and Charitable Endowments Act, 1951 applicable to the Malabar Region of the State of Kerala States that it is an Act to provide for the better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras of which Malabar region including the present Kasaragod District was a part then. The powers and duties of the Commissioner are embodied in Section 20 of the Act. Section 23 enjoins a duty on the trustee Board to obey all lawful orders issued by the Government, the Commissioner, the Deputy Commissioner, the Area Committee of the Assistant Commissioner. The Trustees are bound to furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution. The trustee of a religious institution is authorised to incur expenditure as provided in Sub-section (1) of Section 30 of the Act. Sub-section (2) of that section stipulates that the trustee shall have due regard to such general or special instruction as may be given by the Commissioner or in the case of an institution over which an Area Committee has jurisdiction also by such Committee in incurring such expenditure. The Commissioner is also given powers under Section 31 of the Act to declare that after satisfying adequately the purposes of the religious institution, the surplus, if any, may be appropriated to religious, educational or charitable purposes. Under Section 45 of the Act the Deputy Commissioner in the case of any religious institution over which an area committee-has jurisdiction and the Commissioner in the case of any other religious institution is given the power to suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees thereof on the grounds mentioned therein. Though the trustee has got power to suspend, remove or dismiss any of the servants or office-bearers attached to a religious institution, the person so suspended, removed or dismissed is given a right under Sub-section (2) of Section 49 to appeal against that order to the Deputy Commissioner from whose decision an appeal lies to the Commissioner under sub-section (3) of that section. The Deputy Commissioner given power under Section 58 of to settle a scheme for a religious institution when he has reason to believe that it is necessary in the interests of the proper administration of a religious institution.

The provisions of the Act (1951) referred to in the foregoing paragraph indicate the wide powers conferred on the Department in the matter of management of temples and the utilisation of the income therefrom. On a consideration of the various provisions contained in the Hindu Religious Endowments Act and the provisions in the Wakf Act, There was no difference in the matter of supervision and control of the religious institutions by the HR & CE Department (Department for short) and the Wakf Board in the case of Wakfs. On the other hand, the preamble to the Hindu Religious Endowments Act suggests that the Act is intended not only : T ¹ iministration of the Hindu

Religious and Charitable Institutions, but also their governance. By governance is meant to rule with authority. The various provisions of the Act extracted in the foregoing paragraphs would indicate that the Department is the predominant force as far as the temples in Malabar are concerned. By looking at the purpose of the legislation and the various provisions contained therein Court was of the firm view that the principles laid down by the Supreme Court in the Imam's case,¹⁶ squarely apply to the present case also. The request of the counsel for respondents 3 to 16 for issue of directions similar to those issued by the Supreme Court in the Imam's case was therefore justified. Court was of the view that similar directions to be issued in this case also.

The Supreme Court in Imam's case,¹⁷ has in very clear terms observed that it is the duty of the Wakf Boards to harness resources to pay the Imams who perform the most important duty, namely, of leading community prayer in a mosque. It is not therefore open either to the Government or to the Department to throw up their hands in despair and say that they are not possessed of sufficient funds to meet the demands of the temple employees. The Department which is authorised by the Act to administer and govern the endowments has' thus a duty to harness the resources and to pay living wages as suggested by the Supreme Court in the Imam's case.

Even otherwise, the Government cannot disclaim the liability to pay living wages to the employees in view of the vesting of temple lands in the Government as on 1-1-1970 as well as the vesting of the private forests owned by the Devaswoms in the Malabar region. True, the Kerala Land Reforms Act provides for payment of annuity. It is in evidence that the final annuity statements had not so far been prepared. The vesting took place on 1-1-1970. Even two decades thereafter Government was not able to prepare the final annuity statement. The explanation of the Government appears to be that particulars of records were not obtained from the various Land Tribunals, the Land Board and other authorities.

That is not a concession on the part of the Government, but only payment of the value of the commodities to which the Devaswoms are entitled. It is common knowledge that Devaswoms were getting rent in kind. Many of the Devaswoms were getting paddy as rent. The paddy thus received was utilised for the expenses of the temple. When the properties had already vested in the Government, it only stands to reason that the Devaswoms should be paid the value of those commodities at prevailing market rate. In other words, the annuity fixed by the Government has to be periodically revised. Since the final annuity statement has not so far been prepared, such preparation has to be made on the basis of the observations made in this judgment.

The claim for living wages is also based on the principle "equal pay for equal work". The employees in the temple administered by the Travancore, Cochin Devaswom Boards were paid salary, and other emoluments at the rates paid to Government servants. On the other hand, the employees of the temples in Malabar were getting only a pittance. This aspect has been spoken to by the witnesses examined on the side of respondents 3 to 16 and is also admitted by respondents 1 and 2 in their affidavits and statements as well as by RWs 9 and 10 at the time of evidence.

Viewed in the light of the principles enunciated by the Supreme Court in the aforementioned decisions and the evidence available on record, it is clear that the

16. AIR 1993 SC 2086.

17. *Ibid.*

employees of the temples in Malabar are discriminated against in the matter of salary and other remunerations. That they possess the same qualifications and discharge same duties and responsibilities is not disputed by respondents 1 and 2 and has also been spoken to by the witnesses on the side of respondents 3 to 16. There has thus been a clear violation of the fundamental right of the employees in Malabar to get living wages. Under such circumstances the 1st respondent has a constitutional obligation to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right as held by the Supreme Court in *People's Union for Democratic Rights Union of India*. In that case the Supreme Court was considering a public interest litigation to ensure observance of the provision of various labour laws in relation to workmen employee in the construction work of various projects connected with the Asian games. The Supreme Court held the Union of India, the Delhi Administration and the Delhi Development Authority to be under an obligation to ensure observance of the various labour laws by the contractors and if the provisions of any of the labour laws are violated by the contractors, the petitioners vindicating the case of the workmen are entitled to enforce this obligation against the respondents by filing a writ petition. Respondents 1 and 2 were therefore under an obligation to ensure that the employees in the various temples in Malabar are paid reasonable wages.

As observed by the Supreme Court in the *Imam's case*,^{18 19} the 2nd respondent has to harness the resources for making payments to the various employees in the temples in Malabar. Here itself it has to be mentioned that the direction for payment is applicable not only to the 1269 temples under the administration and governance of the Department, but also the other public temples numbering about 2000, which do not come within the purview of the Act.

Under Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 the ownership and possession of all private forests in the State of Kerala stood transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person in any private forest shall stand extinguished subject to the provisions contained in sub-sections (2) and (3) of that section. The owners were deprived of the forest land without compensation for their ownership. The Act was declared to be unconstitutional and void by this Court.

Whether Government is holding the lands as trustees or not does not require adjudication in this proceeding. At the same time it has to be stated that the owners were deprived of their properties without paying any compensation and the purpose of the legislation viz, agrarian reform has also been defeated, Government not having assigned the land to agriculturists and the landless. That Government was prevented from making the assignments in view of a subsequent legislation is no reason to hold that the purpose of the legislation has been fulfilled. Under such circumstances Government owes a duty to account for the income, which they are getting from these forest lands. It has also to be noted that the dedication of these forest lands to the respective Devaswoms was in trust for the purposes of the temples and to meet the expenses in connection thereto. When that income is even now available to the Government, it is only proper and reasonable to direct the Government to utilise the same for the purpose for which the lands were dedicated.

18. (1982) 3 SCC 235; AIR 1982 SC 1473.

19. AIR 1993 SC 2086; 1993 (3) SCC 584; 1993 (3) SCJ 45; 1993 (3) SCR 742.

Whatever that be, the evidence of RW 1 that the Devaswom forests vested in the Government would fetch an annual income of Rs. 24 crores is not seen to have been seriously disputed by respondents 1 and 2. That much income at least is therefore available with the Government, which can be utilised for payment of reasonable wages to the temple employees in Malabar.

The classification of the temple employees in the two regions into different categories is not founded on intelligible *differentia*. Persons in the same category discharge the same functions and possess the same qualifications throughout the State. The *differentia* has thus no rational relation to the object sought to be achieved by the statute in question viz, the proper administration and governance of the temples in Malabar and well-being of the religious institutions and endowments coming under the purview of the Hindu Religious and Endowments Act. As observed by the Division Bench in *United Kopari Mills* ' case,^{20 21} inequality is clearly writ large on the face of the Act in its application to the erstwhile Malabar region and "is perilously near the periphery of unconstitutionality".

The necessity to maintain the temples, to perform the rituals therein and to preserve the same for all time need not therefore be overemphasised. In order to maintain the sanctity and purity of the atmosphere in the temples, the employees are to be given fair wages and then and then alone can one expect them to perform their duties with all sincerity and earnestness and to the best of their effort. Court may not be understood to mean that the employees are not performing their duties properly at present, but it only say that they are constrained to discharge their duties without getting the bare necessities required for their sustenance. When they are provided with fair wages sufficient for their sustenance, one could expect them to perform their duties in a more efficient and more elegant manner, which will add to the purity and sanctity of the atmosphere in the temples. So long as temples are essential for the spiritual evolution of man as they are necessary aid in the Bhakthi merge and realisation of the Supreme Self, it is a duty to preserve them for posterity. That can be achieved only if proper and reasonable wages are paid to the employees and proper persons manage the properties of the temples in a proper manner/¹

7. Hawala Transactions.—The true scope of this writ petition had been indicated during the earlier hearings. At this stage, when some charge-sheets have been filed in the Special Court and there is considerable publicity in the media regarding this matter, with some speculation about its true scope, it is appropriate to make this order to form a part of the record.

The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities, have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so-called "Jain Diaries" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means by use of tainted funds obtained through 'hawala' transactions that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given

20. AIR 1993 Kerala 248.

21. In re : Temples in the erstwhile Malabar area, AIR 1995 Ker. 172 at pp. 176, 177, 182, 183, 184, 185, 186, 187, 188, 189, 190, 196 (K. P. Balanarayana Marar and P. K. Balasubramanyan, JJ.).

for unlawful considerations; that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who were very influential and powerful in the present setup; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power setup.

The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.

In this proceeding Supreme Court was not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

In case of persons against whom a *prima facie* case is made out and a charge-sheet is filed in the competent Court, it is that Court which will then deal with that case on merits, in accordance with law.

However, if in respect of any such person the final report after full investigation is that no *prima facie* case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in Supreme Court, action on such a report by this Court would be considered, if and when that occasion arises. This Court also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.

The Apex Court may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent tendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task." *

22. Vineet Narain v. Union of India, AIR 1996 SC 3386 at 3386, 3387 : (1996) 1 East Cri Cas 504: 1996 AIR SCW 2835: (1996) 1 BLJ 242 : 1996 SC Cri R 422: (1996) 2 SCC 199: (1996) 1 JT(SC) 708: 1996 SCC (Cri) 264.

8. Frivolous petition.—Court should not allow its process to be abused for oblique consideration by marked phantoms.—Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of a persons or member of public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.²³

9. Expunging Of Allegations—This petition to settle personal scores.—*In Forum for Fairness in Education v. Vilasrao Desmukh*, AIR 2001 Bombay 136 at 140, 141; 2001 (2) Bomb. LR 138; it was observed as follows (Paras 19, 20 and 21 to 26).

“79. One of the contentions raised by the petitioners is that the appointment has been made in an arbitrary manner and not on the basis of any norms. We find that there are, in fact, no qua ifications or norms laid down by the Government for appointing a persons as Sheriff of L mmbai. We are, therefore, unable to accept the contention that the power to make the appointment has been exercised arbitrarily in this case. There is no challenge before us on the ground that the absence of qualifications or guidelines for appointment to the post to Sheriff of Mumbai renders the power to make such an appointment itself unconstitutional.

At this stage, we must point out that this petition does not appear to us to be moved in public interest. There are several features about this petition which suggest that it is moved to settle some score or they other against Respondent No. 1, the Chief Minister of Maharashtra, and his appointee, the Sheriff of Mumbai:—

(i) The petitioners are mainly from the field of education. Petitioner No. 1 is styled as the Forum for Fairness in Education. It is obvious from the petition itself that both the Respondents referred to above are said to be associated with educational institutions. In fact, the 3rd Respondent appears to have established several educational institutions, which have gained prominence over the years and at present the total number of students studying in the institutions established by him, are about 1,25,000. This petition appears to be a clear attempt to discredit the 3rd Respondent i.e A.F. Pinto.

(ii) In fact, the 4th petitioner has even alleged that the 3rd Respondent was at one time earning only about Rs. 150/- per month and how this petitioner helped him; and how, in an obvious imputation of ingratitude, he later on avoided meeting him. This petitioner is described in one of the documents as a Council Member of the Janata party.

(iii) The 3rd Respondent entered upon the office of Sheriff sometime or about 27-1-2000 whereas O.O.C.J. Writ Petition No. 1328 of 2000 has been filed on 23-6-2000 and Appellate Side Writ Petition No. 2626 of 2000 has been filed on 4-4-2000. We find no reason as to why the petitioners should have waited for almost a period of six months before moving this Court, particularly when the tenure of the Sheriff of Mumbai is itself for a period of one year.

(iv) The petitioners have stated in para 26 of the petition that they attempted to have the son of one Shiv Menon admitted in one of the schools run by Respondent No. 3's Trust, without any donation that was asked for by the School. It is further stated in the petition that the petitioners warned the principal of the School that collection of donation was illegal. That in spite of this warning, the said son of Mr. Shiv Menon was not admitted.

(v) Besides, had the petition been purely in public interest with a view to ensure the appointment of what the petitioners conceived to be a proper person to the post of Sheriff of Mumbai, there was no reason at all to join the 3rd Respondent's wife as a party to this petition. No relief is claimed against her. Nonetheless, she has been joined as a party and several allegations extremely scandalous in nature have been made about her. The allegations pertain to her personal character and are highly offensive. The allegations themselves make it clear to us that the petition is moved with an oblique purpose of tarnishing the reputation of the 3rd respondent and more unfortunately, his wife, too. The learned counsel for Respondent No. 4 has rightly claimed that the allegations against Respondent No 4 i.e the 3rd Respondent's wife reproduced in para 5 of the petition be expunged. We, therefore, hereby direct that paras 5(i) and (ii) be expunged from the record.

(vi) Particularly, we find that the allegations against the Respondent-Chief Minister are completely without any evidence and merely based on certain newspaper reports regarding certain School with which he is said to be associated. We fail to see any propriety in making such allegations if the petition was bona fide public interest litigation for challenging the appointment of the 3rd Respondent as Sheriff of Mumbai.

21. We find that the petitioners have not acted bona fide, in public interest, for the reasons stated above and they have, therefore, no locus standi to approach this Court in this matter. We find that the directions of the Supreme Court in *Janata Dal v. H. S. Choudhary*, reported in (1992) 4 SCC 305 : (AIR 1993 SC 892), relied upon by the the learned counsel for Respondent Nos. 3 & 4 are applicable to the present case. In that case, the Supreme Court referred to the decision in *Subhash Kumar v. State of Bihar*, reported in (1991) 1 SCC 598; AIR 1991 SC 420, where it had observed that public interest litigation cannot be invoked by a person or body of persons a satisfy his or its personal grudge and enmity. That such a petition would amount to an abuse of the process of the Court, preventing speedy remedy to other genuine petitioners from the Supreme Court. It was further observed (para 106 of AIR):— It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdictions of this Court for personal matters under the garb of the public interest litigation.

Their Lordships further observed (para 108 of AIR):—..... the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other strenuous motivation or for glare of publicity, break the queue

muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

22. We are of the considered view that this is not a petition moved genuinely in public interest for the reasons mentioned earlier.

23. In the circumstances, O.O.C.J. Writ petition No. 1328 of 2000 is dismissed. In view of our findings that this is not a bona fide public interest litigation, for the reasons stated above, we consider it appropriate to impose exemplary costs on the petitioners. The petitioners shall, therefore, pay costs quantified at Rs. 25,000/- Respondent Nos. 3& 4 within a period of one month from today.

24. Insofar as Appellate Side Writ Petition No. 2626 of 2000 is concerned, the only point argued by the learned counsel for the petitioner in this case is that Respondent No. 2, Chief Minister of Maharashtra proceeded to appoint A.F. Pinto (Respondent No. 4) in spite of the fact that the petitioner made a representation against his appointment to the Chief Minister. The petitioner has annexed a copy of the letter dated 12-1-2000 to the Chief Minister of Maharashtra. The learned counsel, however, fairly accepted that he is not in a position to point out any legal duty or obligation on the part of the Chief Minister and the Governor of Maharashtra to give any hearing to a person who makes a representation against the appointment of a person to a public office such as that of the Sheriff of Mumbai.

25. Barring the allegation regarding the wife of Responding No.4, which are absent here, we find that the objections to his appointment are similar to those which are dealt with in O.O.C.J. Writ Petition No. 1328 of 2000.

26. In parting, we would like to observe that the appointment to the post of Sheriff of Mumbai was challenged in this Court on two occasions in the past. On both occasions, the challenge was repelled. On one occasion i.e. Writ Petition No. 325 of 1987 decided on 6-2-1987, one of the ground of challenge was that since that Sheriff is an officer of this Court, he can only be appointed by this Court under Article 229 of the Constitution of India. The challenge that he was an officer of this Court since he has to perform certain duties assigned to him by this Court was not accepted. On the other occasion i.e. O.O.C.J. Writ Petition No. 458 of 1987. *Mrs. Pushpa Kalyanmal Singhvi v. Union of India* decided on 20-3-1987, the appointment of then Sheriff was challenged on the ground that the appointee had concealed their real income and had filed a revised assessment with a view to claim a lower rate of taxation. In that Petition also, a prayer was made to this Court for a direction to the Union of India to produce the tax assessment record of the appointee. That petition was, inter alia, rejected on the ground of multifariousness.”

10. Water connection to Hotel.—It has also been claimed by the petitioners in the representation that in case the respondent Public Health and Engineering Department was not restrained from giving water supply to the Hotel then it will become difficult for the residents of those areas to survive. The petitioners have also claimed that in case the water supply is given from the existing pipeline then agitation will start. The petitioners have also claimed that in case of another Hotel a separate line was instituted and this has not been done in the case of respondent No. 7 it amounts to discrimination. After consideration of the arguments of the petitioners what the Court found in this writ

petition was that question of supply of water was raised. It was alleged that the same will be affected in future. The basis of the inference drawn by the petitioners was not supported by any technical evaluation. There is no material available on record to support the apprehension of the petitioners. When there were not technical details placed on record by the petitioners drawing of such inference is unfounded. The public Health and Engineering Department is equipped to nurture the cause of the residents. On Annex. 2 the Minister for Public Health and Engineering Department has already made an order that the connection should be given after examining the public interest. Once an order has been passed by the concerned Minister, the grievance of the petitioners has already been redressed by the responsible functionaries of the State and the respondents are supposed to follow the orders. As regards the policy decision as contained in Annex. 1 Suffice it to say that such policy decision of the State Government could be justifiable in Court of law and could not be enforced by a writ petition. In view thereof it was not for they Court to enforce such a policy decision and it was for the State to frame and implement such policy in the public interest. That being the position, no relief can be granted to the petitioners in the present writ petition.²⁴

11. Disposal of the land by bulk sale.—Several objectives the Government of Maharashtra incorporated the company with several objective and the main objectives being, (a) To develop land for residential, commercial and allied industrial activities and to provide the required physical infrastructure, such as roads, drainage, water supply, sewerage, street lights and landscaping etc. (b) To build as many houses and community centers, shopping centers, parks, play grounds, bus stations, etc. to meet the day to day needs of the population, as well as for a fast take up a new growth areas and also to make available and develop the plots at affordable prices, so as to construct residential dwellings for self occupation, (c) To promote growth of commercial wholesale market activities, warehousing transport, office and other activities in order to evolve expeditiously a sound economic base for self sustained growth and achieve, at the same time a process of relieving congestion in the cities like Bombay as well as the fast developing cities in other parts of Maharashtra and (d) While doing so, to maintain ecological balance and ensure that environment degradation is not allowed. The CIDCO was declared as special planning authority for Aurangabad notified area under sub-section 3(A) of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the Act) for residential, commercial and industrial purposes. The State of Maharashtra acquired huge land for CIDCO in villages Mukundwadi, Garkheda, Harsul, Hatesingpura, Jaswantsingpura, Bayaji-pura, Jadhavwadi, Murtizapur, Mastanpur etc. which are all located in the outskirts of Aurangabad Municipal limits.²⁵

12. Code of conduct. — While hearing a public interest litigation the constitutional court acts as the sentinel discharging its obligation as custodian of the constitutional morals, ethics and code of conduct—well defined by series of judicial pronouncements. The Court is obliged to see while scrutinizing the conduct and activities of a public body constituted with the avowed object of serving the society to see that its activities bear no colour except being transparent, are guided with the object of public good and are within the four comers of law governing the same. The holder of every public office hold a trust for public good and therefore his actions should all be above board. Whatever may have

24. Braham Singh v. State of Rajasthan, AIR 2001 Raj 392 at 393: 2001 (3) WLC 150:2001 (2) Raj LW 992: 2001 (2) Raj LR 732.

