REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1134-1135 OF 2002

State of Uttaranchal .. Appellant

Versus

Balwant Singh Chaufal & Others .. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. These appeals have been filed by the State of Uttaranchal (now Uttarakhand) against the orders dated 12.7.2001 and 1.8.2001 passed by the Division Bench of the High Court of Uttaranchal at Nainital in Civil Miscellaneous Writ Petition No. 689 (M/B) of 2001.

2. The appointment of L. P. Nathani was challenged before the High Court in a Public Interest Litigation on the ground that he could not hold the august Office of the Advocate General of Uttarakhand in view of Article 165 read with Article 217 of the Constitution. According to the respondent, Mr. Nathani was ineligible to be appointed as the Advocate General because he had attained the age of 62 years much before he was appointed as the Advocate General. The High Court entertained the petition and directed the State Government to take decision on the issue raised within 15 days and apprise the same to the High Court.

3. The State of Uttaranchal preferred special leave petitions before this Court on 6.8.2001. This Court vide order dated 9.8.2001 stayed the operation of the impugned judgment of the High Court. Thereafter on 11.2.2002, this Court granted leave and directed that the stay already granted shall continue.

4. It may be pertinent to mention that, despite the service of notice, the respondents who had initially filed the writ petition before the High Court challenging the appointment of Nathani as the Advocate General did not appear before this Court. This clearly demonstrates the non-seriousness and non-commitment of the respondents in filing the petition.

5. Before we proceed to examine the controversy involved in this case, we deem it appropriate to set out Articles 165 and 217 of the Constitution dealing with the post of the Advocate General and the qualifications for appointment to this post in the Constitution. Article 165 which deals with the appointment of the Advocate General for the States is reproduced as under:

> **"165. The Advocate-General for the State.-(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.**
>
> **(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from**

time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

6. Article 217 which deals with the appointment and the conditions of the office of a Judge of a High Court is set out as under:

217 - Appointment and conditions of the office of a Judge of a High Court .- (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that--

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such courts in succession;

Explanation: For the purposes of this clause—

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act,1935, or has been an advocate of any High Court in any such area, as the case may be.

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final."

7. The Division Bench of the High Court in the impugned judgment observed that the first clause of Article 165 insists that the Governor shall appoint a person as the Advocate General who is qualified to be appointed as a Judge of a High Court. The qualifications for the appointment of a Judge of a High Court are prescribed in the second clause of Article 217. It is true that the first clause of Article 217 says that a

Judge of a High Court "shall hold office until he attains the age of 60 years" (at the relevant time the age of retirement of a Judge of the High Court was 60 years and now it is 62 years). The Division Bench further held that the real question then was whether this provision is to be construed as one prescribing a qualification or as one prescribing the duration of the appointment of a Judge of a High Court. It was further held that as the provision does not occur in the second clause, it can only be construed as one prescribing the duration of the appointment of a Judge of a High Court. The Court further observed that the provisions about duration in the first clause of Article 217 cannot be made applicable to the Advocate General because the Constitution contains a specific provision about the duration of the appointment of the Advocate General in the third clause of Article 165 which says that the Advocate General shall hold office during the pleasure of the Governor. This provision does not limit the duration of the appointment by reference to any particular age, as in the case of a Judge, it is not permissible to import into it the words "until he attains the age of sixty years". The specific provision in the Constitution must, therefore, be given effect to without any limitation. If a person is appointed as an Advocate General, say at the age of fifty-five years, there is no warrant for holding that he must cease to hold his office on his attaining sixty two years because it is so stated about a Judge of a High court in the first clause of Article 217. If that be a true position, as

we hold it is, then the appointment is not bad because the person is past sixty two years, so long as he has the qualifications prescribed in the second clause of Article 217.

8. Shri Dinesh Dwivedi, the learned senior counsel appearing for the State of Uttarakhand submitted that, over half a century ago, in *G.D. Karkare v. T.L. Shevde & Others* AIR 1952 Nagpur 330, this controversy has been settled by the Division Bench of the Nagpur High Court and the said judgment was approved by a Constitution Bench of this Court in the case of *Atlas Cycle Industries Ltd. Sonepat v. Their Workmen* 1962 Supp. (3) SCR 89. In *Karkare's* case (supra), it was observed as follows:

> **"25. It is obvious that all the provisions relating to a Judge of a High Court cannot be made applicable to the Advocate-General. The provisions about remuneration are different for the two offices. A Judge of the High Court is governed by Art. 221. The Advocate-General is governed by clause (3) of Art. 165 and receives such remuneration as the Governor may determine.**
>
> **26. What the first clause of Art. 165 insists is that the Governor shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State. The qualifications for the appointment of a Judge of a High Court are prescribed in the second clause of Art. 217. It is true that the first clause of Art 217 says that a Judge of a High Court "shall hold office until he attains the age of 60 years". The real question then is whether this provision is to be construed as one prescribing a qualification or as one prescribing the duration of the appointment of a Judge of a High Court. As the provision does not occur in the second clause, it can only be construed as one prescribing the duration of the appointment of a Judge of a High Court.**
>
> **27. The provision about duration in the first clause of Art. 217 cannot be made**

applicable to the Advocate-General because the Constitution contains a specific provision about the duration of the appointment of the Advocate-General in the third clause of Art. 165 which says that the Advocate-General shall hold office during the pleasure of the Governor. As this provision does not limit the duration of the appointment by reference to any particular age, as in the case of a Judge, it is not permissible to import into it the words "until he attains the age of sixty years". The specific provision in the Constitution must therefore be given effect to without any limitation. If a person is appointed Advocate-General, say at the age of fifty-five, there is no warrant for holding that he must cease to hold his office on this attaining sixty years because it is so stated about a Judge of a High Court in the first clause of Art. 217. If that be the true position, as we hold it is, then the appointment is not bad because the person is past sixty years, so long as he has the qualifications prescribed in the second clause of Art. 217. It was not suggested that the non-applicant does not possess the qualifications prescribed in that clause.

28. The provision that every Judge of a High Court "shall hold office until he attains the age of sixty years" has two aspects to it. While in one aspect it can be viewed as a guarantee of tenure during good behaviour to a person appointed as a Judge of a High Court until he attains the age of sixty, in another aspect it can be viewed as a disability in that a Judge cannot hold his office as of right after he attains the age of sixty years.

29. We say as of right because under Art. 224 a person who has retired as a Judge of a High Court may be requested to sit and act as a Judge of a High court. The attainment of the age of sixty by a person cannot therefore be regarded as a disqualification for performing the functions of a Judge. But the learned counsel for the applicant tried to distinguish between the case of a person qualified to be appointed a Judge of a High Court under Article 217 and the case of a person requested to sit and act as a Judge under Article 224.

The distinction between the case of a person qualified to be appointed a Judge of a High Court under Article 217 and the case of a

person requested to sit and act under Article 224 is not with respect to the qualifications for performing the functions of a Judge, but with respect to the matters provided by Article 221, 222, 223, etc. In the language of the Constitution a Judge does not lose the qualifications prescribed in the second clause of Article 217 on the attainment of the age of sixty years. A person who attains that age cannot be appointed as a Judge not because he is not qualified to be so appointed within the meaning of the second clause of Article 217, but because the first clause of that Article expressly provides that a Judge shall hold office until he attains the age of sixty years.

(30) If the provision in the first clause of Article 217 viewed as a guarantee of tenure of office until the age of sixty is not available to the Advocate-General because he holds office during the pleasure of the Governor, we see no compelling reason why the same provision construed as a disability should be made applicable to him. We are, therefore, of the view that the first clause of Article 217 cannot be read with the first clause of Article 165 so as to disqualify a person from being appointed Advocate-General after the age of sixty years. We have no doubt on the point. Even if the question be considered as not free from doubt, as the applicant desires to construe the first clause of Article 217 as a disabling provision against the non-applicant, we cannot forget that provisions entailing disabilities have to be construed strictly: 'Parameshwaram Pillai Bhaskara Pillai v. State', 1950-5 Dom L R (Trav) 382. The canon of construction approved by their Lordships of the Privy Council is that if there be any ambiguity as to the meaning of a disabling provision, the construction which is in favour of the freedom of the individual should be given effect to : 'David v. De'silva', (1934) A C 106 at p. 114.