25. Padma v. Motilal Disavda, AIR 2002 SC 3252: 2002 (7) JT 198: 2002 (7) SCC 564: 2002 (5) SLT 276: 2002 (6) Scale 383: 2002 (6) Supreme 339.

been the grievance raised in the writ petition filed by the original writ petitioner, vide its order dated 28-4-2000 the High Court framed the following four questions laying down the scope of hearing before it:-

(a) Whether CIDCO should be allowed to resort of bulk land sale as a normal course of its activities?

(b) Whether such an action by CIDCO is permissible in the public interest vis-a-vis its objectives?

(c) Whether the bulk land sale transactions made in the recent past and more particularly after the petitioner has approached this court have been dubious in nature and giving a go-bye to the Rules and Regulations as well as objectives of CIDCO has made them?

(d) Whether the plots have been allotted at a price much lower than the base price and This has resulted in a substantial loss to CIDCO?

The Apex Court have set out the above said part of the High Court proceedings to meet the plea raised by the appellant before Court which complains of want of pleadings and denial of necessary opportunity of defending themselves at the hearing in the writ petition. The High Court had, by having framed the above said questions, put all the parties before it on notice that it proposed to enter into issues wider than what may have been raised in the writ petition filed before it. The non-petitioners in the High Court, including the appellants before Court, were put on notice of the issues on which the High Court proposed do dwell upon and they were allowed full opportunities of defending themselves-by-bringing in such pleading and documents as they proposed to do in their defence. The High Court called for the record of CIDCO and subjected the same to scrutiny under its magnifying glass of judicial review. The non-petitioners in the High Court were well aware of CIDCO record of proceedings and the findings of the High Court are based on the facts discernible from the records and the factual inferences necessarily and inevitably flowing :

There from in public interest litigation jurisdiction, the Constitution Court was mobilized and acts for redressal of public injury, enforcement of public duty, protection of social rights and upholding constitutional and democratic values. Technicalities did not deter the Court in wielding its power to do justice enforcing the law and balancing the equities. The Apex Court unhesitatingly had the opinion that the appellants before Court could not raise any grievance on the ground of want of necessary pleadings.²⁶

13. Amalgamation of co-operative societies.—Amalgamation of Co-Operative Societies, when such amalgamation was in the interest of the Co-operative Societies was certainly in the public interest or can only be to secure the proper management of the societies. Held, such like petitions including the present one, can be treated as Public Interest Litigation."

14. PIL During pendency of civil suit.—In a case if a Civil Suit was pending which may or may not be frivolous, ordinarily the High Court should not have entertained a public interest litigation. On the other hand, if it was found that the Civil Court was not proceeding with the matter as expeditiously as it should have, appropriate directions

26 Padma v. Harilal Motilal Disarda, AIR 2002 SC 3252 at 3256, 3257.

27. S.H. Singh v. The Co-Operation Ministry, Punjab Civil Secretarial, Chandigarh, AIR 2001 P & H 27 at 29: 2001 (2) Rec Civ R 291.

could have been issued in that behalf. It is trite that save and except cogent reasons, the High Court, in a public interest litigation would not interfere with the due process of law.

If a party undertook an abuse of process of Court, some finding of fact was required to be arrived at and even a proceeding under Contempt of Courts Act could have been initiated.

During pendency of civil suit by a person claiming ownership, directions to take steps for dispossession of such person were given in public interest without service of notice to him.

PIL was uncalled for and the directions were liable to be substituted by directions to Civil Court to dispose of suit expeditiously within stipulated time.²⁸

15. Allotment of land.—Several writ petitions were filed in public interest before the Calcutta High Court challenging the allotment of land given in favour of Mr. Sourav Ganguly (hereinafter referred to as allottee), by the State of West Bengal. The High Court, by its judgment dated 12.04.2010, upheld the allotment of plot of land being plot No. CA-222 by allotment letter dated 17.02.2009. It disposed of all the petitions by a direction that in order to retain leasehold rights and possession of the said plot in Sector-V, Salt Lake City (Bidhannagar), Kolkata, the allottee has to pay the State Government a sum of Rs. 43,25,500/-, failing which the lease deed dated 1.4.2009 shall be treated as invalid and possession of the land shall be handed back to the State Government.

When the Government decided to allot a substantial plot for setting up of a school by private organizations and when on the basis of an advertisement to that effect various organizations responded, the action of the Government was one of granting largesse inasmuch as land of which the Government is owner and which was allotted is a very scarce and valuable property.

This court cannot persuade itself to hold that this allotment is in exercise of the right of the Government in the first advertisement dated 5.11.2006, where the Government reserved its right to change the location of the land. The Second allotment is not only about a change in the location of the land, but the subsequent allotment is also of a much larger plot of land, brought about in terms of the request of the allottee for a bigger plot. The subsequent change was not brought about by the Government in its own discretion, assuming but not admitting that the Government could exercise its discretion in such a fashion but was in response to a written request of the allottee.

In the instant case, the Government initially issued advertisement for allotment of land for setting up of a school and to which the allottee responded. Thereafter, a Committee considered all the applications and decided to allot the land in favour of the allottee. The matter rested there. Then came the letter of the allottee dated 19.01.2009, which has been set out above. It is very surprising that the Division Bench of Calcutta High Court, in paragraph 5 (page 6) and paragraph 21 (page 18) of the impugned judgment, recorded a finding that the allottee was informed by ICSE that for obtaining affiliation for integrated educational institution, land should not be less than 60 Kathas. In the instant case, the impugned allotment of a different and bigger plot by the government in favour of the allottee without any advertisement, when initially advertisement was

28. Santosh Sood v. Gajendra Singh, AIR 2010 SC 593; AIR 1980 SC 946 and 2003 AIR SCW 6039—Relied on.

resorted to, and then it was given up and everything was rushed through in hot haste, in unreasonable and arbitrary manner, and the High Court was wrong in upholding the same, similarly, Apex Court observed in the case of *Institute of Law v. Neeraj Sharma*, allotment of land did not serve any public interest and was not allowed to make money or profiteer with the aid of the public property. Fundamental right to establish and run an educational institution in terms of Article 19(1)(g) of the Constitution is subject to reasonable restrictions under Article 19(6) of the Constitution of India therefore, State is within its competence to prohibit commercialization of education. 1997(1) SCC 164 *relied*. Allotment of 5.75 acres of land by Chandigarh Administration to a Private Law Institute at throw away price causing loss of ₹ 139 crores to State Exchequer, allotment set aside. Allotment made without following mandatory procedure and without public notice. Discretionary power conferred upon the public authorities to carry out the necessary Regulations for allotting land for the purpose of constructing a public educational institution should not be misused.²⁹

16. Litigation against name of movie/film.—The petitioner, Vinod Kumar Kanojia, has preferred this public interest litigation on behalf of the Hindustan Kanojia Organization (a community of ‘Dhobis’, Scheduled Caste in India) after coming to know from a news item published in ‘Amar Ujala’ Dehradun, Hindi newspaper on 20th July, 2010 that a film in the name of ‘Dhobi Ghat’ is going to be released on December, 2010 and the name of the film has affected the sensitivity and created a dent in the feeling of the community. The petitioner has referred to the long history of the depressed and also reproduced the storyline in the writ petition to highlight the contention that the said storyline has nothing to do with the ‘Dhobi Ghat’ and further the use of the word ‘dhobi’ is an insult to the Scheduled Caste and has affected the feelings of the persons belonging to the said particular caste. It is urged by the petitioner that the name of the movie as ‘Dhobi Ghat’ violates Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Reliance was also placed on the decision in *Swaran Singh and others v. State and another*, (2008) 8 SCC 435: (2008 AIR SC (Supp) 441.

It was contended that the alleged act was not committed in a public place and hence does not come within the purview of Section 3(1)(x) of the Act. In this connection it may be noted that the aforesaid provision does not use the expression “public place”, but instead the expression used is “in any place within public view”. There is a clear distinction between the two expressions.” On reading the provision contained in the 1989 Act and the decision referred to in *Swaran Singh and others*, it is clear that provisions of the said Act and the said decision are not applicable to the present case. In *Swaran Singh and others*, the Apex Court was dealing with the offences committed under Section 3(1)(x) of the 1989 Act against various castes and further what is the difference between ‘public place’ and ‘in any place within public view’. It has nothing to do with the name of a movie which can be christened as ‘Dhobi Ghat’. It was contended by learned Additional Solicitor General, that “dhobi ghat” is a description of a place where clothes are washed. Thus, it has a place oriented description. Naming of a movie/film of this nature, can not be held to be offensive to the caste in question.

The Indian cinema has a different conception from its inception inasmuch as myths, historical events, poignant novels, biographical sketches along with melodious songs

29. *Humanity & another v. State of West Bengal & Ors.*, AIR 2011 SC 2308; *Institute of Law v. Neeraj Sharma (SC)*, 2014(10) JT 432 : 2014(11) Scale 5 : 2015(1) SCC 720.

have dominated the silver screen. The term 'cinema' is an abbreviation of the term 'cinematograph'. The cinema as a public medium has something to communicate to the society. The Cinematograph Act governs the grant of certification of cinema and the Rules framed thereunder. There is a Censor Board under the Act, which screens the movies. The said Act prohibits use and presentation of visual or words contemptuous of racial, religious or other groups. In the case at hand, the name of the movie is 'Dhobi Ghat'. It is difficult to understand how an association, which is represented by the petitioner, can conceive the idea that if a movie is named 'Dhobi Ghat', it is offensive or plays foul of the provisions contained in the 1989 Act. Therefore, it was held that there is actually no public interest.

It is borne in mind that a public cause is required to be espoused in a public interest litigation. It must have some kind of nexus with the public interest. It is clear that if the Censor Board grants a certificate in violation of the Act, Rules, Regulations and the Guidelines, the same can be assailed in a court of law regard being had to the other provisions but definitely christening of a movie as 'Dhobi Ghat' would not come in the said realm or sphere. Held that this is an abuse of the process of the Court and defeats the basic concept of public interest litigation for public good. The present litigation has only exhibited ostentatious proclivity of a personality who intended to occupy the centre stage as a protagonist harbouring the notion that the Court is a laboratory and he can come to play at his own whim and fancy. This is not permissible and not to be countenanced.³⁰

17. International treaties to be in conformity to Constitutional provisions.—

Question as to whether mode and manner in which governance of international treaties are sought to be made applicable to citizens of India. Held, executive power of the Union extends to exercise of rights by virtue of any treaty or agreement by virtue of Article 73 (1) (b) of the Constitution but that is "subject of course to constitutional limitations". The petitioner canvassing same but having doubt over stand of respondents that in order to enact any law in pursuance to international treaty, same has to be placed before Parliament in accordance with aforesaid provisions and that even exercise of executive function to enter into international treaty, under Article 73 cannot dehorn the Constitution. It is a policy matter of the nation. However, the same is not a matter of adjudication arising from any economic and political philosophy. A procedure to be devised, whether such a treaty is to be placed before the Parliament or requiring its approval is a matter to be left to the Government and the Parliament. It would not be within the domain of exercise of writ jurisdiction under Article 226 of the Court to issue any direction in that behalf except to determine as to any act of Government in pursuance to international treaty resulting in violation of any provision of Constitution or not satisfying test of being in compliance with doctrine of basic structure. Government of India can only enter into a treaty in conformity with the constitutional provisions laid down in the constitution of India.³¹

18. Scope of writ of mandamus.—The petitioner filed the instant writ petition on as a Public Interest case impleading the Central Bureau of Investigation, the Union of India are Sri Sita Ram Kesari, President of the Congress Party, as respondents 1 to 3 respectively. The relief sought in the writ petition is for the issue of a writ of mandamus to respondents 1 and 2 to ensure that a thorough and proper investigation is conducted into the complaint of the petitioner submitted to the 1st respondent.

30. Vinod Kumar Kanojia V. UOI & Others, AIR 2011 Del. 73.

31. Shiva Kant Jha v. Union of India, 2010 (6) RCR (Civil) 281 (Delhi) (DB).

Petitioner claims to be a journalist and to have worked as Private Secretary from 1988 to 1990, to one Sri Shyam Sunder Singh Dhiraj (formerly Urban Development Minister of State of Bihar) and petitioner said that person was a “close confident and right hand man of the 3rd respondent. Petitioner claimed to have been Editor of a magazine called “Sampurna Kranthi” of Bihar during 1974. Petitioner submitted that he has association with some political leaders and that he also came into close contact with the 3rd respondent and he says that thus he had opportunity to “see the working” of the 3rd respondent from very close quarters after he became Secretary to Mr. Dhiraj, petitioner alleged that not only did he come into contact with the 3rd respondent, but with the latter’s son and daughter-in-law and other members of his family, including one grandson and grand daughter-in-law and five granddaughters and their husbands. The broad allegation is that the 3rd respondent, who came from humble beginning had amassed a huge amount of wealth for himself and his family members, especially after 1979 when the 3rd respondent became treasurer of Congress party. The 3rd respondent became a member of the Lok Sabha in 1967 and thereafter a member of the Rajya Sabha in 1972 and has continuously been a Member of the Rajya Sabha. He became treasurer of the same party at the national level in 1979 till September, 1996 when he became President of the said party. It is also mentioned that the 3rd respondent was a Minister of State in the Central Government between 1975-79, and a Cabinet Minister from 1991-1996. Allegations are made that neither the 3rd respondent nor his son, daughter-in-law nor grandson nor grand daughter-in-law have paid income-tax (except what the 3rd respondent might have paid as Minister and that the 3rd respondent and his family members have amassed huge amount of property valued over crores of rupees” since 1979. It was stated that the petitioner “has personal knowledge” of a number of movable and immovable properties acquired by the 3rd respondent and his immediate family members. In para 5 of the writ petition, petitioner set out, vide-sub-paras (a) to (f), a list of the said properties. In para 6 he says that the 3rd respondent’s son who has no work nor received any income “has also acquired a great deal of movable property” during the past few years. Prior to 1991, the 3rd respondent’s son worked as Liaison Officer, SKG Distillery on a meagre salary. A list of movable assets of the 3rd respondent’s son are set out in para 6, sub-paras (a) to (d). Then, in para 7, petitioner set out on sub-paras (a) to (c) the assets acquired by the 3rd respondent’s grandson, who was also “unemployed”. In para 8, petitioner referred to the 5 grand daughters of 3rd respondent, who were, married between 1983 to 1994, that their husbands had only modest means but they have all become “quite wealthy” some of them having assets worth “crores” of rupees. In sub-paras (a) to (c) certain details of the alleged assets of the grand son-in-law are set out. In para 9 petitioner had made an allegation that he had personally seen the 3rd respondent receiving huge sum of money in suit-cases at his Delhi residence from unidentified businessman while he was a Minister. Petitioner says he has “personally seen” huge bundles of currency notes in cloth bags being given by the 3rd respondent to several MLAs as bribe, to vote in his favour for his Rajya Sabha Membership both in 1988 and 1994. It is then stated that the petitioner approached the CBI Director on 5-10-96 and he advised the petitioner to file a regular FIR “on which he promised to take action”. The petitioner says he filed an affidavit on 7-10-96 and “handed over “the same to the Director, CBI. Four weeks passed by thereafter and “no-tangible action has been taken by the CBI on the petitioner’s, complaint. The petitioner has repeatedly inquired from the CBI office on the action taken on his complaint but he has not received any response about the same.” The petitioner therefore says that “he has read to believe that the CBI and its Director are not going to proceed on this matter until they have political clearance from the

Prime Minister because of the fact that the survival of the present Government had been on the support of the Congress party” headed by the 3rd respondent and therefore the petitioner is forced to move the Court.

It was felt not necessary to issue notice to the CBI or 3rd respondent but issued notice to the Union of India limited to filing a “status report” and adjourned the matter. On that day Additional Solicitor General of India Counsel appearing for Union of India and also CBI contended that the petition was not maintainable, that norms must be laid down in such PIL matters. However, without prejudice to the said contentions, he submitted that a ‘status report’ will be filed as per the order dated 7-11-96 on 17-12-96, as directed by Court. Matter came up on 19- 12-96 and on that Sri K.N. Bhat regarding maintainability of the writ petition and the Status Report I was filed filed day written submissions. Mr. G.L. Sanghi appeared for the 3rd respondent (though notice was not issued to 3rd respondent) and submitted that the petitioner was giving interviews in the media and damaging the reputation of the 3rd respondent and of his political party. The petitioner’s counsel gave an undertaking that petitioner will not go to the media in connection with the subject matter of writ petition. The CBI asked 2 months time for filing a report. On 20-1-97, Status Report II was filed and CBI sought further time for filing a final report. In fact, counsel for 3rd respondent pressed for hearing of the case on that days but as detailed in the order dated 20-1-97, the case could not be taken up due to administrative reasons and was adjourned to 10-2-97. On 10-2-97, the 3rd “Status Report” was filed and arguments were heard on 12-2-97 and judgment reserved.

Counsel for petitioner submitted that petitioner has *locus standi* to set the criminal law in. motion, that the petition is not a motivated one, that when nearly one month had elapsed after a complaint followed by an appeal was given to the CBI on 7-10-96, it was open to the petitioner to move the Court seeking *mandamus*, inasmuch as there was no response from the CBI and that breach of statutory duties by CBI was sufficient cause of action for filing the writ petition. He also contended that an FIR ought to have been registered and investigation without registration of FIR was not an effective one. He contended that the contents of the petitioner’s affidavit revealed that the 3rd respondent was guilty of offences under Sections 7.20 of the Prevention of Corruption Act, 1988, that Section 2 and 32 of the Delhi Special Police Establishment Act, 1946 read with the notification dated 6-11-56 specified offences under Section 161 to 165, IPC and offences under the Prevention of Corruption Act. Accordingly, these would come within the purview of CBI and hence directions could be issued to CBI, some recent rulings of the Supreme Court were relied upon.

Additional Solicitor of India, submitted that petition was not maintainable at the instance of the petitioner on these allegations, and even if maintainable, there was no cause of action inasmuch as the petitioner rushed to the Court at a premature stage, that there was no truth in his allegation that the reminded the CBI nor in the allegation that there was no response. Mr. ‘B’ also relied upon several rulings of the Supreme Court and submitted that no *mandamus* is called for on facts of the case and that in any event, in view of the three status reports filed into Court, which show that proper action has been taken, no such order is called for. He said that it was nobody’s case that the non-registration of FIR precluded the CBI from examining witnesses or gathering material. He said petitioner ought not have moved the High Court but ought to have moved the competent Criminal Court as per the procedure in the Cr. P.C. if petitioner felt that the CBI was not moving in the matter. Sri G.L. Sanghi for the 3rd respondent (even though

no notice was given to the said respondent) submitted that the petitioner was politically motivated to harm the 3rd respondent and his party, it was defamatory and *mala fide*. Petition should be dismissed with heavy costs.

Court not proposed to go into the question of *locus standi* of the petitioner. The Court however, go into the question as to whether there was enough justification for the petitioner to approach the High Court within 4 weeks of his lodging a complaint with the CBI, whether CBI ought to have straightway registered a FIR and whether it was not permissible for them to investigate without registering an FIR and whether the petitioner ought to have moved the Criminal Court and also whether the petitioner was entitled to any mandamus on the facts and circumstances of the case, in view of the Status Reports I, 11 and III respectively dated 17-12-96, 20-1-97 and 10-2-97 filed by the CBI.

Taking up the first question, it will be noticed that the petitioner approached the CBI on 5-10-96, followed by affidavit/complaint on 7-10-96 and filed the writ petition on 5-11-96. Court had already referred to the pleadings of the petitioner in the writ petition in this behalf. Having regard to the nature of allegations, which are contained in the complaint of the petitioner, ought to have waited for reasonable time before presuming that 5-11-96 took no action or that no speedy action would be taken in future. Court had noticed that petitioner said in para 12 of the writ petition that ‘no tangible action’ was taken because though he ‘repeatedly’ inquired in CBI office he did ‘not receive any response’. Court asked the petitioner’s counsel as to when the petitioner went to CBI officer after 7-10-96 whom he met and who was the person who did not give him the response. No details however were forthcoming and none have been mentioned in para 12 of the writ petition. If inaction on the part of the CBI was to be the sole cause of action for filing the writ petition, one would expect full details of the efforts made by the petitioner to move the CBI to be given. No registered notice was sent within reasonable time after 7-10-96 to say that action was not being taken by the CBI that petitioner had gone to CBI office and met such person on various dates and the persons so asked did not give any response. There is no contemporaneous evidence to show that petitioner has tried to move in the matter. The petitioner appears to have surmised as stated by him para 12 and ground (B)...that ‘the petitioner has reason to believe that the CBI and its Director are not going to proceed on this matter until they have political clearance from the Prime Minister because of the fact that the survival of the present Government has been on the support of the ‘party’ headed by the 3rd respondent. Court was of the view that there is no evidence of any effort made by the petitioner to find out whether any action on his complaint has been taken by the CBI and that the petitioner rushed to the Court without reasonable time having elapsed accordingly without there being sufficient justification to move Court.

The registration of an FIR is not a condition precedent for conducting a preliminary investigation as distinct from a regular investigation. In fact, senior counsel stated that the non-registration of an FIR did not, as a fact come in the way of making an effective preliminary investigation and nobody has objected to the procedure adopted by the CBI.

It is clear that it is not open to the High Court to go into the merits of the matter or review the final decision of the police. If, however, the Court’s monitoring of the investigation shows either sluggishness or a deviation from a normal, honest and objective investigation, the Court could give ‘guidance’ to the Counsel for the CBI rather than express anything on the merits of the investigation.

It is for the police authorities to draw their final conclusions in the matter and not for this Court. High Court was mainly concerned with the question whether the investigation is going on honestly, sincerely, objectively and without delay. The Court confined its attention to this delicate task that is cast upon Court and have, examined the progress of the investigation. In fact, in a way, High Court has monitored the progress made by the CBI in the month of October, November, December, 1996 and January and February, 1997. The Court was satisfied that the investigation, though preliminary, has been and is going on within the well-defined parameters stated above. In any event the writ petition has served the legal purposes for which it has been filed.

In the result, on the basis of the complaint of the petitioner and followed by the notices for status reports, the CBI has been investigating into this matter in a manner which does not call for further monitoring or the issuance of a mandamus.^{32 33 34}

In *S.P. Gupta v. UOI*³² it was stated that in writ proceedings affidavits constitute ‘not merely their pleadings but also partake of the character of evidence in the case’. Therefore details ought to have been set out in the main writ petition. A rejoinder can contain only a reply to the specific points raised in the counter-affidavit and is not a substitute for a proper writ petition. If the main affidavit of a writ petition is bereft of details, a respondent can, in fact, say in his counter-affidavit that no counter is called for on the vague allegations of the petitioner. In *G. Shaik Shavalli v. Secy. Rt Anantapur*³³ in a case seeking relief on the ground of refusal to dispose of an application, it was observed (at page 298):—

‘To the question whether a writ petition disclosed any cause of action or not, the answer has to be found in the initiating document. Such a question has to be decided exclusively with reference to the averments made in the writ petition and wholly without reference to the counter-affidavit. It is a threshold question.....’

For the aforesaid reason, Court was not proposed to admit the writ petition nor call upon the respondents to file their counters to the writ petition.

Coming to the second contention, namely, as to whether the CBI ought to have straightway registered an FIR before starting preliminary investigation, the petitioner’s counsel submitted that there was no provision in the Code of Criminal Procedure which permitted the police authorities to start preliminary investigation before registering an FIR. It was pointed out to the counsel that perhaps the correct approach to the problem was whether there was any prohibition in the Code to start a preliminary investigation. That the latter approach is the correct one is clear from several rulings of the Supreme Court. It was pointed out by Mudholkar, in *State of U.P. v. Bhagwant Kishore Joshi*,³⁵ while agreeing with the conclusion of the majority that the question whether there was any prohibition in the Cr. P.C. against starting a preliminary investigation before registering an FIR *Mudholkar, J.* stated (at page 145 (of Cri Li):

32. Madhuresh v. C.B.I., 1997 Cri LJ 2820 at 2821, 2822, 2823, 2824, 2825, 2826, 2827 (Del.) (M. Jagannadha Rao, C J. and Manmohan Sarin, J.).

33. AIR 1982 SC 149, at 434, para 675.

34. AIR 1982 AP 296.

35. AIR 1964 SC 221: 1964(1) Cri LJ 140.

“In the absence of any prohibition in the Code, express or implied. I am of the opinion that it is open to a police officer to make preliminary inquiries before registering an offence and making a full scale investigation to it”:—

Again in *P. Sirajuddin v. State of Madras*³⁶ it was held by *Mitter, J* that before a public servant, whatever be his status, is publicly charged with act of dishonest which amounts to serious misdemeanour or misconduct and before a first information report is lodged against him, there must be some suitable preliminary investigation as to the allegations by a responsible officer. Otherwise, if an FIR is straightway registered, “such a report would to incalculable harm not only to the office in particular but to the department he belong to”.

Adverting to the above observations of Mudholkar, J and Mitter, J Ratnavel Pandian, J. stated in *State of Haryana v. Bhajan Lal*;³⁷ as follows:—

“We are in agreement with the views expressed by *Miller J. and Mudholkar, J.* in the above two decisions.”

Now we come to the main issue dealing with the role of the Court and the scope of the writ of mandamus that is sought to be issued. In the late one year we have about several rulings of the Supreme Court on this aspect, starting with *Vineet Narain v. L'9*,³⁸ (dated 20-96) and ending with *Union of India v. Sushil Kumar Modi*?⁴⁰ (Dated 24-1-97). The last decision puts the role of the Court beyond any doubt.

It may be started with the leading judgment in this area rendered by Lord Denning in *R. v. Metropolitan Police Commissioner*?⁴⁰ Indicating the duty of the Commissioner of Police, Lord Denning said:—

“..... I have no hesitation, however in holding that like every constable in the land, he should be, and is, independent of the executive. He not subject to the orders of the Secretary of State..... I hold it to be the duty of the Commissioner of Police, or it is of every Chief Constable, to enforce the law of the land. He must take steps so to post his men and crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are not to be prosecuted; and, if need be, bring the prosecution. or see that it is brought, but in all these rulings, he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him he must or must not, that observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.....”

The nature of such a duty and the power of the Court to enforce it were also mentioned by Lord Denning as follows:—

“A question may be raised as to the machinery but which he could be compelled to do his duty. On principle, it seems to me that once the duty exists,

36. 1970 (I) SCC 595: 1971 Cri LJ 523.

37. 1992 Suppl. (1) SCC 335: 1992 Cri 5. I 527.

38. 1996 (2) SCC 199: AIR 1996 SC 3386.

39. 1997 (1) SCALE 432: 1997 AIR SCW 725.

40. 1968 (1) ALR 763.

there should be means of enforcing it. This duty can be enforced I think, either by action at the suit of the Attorney General or by the prerogative order of mandamus

The Supreme Court in *Union of India v. Sushil Kumar Modi*,⁴¹ accepted the dictum of Lord Denning and their Lordships stated: ‘There can be hardly any doubt that the obligation of the police in our Constitutional scheme is no less’. So the law in India is the same.

Having noticed the positive side of the role of the High Court, the Supreme Court also referred to certain areas which the Court has to keep aloof from. They said that the role of the Court does not extend to formation of any opinion on the final step that is to be taken upon the investigation i.e. after the regular investigation made subsequent to registration of an FIR. In the same case *Union of India v. Sushil Kumar Modi*,⁴² the Supreme Court observed clearly:—

“According to the Code of Criminal Procedure, the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the Police and by no authority.⁴³

Their Lordships emphasised that the High Court’s function is limited to the following:

‘This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure proper and faithful performance of its duty by the police officer by resort to the prerogative writ of *mandamus*’.

The High Court should also see that anything done but it does not prejudice the case of the accused. In this context, the Supreme Court in *Sushil Kumar Modi*’s case,⁴⁴ referred to *Anukul Chandra Pradhan v. Union of India*,⁴⁵ to say that the High Court must see that publicity in these matters does not diminish dilutes the requirement of our criminal law for a fair trial in case a charge-sheet is registered and the matter goes to trial. The relevant passage in *Anukul Chandra Pradhan*’s case reads as follows:—

“A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial... It is reiterated, that any observation made by this Court for the purposes of the proceedings pending here has the bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner.”

41. 1997 (1) SCALE 432: 1997 AIR SCW 725.

42. *Ibid.*

43. See *Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117: 1967 (3) SCR 668: 1968 Cri LJ 97.

44. 1997(1) SCALE 432: 1997 AIR SCW 725.

45. 1996 (6) SCC 354.

Having referred to the above, passage, their Lordships in *Sushi Kumar Mocli's* case described the task of the High Court as a “delicate one” which has to be handled with dexterity and tact. They observed (at page 437, para 11):—

“The delicate task of ensuring implementation of the rule of law by requiring proper performance of its duty by the CBI and other governmental agencies, while taking care to avoid the likelihood of any prejudice to the accused at the ensuring trial because of any observation made on the merits of the accusation in the present proceedings, has to be performed with dexterity and tact needed in the conduct of such a proceeding.”

The Supreme Court in *All India Institute of Medical Science Employees Union (Regd.) v. Union of India*,⁴⁶ (dated 29-10-96) governs the case and the writ petition is liable to be dismissed inasmuch as if the petitioner was not satisfied with the action of the CBI, he could move the Criminal Court of competent jurisdiction under Section 190 of the Cr. P.C. read with Section 200 thereof by filing a complaint before the Magistrate to take cognizance of the offences and requesting the Magistrate to inquire into the complaint as provided in Chapter XV of the Code. The Magistrate could, record evidence and if he finds a *prima facie* case, instead of issuing process to the accused he is empowered to direct the concerned police to investigate into the offence under Chapter XII of the Code and submit a report. If the Magistrate finds that the complaint does not disclose any offence requiring further action, he is empowered to dismiss the complaint under Section 203 of the Code. If he finds that *prima facie* an offence is disclosed, he is empowered to take cognizance of the offence and issue process to the accused.

"he above decision in AIIMS case is not in any manner in conflict with the other judgments of the Supreme Court culminating in *Union of India v. Sushil Kumar Modi*, The ruling in AIIMS case obviously takes care of a later stage in the proceedings. The broad procedure is that initially the complainant goes to the police and investigation is to be done as per the provisions of Chapter XII by the police under Sections 154, 156, 157 refer to the said procedure. Section 173(1) envisages that every investigation under this Chapter shall be completed without unnecessary delay. On completion, if the police come to the final decision that the investigation had revealed the commission of offence, it shall so report to the Magistrate who under Section 190 takes cognizance of the same. Section 173(8) permits the investigating officer to make further investigation into the offence. But where the police have ultimately come to the conclusion that no offence has been *prima facie* brought out during the investigation, the complainant can go before a Magistrate and seek redress as per Sections 199, 200 etp. and the Magistrate can record evidence and if he finds a *prima facie* case, he can direct investigation again under Chapter XII. This is the ratio of AIIMS case.

But, the decision in *Union of India v. Sushil Kumar Modi*, takes care of an earlier stage. If during the investigation under Chapter XII, the police are found to be not performing their duty by conducting an honest, objective and speedy investigation, then, at that stage, the aggrieved party can use the mandamus procedure by moving the High Court under Article 226 to see that the police perform that duty effectively. If after the investigation has reached the finality and the police had come to the conclusion that *prima facie* no offence was made out, then the complainant could adopt the procedure

46. 1996 (8) SCALE 383.

envisaged in Sections 190, 200 etc. as laid down in *AIIMS case*?⁷ The said decision is not therefore in conflict with *Union of India v. Sushil Kumar Modi*, which deals with the scope of mandamus.

19. Mandamus-Unauthorized blockage of canal alleged.—Relief prayed for removal of encroachment, completion and construction canal work. Seeking issuance of mandamus to direct MCD and police to take appropriate step. Proceeding are pending in various forums/courts. Controversy raised cannot be subject matter of PIL. Not appropriate case to exercise extra ordinary jurisdiction under article 226 of Constitution.⁴⁷⁴⁸

20. Rule of mandamus is being sought as a direction that these authorities be directed to continue the registration of land.—It was contended that the rates of valuation which are in the Government order of 26-5-2000 was an exercise, which is in contravention of the procedure prescribed under the Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995. It was contended that the enhanced valuation aggrieves the petitioners. It was further contended that the respondent No 3, the Collector, Nalanda Bihar Sharif, promised verbally that the enhanced valuation, henceforth, will be only 20th on the old rates but has not kept his assurance. It was further contended that while the Government has remitted the fee and the Court fee by a special Notification No. S. O. R-3/201/95-62 dated 8-1-2000, the Collector, Nalanda, has decided to enhance the valuation rates of the land over night and otherwise not in accordance with the procedure prescribed.

None of the petitioner were aggrieved nor any right of (sic) theirs was in violation either Statutory or fundamental. Neither of them are either selling their land or purchasing land so as to be affected by the enhanced rates of valuation and the consequential stamp duty as may be paid, should it be a transfer of property.

Plainly, this cannot be a petition, as declared to the High Court as a Public Interest Litigation. It has been filed upon a lead by an Hon'ble Member of the Legislative Assembly. Neither the Hon'ble Member of the Legislative Assembly nor the eleven members, who accompanying him as petitioners, are aggrieved by any order or the Collector, Nalanda at Bhar Shariff. It is stated that they are holding the brief of the entire public as the rates of valuation have been increased cryptically.

In the instant case, fundamental right of petitioners was not infringed. Neither of the petitioners was an aggrieved person, as none of them was either a buyer or seller of property. As a generality interference was sought from the High Court. The issues, which have been raised, were within the capacity of a Member of the Legislative Assembly to seek an answer from the Government as of right, for such were the nuances of Parliamentary democracy.⁴⁹

21. Writ Petition for investigation—direction to approach relevant High Court and initiation of investigation is for executive & investigative agencies to probe.—Writ petition was instituted by way of public interest litigation under Article 32 of the Constitution of India. The petitioners have leveled some allegations against the

47. Ibid.

48. Satish Kumar Mann v. MCD, 2010 (6) RCR (Civil) 549 (Delhi).

49. Ram Charitra Prasad Singh (M.L.A. Hilsa) v. State of Bihar, (2001)1 BLJ 299 at 299, 300: (2001) 1 PLJR 67: AIR 2001 Pat 46 (Ravi S. Dhavan C.J. and Aftab Alam, J.)

incumbent Chief Minister of the State of Sikkim who was impleaded as Respondent No. 2 herein. The crux of these allegations was that he has misused his public office to amass assets disproportionate to his known sources of income. The petitioners have also alleged that he has misappropriated a large volume of public money at the cost of the Government of India and the Government of Sikkim. The relief sought by the petitioners was the issuance of a writ of mandamus directing the Central Bureau of Investigation (CBI) to investigate the allegations that have been leveled against him.

Statutory provisions controlled the scope for intervention by the trial court and it was not advisable for writ courts to interfere with criminal investigations in the absence of specific standards for the same.

The High Court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a Constitutional Court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of the Court may have far reaching persuasive effect on the court which it may ultimately try the accused. It was always open to the petitioners to approach the investigating agencies directly with the incriminating materials and it was for the investigating agencies to decide on the further course of action. While the Court can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It was only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition.⁵¹¹

22. Res—Judicata—Applicability to P.I.L.—In a public interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in rem. It binds the public at large and bars any before the Court and raising any connected issue or an issue. Which had been raised/should have been raised on an earlier occasion by way of a public Interest Litigation. It cannot be daunted that the petitioner in *Somashekar Reddy v. Govt. of Karnataka and Anr.*, 1999 (1) KLD 500 (DB), was acting bonafide. Further, as a retired Chief Engineer, Somashekar Reddy had the Special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, Somashekar Reddy as a public interest Litigation, could bar the present litigation.³⁹

The West Bengal Government Township (Extension of Civic Amenities) Ordinance, 1975, was promulgated to provide for an extension of civic amenities of Government Township in West Bengal and for the matters connected therewith and incidental thereto. This Ordinance was replaced by the West Bengal Government Township (Extension of Civil Amenities) Act, 1975 (hereinafter referred to as 'the Act'). Section 2(b) of the Act enumerated different civic amenities like drainage, sewerage, sanitation, roads, maintenance, public health, parks, etc. Till about 1977, according to the petition, there was great transparency in functioning of the Administrator, appointed under Section 4 of

50. Kunga Nima Lepcha & Ors. Vs. State of Sikkim & Others, 2010 Cri LJ 2411 (SC).

51. State of Karnataka and Anr. v. All India Manufacturers Organization & Ors., AIR 2006 SC 1846; 2006 (4) Kant LJ 369; 2006 (4) SCC 683; 2006 (4) Scale 398; 2006 (5) Supreme 819.

the Act, who was responsible for implementation of the provisions of the Act and except 500 plots, out of nearly 6000 plots, rest have been distributed.

It was alleged that the Chief Minister's discretionary quota was created by unlawful and confidential executive orders without even informing the Cabinet and illegally usurping the statutory powers of the Administrator. Further that the State Government formed a Salt Lake Advisory Committee, which started distributing the plots clandestinely. Certain deviations were also made from the Master Plan. The Government started carving out new residential plots from the land originally earmarked for civic amenities, ecological balance, maintenance, and public facilities etc. in violation of the approved Master Plan. Sometime in the year 1985, in view of the serious public protest, the Government dissolved the Salt Lake Advisory Committee and amended the Act by West Bengal Government Township (Extension of Civil Amenities) (Amendment) Act, 1985 (for short, the '1985 Amendment Act'). The amendment also validated the allotments, which had been made since October 1, 1976.

Writ Petition was filed before the Calcutta High Court praying for issuance of an appropriate direction to the authorities not to deviate from the Master Plan and to declare the 1985 Amendment Act as ultra vires. Still another writ petition being Writ Petition No. 17306 of 1997 was filed before that Court challenging the exercise of discretionary powers by the Chief Minister in regard to allotment of plots in the Salt Lake City. Challenge was also raised against the deviation from the Master Plan and various instances of the same were given in that writ petition. The writ petition, particularly, referred to Sectors 1, 2 and 3 of the City. As alleged by the petitioner herein, Writ Petition No. 7553 of 1986 came to be dismissed for default without deciding the case on merits vide order dated September 2, 2003.

The long history of the case clearly showed that in proceedings before the Calcutta High Court, the merit or otherwise of the discretionary allotments made by the Chief Minister was not decided in accordance with law. One writ petition, being W.P. No. 7553 of 1986, came to be dismissed for default vide order dated September 2, 2003 which order attained finality as no further proceedings were taken by the petitioners therein. Thereafter, W.P. No. 17306 of 1997 came to be dismissed, primarily, on the ground of non-joinder of necessary parties and the allotments under the discretionary quota of the Chief Minister were not set aside. On the contrary, while referring to the order dated June 11, 1987 of the other Bench in Writ Petition No. 7553 of 1986 that was still subsisting, it was observed that the Chief Minister was permitted to make allotments from the discretionary quota, however, in accordance with the judgment of the Supreme Court in the case of Common Cause, A Registered Society. A Civil Appeal No. 6707 of 1999 against that judgment also came to be dismissed by the Court along with Writ Petition No. 216 of 1999 which had also questioned the discretionary allotments. In other words, the allotment of large number of plots in Salt Lake City, Kolkata had been the subject matter of different writ petitions and/or appeal before the Calcutta High Court, for one reason or the other the allotments in favour of the private parties had not been set aside, though there were doubts raised by the Calcutta High Court as well as the Court regarding allotments under the discretionary quota of Chief Minister and the manner in which they were made. However, as all these judgments have attained finality, they cannot be permitted to be agitated over and over again including in the present writ petition. The principles of finality as well as fairness demand that there should be an end to the litigation and it is in the interest of public that the issues settled by the judgments of courts, including the Court, which have

attained finality should not be permitted to be re-agitated all over again, interest *reipublicae ut sit finis litium*.

The jurisdiction of the Supreme Court in a Public Interest Litigation, cannot be pressed into service where the matters have already been completely and effectively adjudicated upon.

From the above specific averments made in the affidavit, it is clear that there are very few plots presently left for allotment under the discretionary quota. The State Government has taken a conscious decision not to make further allotments under the discretionary quota even qua those plots. As far as already allotted plots are concerned, the rights of the parties appear to have been settled and attained finality, as in none of the writ petitions/appeals referred above any of these allotments was set aside by the Courts of competent jurisdiction. The petitioners in those cases, in fact, did not even care to take further proceedings to have the matters adjudicated before the higher Courts and in accordance with law. In these circumstances it will be a futile exercise of jurisdiction of the Court to reopen the whole controversy once again. The questions raised in the present petition have become merely academic as the rights of the parties have been finally settled and further the parties have acted thereupon to their respective prejudices. Without intending to state any law in the peculiar facts and circumstances of the present case there was no merit in the Public Interest Litigation and therefore the same stood dismissed.⁵²

23. Illegal activities concerning narcotic and psychotropic substances complained.—It, however, appears that the petitioner, an old man and a Sewadar of a gurudwara has been crying hoarse that in the premises of an oil mill near the Gurudwara at Ratangarh in Madhya Pradesh various smuggling and illegal activities relating to narcotic and psychotropic drugs are being carried on. Even if the petitioner has not been able to precisely give particulars of such illegal, activities concerning narcotic and psychotropic drugs. Court feels that it was only desirable that the Director General of Police, Madhya Pradesh should cause inquiry to be made by some superior police officials of the State about the truth or otherwise about the allegations of smuggling and illegal activities being carried on in the premises of an oil mill near the Gurudwara at Ratangarh in the State of Madhya Pradesh concerning narcotic and psychotropic drugs and take appropriate action on the basis of the inquiry report. The Registrar General of Supreme Court was directed to convey only this direction to the Director of Police, Madhya Pradesh.⁵³⁵⁴

24. Management of Religious Trusts and Maths.—The Apex Court in *Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan*,^{5*} stated that the appellant cannot be permitted to avail two remedies simultaneously, and such conduct of the appellant is abuse of process of Court. Mere availability of alternative remedy cannot be a ground to reject the relief in a Public Interest Litigation, but in view of history of the case, right from 15th century, the long standing litigation, the voluminous record, etc. involving disputed questions of facts and law adjudication of such disputes is not possible in a

52. Joydeep Mukharjee v. State of West Bengal & Ors., AIR 2011 SC 1169.

53. Giani Devender Singh Sant Sepoy Sikh v. Union of India, AIR 1995 SC 1847: 1995 (6) JT 198: 1996 (9) SCC 351: 1995 AIR SCW 2878: 1995 (1) Crimes 298: 1995 (1) EastCriC 170: 1995 (1) JT 263: 1995 () JabLJ 186 (1995) 1 East Cri. Cas 170 (SC).