(31) There is no force in the contention that the non-applicant could not have been appointed Advocate-General because he had retired as a Judge of the High Court. The learned counsel referred us to Clause (4)(a) of Article 22 of the Constitution and submitted that the Constitution makes a distinction between a person who has been a Judge and one who is qualified to be appointed as a Judge of a High Court. The provision in our view only makes an

exhaustive enumeration of the classes of persons who can constitute an Advisory Board. Such persons must either be or must have been or must be qualified to be appointed as Judges of a High Court. The provision has therefore no bearing on the question whether the first clause of Article 165 has to be read with the first clause of Article 217, which question we have already answered in the negative. The case of the non-applicant is unique. Article 220 is not applicable to him because he did not hold office as a Judge of the High Court after the commencement of the Constitution. So the bar contained in that Article also does not come in his way."

9. Despite the fact that the controversy has been fully settled by a judgment of this Court, it has been raised from time to time in a number of writ petitions before the various High Courts. We would reproduce some of the judgments to demonstrate that after the controversy has been finally settled by this Court, the filing of indiscriminate petitions with the same relief creates unnecessary strain on the judicial system and consequently leads to inordinate delay in disposal of genuine and bona fide cases.

10. The following cases would demonstrate that, in how many High Courts, the similar controversy has been raised after the matter was finally settled by this Court:

11. In *Ghanshyam Chandra Mathur v. The State of Rajasthan & Others* 1979 Weekly Law Notes 773, the appointment of the Advocate General was once again challenged. The court held that "…no age of superannuation has been mentioned in Article 165 of the Constitution of India. This clearly means that the age of superannuation which applies to a High Court Judge,

does not apply to the office of the Advocate General".

12. In *Dr. Chandra Bhan Singh v. State of Rajasthan & Others* AIR 1983 Raj. 149, the question regarding the validity of the appointment of the Advocate General was challenged. The Court in this case had held that the age of superannuation of a High Court Judge did not apply to the post of the Advocate General. The court noted that all provisions in the Constitution for High Court Judges, such as remuneration and tenure of office do not apply to the post of the Advocate General.

13. In *Manendra Nath Rai & Another v. Virendra Bhatia & Others* AIR 2004 All. 133, the appointment of the Advocate General was yet again challenged. The Court held as under:

> **"The argument that the provision of Sub-clause (1) of Article 217 of the Constitution should be followed in the matter of appointment of Advocate General is wholly misconceived. Article 217 of the Constitution deals with the appointment and conditions of the office of a Judge of a High Court. The consultation with the Chief Justice of the State in the matter of appointment of a Judge of the High Court cannot be made a requirement in the matter of the appointment of Advocate General. The appointment of Advocate General is not governed by the aforesaid Article which falls in Chapter-V Part-6 of the Constitution whereas Article 165, which deals with the appointment of Advocate General for the State falls in Chapter II of Part 6. The scheme of the Constitution for the appointment of Advocate General as well as for appointment of a Judge of the High Court is totally different."**

14. In a Division Bench judgment dated 4.2.2005 of the Allahabad High Court in *Prem Chandra Sharma & Others v. Milan Banerji & Others* in writ petition No. 716 (M/B) of 2005

reported in 2005 (3) ESC 2001, the appointment of the Attorney General for India was challenged and a prayer was made to issue a writ in the nature of *quo warranto*, because according to the petitioner, the respondent Milan Banerji had already attained the age of 65 years and he could not be appointed as the Attorney General for India. In that case, the Division Bench relied upon the judgment of the Division Bench of the Nagpur High Court in *G.D. Karkare's* case (supra). The Court held as under:

> **"Having examined various provisions of the Constitution, it is quite clear that the Constitution of India does not provide the retirement age of various constitutional appointees. No outer age limit has been provided for the appointment of the Attorney General, Solicitor General and Advocate General in the State. In the democratic system, prevailing in our country the Attorney General is appointed on the recommendation of the Prime Minister by the President of India and traditionally, he resigns along with the Prime Minister. Learned Counsel for the petitioner could not show any law relating to the age of retirement of Attorney General or embargo provided in Constitution on appointment of a person as Attorney General, who has already attained the age of 65 years. We are of the considered opinion that the letter and spirit of the Constitution as far as appointment of the Attorney General is concerned, looking to significance, responsibility and high status of the post, it lays down certain requirements for a Member of Bar to be appointed as Attorney General of India. It is in this backdrop that the framers of the Constitution thought it necessary to prescribe minimum requisite qualification by laying that a person who is qualified to be appointed as Judge of the Hon'ble Court can be appointed as Attorney-General of India. This situation, however, cannot lead us to the conclusion by any stretch of imagination that the Attorney General cannot hold his office after the age of 65 years. As already indicated herein-above there are various constitutional functionaries where no outer age limit is provided to hold the**

office."

15. In view of the clear enunciation of law in the aforesaid judgments, the controversy has been fully settled that the 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. In a number of other cases regarding the appointment of other authorities, the Courts have consistently taken the similar view.

16. This Court in *Binay Kant Mani Tripathi v. Union of India & Others* (1993) 4 SCC 49 has re-affirmed this position. The Court pointed out that the decision of appointing D.K. Aggarwal to the position of the Vice-chairman of the Central Administrative Tribunal could not be held to be illegal or wrong on the ground that he was more than sixty two years old.

17. In *Baishnab Patnaik & Others v. The State AIR 1952 Orissa 60,* the appointment of a person to the Advisory Board under the Preventive Detention Act was challenged on the grounds that he was older than 60 years (the age of superannuation for High Court judges at that time). The court pointed out:

> **"If the makers of the Constitution thought that the age limit was one of the qualifications for appointment as a Judge of a High Court they would not have specified it in Clause (1) of Article 217 but would have included it in Clause (2) of the said Article."**

18. In *Gurpal Singh v. State of Punjab & Others* (2005) 5

SCC 136, the appointment of the appellant as Auction Recorder was challenged. The Court held that the scope of entertaining a petition styled as a public interest litigation and *locus standi* of the petitioner particularly in matters involving service of an employee has been examined by this Court in various cases. The Court observed that before entertaining the petition, the Court must 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. The 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.

19. The aforementioned cases clearly give us the picture how the judicial process has been abused from time to time and after the controversy was finally settled by a Constitution Bench of this Court, repeatedly the petitions were filed in the various courts.

20. In the instant case, one of the petitioners before the High Court is a practicing lawyer of the court. He has invoked the extraordinary jurisdiction of the High Court in this matter. It was expected from a Hon'ble member of the

noble profession not to invoke the jurisdiction of the court in a matter where the controversy itself is no longer *res integra*.

21. Similarly, it is the bounden duty of the court to ensure that the controversy once settled by an authoritative judgment should not be reopened unless there are extraordinary reasons for doing so.

22. In the instant case, the High Court entertained the petition despite the fact that the controversy involved in the case was no longer *res integra*. In reply to that writ petition, the Chief Standing Counsel of Uttrakhand also filed a Miscellaneous Application before the High Court. The relevant portion of the application reads as under:

> **"3. That the following Attorney Generals appointed under Article 76 of the Constitution were appointed when they were appointed as Attorney General were beyond prescribed age for appointment as Supreme Court of India.**
>
> **(I) Sri M. C. Setalvad**
> **(II) Sri C. K. Dapatary**
> **(III)Shri Niren De**
> **(IV) Sri Lal Narain Singh**
> **(V) Sri K. Parasaran**
> **(VI) Sri Soli Sorabjee**
>
> **4. That the appointment of present Attorney General (Mr. Milon Banerjee) was challenged before the Delhi High Court and the petition was dismissed in limine. The appointment of Mr. R.P. Goel, Advocate General of U.P. who has passed the age of 62 at the time of appointment was also dismissed.**
>
> **5. That in the Hon'ble High Court of Judicature at Allahabad Sri JV. K.S. Chaudhary, Sir Rishi Ram, Pt. Kanhaiya Lal Mishra, Sri Shanti Swaroop Bhatnagar and several others were appointed as Advocate General after crossing the**

age of 62 years. There were several Advocate Generals in India who were appointed after 62 years."