54. 2014(5) SCC 530 : 2014(5) Scale 200 : 2014(5) JT 577 : 2015(6) R.C.R.(Civil) 730 : 2014 All SCR 3272 : 2016(1) WBLR 502.

Public Interest Litigation, the remedy is to get such disputes adjudicated by a fact finding authority as enumerated under the Act.

In matter of religious institutions scope of PIL is very limited, it is always better not to entertain this type of PIL simply on the basis of affidavits of the parties. Public Trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and their management thereof. Forums cannot be misused by the rival groups in the guise of PIL.⁵⁵

25. Usage of public funds on Government advertisements.—The petitioner sought an appropriate writ to restrain the Union of India and all State Governments from using public funds on Government advertisements which are primarily intended to project individual functionaries of the Government or a political party. It was contended that photographs on public advertisements, have the potential of developing the personality cult and the image of a one or a few individuals which is a direct antithesis of democratic functioning. The legitimate and permissible object of an advertisement can always be achieved without publication of the photograph of any particular functionary either in the State of a political party. The Apex Court stated that in exercise of jurisdiction under Article 142 of the Constitution, parameters can be laid down by this Court consistent with the objects enumerated by any of the provisions of Part IV, such exercise would be naturally time bound i.e. till the Legislature or the Executive, as the case may be, steps in to fulfill its constitutional role and authority by framing an appropriate policy.

Recommendation of Committee: Supreme Court, approving and adopting the recommendation to the Committee except where it was specifically indicated with regard to. **(1)** Publication of photographs of the Government functionaries and political leaders along with the advertisements, **(2)** appointment of an Ombudsman, **(3)** the recommendation with regard to performance audit by each Ministry, **(4)** Embargo on advertisements on the eve of the elections.⁵⁶

26. Prevention of Damage of Public Property Act.—Prevention of rich heritage and culture of the country is a constitutional mandate.⁵⁷

27. Case filed against Judge for passing a judicial order—not maintainable.—A petition was filed for registering a case against a retired judge of Supreme Court for passing a certain order, the said petition was dismissed stating that the order passed was on the judicial side by the judge in discharge of his judicial duty while functioning as a Judge, therefore aggrieved person may file a review petition.⁵⁸

28. Effect of non-disclosure of complete litigation history in a tendering.— Non-disclosure of complete litigation history would result in disqualification only if Tendering Authority comes to a conclusion that non-disclosure would result in serious prejudice to the public interest.⁵⁹

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55. Jaipur Shahr Hindu Vikas Samiti v. State of Rajasthan, 2014(5) SCC 530 : 2014(5) JT 577.

56. Common Cause v. Union of India (SC), 2015(6) Scale 302:2015(7) SCC 1: A1R2015SC 2286.

57. Subhas Datta v. Union of India (SC), 2015(2) Scale 166:2015(2) JT 192:2015 AIR (SCW) 1072.

58. Prashant Bhushan v. Union of India (SC), 2015(2) R.C.R.(Criminal) 576.

59. M.E. Infraprojects Pvt. Ltd v. Municipal Corporation of Greater Mumbai, (Bombay)(DB), 2018(5) BCR 841 : 2018(5) All MR 809 : 2019(1) Mh.LJ 56.

Part II

Legal Aid

Lok Adalat



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1. Introduction.—Lok Adalat is a process of administering justice without resorting to litigation. Its process is voluntary and works on the principle that both parties to the dispute are willing to sort out their disputes amicably. Through this mechanism, disputes can be settled in a simpler, quicker and cost-effective manner.

Under the Legal Service Authorities Act, 1987, National Committee and State Committees have been constituted to supervise the effective Legal Aid Schemes. Under this Act, Lok Adalats are being constituted at various places in the country for disposal of disputes in a summary way and through the process of conciliation and settlement. Functioning of Lok Adalat is entirely voluntary and conciliatory. Thus, it is speedier system of administration of justice. Lok Adalat would take justice to the door-steps of the poor and needy and make justice quicker and less expensive. There are no expenses involved in the process of Lok Adalat. In view of mounting burden of large number of small Non-Performing Assets, the onus now is on the Banks to make use of this forum and speed up recovery process.

Lok Adalat is the body constituted within the legal system to encourage settlement of disputes in an atmosphere of conciliation without going to the Courts and for arriving at a workable solution amicably. It can take cognizance of both suit filed and non-suit filed cases.

The word ‘Court’ as defined in Section 2(1) means a Civil, Criminal or Revenue Court and includes any tribunal or any other authority constituted under any law for the time being in force to exercise judicial or quasi judicial functions.

The Lok Adalats shall, for the purpose of holding any determination under the Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure while trying a suit in respect of the following :

- (a) The summoning and enforcing the attendance of any witness and examine him on oath;
- (b) The discovery and production of any document;
- (c) The reception of any evidence on affidavits;
- (d) The requisitioning of any public record or document or copy of such record or document from any Court or office;
- (e) Such other matters as may be prescribed.

The Lok Adalat has the power to specify its own procedure for determination of any dispute coming before it. All the proceedings before the Lok Adalat shall be deemed to be a judicial proceeding and every Lok Adalat shall be deemed to be a Civil Court for the purposes of Indian Penal Code and Criminal Procedure Code.

A supplementary forum for conciliatory settlement of disputes have acquired a statutory base. The Awards passed by the Lok Adalats are deemed to be the decrees of the Civil Court or the order of any other Court, and are binding on all the parties to the dispute. No appeal lies against an Award.

All categories of cases can be settled through Lok Adalats except criminal cases which are not compoundable.

Disputes at pre-litigative stage also can be taken cognizance of by the Lok Adalats.

Permanent & Continuous Lok Adalats have already been established in DVB, MCD, MTNL, DDA and GIC in Delhi for settling pending Court cases as well as disputes at pre-litigative stage.

2. Schemes Introduced by National Legal Services Authority.—Permanent and Continuous Lok adalats in all Districts throughout the country are being set up for conciliatory settlement of disputes.

Permanent and continuous Lok Adalats for all Government Departments, Public Sector Undertakings and statutory bodies are likely to be set up soon.

Legal Aid Counsel have been appointed in all the Courts of Magistrates in the country to give timely and free legal assistance to persons in custody who cannot engage an Advocate.

Legal aid and advice to prisoners in jails is being provided.

Legal literacy and legal awareness camps are being organised for dissemination of information making the people aware of their legal rights and remedies available to them.

Counselling and Conciliation Centres for guiding the public to settle their disputes amicably are being set up in the Districts.

Legal aid clinics and camps even in the remotest areas including tribal areas for giving guidance to the people on legal matters are being organised.

Accreditation of NGOs by the State Legal Services Authorities for implementation of legal aid programmes at the grass-roots level.

Social Justice Litigation regarding consumer protection, environmental protection or any other matter of special concern to weaker sections of the society.

3. What are legal services ?—Legal services include the rendering of any service in the conduct of a case or legal proceeding before any Court/Authority/Tribunal and the giving of advice on a legal matter. These are provided by way of,—

- (i) Providing advocates at State expense;
- (ii) Paying Court fee on behalf of the eligible persons;
- (iii) Bearing expenses regarding preparation of documents;
- (iv) Paying expenses for the summoning of witnesses; and
- (v) Paying other incidental expenses connected with litigation.

4. Persons eligible to receive free legal services.—Any person who is either—

- (i) a member of a Scheduled Caste/Scheduled Tribe; or
- (ii) a victim of trafficking in human beings or ‘beggar’ as referred to in Article 23 of the Constitution; or
- (iii) a woman or a child; or
- (iv) a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or]
- (v) a victim of mass disaster, ethnic violence, caste atrocity, flood, draught, earthquake, or industrial disaster; or
- (vi) an industrial workman; or
- (vii) in custody, including that of a protective home, juvenile home, psychiatric hospital, psychiatric nursing home; or
- (viii) having annual income less than Rs. 9,000/- or such other higher amount as prescribed by the State Government if the case is before a Court other than the Supreme Court, and less than Rs. 18,000/- or such other higher amount, as prescribed by the Central Government if the case is before the Supreme Court. (In most of the States, income-ceiling has already been enhanced to Rs. 25,000/- per annum for the cases up to High Court. The ceiling is being enhanced to Rs. 50,000/- per annum for the cases before the Supreme Court of India.)

5. Whom to contact for legal services ?—For obtaining free legal services, the eligible persons may contact Legal Services Authorities in every State, District and Taluk/Mandal,—

- (i) Chief Justice of State High Court is *ex officio* Patron-in-Chief of State Legal Services Authority.
- (ii) A serving or retired Judge of State High Court is Executive Chairman of State Legal Services Authority.
- (iii) An officer of the rank of District Judge is Member-Secretary of State Legal Services Authority.
- (iv) District Judge of every District is *ex officio* Chairman of District Legal Services Authority.
- (v) Senior Civil Judge of every Taluk/Mandal is *ex officio* Chairman of Taluk Legal Services Committee.

6. Essential features of Lok Adalats.—Essential features of Lok adalats which were earlier functioning as non-statutory institutions and which are now statutory institutions have remained the same. If these Lok Adalats have to be effective and successful, then in my view, these Lok Adalats should get co-operation to the fullest extent from all the agencies concerned with the working of such Lok Adalats. Panchsheel or Panchratna of Lok Adalats, namely,—

- (1) co-operation of lawyers;
- (2) co-operation of judicial authorities who monitor these Lok Adalats;
- (3) co-operation of conciliators who are appointed as per Section 19(2)(a) and (b) of the Act. These conciliators are drawn from different sections of the society who are having good social standing and zeal to do social work by sparing their valuable time for solving the problems of suffering litigants and prospective litigants;
- (4) co-operation of executive authorities and other staff members who are associated with Lok Adalats at various levels; and
- (5) co-operation of litigants themselves.

If all these five functionaries fully co-operate then the Lok Adalats would become vibrant, viable and would deliver the goods for which they are constituted by the Parliament under the aforesaid statutory scheme.

7. Judicial blend of Lok-Adalat.—The word “Lok” has been profusely used in political contents and made use of by political parties as a part of their appellation. It is heartening to note that Indian jurisprudential thought has, in recent times, accorded a respectable place to this word by christening the forum for judicial determination envisaged and elaborated under the Legal Services Authorities Act, 1987, as “Lok Adalat”.

In the phraseology “Lok Adalat”, both the words namely “Lok” and “Adalat” are equally thoughtful and profound, and influence the purport of each other. “Lok” is a word of wide connotation. Apart from signifying the people in general, it conveys the abiding sense of supremacy and ultimate authority of the people, especially in a democratic set-up like ours. This word “Lok” used to connote there lofty values even when, in a formal sense, India was not a democracy. A detailed discussion of this aspect would amount to detour from the reasonable scope of the topic at hand. It would not, however, be out of place to mention the fact that our epics—the Ramayana and the Mahabharat and the illuminating stories of the Puranas, insofar they deal with the political-cultural heritage of India, pointedly portray and underscore the majesty and supremacy of “Lok” even in monarchical systems making them subservient to the “Lok” and their success entirely dependent upon “Lokmat” i.e., public opinion.

The word “Lok” prefacing the word “Adalat” would, therefore, influence the meaning of the latter by requiring it to be an institution not of formal and static significance inspiring awe in the minds of the people, rather, to be one entirely committed to subserve the aspirations of speedy justice of people with a missionary zeal. The aims, objectives and *raison-d-etre* of such Adalats must ultimately be judged and evaluated at the touch-stone of the lofty concept of “Lok” even as its functioning and methodology must be inspired by, and must translate into practice, the hopes and aspirations of “Lok”. No technical nicety known to law can act as an impediment in achieving the said objective.

The word “Adalat” signifies a sense of thorough, dispassionate and expert deliberation of the issues before it so that its decisions inspire an intrinsic trustworthiness. These facets of the concept of “Adalat” cannot fail to influence and circumscribe at least the populist content in the concept “Lok”. A Lok Adalat therefore is morally obliged to ensure that comprises forming basis of its decision are grounded in the soil of justice and parties do not suffer, in the populist wake of getting the dispute settled, on account of their innocence and ignorance in the matter of fully appreciating the facts and sweep of their rights or the degree of damage suffered by them.

In Lok Adalat, the “Lok” content *i.e.* the public opinion aspect and the “Adalat” content *i.e.* the accurate and thorough deliberation aspect, have to be judiciously blended and balanced, especially in view of the fact that the decisions of Lok Adalat have been made non-appealable. It appears that these aspects have been well taken care of by providing under Sections 19(1) and 20(4) of the Legal Services Authorities Act, 1987, to the effect that Judicial Officers are integral part forming the constitution of Lok Adalat and legal principles and principles of justice, equity and fair play are the guiding factors for decision based on compromise to be arrived at before such Adalats.

8. Statutory foundation of Lok-Adalat—Birds Eye on Lok Adalat.— Lok Adalats are having a statutory foundation. It is easy to interpret a constitutional foundation for Lok Adalat specially in criminal matters. Speedy trial is the essential component of the fundamental right of life and liberty enshrined under Article 21 of the Constitution of India. The statutory foundation of Lok Adalat inherently subsumes the lofty concept of speedy trial and it can be seen as one of the most efficacious legal instruments for upholding the ‘speedy trial’ dimension of Article 21 of Constitution of India; for, trial, in a broader sense, must include conclusion of the case by settlement and compromise. Widening the criminal jurisdiction of Lok Adalats would be a significant step-in-aid of realising the said constitutional mandate.

9. Permanent and continuous Lok Adalats—Philosophy and the concept.—In the first, Annual Meeting of the State Legal Services Authorities held at New Delhi on 12th September, 1998, the progress in regard to the proposal for establishing permanent and continuous Lok Adalats in all the districts in the country was examined. Hon’ble Executive Chairman (as His Lordship Hon’ble the Chief Justice then was) reiterated that the Lok Adalats currently in vogue were not very successful in conciliatory settlement of those legal matters which required continuous and repeated mediation. His Lordship observed that complicated matters regarding matrimonial, landlord-tenant controversies, etc. could be more effectively sorted out in permanent and continuous Lok Adalats and suggested that State Legal Services Authorities should allocate one separate room in each District Courts complex or the room being used by District Legal Services Authority could be used as a venue for permanent and continuous Lok Adalats. Hon’ble Executive Chairman from most of the State Legal Services Authorities informed the House that they were in the process of establishing permanent and continuous Lok Adalats. Chandigarh Legal Services Authority was perhaps the first in the country to establish a permanent and continuous Lok Adalat followed by Punjab State Legal Services Authority, State Legal Services Authority, U.P. is also finalising modalities for establishing such Lok Adalats.

The underlying philosophy for setting up permanent and continuous Lok Adalat is that in our country, the litigants public has not so far been provided any statutory forum for counselling and conciliation and as such, these Lok Adalats may take upon themselves the role of counsellors as well as conciliators. After a *lis* is filed in the Court containing allegations, part of which may be untrue even, the attitudes of the parties get

hardened and thereafter the efforts to bring about conciliation are usually scoffed at. Moreover, the Judicial Officers before whom the matters come up for hearing, are already reeling under the burden of heavy pendency and as such, they are seldom in a position to spare sufficient time for bringing about conciliatory settlement between the parties. Many times the Judicial Officers dealing with the matters feel hesitant to make suggestions for conciliation to the parties because they apprehend that one or the other party may misunderstand their effort. Permanent and continuous Lok Adalats, therefore, if available in every District Courts complex, provide a statutory forum to the litigants where they may go themselves before litigation and the Court may also refer to it pending cases for counselling and conciliation. These Lok Adalats would be certainly in a better position to try conciliatory settlements in more complicated cases arising out of matrimonial, landlord tenant disputes, property and commercial disputes, etc. where repeated sittings are required for persuading and motivating the parties to settle their disputes in an atmosphere of give and take. The Lok Adalats may pass Awards where the parties agree to sort out their disputes and differences amicably and the matters where the efforts do not succeed may be conveniently sent back to the Courts concerned for further proceedings in accordance with law.

In the annual meeting held on 12th September, 1998, it was also unanimously resolved that a combined reading of Sections 19 and 20 of the Legal Services Authorities Act reveals that disputes at pre-litigative stage even could be taken cognizance of by Lok Adalats and Awards could be passed therein. The issue of compilation of limitation period is being examined and suggestions from the State Authorities are being awaited. (However, till then the Lok Adalats dealing with matters at pre-litigative stage may specifically warn the parties to take care of the limitation periods and may itself also be careful to see that the matters do not remain pending beyond limitation period). Far-reaching implications of this resolution must be appreciated and understood by all Legal Services functionaries in the country inasmuch as the settlement of legal disputes at pre-litigative stage itself saves the litigant from unnecessary litigation and prevents inflow of legal matters into our already overburdened courts.

The resolution passed in the meeting of the State Legal Services Authorities at Item No. 8 is also radical and revolutionary and needs focussed attention of all Legal Services Authorities. We all know that a very large number of cases pending in the Courts is directed against the Central Government, State Government, Public Sector Undertakings, Statutory Authorities and other autonomous bodies controlled by the Government. The resolution requests the Central Government through Ministry of Law, Justice and Company Affairs to impress upon all the Departments of the Central Government, State Government and Public Sector Undertakings to refer as many cases as possible to Lok Adalats for conciliatory settlements and also examine the feasibility of establishing separate Lok Adalats for different departments. It was also resolved that the matters at pre-litigative stage also could be settled through Lok Adalats. If Government Departments, Statutory Bodies like Electricity Boards, Telephone Departments and Municipal Bodies, etc. which are involved in heavy litigation due to the nature of their activities agree to establish permanent and continuous Lok Adalats in their departments itself, majority of the aggrieved citizens may not like to rush to the courts of law straightaway and instead move such Lok Adalats pointing out their grievances so that the Lok Adalat Judges may call for the records of the Departments and in the presence of the applicants and the departmental nominees sort out their disputes and differences amicably. The strategy is bound to enable the litigant public as well as departments concerned to settle their disputes across the table saving both of them from enormous

litigation costs. The methodology would not only settle and sort out most of the disputes at the Department's level but would also work as a check on lower functionaries of the departments who may be always asked to explain their actions during Lok Adalats hearings. Senior officers of the departments may be included in Lok Adalats benches for effective and speedy settlement of disputes.

Permanent and Continuous Lok Adalats which are an innovative extension of the existing Lok Adalats aim at providing a statutory forum to the litigant public for resolving their disputes and differences amicably in the presence of Lok Adalat Judges one of whom has to be a serving or retired Judicial Officer. The Judges of these Lok Adalats, which are to function on a regular basis at every District Court's complex in the country and also within the departments of the Central Government, State Governments, PSUs and statutory bodies, etc. would be in a better position to act as counsellors and conciliators by giving the parties continuous and repeated sittings and persuading them to arrive at amicable settlements. These Lok Adalats once established throughout the length and breadth of the country would revolutionise the justice delivery mechanism of the country by inculcating in the people culture of negotiated settlements.¹

10. Public Interest Litigation and Legal Services Authorities.—The emergency of the concept of PIL in the Indian Legal System has been explained by P.N. Bhagwati, J. in an article titled as "Social Action Litigation : The Indian Experience" in the following words :

"The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose, it is necessary to make procedural innovations in order to meet the challenges posed by this role of an active and committed Judiciary. The summit Judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the Power of Judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups."

The expression 'PIL' was first articulated by the Apex Court in *Fertilizer Corporation Kamgar Union v. Union of India*,² although the concept of PIL was discussed earlier, without assigning the terminology, in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*,³ The concept was crystallized in *S.P. Gupta v. Union of India*,⁴ and elaborated further in several subsequent judgments. Refer e.g. *People's Union of Democratic Rights v. Union of India*⁵; *Dr. Upendra Baxi v. State of U.P.*⁶; *Bandhua Mukti Morcha v. Union of India*⁷ ⁸; *Rural Litigation & Entitlement Kendra v. State of U.P.*; *Olga Tellis v. Bombay Municipal Corporation*.⁹

1. R.C. Chopra v. Member Secretary, National Legal Service Authority.
2. 1981 (1) SCC 568.
3. 1976 (3) SCC 832.
4. 1981 (Supp) SCC 87.
5. 1982 (3) SCC 235.
6. 1983 (2) SCC 308.
7. 1984 (3) SCC 161.
8. 1985 (2) SCC 431.
9. 1985 (3) SCC 545

Though it is imperative to lay down clear guidelines and propositions; and to clearly outline the correct parameters for entertaining a Public Interest Litigation, yet no clear rules/guidelines have been formulated, one view being that it is not possible to do so. While the Apex Court has, in a series of landmark decisions, adopted and sought to develop the concept of PIL, it has also, repeatedly, struck a note of caution. In *S.P. Gupta*, (supra at 219), Bhagwati J. observed as follows :

“But, we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.”

These concerns have also been echoed in later judgments. Refer : *Sachidanand Pandey v. State of West Bengal*¹⁰ 11; *Ramsharan Autyanprasi v. Union of India*¹¹; *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*¹²; *Subhash Kumar v. State of Bihar*¹³; *Union Carbide Corporation v. Union of India*¹⁴.

In *Janta Dal v. U.S. Chowdhary*¹⁵, the Court noted that it was depressing to note that on account of such trumpet proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants.

The difficulty which arises in this regard is that the Courts are often not in position to separate, as it were, the wheat from the chaff. It is difficult for the Court to go into the mind of the petitioner and to determine why a particular cause is being espoused—whether it is being espoused due to personal interest/motivations or whether the litigation is a *bona fide* PIL.

Another related concern about the effectiveness of the PIL which has often been voiced is that as opposed to private litigation, where the adversary system of justice works and the task of collection of facts may be left to the parties and where the Judge adopts a passive role, in a PIL, the Judge necessarily has to play a more pro-active role. It becomes necessary for the Court to sift through facts, to collect facts, and to ensure representation of potential litigants. This becomes even more necessary, in view of the fact that PILs are often filed on the basis of half-baked information without proper research or by persons who are not qualified or competent to raise such issues. The Court in public interest may entertain such petitions. The practical difficulties faced by Courts in entertaining/disposing of such petitions and in giving appropriate relief are enormous and cannot be underestimated.

It is in this context that the role of the National Legal Services Authorities/State Legal Services authorities constituted under the Legal Services Authorities Act, 1987 (hereinafter referred to as ‘the Act’) could be examined and developed.

10. 1987(2) SCC 295 at 331.
11. 1989 Supp.(I) SCC 251.
12. 1990 (4) SCC 449 at 452.
13. 1991 (1) SCC 598 at 604-605.
14. 1991 (4) SCC 584 at 610.
15. 1992 (4) SCC 305 at 348.

Section 3 of the Legal Services Authorities Act contemplates the creation of a National Legal Services Authority. Besides, the Chief Justice of India who is to be the Patron-in-Chief, and a serving or retired Judge of the Supreme Court who is to be the Executive Chairman, the Authority is to consist of such number of other Members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Government in consultation with the Chief Justice of India. Under Section 3-A of the Act, the National Legal Services Authority or the Central Authority is to constitute a Committee called the Supreme Court Legal Services Committee which is to perform such functions as may be determined by regulations made by the Central Authority.

Similarly, at the State level, every State Government is to constitute a body to be called the State Legal Services Authority, consisting of the Chief Justice of the High Court, a serving or retired Judge of the High Court who is to be the Executive Chairman and such number of other Members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court. [Section 6(1)]. Further, each State Authority is to constitute a Committee called the High Court Legal Services Committee which is to perform such functions as may be determined by regulations made by the State Authority. [Section 8-A].

The functions of the Central Authority are laid down by Section 4 of the Act. One of the functions which is prescribed by Clause (d) of Section 4 is take necessary steps by way of social justice litigation with a regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society. It is thus apparent that the Act envisages involvement of the Authorities/Committees constituted under the Act in PILs. With regard to the State Authorities. Section 7(2)(d) of the Act provides that they are to perform such functions as the State Authority, may, in consultation with the Central Authority, fix by regulations. *PIL & Legal Services Authorities by Justice Y.K. Sabharwal, Judge Delhi High Court.*

11. Nuances of Legal Aid Schemes.—Legal Aid Schemes have now obtained statutory sanction under the Legal Services Authorities Act, 1987 which has come into force from November 9, 1995. This Act is a successor to the earlier legal aid schemes which were being carried on in the different States of the country by way of executive directions. The genesis of the legal aid schemes is found in Article 39-A of the Constitution of India which enjoins the State to see to it that the operation of that legal system promotes justice, on a basis of equal opportunity, and that it shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The prime object of this Article is to ensure that the States in federation make available free legal aid to needy so that the needy and disabled litigants may not be deprived of access to legal system specially when they are matched against affluent litigants who can requisition services of competent senior advocates. With passage of time, the State Authorities which were carrying on these legal aid schemes thought it necessary to extend the legal services beyond the portals of law courts where the needy litigants could be provided free legal aid. A felt need was experienced by all those concerned with running of legal aid schemes that a time had reached where the principle of *prevention is better than cure* could be followed by transmitting legal literacy amongst ignorant masses so that they may know their legal rights and obligations. Consequently, avoidable legal disputes could be nipped in the bud. That gave rise to

conducting of legal aid camps on a large scale in rural and semi-urban areas. It was also felt that rising dockets of Court cases and mounting arrears which resulted in lot of delay in disposal of cases could also be effectively tackled by evolving a system of Lok Adalats where by persuasion the parties whose matters had reached the court could be made to compromise or settle their legal disputes amicably with little give and take. Lok Adalats were also held in pre-1987 era in different parts of the country for resolving disputes which had not even reached law Courts and were at pre-litigation stage. Thus, the conducting of Lok Adalats in those days tried to achieve dual purpose—(i) reducing arrears of pending matters in the Courts by amicable settlements which in turn reduced the possibility of proliferation of litigation by way of appeals, revisions, second appeals and ultimately the matters reaching up to the Supreme Court, and (ii) on the other hand resulted in disposal of pending cases by avoiding unnecessary delay. Thus, the legal aid schemes which were existing prior to coming into operation of the Legal Services Authorities Act had operated in three spheres, firstly by providing free legal aid to litigants who were not able to get their cases conduct by Advocates of their choice on account of penury; secondly, by spreading of legal literacy avoidable future legal disputes could be bye-passed and, thirdly, by instrumentality of Lok Adalats pending cases as well as future legal litigation could be effectively avoided. These legal aid schemes prior to coming into operation of the aforesaid Act got effectively implemented pursuant to the monitoring rendered by a Committee known as Committee for Implementing Legal Aid Schemes (CILAS) at the Centre and the State Legal Aid & Advice Boards at State Level which in their turn monitored the District & Taluk Legal Aid Committees which resulted in fructifying to a large extent the laudable object as envisaged by the Founding Fathers by enacting the Directive Principles of State Policy enshrined in Article 39-A of the Constitution. Hon'ble Mr. Justice S.B. Majumdar is a sitting Judge of the Supreme Court of India, Chairman, Supreme Court Legal Services Committee and Former Vice-Chairman of Gujarat State Legal Aid & Advice Board.

12. Equality before law.—Article 14 of the Constitution guarantees the equality before law and the equal protection of the laws to every person within the territory of India.

His Lordship Subba Rao, J. of the Supreme Court as he then was, has elucidated on the point that all person are equal before the law is fundamental of every civilised Constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that everyone is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates in equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure it is well high impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose or which it is made.¹⁶

In *D.D. Joshi v. Union of India*¹⁷, the Supreme Court had laid down that,—

16. (1961) 1 SCR 14.

17. AIR 1983 SC 420; (1983) 2 SCC 235; (1983) 1 SLJ 427

“The decisions on the scope and content of Article 14 are legion and to recall all of them would be merely an ‘idle parade of familiar learning’. It is well settled that article 14 forbids class legislation but does not forbid classification for the purpose of legislation. It is equally well settled that in order to meet the test of Article (14) (i) the classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) the differentia must have rational nexus to the objects sought to be achieved by the legislative or executive action under challenge.”

The Supreme Court in *Dashrath Rama Rao v. State of Andhra Pradesh*¹⁸, has succinctly observed :—

“Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special ground—religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, Clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state; and Clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention ‘descent’ as one of the prohibited grounds of discrimination. Whereas Article 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment should be cut down by a reference to the provisions of Part XIV of the Constitution which relate to Services or to provision in the earlier Constitutions Acts relating to the same subject. These Service provisions so not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of Service of persons, citizens or otherwise, appointed to a Civil Service or posts in connection with the affairs of the Union or any State. The word ‘State’, be it noted, has a different connotation in Part III relating to Fundamental Rights; it includes the Government and Parliament of India, the Government and legislatures of each of the states and all local or other authorities within the territory of India, etc. therefore, the scope and ambit of the Service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right guaranteeing to all citizens an equality of opportunity in matters of public employment. The preamble of the Constitution states that one of its objects is to secure to all citizens equality of status and opportunity; Article 16 gives equality of opportunity in matters of public employment. We think that it would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have altogether a different scope and purpose.”

13. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

- (a) a member of a Scheduled Caste or Scheduled Tribe;

18. AIR 1961 SC 564.

(b) a victim of trafficking in human being or beggar as referred to in Article 23 of the Constitution;

(c) a woman or a child;

(d) a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of Clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of Clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of Clause (q) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. *Vide* Section 12, Legal Services Authority Act, 1987.

14. Equal access to the law for the rich and the poor.—The primary dedication of the judiciary to the dissemination of the rule of law is not only the direct demand of their assigned role but draws sustenance as well, from the national choice of political democracy. Equal access to the law for the rich and the poor alike is essential to the maintenance of the rule of law. It is therefore essential to provide adequate legal advice and representation to all those, threatened as to their life, liberty, property or reputation, who are not able to pay for it. In fact, where there is no protection, there is in effect no law. No true democracy can endure without a system of administration of justice of which the poorest are able to take advantage.

It would not be an exaggeration to say that the very existence of free government depends upon making the machinery of justice available to the humblest of its citizens.

15. Free legal aid and fairness in criminal trials and the rights of indigent accused persons.—It will be very interesting to first refer to the proposition laid down by the Hon'ble Supreme Court in *Tyron Nazareth v. State of Goa*.¹⁹ It was submitted on behalf of the appellant-accused that in this decision, the accused came to be convicted without giving him free Legal Aid. No assistance was provided of a lawyer before the trial in a case under NDPS Act and the accused was convicted and sentenced to undergo minimum 10 years rigorous imprisonment and a minimum fine of Rs. 1 lac. Similar is the fact-situation in the appeal, on hand. In fairness, this submission is not disputed by the learned Additional Public Prosecutor appearing for the respondent-State.

In *Tyron Nazareth's* case (*supra*), the Hon'ble Apex Court following the decision of Supreme Court in *Khatri-11 v. State of Bihar*²⁰, and *Suk Das v. Union Territory of*

19. 1994 Supp (3) SCC 321.

20. 1981 (1) SCC 627.

Arunachal Pradesh,²¹ held that convicted-appellant was not assisted by any lawyer and perhaps, he was not aware of the fact that the minimum sentence provided under the statute was 10 years imprisonment and a fine of Rs. one lac. Therefore, the Supreme Court, in the circumstances of the matter, had set aside the conviction and case was remanded for *de novo* trial. It was further held that the appellant, if not represented by a lawyer, may make a request to the Court to provide him a lawyer under Section 304 of Cr PC or under any other Legal Aid Scheme and the Court may proceed with the trial afresh after recording a plea on the charges. The appeal was, therefore, allowed. The order of conviction and sentence recorded by the Special Court and confirmed by the High Court were set aside and a *de novo* trial was ordered. The ratio propounded, in this case, is squarely attracted to the fact situation of the appeal on hand. It appears that this decision was not brought to the notice of the trial Court. It has, therefore, resulted into miscarriage of justice.

Similarly, in *Rishi Nandan Pandit v. State of Bihar*²², Hon'ble Apex Court allowed the appeal of the appellants. Interpreting the provisions of Sections 386, 374, 303, 304 and 162 of the Cr PC and the disposal of appeal by the High Court on merits, in absence of accused-appellant's Counsel and upholding conviction under Section 395 and sentence of 10 years of rigorous imprisonment, came to be quashed. It was held that in view of the large number of convicts (12 in the case) and the severity of the sentence, it was advisable for the High Court to appoint an *amicus curiae* in such a case. Omission to do so, was held bad. Procedural flaws might have been averted if a counsel was appointed to argue for the appellants.

Article 39-A of the Constitution of India, has again amplified and magnified the concept and philosophy of free, fair and full Justice, which reads as under :—

“39-A. *Equal Justice and free legal aid.*—The State shall secure that the operation of the legal system promotes Justice, on a basis of equal opportunity, and shall, in particular, provide free Legal Aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities.”

A plain perusal of the aforesaid provisions, evidently, leads us to believe that it is an obligation of the State Authority to provide free and competent legal aid to the persons, who are, unable to procure or engage services of a private lawyer on account of financial or any other disability. Fairness in trial of a person, who is facing an indictment is a basic feature of criminal jurisprudence. That is how, provisions are, specifically, incorporated in Section 304 of the Cr PC, which prescribes that legal aid shall be provided to the accused, in certain cases, at the State expenses. Section 304 reads as under :—

“304. *Legal Aid to accused at State expense in certain cases.*—(1) Wherein a trial before the Court of Sessions, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

21. 1986 (2) SCC 401.

22. 2000 SCC (Cri) 21.

(b) the facilities to be allowed to such pleaders by the courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Sessions.”

The Universal Declaration of Human Rights and the Constitutional provisions enshrined in Chapters III and IV and the provisions of Legal Services Authorities Act, 1987 and the provisions of Section 304 of the Code of Criminal Procedure manifest the human rights deriving from the dignity and worth in the human beings, Articles 3, 10 and 11 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly (U.N.O.) Resolution 217A(III) of 10th December, 1948 and recognised and ratified by India, are as under :—

“Article 3. Every one has the right to life, liberty and security of person.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.1. Everyone charged with a penal offence has the right to be presumed, innocent until proved guilty according to law in a public trial, at which he has had all the guarantees necessary for his defence.”

16. **Constitutional Commands.**—Therefore, it would be expedient to refer to and recount them so that serious error committed by trial Court could be obviated in future and Constitutional commands could be observed in true spirit and letter,—

(i) Protection against arbitrary or unlawful arrest [Article 22 of the Constitution and Sections 41,55 and 151 of Cr PC];

(ii) Protection against arbitrary or unlawful searches [Sections 93, 94, 97, 100(4) to (8) and 165 of Cr PC];

(iii) Protection against “double Jeopardy” [Article 21(2) of the Constitution and Section 400 of Cr PC];

(iv) Protection against conviction or enhanced punishment under *ex post facto* law [Article 20(1) of the Constitution];

(v) Protection against arbitrary or illegal detention in custody [Article 22 of the Constitution and Sections 56, 57 and 76 of Cr PC];

(vi) Right to be informed of the grounds, immediately after the arrest [Article 71(1) of the Constitution and Section 50 of Cr PC as also Sections 55 and 75 of Cr PC];

(vii) Right of the arrested person not to be subjected to unnecessary restraint [Section 49 of Cr PC];

(viii) Right to consult a lawyer of his own choice [Article 22(1) of the Constitution and Section 303 of Cr PC] ;

(ix) Right to be produced before a Magistrate within 24 hours of his arrest [Article 22(1) of the Constitution and Sections 57 and 76 of Cr PC];

(x) Right to be released on bail, if arrested [Sections 436, 437 and 439 of Cr PC, also Sections 50, 20 and 167 of Cr PC];

(xi) Right not to be a witness against himself [Article 20(3) of the Constitution];

(xii) Right to get copies of the documents and statements of witnesses on which the prosecution relies [Sections 173(7), 207, 208 and 238 of Cr PC];

(xiii) Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt [Sections 101-104 of Evidence Act];

(xiv) Right to insist that evidence be recorded in his presence except in some special circumstances [Section 273 of Cr PC, also Section 317, Cr PC];

(xv) Right to have due notice of the charges [Sections 218, 228(2) and 240(2), etc. of Cr PC];

(xvi) Right to test the evidence by cross-examination [Section 138 of Evidence Act];

(xvii) Right to have an opportunity for explaining the circumstances appearing in evidence against him at the trial [Section 313 of Cr PC];

(xviii) Right to have himself medically examined for evidence to disprove the commission of offence by him or for establishing commission of offence against his body by any other person [Section 54 of Cr PC];

(xix) Right to produce defence witnesses [Section 243 of Cr PC];

(xx) Right to be tried by an independent and impartial Judge [The Scheme of Separate of Judiciary as envisaged in Cr PC, also Sections 479, 327 and 191, etc. of Cr PC];

(xxi) Right to submit written arguments at conclusion of the trial in addition to oral submission [Section 314 of Cr PC];

(xxii) Right to be heard about the sentence upon conviction [Sections 235(2) and 248(2) of Cr PC];

(xxiii) Right to fair and speedy investigation and trial [Section 309 of Cr PC];

(xxiv) Right to appeal in case of conviction [Sections 351, 374, 379 and 380 of Cr PC and Articles 132(1), 134(1) and 136(1) of the Constitution];

(xxv) Right not to be imprisoned upon conviction in certain circumstances [Section 360 of Cr PC and Section 6 of the Probation of Offenders Act];

(xxvi) Right to restrain police from intrusion on his privacy [Article 31 of the Constitution];

(xxvii) Right to release of a convicted person on bail pending appeal [Section 380 of Cr PC];

(xxviii) Right to get copy of the judgment when sentenced to imprisonment [Section 363 of Cr PC];

It may also be stated at this stage that provisions for providing legal aid to needy and indigent persons, particularly, in criminal trial has been made, as it is reported, in more than 132 Nations out of 192 U.N.O. member States. Even in affluent capitalist and developed democratic countries like United States, Legal Aid is provided, as of right, to needy and deserving persons facing criminal trial. The Legal Aid Corporation has been

constituted which is manned, managed and monitored by the American Bar Association and many other American Law Societies or organisation provide Attorneys. Interestingly the provisions to be incorporated even in the Constitution of United States by virtue of Fourth Amendment in 1789, whereby the life, liberty and freedom is preserved and cannot be taken away without due process of law. It would be interesting to refer to the Fourth Amendment made in the United States Constitution, which came into force in 1789

Amendment IV.—The right of the people to secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Again in the United States by virtue of Amendment XIV, the right and liberty of a citizen is proclaimed and strengthened. It reads as under :—

Amendment XIV.—Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The right to counsel in a criminal trial is very important in USA. This aspect is very well developed. We may, therefore, peep into it. The right of an indigent accused in a criminal trial to the assistance of counsel, which is guaranteed by the 6th Amendment, is made applicable to the States. The 14th Amendment, in *Gideon v. Wainwright*²³, is not governed by the classification of the offence or by whether or not jury trial is required. It has been clearly propounded that no accused may be deprived of his liberty as a result of any criminal prosecution, whether felony or misdemeanor, in which he was denied the assistance of counsel is not determined by the seriousness of the crime.

The assistance of counsel will best avoid conviction of he innocent, an objection as important in the Municipal Court as in Court of general jurisdiction. Therefore, in our view, the opinion of U.S. Supreme Court in *Jon Richards v. Raymond Haling*²⁴, is landmark and epoch- making in the realm of right to counsel for an indigent accused in a criminal trial. The 6th Amendment, which enumerated the situation, has been applicable to the States by reason of 14th Amendment and it provides specified standards of “all criminal prosecutions”. The federal constitutional right to counsel is not, thus, limited to trials for offences punishable by certain amount of punishment or imprisonment. Our view is also, therefore, very much reinforced by the decision of the U.S. Supreme Court.

In *William Burns v. State of Ohio*²⁵, it has been held that there is no rational basis for assuming that indigent’s motions for leave to appeal are less meritorious than those of other defendants (“accused”). The imposition by the State of Finance’s barriers restricting the availability of appeal or review for indigent criminal defendants has no place in the American heritage of criminal Justice under the law.

23. 372 US 335.

24. 407 US 25.

25. 306 US 252

In *Lawrence Long v. District Court, Iowa*, it has been decided that to interpose any financial consideration between an indigent prisoner of the State and his exercise of a state-right to sue for his liberty is to deny the prisoner, the equal protection of laws. In this case, U.S. Supreme Court reversed the opinion of Supreme Court of Iowa and unanimously decided in favour of the accused, who was indigent prisoner. Equal Justice is interpreted ingeniously and it has been held that there can be no equal Justice, where the kind of trial a man gets, depends on the amount of money he has. The 14th amendment of U.S. Constitution requires, whereas, the State grants the Right of *habeas corpus*, rich and poor prisoners are to be treated alike.

It is interesting to note that in *Annie Harper v. Virginia State Board of Elections*²⁶, the U.S. Supreme Court rendered the opinion while interpreting the expression "due process". The "due process" clause of 14th amendment does not enact economic theories of a particular era. The "equal protection" clause of 14th Amendment is not shackled to the political theory of a particular era. Where fundamental rights and liberties are asserted under the equal protection clause, classifications, which might invade or restrain them, must be closely scrutinized and carefully confined. The opinion of U.S. Supreme Court, in this case, is of historical interest on the constitutionality of discrimination as regards the property right classifications or payment of tax as a condition of right to vote.