23. The State of Uttrakhand was a part of the State of U.P. a few years ago. In the State of U.P., a large number of Advocate Generals appointed were beyond 62 years of age at the time of their appointment. The petitioner, a local practicing lawyer, ought to have bestowed some care before filing this writ petition in public interest under Article 226 of the Constitution.

24. The controversy raised by the petitioner in this case was decided 58 years ago in the judgment of *Karkare* (supra) which was approved by the Constitution Bench of the Supreme Court way back in 1962. Unfortunately, the same controversy has been repeatedly raised from time to time in various High Courts. When the controversy is no longer *res-integra* and the same controversy is raised repeatedly, then it not only wastes the precious time of the Court and prevent the Court from deciding other deserving cases, but also has the immense potentiality of demeaning a very important constitutional office and person who has been appointed to that office.

25. In our considered view, it is a clear case of the abuse of process of court in the name of the Public Interest Litigation. In order to curb this tendency effectively, it has now become imperative to examine all connected issues of public interest litigation by an authoritative judgment in the hope that in future no such petition would be filed and/or

entertained by the Court.

26. To settle the controversy, we deem it appropriate to deal with different definitions of the Public Interest Litigation in various countries. We would also examine the evolution of the public interest litigation.

DEFINITIONS OF PUBLIC INTERST LITIGATION

27. Public Interest Litigation has been defined in the Black's Law Dictionary (6th Edition) as under:-

> **"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...."**

28. Advanced Law Lexicon has defined 'Public Interest Litigation' as under:-

> **"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 has pecuniary interest or some interest by which their legal rights or liabilities are affected."**

29. The Council for Public Interest Law set up by the Ford Foundation in USA defined "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.*" (M/s Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors. – AIR 2008 SC 913, para 19).

30. This court in *People's Union for Democratic Rights & Others v. Union of India & Others* (1982) 3 SCC 235 defined 'Public Interest Litigation' and observed that the "Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society".

ORIGIN OF PUBLIC INTEREST LITIGATION:

31. The public interest litigation is the product of realization of the constitutional obligation of the court.

32. All these petitions are filed under the big banner of the public interest litigation. In this view of the matter, it has become imperative to examine what are the contours of the public interest litigation? What is the utility and importance of the public interest litigation? Whether similar jurisdiction exists in other countries or this is an indigenously developed jurisprudence? Looking to the special conditions prevalent in our country, whether the public interest litigation should be encouraged or discouraged by the courts? These are some of the questions which we would endeavour to answer in this judgment.

33. According to our opinion, the public interest

litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. etc. The court's directions to some extent have helped in maintaining probity and transparency in the public life.

34. This court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Pre-dominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of this court's deep and intense urge to fulfill its bounded duty and constitutional obligation.

35. The High Courts followed this Court and exercised similar jurisdiction under article 226 of the Constitution. The courts expanded the meaning of right to life and liberty guaranteed under article 21 of the Constitution. The rule of *locus standi* was diluted and the traditional meaning of

'*aggrieved person*' was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. We would like to term this as the first phase or the golden era of the public interest litigation. We would briefly deal with important cases decided by this Court in the first phase after broadening the definition of 'aggrieved person'. We would also deal with cases how this Court prevented any abuse of the public interest litigation?

36. This Court in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India & Others* AIR 1981 SC 298 at page 317, held that 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 'representative 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 participative justice in our democracy. We have no hesitation in holding that the narrow concepts of 'cause of action', 'person aggrieved' and individual litigation are becoming obsolescent in some jurisdictions.

37. In *Bandhua Mukti Morcha v. Union of India & Others* AIR 1984 SC 802, this court entertained a petition even of unregistered Association espousing the cause of over down-

trodden or its members observing that the cause of "little Indians" can be espoused by any person having no interest in the matter.

38. In the said case, this court further held that where a public interest litigation alleging that certain workmen are living in bondage and under inhuman conditions is initiated it is not expected of the Government that it should raise preliminary objection that no fundamental rights of the petitioners or the workmen on whose behalf the petition has been filed, have been infringed. On the contrary, the Government should welcome an inquiry 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 any consigned to a life of utter deprivation and degradation, such a situation can be set right by the Government.

39. 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 social and economic justice which is the signature tune of our Constitution. 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 or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

40. In *Fertilizer Corporation Kamagar Union (Regd., Sindri & Others v. Union of India & Others* AIR 1981 SC 844, this court observed that "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 doorsteps".

41. In *Ramsharan Autyanuprasi & Another v. Union of India & Others* AIR 1989 SC 549, this court observed that the public interest litigation 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.

<u>EVOLUTION OF THE PUBLIC INTEREST LITIGATION IN INDIA</u>

42. The origin and evolution of Public Interest Litigation in India emanated from realization of constitutional obligation by the Judiciary towards the vast sections of the

society - the poor and the marginalized sections of the society. This jurisdiction has been created and carved out by the judicial creativity and craftsmanship. In *M. C. Mehta & Another v. Union of India & Others* AIR 1987 SC 1086, this Court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on this Court to protect the fundamental rights of the people. The court asserted that, in realization of this constitutional obligation, "it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights". The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order to preserve and protect the fundamental rights of the marginalized section of society by judicial innovation, the courts by judicial innovation and creativity started giving necessary directions and passing orders in the public interest.

43. The development of public interest litigation has been extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the strict *locus standi* requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher Courts exercised wide

powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the courts have also given guidelines and directions. The courts have monitored implementation of legislation and even formulated guidelines in absence of legislation. If the cases of the decades of 70s and 80s are analyzed, most of the public interest litigation cases which were entertained by the courts are pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society. This can be termed as the first phase of the public interest litigation in India.

44. The Indian Supreme Court broadened the traditional rule of standing and the definition of "person aggrieved".

45. In this judgment, we would like to deal with the origin and development of public interest litigation. We deem it appropriate to broadly divide the public interest litigation in three phases.

- **Phase-I: It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this court or the High Courts.**

- **Phase-II: It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc.**

- **Phase-III: It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.**

46. Thereafter, we also propose to deal with the aspects of abuse of the Public Interest Litigation and remedial measures by which its misuse can be prevented or curbed.

DISCUSSION OF SOME IMPORTANT CASES OF PHASE-I

47. The court while interpreting the words "person aggrieved" in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Others* (1976) 1 SCC 671 observed that "the traditional rule is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule".

48. The rule of *locus standi* was relaxed in *Bar Council of Maharashtra* v. *M. V. Dabholkar & Others* 1976 SCR 306. The court observed as under:

> **"Traditionally used to the adversary system, we search for individual persons aggrieved. But a new class of litigation public interest litigation- where a section or whole of the community is involved (such as consumers' organisations or NAACP-National Association for Advancement of Coloured People-in America), emerges in a developing country like ours, this pattern of public oriented litigation better fulfils the rule of law if it is to run close to the rule of life.**
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> **xxx xxx xxx**

> **"The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system."**

49. The court in this case observed that "procedural prescriptions are handmaids, not mistresses of justice and failure of fair play is the spirit in which Courts must view procession deviances."

50. In *The Mumbai Kamgar Sabha, Bombay* v. *Abdulbhai Faizullabhai & Others* AIR 1976 SC 1455, this Court made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of *locus standi.*

51. In *Sunil Batra* v. *Delhi Administration & Others*AIR 1978 SC 1675, the Court departed from the traditional rule of standing by authorizing community litigation. The Court entertained a writ petition from a prisoner, a disinterested party, objecting to the torture of a fellow prisoner. The Court entertained the writ after reasoning that "these 'martyr' litigations possess a beneficent potency beyond the individual litigant and their consideration on the wider representative basis strengthens the rule of law." Significantly, citing "people's vicarious involvement in our justice system with a broad-based concept of locus standi so necessary in a democracy where the masses are in many senses weak," the Court permitted a human rights organization to intervene in the case on behalf of the victim.

52. In *Hussainara Khatoon & Others* v. *Home Secretary, State of Bihar, Patna* AIR 1979 SC 1369, P. N. Bhagwati, J. has observed that "today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to (sic) about changes in their life conditions and to deliver justice to them. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across *'law for the poor" rather than law of the poor'*. The law is regarded by them as something mysterious and forbidding--always taking something away from them and not as a positive and constructive social device for changing the social economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker section of the community.

53. In *Prem Shankar Shukla* v. *Delhi Administration* AIR 1980 SC 1535, a prisoner sent a telegram to a judge complaining of forced handcuff on him and demanded implicit protection against humiliation and torture. The court gave necessary directions by relaxing the strict rule of *locus standi*.

54. In *Municipal Council, Ratlam* v. *Vardhichand & Others* AIR 1980 SC 1622, Krishna Iyer, J. relaxed the rule of locus standi:

> **"The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we**

must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the center of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered…..

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Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Don'ts the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice……"

55. In *Fertilizer Corporation Kamgar Union* (supra) Krishna Iyer, J. and Bhagwati, J. had to answer in affirmative as to whether the workers in a factory owned by government had *locus standi* to question the legality of sale of the factory. They concluded with a quote: 'Henry Peter Brougham: Nieman Reports, April 1956 as under:

"It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of innocence."

56. In *People's Union for Democratic Rights & Others* (supra), this Court observed as under:

"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 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 numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed. 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 prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have 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. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right of exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our

> **people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty: utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?**

57. Justice Bhagwati of this court in his judgment in *S.P. Gupta v. President of India & Others* AIR 1982 SC 149 altogether dismissed the traditional rule of standing, and replaced it with a liberalized modern rule. In this case, the Court awarded standing to advocates challenging the transfer of judges during Emergency. Describing the traditional rule as an "ancient vintage" of "an era when private law dominated the legal scene and public law had not been born," the Court concluded that the traditional rule of standing was obsolete. In its place, the Court prescribed the modern rule on standing:

> **"where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, *any member of the public can maintain an application for an appropriate direction, order or writ, in the High Court under Article 226, and in case of breach of any fundamental right, in this Court under Article 32*."**

58. Finding that the practicing advocates "are vitally

interested in the maintenance of a fearless and an independent Judiciary," the Court granted standing to the advocates under the modern rule to bring cases challenging the transfer of judges during Emergency. In this case, this Court further observed as under:

> **"……it must now be regarded as well settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the Court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go un-redressed and justice is done to him.**
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> **xxx xxx xxx**
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> **……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 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 Courts of the country will also adopt this pro-active, goal-oriented approach."**

59. In *Anil Yadav & Others* v. *State of Bihar and Bachcho*

Lal Das, Superintendent, Central Jail, Bhagalpur, Bihar **(1982) 2 SCC 195, a petition was filed regarding blinding of under-trial prisoners at Bhagalpur in the State of Bihar. According to the allegation, their eyes were pierced with needles and acid poured into them. The Court had sent a team of the Registrar and Assistant Registrar to visit the Central Jail, Bhagalpur and submit a report to the Court. The Court passed comprehensive orders to ensure that such barbarous and inhuman acts are not repeated.**

60. In *Munna & Others* v. *State of Uttar Pradesh & Others*, (1982) 1 SCC 545, the allegation was that the juvenile under-trial prisoners have been sent in the Kanpur Central Jail instead of Children's Home in Kanpur and those children were sexually exploited by the adult prisoners. This Court ruled that in no case except the exceptional ones mentioned in the Act, a child can be sent to jail. The Court further observed that the children below the age of 16 years must be detained only in the Children's Homes or other place of safety. The Court also observed that "a Nation which is not concerned with the welfare of the children cannot look forward to a bright future."

61. Thereafter, in a series of cases, the Court treated Post Cards and letters as writ petitions and gave directions and orders.

62. In *Sheela Barse v. State of Maharashtra* AIR 1983 SC 378, Sheela Barse, a journalist, complained of custodial

violence to women prisoners in Bombay. Her letter was treated as a writ petition and the directions were given by the court.

63. In *Dr. Upendra Baxi (I)* v. *State of Uttar Pradesh & Another* 1983 (2) SCC 308 two distinguished law Professors of the Delhi University addressed a letter to this court regarding inhuman conditions which were prevalent in Agra Protective Home for Women. The court heard the petition on a number of days and gave important directions by which the living conditions of the inmates were significantly improved in the Agra Protective Home for Women.

64. In *Veena Sethi (Mrs.)* v. *State of Bihar & Others* AIR 1983 SC 339, some prisoners were detained in jail for a period ranging from 37 years to 19 years. They were arrested in connection with certain offences and were declared insane at the time of their trial and were put in Central Jail with directions to submit half-yearly medical reports. Some were convicted, some acquitted and trials were pending against some of them. After they were declared sane no action for their release was taken by the authorities. This Court ruled that the prisoners remained in jail for no fault of theirs and because of the callous and lethargic attitude of the authorities. Even if they are proved guilty the period they had undergone would exceed the maximum imprisonment that they might be awarded.

65. In *Labourers Working on Salal Hydro Project* v. *State*

of Jammu & Kashmir & Others **AIR 1984 SC 177, on the basis of a news item in the Indian Express regarding condition of the construction workers, this Court took notice and observed that the construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government.**

66. In *Shri Sachidanand Pandey & Another* v. *The State of West Bengal & Others* (1987) 2 SCC 295, in the concurring judgment, Justice Khalid, J. observed that the public interest litigation should be encouraged when the 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.

67. The case of *B. R. Kapoor & Another* v. *Union of India & Others* AIR 1990 SC 752 relates to public interest litigation regarding mismanagement of the hospital for mental diseases located at Shahdara, Delhi. This Court appointed a Committee of Experts which highlighted the problems of availability of water, existing sanitary conditions, food, kitchen, medical

and nursing care, ill-treatment of patients, attempts of inmates to commit suicide, death of patients in hospital, availability of doctors and nurses etc. The Court went on to recommend the Union of India to take over the hospital and model it on the lines of NIMHANS at Bangalore.

68. In *Smt. Nilabati Behera alias Lalita Behera* v. *State of Orissa & Others* AIR 1993 SC 1960, this Court gave directions that for contravention of human rights and fundamental freedoms by the State and its agencies, a claim for monetary compensation in petition under Article 32 of 226 is justified. In a concurring judgment, Anand, J. (as he then was) observed as under:

> **"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations."**

69. In *Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary* v. *State of Punjab & Others* (1994) 1 SCC 616, the allegation was that a practicing advocate, his wife and a child aged about two years were abducted and murdered. This Court directed the Director of the CBI to investigate and report to the Court.

70. In *Navkiran Singh & Others* v. *State of Punjab through Chief Secretary & Another* (1995) 4 SCC 591, in a letter petition the advocates from the Punjab & Haryana High Court expressed concerned about the kidnapping/elimination of

advocates in the State of Punjab. This Court directed the CBI to investigate the matter and also directed the State of Punjab to provide security to those advocates who genuinely apprehend danger to their lives from militants/anti-social elements. The Court also observed that if the request for security is recommended by the District Judge or the Registrar of the High Court, it may treated as genuine and the State Government may consider the same sympathetically.

71. In *Delhi Domestic Working Women's Forum* v. *Union of India & Others* (1995) 1 SCC 14, the Court expressed serious concern about the violence against women. The Court gave significant directions and observed that compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

72. In *Citizens for Democracy* v. *State of Assam & Others* (1995) 3 SCC 743, this Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international law and the law of the land. The Court in para 15 observed as under:

> **"15. ….. The handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, the least we can say, inhuman and in utter violation of the human rights guaranteed to an individual under the international law and the law of the land. We are,**

therefore, of the view that the action of the respondents was wholly unjustified and against law. We direct that the detenus – in case they are still in hospital – be relieved from the fetters and the ropes with immediate effect."

73. In *Paramjit Kaur (Mrs.) v. State of Punjab & Others* (1996) 7 SCC 20, a telegram was sent to a Judge of this Court which was treated as a *habeas corpus* petition. The allegation was that the husband of the appellant was kidnapped by some persons in police uniform from a busy residential area of Amritsar. The Court took serious note of it and directed the investigation of the case by the Central Bureau of Investigation.

74. In *M. C. Mehta* v. *State of Tamil Nadu & Others* (1996) 6 SCC 756, the Court was dealing with the cases of child labour and the Court found that the child labour emanates from extreme poverty, lack of opportunity for gainful employment and intermittency of income and low standards of living. The Court observed that it is possible to identify child labour in the organized sector, which forms a minuscule of the total child labour, the problem relates mainly to the unorganized sector where utmost attention needs to be paid.