On the other hand, apart from many developing countries, even in a country like China, a communist country, right to free legal aid in a criminal trial is made, statutorily, mandatory. Such a provision in the realm of legal services has been made effectively and efficiently in various Western and European countries.

There are several reasons why, the right to legal aid or to avail legal services in a country like India, which is underdeveloping, democratic republic, wherein, the 'Welfare State' doctrine has been adopted, assumes wider significance. There are several reasons, aspects and facets prevalent in this country, which would prompt to have a very effective, useful and efficient infrastructure for providing free and competent legal aid in a country like India, where less than 33 per cent of the people know how to write and read sufficiently and usefully. It is in this context, the provisions for legal services have been made in the Constitution as well in the Legal Services Authorities Act, 1987, over and above the provisions made in Section 304 of the Criminal Procedure Code, 1973.

It would be fruitful to mention the steps suggested in England to assist the unaided and unrepresented accused who is known as 'defendant' in England in Magistrate Court. In 1966, in a Committee was appointed under the Chairmanship of Lord Chief Justice Widgery, known as 'Widgery Commission' to consider the question of legal-aid in criminal proceedings and submit its report. Unfortunately, the report was found not satisfactory by the British Section of the International Court of Jurists. A Special Committee was appointed known as 'Justice in 1970' and it submitted its report in 1971, wherein, it has been observed that the Criminal Legal Aid System in Magistrates Court was not working, as fairly as, it should, and that, most accused persons in Magistrate Courts were unaided or unrepresented.

It was, therefore, suggested to establish a "Duty Solicitor System" similar to the system operating in Scotland and Ontario. In such a system, a solicitor appointed from the Legal Aid Panel attends at Court, prior to the Court sitting and interviewing the accused, coming before the Court for the first time. He would tender advice as to which

26. 383 US 663.

plea should be taken by the accused or defendant, including plea in mitigation and also applies for bail or for adjournment, if necessary. He could also advise him on the need for applying for legal aid. The Widgery Committee had rejected such a proposition, essentially, on the ground of shortage of Barristers and Solicitors, where, the Justice Committee pointed out that such a task is not insuperable.

At this stage, it would be interesting to refer to the innovative scheme known as, "The Scheme of Legal Aid Counsel" introduced by the National Legal Services Authority's Patron-in-Chief and Chief Justice of India, Hon'ble Dr. Justice A.S. Anand and the Executive Chairman and Judge of the Supreme Court, Hon'ble Mr. Justice S.P. Bharucha. Such a scheme is introduced in almost All-magisterial Courts in Gujarat, and it is also, reported that in almost all Criminal Courts, such a scheme has been implemented. The role of the Supreme Court and the NALSA in the realm of Legal Aid and ADR has been outstanding and excellent.

By virtue of the provisions of Articles 21 and 22(1) and 39A of the Constitution of India, and Section 304 of the Criminal Procedure Code, and also, the provisions of National Legal Services Authorities Act, 1987, and the dynamic interpretation of Supreme Court and innovative schemes of NALSA, legal aid has been elevated on a very high pedestal in India. It will, also, be interesting to refer the judicial creativity and activism of the Hon'ble Apex Court manifested in *Maneka Gandhi v. Union of India*.²⁷ It will be heartening to find that the highest court of the land has given this landmark decision in which the following observations in the matter of free legal aid for indigent litigants are very pertinent.

The procedure under which a person may be deprived of life or liberty should be "reasonable, fair and just", now a procedure, which does not make available the legal services to accused person, who is 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".

In the present case, also, there cannot be said to be a reasonable, just, free and fair trial in a serious charge against the accused. Not only that he is not a trained person, but also, due to the fact that while making a statement that he would himself defend, he was not informed about the seriousness of the charge, minimum sentence of 10 years and a minimum fine of Rs. 1 lac, on being found guilty. Simply because he did not say 'yes' to a question of the Court on being asked about legal-aid, without understanding the seriousness, the intricacies, the implications and the minimum statutory prescription of sentence of 10 years and a fine of Rs. 1 lac, would not change the scenario. Of course, legal aid cannot be thrust against the wish of the accused, when he has voluntarily, evidently and after understanding and exercising his option in refusing or accepting legal-aid.

The object and design of the provisions of Section 304 of Cr PC, is that legal aid should be provided to a poor or an indigent unaided accused in a Sessions Trial case and it is a mandatory duty. Section 304(1) of the Criminal Procedure Code, in fact, gives effect to the recommendations of the Law Commission for making legal-aid available in all trials before the Court of Sessions. The accused was tried before the Court of Sessions and, the record does not show, clearly, that we can say that we are satisfied that he had replied to the question of the trial Court on the point of legal aid understanding or

exercising his faculty of mind or his intelligence, and again, it is aptly manifested from the record and, also, admitted even, by the learned APP appearing before us, that there is nothing on record to suggest that the accused was given to understand by the Sessions Court that the offence with which he was charged, carries a minimum statutory sentence of 10 years and fine of Rs. 1 lac. So, on both counts, factually and legally, the trial against the accused before the Sessions Court cannot be characterised as “reasonable, fair and just.”

The Hon’ble Apex Court has also, in the following epoch-making decisions, lucidly expounded the principles of providing free legal aid and fairness in criminal trials and the rights of indigent accused persons.²⁸

There are innumerable reasons why Free and Competent Legal Aid in India is, extremely, imperative and should be liberally construed. Therefore, it would be appropriate and expedient to highlight some of the significant facets and features, at this juncture, in nutshell, which are as follows:

(i) India is largest Democratic Republic, Secular State which has adopted the doctrine of Welfare State and has followed Welfare State doctrine.

(ii) Almost 50 per cent of our population constitutes women and, undoubtedly, in the present social set-up, there is, unfortunately, still undesirable strong gender-bias in practice. And majority of them are rural areas and illiterate.

(iii) Out of the total population of the women in this country, almost less than 50 per cent is literate;

(iv) Most of the rural people in India reside in more than 5,18,000 villages who are either illiterate, indigent or ignorant of their rights. They have started to look upon the system as a foe and not a friend, which is, undoubtedly, an unhealthy syndrome.

(v) Pending work-load of cases in Indian Courts has rapidly crossed the 30 millions as per latest survey, and many more are under inquiry or investigation stage, etc.

28. (i) *Ram Krishan Bhardwaj v. State of Delhi*, AIR 1953 SC 318.

(ii) *M.H. Hoskat v. State of Maharashtra*. 1978 (3) SCC 544.

(iii) *Hussainara Khatoon (IV) v. Home Secy., State of Bihar*, 1980 (1) SCC 98.

(iv) *Hussainara Khatoon (V) v. Home Secy., State of Bihar*, 1980 (1) SCC 108.

(v) *Kadra Pahadiya v. State of Bihar*, 1981 (3) SCC 671.

(vi) *Khatris (II) v. State of Bihar*. 1981 (1) SCC 627.

(vii) *Munna v. State of U.P.*, 1982 (1) SCC 545.

(viii) *Sheela Barse v. State of Maharashtra*. 1983 (2) SCC 96.

(ix) *Suk Das v. Union Territory of Arunachal Pradesh*, 1986 (2) SCC 401.

(x) *Sheela Barse v. Union of India*, 1986 (3) SCC 596.

(xi) *Centre for Legal Research v. State of Kerala*. 1986 (2) SCC 706.

(xii) *Bajiban Salambhai Chauhan v. U.P. State Road Transport Corporation*, 1990 Supp SCC 769.

(xiii) *Kishore Chand v. State of HP.*, 1991 (1) SCC 286.

(xiv) *State of Maharashtra v. Manubhai Proqaji Vashi*, 1995 (5) SCC 730.

(vi) Roughly, 91 per cent of cases instituted in the Courts go for trial and only 9% of cases are settled without judicial agitation, which is reverse in the USA. Thus in USA more than 90% of cases involving legal disputes are settled before they go for trial.

(vii) The ratio of Judges per million in India is almost 9, whereas, it is more than 115 in USA. Even in a country like Pakistan, the ratio is more than the ratio in India.

(viii) In case of ratio of Advocates available in India, is far less than developed countries. There are about only 4,50,000 and odd numbers of advocates in India which has populous of 1 billion.

(ix) Even in case of urban populous most of them are ignorant about their legal rights, who are otherwise, literate. The urbanised populous lack awareness about their Legal Rights.

(x) The life span of a civil case or a law suit in civil side, is ranging average, between 8 to 12 years. Who knows even after a successful decision or order in favour of a party, whether he would be able to see light at the end of tunnel after having passed through the long legal and procedural conduit pipes?

(xi) The Courts have to interpret, analyse and apply the provisions of law in the beginning of the 21st Century, which are made more than 8 to 9 decades old. Some of them are even century old and even more. Let us not forget that there is nothing constant except 'change'.

(xii) Our traditional Legal system is founded upon British legacy which had a basis and bastion of Roman jurisprudence which historically proved to be a great and grand failure in terms of local and personal in terms of Indians.

(xiii) Even after decree award or order passed on judicial side in favour of a party, after numbers of years, successful party has to again undergo the second round of litigation at the stage of execution. Is it not a Pity v. Duty?

(xiv) Our present traditional system of Justice is suffering from 3 main maladies and unhealthy syndromes :

- (a) Huge and heavy expenses;
- (b) Unexpected and unpredictable inordinate delay in disposal;
- (c) Cumbersome and complex process of Court.

(xv) In view of the failure to provide easy, cheap and expeditious accessibility, mental barrier is developed amongst many persons to suffer injustice. As a result of which, a common man has started looking at it, as for rather than a friend.

(xvi) The country like ours, the largest democratic welfare state, in which Rule of Law has been recognised as one of the basic features of the Constitution.

(xvii) Majority of the people are poor or indigent and most of them live below the poverty line, even though poverty line is drawn liberally and not upon an International Standard.

(xviii) The voice of the litigant who is the heart of the system is soft and weak. It is drowned out by the roar or fear. It is ignored by voice of desire. It is contradicted by the voice of some strong. It is hissed away by hate and finally extinguished by fire of anger.

(xix) The Legal Aid which aims at providing free and competent Legal Aid, which is protective as well as preventive aspect, assumes higher degree of importance, when we have astronomical arrears in our courts at present.

(xx) The Legal Aid system covers all the 3 stages pretending and post litigation. Therefore, by mediation or any other effective, Alternative Dispute Redressal (A.D.R.) Forum dispute can be resolved. National Legal Service Authority (NALSA) has reported that more than 50,000 cases have been settled at profiling stage, out of which more than 18,000 cases have been finally settled in Gujarat by GSLSA.

(xxi) Legal Aid under the Legal Services Authorities Act, 1987, has become a mission whereas it was a vision earlier and right from the Highest to the Lowest Court mechanism under the direction and guidance of NALSA has been set up.

(xxii) Legal Aid means to assist or provide some help to the needy, whereas, under the 1987 Act, the concept is changed and Legal Aid is substituted by Legal Services. It is also the duty to provide it.

(xxiii) The revolutionary evolution of resolution of dispute by one or other means, A.D.R. has been, successfully, translated in various countries.

(xxiv) It promotes dispensation of socio-economic Justice to the deserving indigent who is wronged or done injustice.

(xxv) It is a means to achieve the end enshrined in the Constitution to reach the goal of equal accessibility to the Justice system.

(xxvi) The weaker section, viz., Scheduled Caste and Tribes, under- privileged, oppressed and depressed, destitutes and deserted millions of illiterate and ignorant have started losing faith in the traditional system. It can, hardly, be denied that in the present set up of the society, corruption has not only become endemic, but also epidemic. Therefore, easy and speedy access to Justice for a common man is imperative.

(xxvii) 34 per cent of the total world's poor populous is in India. More than majority persons live below poverty line. Even in State like Gujarat, as per latest survey, 39 per cent population, in reality, lies below poverty line.

(xxviii) UNICEF has declared the year 2000 as International Year of culture of peace. The preventive and protective Legal Aid creates jurisprudence of peace.

(xxix) Legal Aid is in full swing even in a rich country like USA, where, average annual per capita income is more than \$27,000 whereas it is almost \$350 in India.

(xxx) Jurisdiction is equally important, if not more than the Medicare, for the survival of the rule of Law. It, also, revives, rejuvenates, restatements and for revivification of values and ethos. It helps to create renaissance of National Legality and provides a rendezvous for social amity and affinity and social Justice.

(xxxi) It is no longer a plan but it is a pledge. It is not longer a chart, but a charter. It is no longer a cry or call but a creed. It is, therefore, necessary to consider to have (i) National Legal Aid Corporation; (ii) National Equal Access to Justice Library for better monitoring and Management of Legal Aid and providing competent Legal Aid to poor and not the poor Legal Aid.

(xxxii) It aims at promoting larger interest, harmony, comity and policy and jurisprudential cohesion and environment.

(xxxiii) It creates not only peace but a culture of compromise. In our country, amount spent or expenditure for administration of law and Justice is reportedly 0.2 per cent of the Gross Domestic Product (G.D.P.) which is grossly inadequate and insufficient in a democratic set up. It is, therefore, necessary to constitute a regular mechanism, whereby, we can take and evaluate Judicial Cardiomogram for necessary urgent and useful, effective and ebullient reforms to translate Constitutional mandates and obligation propounded right from Preambular Promise in their fighting faith by its Founding Fathers, a reality.

(xXxiv) As per the report of World Health Organisation, (U.N.O. Aids) the victimization of children and women due to various health syndromes is very high in India, apart from regional disparities and bias.

(xxxv) If is also reported by the UNICEF that in the year 2000, India will be the world's most illiterate nation.

(xxxvi) It is further reported by the UNICEF that India has maximum school dropout and every third illiterate in the world is an Indian.

(xxxvii) The custodial violence, investigating abuses and social exploitation pose the greatest challenges to the human rights in India.

(xxxviii) It is necessary, in x ew of the retrogradation in authenticity of judicial system value. The right corrosion in the p ublic life and ethical value and moral ethos have been in fall- downward swing.

(xxxix) We have reached a situation where law and Justice in many cases becomes distant neighbours. Despite the accepted practice and norms of having a separate Court or a Judge per about 700 cases in India as per the last report, average, work-load is exceeding per Court 5600 and again it is reported that in a Court of Metropolitan City like Ahmedabad work-load per Court is almost around 70,000 cases. In many Courts, cause list or popularity known as Board of the day of the cases, runs into more than two hundred cases a day, one would be tempted to say that there is high time for scientific Court Management and Legal and Judicial continuing education and training.

(xl) It must be remembered that the present system is diabolic and dilatory instead of being dialectical and speedy.

(xli) A common man has started feeling that Justice itself is on trial. It is, therefore, imperative to evolve effective and efficient strategies both preventive and protective :

- (1) To manage : Unmanageable
- (2) To break : Unbreakable
- (3) To beat: Unbeatable
- (4) To hit: Unhitable
- (5) To defend : Indefensible.

(xlii) Looking to the present situation in the country, we are obliged to create and constitute a neo-jurisprudence a public oriented participation performing, progressive, professional and pervasive programmes.

(xliii) Legal education must, urgently, be upgraded if the grammar of anarchy is not to invade the Bar, he Bench and constitu- tional order. It is necessary to consider various modern ways and means for high order of Legal Aid and A.D.R., like use of the

Information Technology and also the concept of *pleahargain* which is in practice in U.S., U.K., France and many other countries and reported to be productive, at least to begin with certain petty offences and earmarked or defined minor offences, wherein, individual interest and not the Public Interest or Policy is involved and on experimental basis and that too within the monitoring and controlling supervision of Courts.

(xliv) To save the Nation, a catalytic role has to be played by Legal Aid in the larger interest of weaker sections NALSA has undertaken various important and effective and appreciable Legal-Aid programmes and, therefore, members of Bench and Bar, NGOs and Government Agencies must render voluntary helping hand in such noble and novel projects.

(xlv) Unfortunately, in the present system, the litigant, who is the heart of judicial anatomy, is the most neglected segment. He is the consumer of justice and he should be respected. The litigant consumer of justice and heart of our system must receive equal, effective, inexpensive and speedy trial and Justice.

(xlvi) It is imperative to reach the goal of 'equal access to Justice', which is a constitutional commandment and statutory imperative. Jurisprudential history speaks, unequivocally, that the concept of equal Justice came to be manifested in the ancient and early laws. Even in a classic statement, Magna Carta, in its most glorious enunciation in 40th para, evidently, has inscribed, "To no one will we sell, to no one will we refuse or delay right of Justice."

(xlvii) Legal-Aid is not a charity or a chance, but as stated, it is a constitutional mandate to the State and right of public, which is not now an opinion, but a constitutional obligation and compulsion. As such, it is not a pledge or a plan of a Government, but has assumed, the status of peoples' movement. Somebody has rightly said, "What is the use of the system, which does not help lowly and lost, poor and downtrodden and which creates distance between law and Justice."

(xlviii) Needless to state that Legal-Aid becomes legal service in real sense when it becomes accessible to the subjects of its objects and when they get benefit by taking advantage of impartiality and integrity of the system.

(xlix) Legal Services Authorities and Committees and Institutions providing free legal aid ought to be sufficiently funded by the State and must receive adequate support and ample assistance from the civil service, which is badly required. It should, also, liberally be assisted by the Bench and the Bar between whom always exists an unbreakable, irrevocable and irretrievable partnership.

(xlx) In various countries, particularly, in United States and other Western countries, the contribution of the Bar in rendering free and competent legal-aid is praiseworthy and it must be emulated. Legal Aid fraternity must respond with juristic sensitivity to the voice from the silence zone (a class of litigants) and mass voice of weak, meek, poor, suppressed and exploited women and destitute children so as to create evolving ebullient echo for the silent sector. The Bar must evolve scheme to ensure that unprotected is not priced out of Market. The Bar is, really, a backbone of the legal services to compliment and complete the Constitutional obligations and obtain statutory rights of millions of indigent, needy, handicapped and deserving people."²⁹

29. Deneshbhai Dhemenrai v. State of Gujarat, 2001 (1) Guj LR 603 (Guj).

Just as the modern State tries to protect the poor classes against the common dangers of life such as unemployment, disease, old age, social oppression etc., so it should protect them when legal difficulties arise. Indeed, the case for such protection is stronger than the case for any other form of protection. The law is made for all citizens, poor and the rich alike. It is therefore, the duty of the State to make its machinery work alike for the rich and the poor.

Free legal aid to the needy is, in a sense, vital to the very survival of our social system and its denial implies a failure of the rule of law.

Article 14 of the Indian Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Equality in the administration of justice can thus be said to form the basis of our Constitution.

In the context of Indian poverty and inspired by a democratic ideology, our Constitution has assured to all equality before the law and equal protection of the laws. This guarantee under Article 14 apart, the “right to counsel” has been more specifically articulated in Article 22(1) of the Indian Constitution which lays down that no person shall be denied the right to consult and be defended by a legal practitioner of his choice. The perspective which must inform judicial construction of these articles is furnished by Article 38 of the Indian Constitution which states that “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice; social, economic and political, shall inform all the institutions of national life. It is perfectly reasonable to hold that legal aid is a constitutional imperative.

One of the greatest impediment on the way of getting justice by the poor is the heavy amount of Court fees which has to be paid by the party concerned who likes to get assistance from the judicial departments and for the redressal of his grievances. In theory, justice should not be a priced commodity and hence charging Court fees is repugnant to the finer sensibility of those who place principle above expediency. The people of India are yet to see the practical application of the pious words of the Constitution which states that the State shall secure operation of the legal system and promote justice on the basis of equal opportunity and shall, in particular, provide free legal aid so that suitable legislation or schemes or in any other way to ensure that opportunities for ensuring justice are not denied to any citizen by reason of economic or other disabilities.

It must be pointed out that while men in high positions pay lip service to the concept of equal justice, they are unable to see that access to Courts is an illusory right in the absence of State assistance to the economically handicapped.

The politics of Indian poverty, already spearheading a revolutionary instead of evolutionary process of change, is inviting economic sufferers to extra legal excursions and para-violent, direct action recipes. For the poorest sections of the society, ‘justice’ will remain a distant destination, until and unless, comprehensive arrangements are made to offer legal aid to the lower income groups.

It was succinctly pointed out by Francis Bacon : Laws were like cobwebs; where the small flies were caught and the great break through. Since, the judicial process remains costly and naturally it goes out of the reach of the poorest sections of the society.

For quite a long time there have been many suggestions for the abolition of the Court fee-. Some years ago the Conference of the Law Ministers as early as in the year of 1957 agreed that the State Government should draw up comprehensive schemes. After 13 years, it was decided to amend the Advocates Amendment Act to enable Bar

Councils in New Delhi and State Capitals to create legal aid funds. Although enabling legislation was introduced in the Rajya Sabha, the move appears to have fizzled out.

The Report of the V.R. Krishna Iyer Committee was also quietly shelved. Later the Bhagwati Committee was set up and the report of which was tabled before the both Houses of Parliament at the end of 1977. The document which recommended for the abolition of the Court Fees for certain categories of litigants, had been studied by an Inter Departmental Committee of the representatives of the Union Law, Finance, Home and Labour Ministries and of the Departments of Social Welfare, Justice and Personnel and Administrative Reforms.