75. In *D. K. Basu* v. *State of West Bengal* (1997) 1 SCC 416, this Court observed that the custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. The expression "life or personal liberty" in

Article 21 includes 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. The precious right guaranteed by Article 21 cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. The Court gave very significant directions which are mandatory for all concerned to follow.

76. In *Vishaka & Others* v. *State of Rajasthan & Others* (1997) 6 SCC 241, this Court gave directions regarding enforcement of the fundamental rights of the working women under Articles 14, 19 and 21 of the Constitution. The Court gave comprehensive guidelines and norms and directed for protection and enforcement of these rights of the women at their workplaces.

77. In a recently decided case *Prajwala* v. *Union of India & Others* (2009) 4 SCC 798, a petition was filed in this Court in which it was realized that despite commencement of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, disabled people are not given preferential treatment. The Court directed the State Governments/local authorities to allot land for various purposes indicted in section 43 of the Act and various items indicated in section 43, preferential treatment be given to the disabled people and the land shall be given at

concessional rates. The percentage of reservation may be left to the discretion of the State Governments. However, total percentage of disabled persons shall be taken into account while deciding the percentage.

78. In *Avinash Mehrotra* v. *Union of India & Others* (2009) 6 SCC 398, a public interest litigation was filed, when 93 children were burnt alive in a fire at a private school in Tamil Nadu. This happened because the school did not have the minimum safety standard measures. The court, in order to protect future tragedies in all such schools, gave directions that it is the fundamental right of each and every child to receive education free from fear of security and safety, hence the Government should implement National Building Code and comply with the said orders in constructions of schools for children.

79. All these abovementioned cases demonstrate that the courts, in order to protect and preserve the fundamental rights of citizens, while relaxing the rule of *locus standi*, passed a number of directions to the concerned authorities.

80. We would not like to overburden the judgment by multiplying these cases, but brief resume of these cases demonstrate that in order to preserve and protect the fundamental rights of 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 orders. We would like to term cases

of this period where the court relaxed the rule of *locus standi* as the first phase of the public interest litigation. The Supreme Court and the High Courts earned great respect and acquired great 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.

PHASE-II – DIRECTIONS TO PRESERVE AND PROTECT ECOLOGY AND ENVIRONMENT

81. The second phase of public interest litigation started sometime in the 1980's and it related to the courts' innovation and creativity, where directions were given to protect ecology and environment.

82. There are a number of cases where the court tried to protect forest cover, ecology and environment and orders have been passed in that respect. As a matter of fact, the Supreme Court has a regular Forest Bench (Green Bench) and regularly passes orders and directions regarding various forest cover, illegal mining, destruction of marine life and wild life etc. Reference of some cases is given just for illustration.

83. In the second phase, the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution passed a number of orders and directions in this respect.

84. The recent example is the conversion of all public transport in the Metropolitan City of Delhi from diesel engine

to CNG engine on the basis of the order of the High Court of Delhi to ensure that the pollution level is curtailed and this is being completely observed for the last several years. Only CNG vehicles are permitted to ply on Delhi roads for public transport.

85. Louise Erdrich Bigogress, an environmentalist has aptly observed that "grass and sky are two canvasses into which the rich details of the earth are drawn." In 1980s, this court paid special attention to the problem of air pollution, water pollution, environmental degradation and passed a number of directions and orders to ensure that environment ecology, wildlife should be saved, preserved and protected. According to court, the scale of injustice occurring on the Indian soil is catastrophic. Each day hundreds of thousands of factories are functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Everyday millions of litres of untreated raw effluents are dumped into our rivers and millions of tons of hazardous waste are simply dumped on the earth. The environment has become so degraded that instead of nurturing us it is poisoning us. In this scenario, in a large number of cases, the Supreme Court intervened in the matter and issued innumerable directions.

86. We give brief resume of some of the important cases decided by this court. One of the earliest cases brought before the Supreme Court related to oleum gas leakage in

Delhi. In order to prevent the damage being done to environment and the life and the health of the people, the court passed number of orders. This is well-known as *M.C. Mehta & Another v. Union of India & Others* AIR 1987 SC 1086. The court in this case has clearly laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The court directed that the enterprise must adopt highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

87. In *Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Others* AIR 1985 SC 652 the Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commenting on the closure of the lime-stone quarries, the court stated that this would undoubtedly cause hardship to owners of the lime-stone quarries, but it is the price that has to be paid for

protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.

88. Environmental PIL has emerged because of the court's interpretation of Article 21 of the Constitution. The court in *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Others* AIR 1990 SC 2060 observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers 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 take recourse to Article 32 of the Constitution.

89. This court in *Subhash Kumar v. State of Bihar & Others* AIR 1991 SC 420 observed that under Article 21 of the Constitution people have 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.

90. The case of *M.C. Mehta v. Union of India & Others* (1988) 1 SCC 471, relates to pollution caused by the trade effluents discharged by tanneries into Ganga river in Kanpur.

The court called for the report of the Committee of experts and gave directions to save the environment and ecology. It was held that "in Common Law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. But in the present case the petitioner is not a riparian owner. He 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 petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widerspread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case, the petitioner is 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 (Prevention and Control of Pollution) Act, 1974".

91. In *Vellore Citizens Welfare Forum v. Union of India & Others* AIR 1996 SC 2715, this court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This court declared Articles 47, 48A and 51A(g) to be part of the constitutional

mandate to protect and improve the environment.

92. In *M.C. Mehta* v. *Union of India & Others* AIR 1988 SC 1037, this court observed that the effluent discharged in river Ganga from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks. The court further observed that the financial capacity of the tanneries should be considered as irrelevant without requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large.

93. In *M.C. Mehta* v. *Union of India & Others* AIR 1997 SC 734, this court observed that in order to preserve and protect the ancient monument Taj Mahal from sulphurdioxide emission by industries near Taj Mahal, the court ordered 299 industries to ban the use of coke/coal. The court further directed them to shift-over to Compressed Natural Gas (CNG) or re-locate them.

94. In *A. P. Pollution Control Board* v. *Prof. M. V. Nayadu (Retd.) & Others* (1999) 2 SCC 718, this Court quoted A. Fritsch, "Environmental Ethics: Choices for Concerned Citizens". The same is reproduced as under:

> **"The basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system in weblike; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for**

all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem". [Science Action Coalition by A. Fritsch, Environmental Ethics: Choices for Concerned Citizens 3-4 (1980)] : (1988) Vol. 12 Harv. Env. L. Rev. at 313).”

95. The court in this case gave emphasis that the directions of the court should meet the requirements of public interest, environmental protection, elimination of pollution and sustainable development. While ensuring sustainable development, it must be kept in view that there is no danger to the environment or to the ecology.

96. In *Essar Oil Ltd.* v. *Halar Utkarsh Samiti & Others* AIR 2004 SC 1834, while maintaining the balance between economic development and environmental protection, the court observed as under:

“26. Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says "man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic developments". These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working

environment for man and for creating conditions on earth that are necessary for improvement of the quality of life".”

97. On sustainable development, one of us (Bhandari, J.) in *Karnataka Industrial Areas Development Board* v. *Sri C. Kenchappa & Others* AIR 2006 SC 2038, observed that there has to be balance between sustainable development and environment. This Court observed that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment; State Industrial Areas Development Board to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

98. In another important decision of this Court in the case of *M.C. Mehta* v. *Kamal Nath & Others* (2000) 6 SCC 213, this Court was of the opinion that Articles 48A and 51-A(g) have to be considered in the light of Article 21 of the Constitution. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21. In the matter of enforcement of rights under Article 21, this Court, besides enforcing the provisions of the Acts referred to

above, has also given effect to Fundamental Rights under Articles 14 and 21 and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect the "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21.

99. The court also laid emphasis on the principle of Polluter-pays. According to the court, pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages or compensation for restoration of the environment and ecology.

100. In *Managing Director, A.P.S.R.T.C.* v. *S. P. Satyanarayana* AIR 1998 SC 2962, this Court referred to the White Paper published by the Government of India that the vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. This Court gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee of Bhure Lal appointed by this Court.

101. *In Re. Noise Pollution* AIR 2005 SC 3136, this Court was dealing with the issue of noise pollution. This Court was of

the opinion that there is need for creating general awareness towards the hazardous effects of noise pollution. Particularly, in our country the people generally lack consciousness of the ill effects which noise pollution creates and how the society including they themselves stand to benefit by preventing generation and emission of noise pollution.

102. In *Indian Council for Enviro-Legal Action* v. *Union of India & Others* (1996) 5 SCC 281 the main grievance in the petition is that a notification dated 19.2.1991 declaring coastal stretches as Coastal Regulation Zones which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. The court observed that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

103. In *S. Jagannath v. Union of India & Others* (1997) 2 SCC 87, this Court dealt with a public interest petition filed by the Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker section of society, wherein the

petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.2.1991 and stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas. This Court passed significant directions as under:

> **1. The Central Government shall constitute an authority conferring on the said authority all the powers necessary to protect the ecologically fragile coastal areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in coastal States.**
>
> **2. The authority so constituted by the Central Government shall implement "the Precautionary principle" and "the Polluter Pays" principles.**
>
> **3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswami report) which are practised in the coastal low lying areas.**
>
> **4. All acquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997.**
>
> **5. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of the shrimp culture ponds.**

6. No acquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter of Chilka lake and Pulicat lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).

7. Acquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997.

8. The Court also directed that the shrimp industries functioning within 1000 meter from the Coastal Regulation Zone shall be liable to compensate the affected persons on the basis of the "polluter pays" principle.

9. The authority was directed to compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.

10. The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

104. The Court also granted substantial costs to the petitioners.

105. The courts because of vast destruction of environment, ecology, forests, marine life, wildlife etc. etc. gave directions in a large number of cases in the larger public interest. The courts made a serious endeavour to protect and preserve ecology, environment, forests, hills, rivers, marine life, wildlife etc. etc. This can be called the second phase

of the public interest litigation in India.

THE TRANSPARENCY AND PROBITY IN GOVERNANCE – PHASE-III OF THE PUBLIC INTERST LITIGATION

106. In the 1990's, the Supreme Court expanded the ambit and scope of public interest litigation further. The High Courts also under Article 226 followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in the governance of the State. The probity in governance is a *sine qua non* for an efficient system of administration and for the development of the country and an important requirement for ensuring probity in governance is the absence of corruption. This may broadly be called as the third phase of the Public Interest Litigation. The Supreme Court and High Courts have passed significant orders.

107. The case of *Vineet Narain & Others* v. *Union of India & Another* AIR 1998 SC 889 is an example of its kind. In that case, the petitioner, who was a journalist, filed a public interest litigation. According to him, the prime investigating agencies like the Central Bureau of Investigation and the Revenue authorities failed to perform their legal obligation and take appropriate action when they found, during investigation with a terrorist, detailed accounts of vast payments, called 'Jain diaries', made to influential politicians and bureaucrats and direction was also sought in case of a similar nature that may occur hereafter.

A number of directions were issued by the Supreme Court. The Court in that case observed that "it is trite that the holders of public offices are entrusted with certain power to be exercised in public interest alone and, therefore, the office is held by them in trust for the people."

108. Another significant case is *Rajiv Ranjan Singh 'Lalan' & Another* v. *Union of India & Others* (2006) 6 SCC 613. This public interest litigation relates to the large scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar. It was said that the respondents had interfered with the appointment of the public prosecutor. This court gave significant directions in this case.

109. In yet another case of *M. C. Mehta* v. *Union of India & Others* (2007) 1 SCC 110, 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 Court directed for a detailed enquiry which was carried out by the Central Bureau of Investigation (CBI). On the basis of the CBI report, the Court directed registration of FIR and made further investigation in the matter. The court questioned the role

played by the concerned Minister for Environment, Government of Uttar Pradesh and the Chief Minister, Government of Uttar Pradesh. By the intervention of this Court, the said project was stalled.

110. These are some of the matters where the efficacy, ethics and morality of the governmental authorities to perform their statutory duties was directed under the scanner of the Supreme Court and the High Courts.

111. In *M. C. Mehta* v. *Union of India & Others* (2007) 12 SCALE 91, in another public interest litigation, a question was raised before the court whether the Apex Court should consider the correctness of the order passed by the Governor of Uttar Pradesh refusing to grant sanction for prosecution of the Chief Minister and Environment Minister after they were found responsible in 'Taj Heritage Corridor Project". It was held that the judiciary can step in where it finds the actions on the part of the legislature or the executive to be illegal or unconstitutional.

112. In *Centre for Public Interest Litigation* v. *Union of India & Another* AIR 2003 SC 3277, two writ petitions were filed in public interest by the petitioner calling in the question of decision of the government to sell majority of shares in Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited to private parties without Parliamentary approval or sanction as being contrary to and

violative of the provisions of the ESSO (Acquisition of Undertaking in India) Act, 1974, the Burma Shell (Acquisition of Undertaking in India) Act, 1976 and Caltex (Acquisition of Shares of Caltex Oil Refining India Limited and all the undertakings in India for Caltex India Limited) Act, 1977. The court upheld the petitions until the statutes are amended appropriately.

113. These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation.

114. We would also like to deal with some cases where the court gave direction to the executives and the legislature to ensure that the existing laws are fully implemented.

115. In *Pareena Swarup* v. *Union of India* (2008) 13 SCALE 84, a member of the Bar of this court filed a public interest litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 as ultra vires to the Constitution as they do not provide for independent judiciary to decide the cases but the members and chairperson to be selected by the Selection Committee headed by the Revenue

Secretary. According to the petitioner, following the case of *L. Chandrakumar* v. *Union of India & Others* (1997) 3 SCC 261 undermines separation of powers as envisaged by the Constitution.

116. We have endeavoured to give broad picture of the public interest litigation of Ist, IInd and IIIrd phases decided by our courts.

117. We would briefly like to discuss evolution of the public interest litigation in other judicial systems.

EVOLUTION OF PUBLIC INTERST LITIGATION IN OTHER JUDICIAL SYSTEMS NAMELY, USA, U.K., AUSTRALIA AND SOUTH AFRICA.

AUSTRALIA

118. In Australia also for protecting environment, the Australian court has diluted the principle of 'aggrieved person'.

119. 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 of Australia (apex court) upheld the concept and pointed out the essential requirements. McHugh J., quoted Stein J., from the lower court:

> **"In summary I find the litigation to be properly characterised 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."

120. To the court it was important that the 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 to gain in some way.

U.S.A.

121. 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* 347 U.S. 483, 489-493 (1954). Perhaps, it would accomplish the constitutional obligation and goal. 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 the history of American judiciary.

122. The US Supreme Court dismissed the traditional rule of Standing in *Association of Data Processing Service Organizations* v. *William B. Camp* 397 U.S. 150 (1970). The

court observed that a plaintiff may be granted standing whenever he/she suffers an "injury in fact" – "economic or otherwise".

123. In another celebrated case *Olive B. Barrows* v. *Leola Jackson* 346 U.S. 249 (1953), 73 S.Ct. 1031 the court observed as under:-

> **"But in the instant case, we are faced with a unique situation in which it 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 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."**

124. In environment cases, the US Supreme Court has diluted the stance and allowed organizations dedicated to protection of environment to fight cases even though such societies are not directly armed by the action.

125. In *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP)* 412 US 669 (1973), the court allowed a group of students to challenge the action of the railroad which would have led to environmental loss.

126. In *Paul J. Trafficante* v. *Metropolitan Life Insurance Company* 409 U.S. 205 (1972) the Court held that a landlord's racially discriminatory practices towards non-whites inflicted an injury in fact upon the plaintiffs, two tenants of an

apartment complex, by depriving them of the "social benefits of living in an integrated community."

127. Similarly, the Supreme Court of the United States has granted standing in certain situations to a plaintiff to challenge injuries sustained by a third party with whom he/she shares a "close" relationship.

128. In *Thomas E. Singleton v. George J. L. Wulff* 428 U.S. 106 (1976), the Court granted standing to two physicians challenging the constitutionality of a state statute limiting abortions. Similarly, in *Caplin v. Drysdale* 491 U.S. 617, 623-24 n. 3 (1989), the Court granted standing to an attorney to challenge a drug forfeiture law that would deprive his client of the means to retain counsel.