But access to the Court is by law made dependent upon the payment of Court Fees and the assistance of the skilled lawyers is in most cases necessary for the proper presentation of a party's case in a Court of law. In so far as a person is unable to obtain access to a Court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man and to pay Court-fee and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.

Reference may also be made to the Fourteenth Report of the Law Commission. In this respect it pointed out that, equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought, must have an equal opportunity of access to the Court and of presenting their cases to the Court.

In fact, for a poor country like India, the burden of Court-fees is a great obstacle to get free access to justice. It is a notorious fact that the Court-fee levied by many States in India is the heaviest in the world although India itself is among the poorest in the world.

Our law of Court-fee not only lacks sale of justice but hover perilously near unconstitutionality. So far as the real picture of the Indian justice is concerned, in a civil action, a poor man cannot enter the shrine of justice without first paying a sum beyond his means before the law would listen to him. The economically disadvantaged sections of the society cannot institute proceedings in Court without paying a high price for registering their prayer. It is due to this reason that a large number of persons are in prison without trial. A report of the Statesman Weekly<\$FThe Statesman Weekly, September 22, 1980.> points out that 90,000 people are in prison without trial. Since they are financially handicapped, they cannot appeal to the Court for bail. There are a lot of undertrial prisoners who are charged with bailable offences.

The move by the Government of West Bengal for providing free legal aid to the poor deserves mention in this connection. Legal Aid Committee for six districts, including Calcutta have already been constituted, apart from the State Level Board. It has been provided that a *bona fide* resident of the State who has a total income not exceeding Rs. 2,400/- a year, will be entitled to such free legal services. The eligibility of a person for getting legal assistance and to decide whether he has a proper case for going to the Court, is to be decided by the Legal Aid Committee to be constituted up to the Block Level. It has been sought to provide the aid in the form of payment of Court-fees, expenses of witness and all other charges incurred in connection with any legal proceedings, cost for representation by a legal practitioner of an appeal paper and drafting legal documents.

However, it can be said without any hesitation that in a poor country like India, free legal aid is a must, mainly for the poor and the downtrodden sections of the society or

else the dream to bring social and economic equality and justice in the society would remain a far dream to be realised by the constitutional objectives.

17. Legal aid.—The poor and the neglected must be given legal aid or assistance by the State. It is the constitutional obligation of the State. It is the constitutional right of the poor to demand the legal assistance from the State. If the poor divorcee, the neglected children and parents do not get free legal assistance from the State to vindicate their rights, then sleeping over the matter would be anti-constitutional inaction. In the instant criminal revision, an Advocate was appointed *amicus curiae* for the wife, who was getting a paltry sum of Rs. 175/- per month as maintenance to sustain herself and her child, and hence, was unable to contest the proceeding. *Mokshed Ali*, 1987 Cr LJ 1652 (Gau).

18. Legal Aid—A challenge.—The obligation of the State to render legal aid, gives rise to a corresponding right of the citizen to receive legal aid for the fulfilment of his rights enshrined in the Constitution. The legal fraternity which is largely instrumental in balancing the obligations and rights has a duty cast upon it by virtue of its licence, which guarantees to it a right to practice law to the exclusion of other, to render such aid and assistance as it necessary to bring about a system which give a credible, meaningful and qualitative “legal aid system”.

The State on its part can provide wherewith, but it is legal fraternity that must infuse the life blood to make the ‘legal aid system’ work into a healthy and an effective one. This calls for a dedicate legal fraternity which looks upon ‘legal aid’ as its own baby and not merely dispensing charity.

‘To right howsoever valuable and no objective howsoever laudable can be achieved unless there is a will to implement by all with sincerity by those who render legal aid and there is confidence in those who receive it.

19. Grants by the Central Government.—The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act. *Vide* Section 14 of Legal Services Authorities Act, 1987.

20. National Legal Aid Fund.—(1) The Central Authority shall establish a Fund to be called the National Legal Aid Fund and there shall be credited thereto—

(a) All sums of money given as grants by the Central Government under Section 14;

(b) Any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(c) Any amount received by the Central Authority under the orders of any Court or from any other source.

(2) The National Legal Aid Fund shall be applied for meeting—

(a) the cost of legal services provided under this Act including grants made to State Authorities;

(b) the cost of legal services provided by the Supreme Court Legal Services Committee;

(c) any other expenses which are required to be met by the Central Authority. *Vide* Section 15 of Legal Services Authorities Act, 1987.

21. State Legal Aid Fund.—(1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto—

(a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;

(b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;

(c) any other amount received by the State Authority under the orders of any Court or from any other source.

(2) A State Legal Aid Fund shall be applied for meeting,—

(a) the cost of functions referred to in Section 7;

(b) the cost of legal services provided by the High Court Legal Services Committee;

(c) any other expenses which are required to be met by the State Authority. *Vide* Section 16 of Legal Services Authorities Act, 1987.

22. District Legal Authority.—(1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto,—

(a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;

(b) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act;

(c) any other amount received by the District Authority under the orders of any Court or from any other source.

(2) A District Legal Aid Fund shall be applied for meeting,—

(a) the cost of functions referred to in Sections 10 and 1 IB;

(b) any other expenses which are required to be met by the District Authority. *Vide* Section 17 of Legal Services Authorities Act, 1987.

23. Accounts and Audit.—(1) The Central Authority, State Authority or the District Authority (hereinafter referred to in this section as ‘the Authority’), as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance-sheet in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Authorities shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the auditing of the accounts of an Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the authorities under this Act.

(4) The accounts of the Authorities, as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually by the Authorities to the Central Government or the State Governments, as the case may be.

(5) The Central Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before each House of Parliament.

(6) The State Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before the State Legislature. *Vide* Section 18 of Legal Services Authorities Act, 1987.

24. Organisation of Lok Adalats.—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of,—

(a) serving or retired judicial officers; and

(b) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in Clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of,—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of and is not brought before, any Court for which the Lok Adalat is organised :

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. *Vide* Section 19 of Legal Services Authorities Act, 1987.

25. Jurisdiction of Lok Adalat.—The jurisdiction that the Lok Adalat derives under sub-clause (5) of Section 19 is hedged by the expression “to determine and arrive at a compromise or settlement”. In legal terminology it connotes the jurisdiction that could be exercised by the Lok Adalat cannot extend to deciding a dispute where one of the parties is not amenable or agreeable to a compromise or settlement. The moment one of the parties to the dispute expresses unwillingness to arrive at a compromise or settlement, the Lok Adalat would stand stripped of its jurisdiction to deal with the dispute in any manner.

In the instant case the Lok Adalat had done its utmost to give effect to the first part of Rule 20(4) in disposing of the reference with utmost expedition, but has given a complete go-by to the latter part of the clause which enjoins on it a duty to be guided by the principles of justice, equity and fair play. What is more, the Lok Adalat has gone overboard by even brushing aside the remonstrance of the Government Pleader pleading his inability to enter into a compromise and proceeded to decide the reference on merits which course was not open to it in law as it is totally lacking in jurisdiction to decide a reference on merits, when one of the parties is unwilling to enter into a compromise. The course adopted by the Lok Adalat would be illegal. The resultant award is hopelessly without jurisdiction and contravenes the principles of justice, equity and fair play. Sub-clause (5) of Section 19 of the Act well and truly defines and demarcates the parameters beyond which the Lok Adalat cannot traverse. It is a clear case of 'thus far' and 'no further' and any transgression of this limit by the Lok Adalat would render the proceedings a nullity.³⁰

26. Reference to Lok Adalat.—The Legal Services Authorities Act, 1987 ('the Act' for short) was promulgated to provide free and competent legal service to the weaker section of the society and to organise Lok Adalats to ensure that the operation of the legal system promotes justice on the basis of equal opportunity. Chapter VI of the Act exclusively deals with Lok Adalats.

Sub-section (5) of Section 19 of the Act deals with the jurisdiction of the Lok Adalat to determine and to arrive at a compromise or settlement between the parties to a dispute.

Barring matters relating to an offence not compoundable under any law, the Lok Adalat has jurisdiction to determine and arrive at a compromise in respect of any case which falls within its jurisdiction. Taking cognizance of the cases by Lok Adalats is governed by Section 20.

In the case on hand, the case has been referred by the Civil Court on being satisfied that it is appropriate to be taken cognizance of by the Lok Adalat. We are concerned with clause (ii) to Section 20. This power of the Civil Court to refer the matter to Lok Adalat is hedged by the proviso that no case shall be referred to Lok Adalat except after giving a reasonable opportunity of being heard to the parties.

The order in the case does not bear out that the parties were subsequently heard on the question of reference, except noting their presence. The power to refer the case to Lok Adalat vested in the civil Court under Section 20 of the Act being subject to the rider as contained in the proviso, any reference either under sub-clause (b) of clause (i) or clause (ii) will be invalid if the parties are not heard in the matter. When the reference made is not valid in the eye of law, the Lok Adalat would not derive jurisdiction to determine any dispute and the Lok Adalat cannot take cognizance of the case under sub-clause (3) of Section 20.

The Civil Court has given a short shrift to Section 20 of the Act and has referred the matter to the Lok Adalat without the consent of the defendants for such reference. The Civil Court even if *prima facie* is satisfied under sub-clause (b) of clause (i) that there are chances of settlement, still it is barred from acting thereunder if the proviso to Section 20 is not complied with by giving a reasonable opportunity. Compliance with the proviso to Section 20 is condition precedent for reference by the Civil Court. In this case, the Civil

30. Commr., K.S.P. Instruction v. Nirupadi Virbhadrappa Shiva, AIR 2001 Kant 504.

Court having referred the matter without complying with the proviso to Section 20 is bad in law.³¹

27. Cognizance of cases by Lok Adalats.—(1) Where in any case referred to in Clause (i) of sub-section (5) of Section 19,—

(1) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the Court; for referring the case to the Lok Adalat for settlement and if such Court is *prima facie* satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat;

the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of Clause (i) or Clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties.

(2) "Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in Clause (ii) of sub-section (5) of Section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination :

Provided that no matter shall be referred to the lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a Court.

(7) Where the record of the case is returned under sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1). *Vide* Section 20 of Legal Services Authorities Act, 1987.

28. Permanent Lok Adalat—Stay procedure.—The Legal Services Authorities Act, 1987 lays down *vide* Section 20(1), that a Court of law where a case is pending may transfer the case to Lok Adalat for settlement when the parties to the case have made a

31. Commr., K.S.P. Instruction v. Nirupadi Virbhadrappa Shiva, AIR 2001 Kant 504.

joint application indicating their intention to compromise the matter. In this connection it would be pertinent to refer to the provisions contained under sub-clause (3) of Clause 32 of the Bihar State Legal Services Authority Regulation, 1998, wherein a Lok Adalat is required to requisition case record from a Court when any party thereto moves an application before it (Lok Adalat) for settlement of the case. It also provides [*vide* Section 20(2)] another mode of reference of “disputes and matters” before Lok Adalat by enabling the District Legal Services Authorities to refer such matter when any party to the dispute or matter desires in writing for its settlement through Lok Adalat.

It is not fully clear from perusal of Section 20(2) whether the District Authority is competent only to refer a pre-litigation dispute or matter or can also refer a pending case in a Court of law. It should be clarified and District Authority be explicitly authorised to refer to Lok Adalat even the cases pending before Courts. The idea of holding Lok Adalat on permanent basis is already taking practical shape. It may be provided in the parent Act that the parties to a case can make joint application not only before the District Authority but also before a Lok Adalat itself, organised by the District Authority, with the power upon the Lok Adalat to requisition the concerned case record for settlement from the concerned Court.

In order to wipe out this anxiety and also to equate the filing of joint application of compromise before regular Court with that of filing it before the District Authority or the Lok Adalat, and, above all, to popularise Lok Adalat by providing psychological fillip in the minds of litigant public, the following provisions, as they suggest themselves to be logically concomitant to the provision under discussion, be incorporated in the Legal Services Authorities Act—

(i) the moment a joint application is made before Lok Adalat/ District Authority, by the parties to a pending case (that is amenable to the jurisdiction of Lok Adalat the District Authority), further proceeding in the case (whether civil or criminal) shall stand *ipso facto* stayed, in the concerned Court;

(ii) the parties to such a case shall be under no obligation to attend Court concerned during the period intervening between the filing of the joint application and disposal of the case by the Lok Adalat;

(iii) a certificate or an endorsement made by the Lok Adalat or the District Authority about filing of such joint application given to the parties should be sufficient legal document to undo the effects of any adverse order [*e.g.* issuance of warrants/processes in criminal cases, dismissal for default in civil cases etc.) that might have been occasioned because of non-attendance of the parties in the Court concerned, apart from the provision requiring the Court itself to recall such warrants/processes in criminal cases or to make suitable rectificatory order after receiving the requisition from the Lok Adalat.

Provision in the regulation assumes the existence of such a power in the Lok Adalat - while the actual provision [*vide* Section 20(2) of the Legal Services Authorities Act] is to the effect that parties would apply before District Authority and not Lok Adalat. Parties to a case, that has not been referred to Lok Adalat by the Court concerned, might get instantaneous inspiration while a Lok Adalat is being held, to apply before it for settlement of their case. Section 20(2) of the said Act must be suitably amended to empower the Lok Adalat, apart from the District Authority, to requisition the record of a case when joint application is made before it by parties to the case for settlement. Now when such an application is filed by the parties, the Lok Adalat might requisition the record of the case on that very day in that very sitting, or, because of pre-occupation with

other matters or because of lack of time, might like to adjourn the consideration of such application and requisitioning of the concerned case record, to its next sitting.

An adjournment might also be necessitated on account of the fact that the Lok Adalat, where the said joint application has been filed, was having its sitting at a place far away from the place where the concerned Court and its office are located and requisitioning of the case record is not possible on that day. If this happens, there would definitely be some time lag (which may be some days or even months) between the filing of the joint application and arrival of the case record before Lok Adalat pursuant to its requisition.

Of course, all efforts be made to reduce this time lag, but due to practical reasons, it is not possible to eliminate it completely. In that situation, some date fixed in the case by the Court concerned might intervene and parties might have to attend the Court failing which the parties would entertain anxiety about some adverse order (specially in criminal cases) coming in the case.

Permanent sittings of the Lok Adalat would be eminently desirable and any misuse of the said certificate/endorsement issued by Lok Adalat can be avoided by indicating limit of its validity till the next date when it might be extended or terminated as the situation requires.

29. Award of Lok Adalat.—(1) Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court, or, as the case may be, an order or any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870). *Vide* Section 21 of Legal Services Authorities Act, 1987.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.

In case the value is indicated in the dispute raised by the parties before the Lok Adalat, there is no difficulty. If it is a matter where the Munsiff Court could have adjudicated, the award passed by the Lok Adalat shall be treated to be a decree executable before the Munsiff Court. Needless to say that if it was a matter which could have been adjudicated by the Sub Court going by the valuation indicated in the dispute raised before the Adalat, then the award passed by the Lok Adalat will have to be treated as a decree to be executed by the Sub Court. In case the parties before the Lok Adalat do not furnish any indication as to the valuation, the matter will have to be governed by the relief granted to the parties. If the amount granted in the award passed by the Lok Adalat is within the pecuniary jurisdiction of the Munsiff Court for the purpose of filing the suit, the execution shall be before the Munsiff Court and if not, before the Sub Court. The territorial jurisdiction is to be determined as per Section 19(5)(ii), with reference to the Court for which the Adalat is organised. Which would have been the Court of competent jurisdiction that would have entertained the matter for trial had the matter been not settled is though the principle, since the parties have settled the matter in the Adalat organised for a Court/Courts, the territorial jurisdiction shall also be governed accordingly.³²

30. Powers of Lok Adalat or Permanent Lok Adalat.—(1) The Lok Adalat or Permanent Lok Adalat shall, for the purposes of holding any determination under this

32. Thomas Anthony v. Florence George, AIR 2007 Ker 3.

Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely,—

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record or document or copy of such record or document from any Court or office; and
- (e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or Permanent Lok Adalat shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). *Vide* Section 22 of Legal Services Authorities Act 1987.

31. Settlement of disputes on compromise before Lok Adalat.— Settlement of disputes on compromise basis is the foundation of the procedure of Lok Adalat. That the broader and stronger this foundation is, the greater will be the out-turn emanating from such Adalat. The procedural revolution, must therefore be inspired by seeking to broaden the base of compoundability.

Legal Services Authorities Act under Section 19(3), does not permit settlement of such cases before Lok Adalat.

Compoundability is no problem in civil cases. In criminal cases, because of specific enumeration of compoundable offences under Section 320 of the Code of Criminal Procedure, 1973 in force at present, considerable difficulties arise in getting the matter settled in Lok Adalat when, technically or otherwise, non-compoundable offences are j, involved. Simple procedure, may be taken to be a class in itself and, in order to encourage and attract people to avail of the benefits of its procedure and also to create a distinct procedural culture around itself, may have an exclusive set of compoundable offences to be amenable to its jurisdiction which will include not only the compoundable offences before regular Courts but also others which are not compoundable before regular Courts.

The offence under Section 498-A Indian Penal Code, should, through appropriate amendment under the Legal Services Authorities Act, be made compoundable before Lok Adalat even as it continues as non-compoundable offence before regular Courts. A different and wider legislative policy of compoundability of offences shall have to be chalked out exclusively in respect of criminal jurisdiction of Lok Adalats. Ail offences except perhaps the miniscule minority of them, like those involving the offences of homicides, the offences against public exchequer etc., should be made compoundable before Lok Adalat. This set of compoundable offences would create a positive psychological image of Lok Adalat and would induce and encourage people to use the

forum of Lok Adalat to derive benefit of its simple and instant procedure and would thereby promote the movement and culture of Lok Adalat.

32. Mental litigation by Lok Adalat.—That inhibitions/operating in the minds of litigant public in respect of bringing an early end to the litigation are mainly psychological in nature.

An instrument to see the adversary socially humiliated and financially truncated. Among the several reasons behind this mentality, some may be identified as lack of cultivation of higher values like pursuit of art, literature, creativity, and spirituality for which law is short and wastage of time unreasonably in pursuit of litigation must be avoided.

In rural areas, susceptibility to village politics and provocations are powerful factors for sustaining litigation.

Serious and sustained efforts are needed to overcome and dissuade people from entertaining litigating mentality and make them understand the value of peace and the futility of winning a case after the litigation has protracted for several generations.

It is not difficult to perceive the enormity of this problem.

Multi-disciplinary interaction involving social psychologists, sociologists, criminologists, social workers—apart from jurists, and legislators, is needed to chalk out the details of educative and motivational programmes in this regard.

Street corner plays may be staged, popular lectures in local vernacular may be organised and house to house persuasive contact programme may have to be undertaken.

The role of journalists also will be immensely significant in realising these programmes.

33. Working of Lok Adalats.—The advocates of plaintiff Bank as well as the defendant are given advance intimation of reference of the cases of Lok Adalats. The place and date of sitting of the same are also informed to the parties. If the parties are mutually agreeable to settle the disputes through conciliation, the Lok Adalat passes an appropriate Award immediately. The Award so made shall be deemed to be a decree of Civil Court. Every Award made by a Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any Court against the Award.

The State/District level Legal Aid Committee/s/Boards identifies the place/s of Lok Adalat and communicate the same to the Steering Committee, which in turn gets in touch with individual banks on possibilities of holding Lok Adalat.

Individual banks on receipt of communication shall prepare a list of cases in the area eligible for reference to Lok Adalat and where the banks are agreeable to enter into conciliation process.

The Legal Aid Board/Committee informs the borrower/guarantor accordingly and arranges for their presence/participation with the help of Taluk Level Bar Association. After ascertaining the participation of the borrowers/guarantors, the Legal Aid Committee fixes the date and venue of Lok Adalat. Such date normally will not be earlier than 45 days from the date of intimation to the banks to facilitate latter come prepared.

Thereafter, the borrower and the bank has to submit the cases in brief in the format prescribed within 30 days from the date of intimation.

It is advised that instead of branches/zonal offices waiting for conducting Lok Adalat by the local Legal Services Authority, the branch/zonal office themselves approach them by identifying required number of eligible cases so that an exclusive Lok Adalat for our Bank cases may be convened.

On the day of Lok Adalat, an official of the bank of sufficiently high rank with necessary authority for approving settlement or an official who has empowered himself by seeking prior approval from the higher authority to negotiate for a lesser amount from the borrower than the actual dues and to accept the settlement shall attend the proceedings.

The proforma of process sheet for seeking permission from competent authority to refer a case to Lok Adalat is furnished in.....

Once both the parties have agreed for a settlement, an Award will be passed by Lok Adalat which is deemed to be a decree of a Civil Court. With a view to make the borrower to adhere to the settlement the Award shall have single/double default clause.

34. Model Forms.—

(1) Form of Application for Legal Aid

1. Name of the Court.
2. No. of Criminal Case.
3. Name, description and place of residence of the applicant.
4. Average monthly income of the applicant from all sources.

I/We am/are the in No..... noted above, my/our/average monthly income from all sources is Rs.....