129. The Supreme Court has also granted organizational standing. In *Robert Warth v. Ira Seldin* 422 U.S. 490, 511 (1975), the Court declared that "even in the absence of injury to itself, an association may have standing solely as the representative of its members." This judgment had far reaching consequence. In *James B. Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343 (1977), the Court elaborated the parameters for organizational standing where an organization or association "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; (c) neither the claim asserted, nor

the relief requested, requires the participation of individual members in the lawsuit".

ENGLAND

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

Broad Rules of Standing

131. 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.**

132. One of the most distinguished and respected English Judge Lord Denning initiated the broadening of standing in the English Courts with his suggestion that the "words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation." – ***Attorney-General of the Gambia v. Pierre Sarr N'Jie*** **(1961) AC 617.**

133. The ***Blackburn Cases*** **broadened the rule of standing in**

actions seeking remedy through prerogative writs brought by individuals against public officials for breach of a 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* [1968] 2 W.L.R. 893 ("Blackburn I").

134. 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.

135. In *Blackburn II*, the Court of Appeal found no defects in Blackburn's standing to challenge the Government's decision to join a common market. *Blackburn v. Attorney-General* [1971] 1 W.L.R. 1037).

136. In *Blackburn III*, the Court of Appeal granted standing to Blackburn to seek a writ of mandamus to compel the Metropolitan Police to enforce laws against obscene publications. *Regina v. Commissioner of Police of the Metropolis, Ex parte Blackburn* [1973] Q.B. 241.

137. In *Blackburn IV*, the Court of Appeal granted standing to Blackburn to seek a writ of prohibition directed at the Greater London Council for failing to properly use their

censorship powers with regard to pornographic films. *Regina v. Greater London Council ex parte. Blackburn* [1976] 1 W.L.R. 550.

138. The English judiciary was hesitant in applying this broadened rule of standing to actions 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 Broadcasting Authority*, (1973) Q.B. 629 the Court stipulated 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." This rule was promptly overturned by the House of Lords in *Gouriet v. Union of Post Office Workers* [1978] A.C. 435. 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.

139. Finally, an amendment to the Rules of the Supreme Court in 1978 through Order 53 overcame the English judiciary's hesitation in applying a broadened rule of

standing to relator claims. Order 53 applied the broadened rule of standing to both actions seeking remedy through prerogative writs and actions seeking remedy through relator claims. Rule 3(5) of Order 53 stipulates that the Court shall not grant leave for judicial review "unless it considers that the applicant has a sufficient interest in the matter to which the applicant relates." - Order 53, Rules of the Supt. Ct. (1981). In *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd.* [1982] A.C. 617, the Court explained that "fairness and justice are tests to be applied" when determining if a party has a sufficient interest.

140. In *Regina v. Secretary of State for the Environment, Ex parte Rose Theatre Trust Co.* (1990) 1 Q.B. 504, the Court elaborated that "direct financial or legal interest is not required" to find sufficient interest. Thus, under the new rule of standing embodied in Order 53, individuals can challenge actions of public officials if they are found to have "sufficient interest" – a flexible standard.

<u>SOUTH AFRICA</u>

141. The South African Constitution has adopted with a commitment to "transform the society into one in which there will be human dignity, freedom and equality." – *See: Soobramoney v. Minister of Health, KwaZulu-Natal*, 1998 (1) SA 765 (CC), p. 5. Thus, improving access to justice falls squarely within the mandate of this Constitution. In

furtherance of this objective, the South African legal framework takes a favorable stance towards PIL by prescribing broad rules of standing and relaxing pleading requirements.

(A) **Broad Rules of Standing**

142. Section 38 of the Constitution broadly grants standing to approach a competent court for allegations of infringement of a right in the bill of rights to:

> **"(a) anyone acting in their own interest;**
>
> **(b) anyone acting on behalf of another person who cannot act in their own name;**
>
> **(c) anyone acting as a member of, or in the interest of, a group or class of persons;**
>
> **(d) anyone acting in the public interest;**
>
> **(e) an association acting in the interest of its members."**

143. In expressly permitting class actions and third-party actions, Section 38 prescribes broad rules of standing for constitutional claims. Interpreting the language of Section 38, the Constitutional Court elaborated in *Ferreira v. Levin NO & Others* 1996 (1) SA 984 (CC), p. 241 that a broad approach to standing should be applied to constitutional claims to ensure that constitutional rights are given the full measure of protection to which they are entitled. In the said judgment by a separate concurring judgment, Justice O'Regan suggested that a "wider net for standing" should be extended to all "litigation of a public character."

(B) **Relaxing Formal Requirements of Pleadings**

144. The Constitutional Court has been prompt to relax formal pleading requirements in appropriate cases. In *S v. Twala (South African Human Rights Commission Intervening)*, 2000 (1) SA 879, the President of the Court directed that a hand written letter received from a prisoner complaining about his frustration in exercising his right to appeal be treated as an application for leave to appeal.

145. In *Xinwa & Others v. Volkswagen of South Africa (PTY) Ltd.* 2003 (4) SA 390 (CC), p. 8 the Court cemented the *Twala* principle 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 favourable 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 to the purpose of the pleading as gathered not only from the content of the pleadings but also from the context in which the pleading is prepared."

IMPACT OF PUBLIC INTEREST LITIGATION ON NEIGHBOURING COUNTRIES

146. The development of public interest litigation in India has had an impact on the judicial systems of neighbouring countries like Bangladesh, Sri Lanka, Nepal and Pakistan and other countries.

PAKISTAN:

147. By a recent path-breaking 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 *Sindh High Court Bar Association* through its Secretary and Constitution Petition No.8 of 2009 filed by *Nadeem Ahmed Advocate*, both petitions 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.

148. 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.

149. In this judgment, the National Reconciliation Ordinance (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.

150. In an important judgment delivered by the Supreme Court of Pakistan in *General Secrerary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum* v. *The Director, Industries and Mneral Development, Punjab, Lahore* reported in 1994 SCMR 2061 (Supreme Court of Pakistan) in Human Right Case No.120 of 1993 on 12th July, 1994 gave significant directions largely based on the judgments of this court.

151. The petitioners in the said petition sought enforcement of the rights of the residents to have clean and unpolluted water. Their apprehension was that in case the miners are allowed to continue their activities, which are extended in the water catchment area, the watercourse, reservoir and the pipelines would get contaminated. According to the court, water has been considered source of life in this world. Without water there can be no life. History bears testimony that due to famine and scarcity of water, civilization have vanished, green lands have turned into deserts and arid goes completely destroying the life not any of human being, but animal life as well. Therefore, water, which is necessary for existence of life, if polluted, or contaminated, will cause serious threat to human existence.

152. The court gave significant directions including stopping the functioning of factory which created pollution and environmental degradation.

153. Another significant aspect which has been decided in this case was to widen the definition of the 'aggrieved person'. The court observed that in public interest litigation, procedural trappings and restrictions of being an aggrieved person and other similar technical objections cannot bar the jurisdiction of the court. The Supreme Court also observed that the Court has vast power under Article 183(3) to investigate into question of fact as well independently by recording evidence.

154. In another important case *Ms. Shehla Zia* v. *WAPDA* PLD 1994 Supreme Court 693, a three-Judge Bench headed by the Chief Justice gave significant directions. In the said petition four residents of Street No. 35,F-6/1, Islamabad protested to WAPDA against construction of a grid station in F-6/1, Islamabad. A letter to this effect was written to the Chairman on 15.1.1992 conveying the complaint and apprehensions of the residents of the area in respect of construction of a grid station allegedly located in the green-belt of a residential locality. They pointed out that the electromagnetic field by the presence of the high voltage transmission lines at the grid station would pose a serious health hazard to the residents of the area particularly the children, the infirm and the Dhobi-ghat families that live; the immediate vicinity. The presence of electrical installations and transmission lines would also be highly dangerous to the citizens particularly the children who play

outside in the area. It would damage the greenbelt and affect the environment. It was also alleged that it violates the principles of planning in Islamabad where the green belts are considered an essential component of the city for environmental and aesthetic reasons.