1/We am/are not in a position to engage a Legal Practitioner of my/our own in the above I/We, therefore, pray that the Court may be pleased to appoint a Legal Practitioner for me/us in the above..... The above statements are true to the best of my personal knowledge and belief.

Signature of applicant/s

Forwarded to..... for enquiry and report before..... Presiding Officer.

(2) Form of Application for Legal Aid (Detailed Form)

To,

The Member-Secretary

District/Taluka Legal Aid and Advice Committee

Sir,

1 aged..... son/daughter, wife/widow of..... beg to apply for Legal Aid/Advice. My particulars are as detailed below :—

- (i) Present Address.
- (ii) Nature of employment.
- (iii) Average annual income from all sources.

(iv) Nature of case in which Legal Aid/Advice is sought.

(Please attach separate sheet, if necessary, giving nature of dispute, claim or right. State documents in support thereof and other relevant particulars).

2. I am willing to furnish such further information as may be required for the purpose of enabling you to consider the application.

3.1 am not in a position to pay court costs and costs of miscellaneous proceedings or engage a Legal Practitioner for me.

4.1 pray, that I may be granted Legal Aid/Advice.

5.1 agree to reimburse the State Government all costs, charges and expenses incurred by the Committee in giving me legal aid if the Court passes a decree or order in my favour awarding costs to me or other monetary benefits or advantages or if I cease to be entitled to legal aid under this scheme.

6. The above statements are true to the best of my personal knowledge and belief.

Date :

Place :

Signature of Applicant

Recommended for grant of legal aid Member-Secretary Panel Counsel.

(For Office use only)

(1) Nature of Advice

(2) Eligibility for Legal Aid..... Yes/No.

(3) Legal Aid..... Granted/Refused.

(4) Anticipated expenditure,—

(i) Court Fees

(ii) Counsel Fee

(iii) Miscellaneous

(5) Documents received

(6) Lawyer appointed,—

Name

Address

(7) Final result

(8) Recovery of cost, if any

. Signature of Member-Secretary

(3) Affidavit in support of Legal Aid

L aged about years, son of/daughter of/wife of Shri
Resident of..... do hereby solemnly affirm and state as under :—

- (a) I belong to a member of a Scheduled Castes/Scheduled Tribes.
- (b) I am a victim of trafficking in human beings or a beggar.
- (c) I am eligible for legal service as I am a woman/child.
- (d) I am a mentally ill or otherwise disabled person.
- (e) I am a person under circumstances of undeserved want being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
- (f) I am an industrial workman.
- (g) I am in custody.
- (h) My annual income from all sources is below Rs. 18,000/- (Rupees eighteen thousand only).

(Delete whatever is not applicable)

2. I shall comply with any requisition and direction that may be made by the Secretary or any of the members of the Supreme Court Legal Services Committee.

3. I shall furnish full and true information of all facts of my case to the Legal Service Advocate to be provided by the Committee.

4.1 seek to approach the Honourable Supreme Court of India,—

- (a) in appeal from the judgment of.....in.....
- (b) in writ jurisdiction for.....

(Delete whatever is not applicable)

5.1 hereby agree that in the event of the Court passing a decree or order in my favour awarding cost to me or other monetary benefit or advantage, I shall repay by way of reimbursement to the Committee all costs, charges and expenses incurred by the Committee in giving me legal service. I hereby also authorise the Secretary of the Supreme Court Legal Services Committee to do all such acts and things as may be necessary for recovery or realisation of the amount decreed or ordered to be paid to me and to reimburse the same for the above mentioned purpose.

6. I agree that my case be listed before Lok Adalat in Honourable Supreme Court, if at any stage, it is considered by the Committee, that my matter can be reconciled or settled through Lok Adalat.

Deponent

Verification—I, Shri/Shrimati/Kumari the above named Deponent do hereby verify that the contents of the paragraphs 1 to 4 are true and correct to my knowledge, nothing stated therein is false and nothing has been concealed. So help me God.

Verified on this day of.....20.... at.....

Deponent

(4) Process sheet to refer the account to Lok Adalat for settlement

Branch :

Branch Code :

Zone :

1. Borrower :
2. Activity:
3. Authority monitoring the file : Zonal Office/Head Office
4. Guarantor and net worth :
5. Securities available and value :
6. Date of last valuation :
7. Book balance (interest debited upto):
8. Uncharged interest (from to):
9. Other expenses not debited to the account:
- 10.(a) No. of suit
 - (b) Date of filing
 - (c) Dues in terms of suit claim :
11. Provision held :
12. In the opinion of the branch reasonable concession that may be offered in the account:
13. Brief History :
14. Observations :
15. Recommendations :

(5) Application for referring the bank's claim to Lok Adalat

(To be submitted in 3 sets)

Before the Chairman, District Legal Services Authority/Taluka Legal Services Committee at....

(Name of the District/Taluka)

1. Name and address of the Borrower :
2. Name and address of the Co-obligant/Guarantor :
3. Amount of Advance :
4. Rate of Interest:
5. Date of Advance :
6. Date of Acknowledgement of Debt:
7. Activity Financed :
8. Amount of claim as on..... (date)
 - (a) Principal
 - (b) Interest

- (i) Charged interest
 - (ii) Interest accrued but not charged
 - (iii) Cost and other charges/expenses
- (Legal extract of the loan A/c enclosed):

9. Security details (if any)

- (a)
- (b)
- (c)

10. Notice issued to the Borrowers/Sureties :

- (a) Date of issue of Regd. Notice
 - (b) Date of issue of Legal Notice
 - (c) Response from the parties (if any)
- (Copies shall be enclosed)

11. Suit filed (if any)

- (a) Date of filing of the suit
 - (b) Suit claim
 - (c) Suit No.
 - (d) Name of the Court
- (One copy of plaint shall be enclosed)

Place :

Applicant

Date :

(Name and Designation)

(6) Proforma claim before the Lok Adalat

(For accounts where suits are not filed and reference is directly made to Lok Adalat)

Before the Lok Adalat

Case No...../.

Between.....Bank

Petitioner/Claimant

And

Respondent/Opp. Parties

1. The Petitioners/Claimants humbly submits that the Respondent/ Opposite Parties owe them a sum of Rs..... towards principal and a sum of Rs..... towards interest calculated till..... (date) in respect of the credit facilities, the details of which are more fully brought out hereunder.

2. The Petitioner/Claimant humbly submits that in respect of its claim against the Respondents/Opposite Parties the Petitioner/Claimant has agreed with the Respondents/Opposite Parties to refer the claim to this Hon’ble Forum for settlement and award under Legal Services Authority Act, 1987 and this Forum was pleased to instruct the parties to submit memo of claim for its consideration.
3. The Petitioner/Claimant is entitled to receive the following amounts in respect of credit facilities granted to and availed of by Respondents/ Opposite Parties.

Sr. No.	Nature of credit facility	Principal amount	Interest due	Total

4. The Petitioner/Claimant humbly submits that they are ready and willing to receive a sum of Rs..... together with interest at the rate of..... with.....rests from the date of award, if any, passed by this Hon’ble Forum and till the date of actual payment, towards full and final satisfaction of all claims of the Petitioner/Claimant against the Respondents/Opposite Parties subject to the following terms and conditions.
5. The Petitioner/Claimant is ready and willing to receive the sum stated in para 4 towards full and final settlement of all claims against the Respondents/Opposite Parties if the Respondents/Opposite Parties :
- (a) admit the claim of the Petitioner/Claimant as detailed in Para 3.
 - (b) Respondents/Opposite parties are ready and willing to pay duly and promptly the sums mentioned in para 4 in the following instalments :

Instalment Amount	Due Date

- (c) The Respondents/Opposite Parties do not commit any default in payment of instalments on due date as mentioned in sub-para (b) above.
 - (d) The Respondents/Opposite Parties are ready and willing to pay entire claim as detailed in para 3 in the event of default of payment of any one of the instalments mentioned in sub-para (b) of para 5 above.
- The Petitioner/Claimant humbly requests this Hon’ble Forum to kindly pass award in terms hereof and pass such other orders as may be just and reasonable.

For Petitioner/Claimant
Authorised Signatory

Verification

I, _____, son of _____, aged about _____ being _____ (name of post/designation) as the Petitioner/ Claimant signed this memo on this _____ day of _____ and the facts stated above are based on records to my knowledge and belief.

Signature

(7) Proforma of award in case of pending suits

Before the Lok Adalat for bank cases

Lok Adalat Case No. /

O.S. No. /

Between

1.

Plaintiff

And

2.

Defendant

Whereas the plaintiff has claimed a sum of Rs. with interest at the rate stipulated in the agreement in the suit filed before (Name of the Court).

Whereas the parties having shown their willingness to enter into a compromise, requested the learned Court (full address) for transfer of this case to Lok Adalat for doing the needful.

Whereas both the parties to the suit taking into consideration various aspects and difficulties of the defendant have agreed before the Lok Adalat for a compromise subject to the following terms :

- (a) Suit shall be decreed for a sum of Rs. with interest at the rate of from the date of award till realisation. (The amount may include the legal charges as well wherever agreed).
- (b) The defendant is ready and willing to pay and the plaintiff agrees to receive a sum of Rs. with interest at the rate of p.a., till realisation towards full and final satisfaction of monies owed to plaintiff.
- (c) That the aforesaid amount along with interest thereon and other charges shall be paid by instalments as per details given hereunder.
- (d) Parties further agree that in the event the defendant/s fail to adhere to the terms of the award herein and/or fails to pay any one instalment the entire amount under the award shall become payable forthwith.

Or

(In case the Bank has agreed to settle for an amount lesser than the amount claimed the default clause will be as under.)

In the event the defendant/s fails to adhere to the terms of the award and/or fails to pay any one instalment entire amount as claimed in the suit with all interests thereon as stipulated in the respective agreements/ loan documents would become payable forthwith minus the amount already received in pursuance of the award.

Plaintiff

Defendant

Parties having agreed for the settlement the award is passed in terms hereof under Section 20 of the Legal Services Authority Act, 1987.

Signed

Seal

(8) Proforma of award where no suits are pending

Before the Lok Adalat for Bank cases

Lok Adalat Case No.....of.....

Between

1 •

Petitioner/Claimant \

And

2.

Respondent/Opp. Parties

1. Whereas the Petitiones/Claimant claim a sum of Rs.....with interest at the rate of..... with..... rests from the Respondent/ Opposite Parties.

2. Whereas the parties by mutual agreement agreed to settle the matter by reference to this forum and consequently reference was registered with this forum being No..... on.....

3. Whe eas after negotiation and conciliatory meetings conducted by the forum between the >arties on various dates, Respondent/Opposite Parties agreed to pay a sum of Rs.....with interest at the rate of..... with.....rests from the date of this award till payment.

4. Whereas the Petitioner/Claimant have agreed to receive a sum of Rs.....with interest at the rate of.....in full and final satisfaction of the claim of the Petitioner/Claimant against the Respondent/Opposite Parties subject to the following conditions :

- (a) The Respondent/Opposite Parties admitting the whole claim of the Petitioner/Claimant mentioned in para 1.
- (b) The Respondent/Opposite Parties shall duly and promptly pay the sum mentioned in para 4 in the following mode and manner and on the due date mentioned against them.

Amount payable

Due date

- (c) The Respondent/Opposite parties shall not commit any default in payment of instalments on due dates and in the even of the default in payment of any one instalment the entire amount mentioned in para 1 shall become forthwith due and payable with interest at the rate of..... with.....rests from the date of the award till realisation.

5. Whereas the Respondent/Opposite Parties unequivocally agreed to the above mode and manner of discharge of their liabilities owed by them to Petitioner/Claimant.

Petitioner/Claimant

Respondent/Opposite Parties

Parties having agreed for the settlement the award is passed in terms hereof under Section 20 of the Legal Services Authority Act, 1987.

Signed

Seal

Para Legal Services



Synopsis

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1. Launching of Para Legal Training and Legal Aid Activities¹.—A very ambitious programme to train young people as ‘paralegals’, who can then work to expand the reach of legal aid activity was launched by the Government of India with the support of Judiciary at Chennai on 25th November 2010.

The Legal Aid movement is indeed at the crossroads today. The agenda for improving access to justice is an important part of social policy. At one level, social distinctions based on caste, class, gender and ethnicity impede the ability of citizens to approach the judicial system. At the same time, the limited reach of the judicial system further creates the conditions for more inequality since the oppressed sections are unable to seek redress for their injuries and grievances. It is in recognition of these persistent problems that we must chart out our steps for strengthening the legal aid movement. I hope that the initiatives taken to train young persons as ‘paralegals’ will prove to be successful and also serve as a model which can be replicated all over the country. All stakeholders in the legal system should wholeheartedly support the deepening of the reach of legal aid services.

Even though the Legal Services Authorities at the National, State and District levels are a relatively recent creation in our legal system, efforts to provide legal aid can indeed be traced back to the period of colonial rule. After the enactment of our Constitution, the justice-delivery system took on the mantle of promoting values such as ‘equal protection before the law’ and non-discrimination on grounds of identity or social status. It is of course a truism that we are still pursuing these objectives by way of sustained efforts to improve access to justice for the marginalized sections of society. We must constantly

1. Launched at Rajiv Gandhi National Institute of Youth Development (RGNIYD), Sriperumbudur, Tamil Nadu, dt. April 25, 2010

remind ourselves of the fact that a person's ability to access the judicial system is often seen as a function of social status and economic capacity. The failure to change this social reality can have long term costs for the country. Hence, it is the 'equality of opportunity' in the sense of improving access to independent and expeditious justice-delivery which should be the guiding principle.

The beginnings of the modern legal aid movement in India can be traced to the 1950s when efforts were made to ensure legal representation for indigent persons who were accused in criminal cases. These initiatives were led by State governments and were mostly dependent on the participation of practicing lawyers. However, the real impetus came with the publication of the 'National Juridicare Report' in 1978 which made several recommendations to give meaning to the constitutional command of ensuring legal aid for needy persons, as per Article 39A which had been inserted in 1976. This was followed by the establishment of the Committee for the Implementation of Legal Aid Schemes (CILAS) under the leadership of Justice P.N. Bhagwati. It was in pursuance of this body's recommendations that the concept of establishing Legal Services Authorities at the various levels found its way into legislation.

However, experiments with 'Lok Adalats' had already begun a few years before the enactment of the Legal Services Authorities Act. The first prominent Lok Adalats had been conducted in Gujarat in the early 1980's and they were supervised by sitting judges as well as practitioners. With the establishment and growth of the Legal Services Authorities, the volume of cases being heard by Lok Adalats has been progressively increasing. For many categories of disputes, Lok Adalats provide a far more accessible forum where the interests of both parties can be accounted for instead of the 'winner takes all' orientation of civil litigation. Subsequent to the amendment of the Code of Civil Procedure (CPC) in 2002, Lok Adalats are also serving as one form of Court-Annexed ADR methods. In recent years, Lok Adalats are often the forum for hearing disputes related to matrimonial matters, petty property disputes, accident compensation claims and deficiencies in public services among others. While the consolidation of the Lok Adalat system does hold out the promise of inexpensive and informal dispute resolution, some doubts continue to linger in respect of their functioning. It is quite evident that the Legal Services Authorities need institutional support as well as trained manpower to expand their reach. While budgetary allocations are always an important consideration, the most important requirement is that of attracting an adequate number of personnel who will be motivated enough to administer Lok Adalats, to provide legal advice and to conduct legal literacy programmes. The experience of the last few years has made it clear that relying on sitting and retired judges as well as practitioners by itself is not enough to expand the reach of the legal services movement. What is needed is a mass mobilization of individuals who may not have legal education, but the inclination as well as capability to serve as paralegals. We must recognise the fact that access to legal education is limited to a certain segment of the population and even amongst the pool of legal aid lawyers and law students, not everyone will be motivated enough to offer their services on a voluntary basis. After all legal aid programmes must respond to local needs which are best articulated by persons belonging to the very same communities. In this respect, a decision was taken to establish a committee which will oversee the training of paralegals and the delivery of legal aid services, with a special emphasis on improving legal literacy through grassroots activities.

Hon'ble Justice P. Sathasivam took the leadership of this Committee and their proposals and actions shall be keenly examined by all those who care about improving access to justice in our society.

At the same time, we must also remember that the overall objective of providing legal aid is not only that of ensuring access to remedies but also to prevent disputes in the future. One strategy for preventing disputes is to improve awareness about legal rights and remedies, so that individuals can safeguard their interests in the course of their routine lives. In this context, the NALSA as well as some of the State Authorities have launched programmes to spread awareness about the content of legislations such as the Mahatma Gandhi National Rural Employment Guarantee Act, the Maintenance and Welfare of Senior Citizens Act, the Unorganised Workers Social Security Act and the Protection of Women Against Domestic Violence Act among others. This educative dimension of the legal aid movement can deliver results only if there is meaningful collaboration between the Legal Services Authorities and local self government institutions as well as Non-Governmental Organisations(NGO's) working in the rural areas.

2. Reasons for Para Legal Services.—Legal services itself cannot reach out to million of needy people in a country of more than 100 million population. In order to make our legal system stronger and most importantly effective, we need to create Para Legal Services so that the Legal services are able to reach the masses. These set of people may not have the complete knowledge of law but have enough to help the needy.

3. Nature of the Work.—While lawyers assume ultimate responsibility for legal work, they often delegate any of their tasks to paralegals. Paralegals are also called legal assistants and are continuing to assume a growing range of tasks in legal offices and perform many of the same tasks as lawyers. Nevertheless, they are explicitly prohibited from carrying out duties considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

The tasks of paralegals differ widely according to the type of organization for which they work. A corporate paralegal often assists attorneys with employee contracts, shareholder agreements, stock-option plans, and employee benefit plans. Corporate paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and is operating within the law. Increasingly, experienced corporate paralegals or paralegal managers are assuming additional supervisory responsibilities such as overseeing team projects.

Paralegal's most important tasks is helping those who might having less or no knowledge of law and are exploited for vested gains. Paralegals might investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that Lawyers use in determining how cases should be handled. If Lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

In addition to this preparatory work, paralegals perform a number of other functions. For example, they help draft contracts, mortgages, and separation agreements. They also may assist in preparing tax returns, establishing trust funds, and planning estates. Some

paralegals coordinate the activities of other law office employees and maintain financial office records. Computer software packages and the Internet are used to search legal literature stored in computer databases and on CD-ROM. In litigation involving many supporting documents, paralegals usually use computer databases to retrieve, organize, and index various materials. Paralegals are found in all types of organizations. In these organizations, they can work in many different areas of the law e.g. personal injury, corporate law, criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. As the law becomes more complex, paralegals become more specialized. Within specialties, functions are often broken down further. For example, paralegals specializing in labor law may concentrate exclusively on employee benefits.

4. Duties of Paralegals.—Paralegals who work in the public sector usually vary by agency. In general, litigation paralegals analyze legal material for internal use, maintain reference files, conduct research for attorneys, and collect and analyze evidence for agency hearings. They may prepare informative or explanatory material on laws, agency regulations, and agency policy for general use by the agency and the public. Paralegals employed in community legal-service projects help the poor, the aged, and others who are in need of legal assistance. They file forms, conduct research, prepare documents, and, when authorized by law, may represent clients at administrative hearings.

5. Work environment.—Paralegals handle many routine assignments, particularly when they are inexperienced. As they gain experience, paralegals usually assume more varied tasks with additional responsibility. Paralegals do most of their work in offices and law libraries. Occasionally, they travel to gather information and perform other duties.

Paralegals must be able to document and present their findings and opinions to their supervising attorney. They need to understand legal terminology and have good research and investigative skills. Familiarity with the operation and applications of computers in legal research and litigation support also is important. Paralegals should stay informed of new developments in the laws that affect their area of practice. Participation in legal education seminars allows paralegals to maintain and expand their knowledge of law, because paralegals frequently deal with the public, they should be courteous and uphold the ethical standards of the legal profession.

6. Voluntary Organisations.—There are certain voluntary organizations which have performed the role of Para Legal Services comprising of Lawyers and non-Lawyers. The country witnessed a mass movement in the name of Jan Lokpal Bill headed by social activist Shri Anna Hazare under the organization “India Against Corruption”, which is helping the downtrodden and the higher strata of the society to fight against corruption through legal procedures.

There are certain organizations which are filing PIL’s thereby helping the poor, one such organization is Centre for Public Interest Litigation.

7. Exemptions.—Even our Courts have made certain procedural exemptions for the poor/underprivileged section of the society so that they could have access to justice.

In order to preserve and protect the fundamental or marginalized, deprived and poor sections of the society, the Courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and order. Due to innovative efforts to protect and preserve fundamental rights of the people belonging to

poor and marginalized sections of the society, Courts earned great respect and credibility in the eyes of public.²

8. International Scenario.—In USA para legal services are provided by way of organizations formed in each state where their mission includes maintaining paralegal ethics, encouraging leadership and networking, promoting our association in the community through volunteer work, and continuing to define and enhance the profession. It supports regulation and licensure of the paralegal profession. The members have participate in various projects of the State Bar Paralegal Task Force.

2. State of Uttaranchal v. Balwant Singh Chaufal, 2010(3) SCC 402 (SC).

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