155. The Supreme Court observed that where life of citizens is degraded, the quality of life is adversely affected and health hazards created are affecting a large number of people. The Supreme Court in exercise of its jurisdiction may grant relief to the extent of stopping the functioning of such units that create pollution and environmental degradation.

SRI LANKA:

156. 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 directions 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 – 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 directions in this case.

NEPAL:

157. 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.

158. The Supreme Court of Nepal gave significant directions

to protect degradation of environment and ecology. The court adopted the concept of sustainable development.

159. 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.

160. The public interest litigation as developed in various facets and various branches is unparalleled. The Indian Courts by its judicial craftsmanship, creativity and urge to provide access to justice to the deprived, discriminated and otherwise vulnerable sections of society have touched almost every aspect of human life while dealing with cases filed in the label of the public interest litigation. The credibility of the superior courts of India has been tremendously enhanced because of some vital and important directions given by the courts. The courts' contribution in helping the poorer sections of the society by giving new definition to life and liberty and to protect ecology, environment and forests are extremely significant.

<u>ABUSE OF THE PUBLIC INTEREST LITIGATION</u>:

161. 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 petitions

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.

162. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

163. In *BALCO Employees' Union (Regd.) v. Union of India & Others* AIR 2002 SC 350, this Court recognized that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

164. In *S. P. Gupta's* case (supra), this Court has found that this liberal standard makes it critical to limit standing to individuals "acting bona fide. To avoid entertaining frivolous and vexatious petitions under the guise of PIL, the

Court has excluded two groups of persons from obtaining standing in PIL petitions. First, the Supreme Court has rejected awarding standing to "meddlesome interlopers". Second, the Court has denied standing to interveners bringing public interest litigation for personal gain.

165. In *Chhetriya Pardushan Mukti Sangharsh Samiti* (supra), the Court withheld standing from the applicant on grounds that the applicant brought the suit motivated by enmity between the parties. Thus, the Supreme Court has attempted to create a body of jurisprudence that accords broad enough standing to admit genuine PIL petitions, but nonetheless limits standing to thwart frivolous and vexations petitions.

166. 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, dismissed the petitions with exemplary costs. In *Neetu v. State of Pubjab & Others* AIR 2007 SC 758, the Court concluded that it is necessary to impose exemplary costs to ensure that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

167. In *S.P. Anand v. H.D. Deve Gowda & Others* AIR 1997 SC 272, the Court warned that it is of utmost importance that those who invoke the jurisdiction of this Court 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.

168. In *Sanjeev Bhatnagar v. Union of India & Others* AIR 2005 SC 2841, this Court went a step further by imposing a monetary penalty against an Advocate for filing a frivolous and vexatious PIL petition. The Court found that the petition was devoid of public interest, and instead labelled it as "publicity interest litigation." Thus, the Court dismissed the petition with costs of Rs.10,000/-.

169. Similarly, in *Dattaraj Nathuji Thaware v. State of Maharashtra & Others* (2005) 1 SCC 590, the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL petition. This Court found that the petition was nothing but a camouflage to foster personal dispute. Observing that no one should be permitted to bring disgrace to the noble profession, the Court concluded that the imposition of the penalty of Rs. 25,000 by the High Court was appropriate. Evidently, the Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by Advocates.

170. This Court, in the second category of cases, even passed harsher orders. In *Charan Lal Sahu & Others v. Giani Zail Singh & Another* AIR 1984 SC 309, the Supreme Court observed that, "we would have been justified in passing a heavy order of costs against the two petitioners" for filing a

"light-hearted and indifferent" PIL petition. However, to prevent "nipping in the bud a well-founded claim on a future occasion," the Court opted against imposing monetary costs on the petitioners." In this case, this Court concluded that the petition was careless, meaningless, clumsy and against public interest. Therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in this case.

171. In *J. Jayalalitha v. Government of Tamil Nadu & Others* (1999) 1 SCC 53, this court laid down that public interest litigation can be filed by any person challenging the misuse or improper use of any public property including the political party in power for the reason that interest of individuals cannot be placed above or preferred to a larger public interest.

172. This court has been quite conscious that the forum of this court should not be abused by any one for personal gain or for any oblique motive.

173. In *BALCO (supra)*, this court held that the jurisdiction is being abused by unscrupulous persons for their personal gain. Therefore, the court must take care that the forum be not abused by any person for personal gain.

174. In *Dattaraj Nathuji Thaware* (supra), this court

expressed its anguish on misuse of the forum of the court under the garb of public interest litigation and observed that the 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 court must not allow its process to be abused for oblique considerations.

175. In *Thaware's* case (supra), the Court encouraged the imposition of a non-monetary penalty against a PIL petition filed by a member of the bar. The Court directed the Bar Councils and Bar Associations to 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. This direction impels the Bar Councils and Bar Associations to disbar members found guilty of filing frivolous and vexatious PIL petitions.

176. In *Holicow Pictures Pvt. Ltd.* v. *Prem Chandra Mishra & Others* AIR 2008 SC 913, this Court observed as under:

> **'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 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, 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 loose faith in the administration of our judicial system."

The Court cautioned by observing that:

"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 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.

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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 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 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."

177. The malice of frivolous and vexatious petitions did not originate in India. The jurisprudence developed by the Indian judiciary regarding the imposition of exemplary costs upon frivolous and vexatious PIL petitions is consistent with jurisprudence developed in other countries. U.S. Federal Courts and Canadian Courts have also imposed monetary penalties upon public interest claims regarded as frivolous. The courts also imposed non-monetary penalties upon Advocates for filing frivolous claims. In *Everywoman's Health Centre Society v. Bridges* 54 B.C.L.R. (2nd Edn.) 294, the British Columbia Court of Appeal granted special costs against the Appellants for bringing a meritless appeal.

178. U.S. Federal Courts too have imposed monetary penalties

against plaintiffs for bringing frivolous public interest claims. Rule 11 of the Federal Rules of Civil Procedure ("FRCP") permits Courts to apply an "appropriate sanction" on any party for filing frivolous claims. Federal Courts have relied on this rule to impose monetary penalties upon frivolous public interest claims. For example, in *Harris v. Marsh* 679 F.Supp. 1204 (E.D.N.C. 1987), the District Court for the Eastern District of North Carolina imposed a monetary sanction upon two civil rights plaintiffs for bringing a frivolous, vexatious, and meritless employment discrimination claim. The Court explained that "the increasingly crowded dockets of the federal courts cannot accept or tolerate the heavy burden posed by factually baseless and claims that drain judicial resources." As a deterrent against such wasteful claims, the Court levied a cost of $83,913.62 upon two individual civil rights plaintiffs and their legal counsel for abusing the judicial process. Case law in Canadian Courts and U.S. Federal Courts exhibits that the imposition of monetary penalties upon frivolous public interest claims is not unique to Indian jurisprudence.

179. Additionally, U.S. Federal Courts have imposed non-monetary penalties upon Attorneys for bringing frivolous claims. Federal rules and case law leave the door open for such non-monetary penalties to be applied equally in private claims and public interest claims. Rule 11 of the FRCP additionally permits Courts to apply an "appropriate sanction" on Attorneys for filing frivolous claims on behalf of their

clients. U.S. Federal Courts have imposed non-monetary sanctions upon Attorneys for bringing frivolous claims under Rule 11.

180. In *Frye v. Pena* 199 F.3d 1332 (Table), 1999 WL 974170, for example, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's order to disbar an Attorney for having "brought and pressed frivolous claims, made personal attacks on various government officials in bad faith and for the purpose of harassment, and demonstrated a lack of candor to, and contempt for, the court." This judicial stance endorses the ethical obligation embodied in Rule 3.1 of the Model Rules of Professional Conduct ("MRPC"): "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous." Together, the FRCP, U.S. federal case law, and the MRPC endorse the imposition of non-monetary penalties upon attorneys for bringing frivolous private claims or public interest claims.

181. In *Bar Council of Maharashtra* (supra) this court was apprehensive that by widening the legal standing there may be flood of litigation but loosening the definition is also essential in the larger public interest. To arrest the mischief is the obligation and tribute to the judicial system.

182. In *SP Gupta* (supra) the court cautioned that important jurisdiction of public interest litigation may be confined to legal wrongs and legal injuries for a group of people or class

of persons. It should not be used for individual wrongs because individuals can always seek redress from legal aid organizations. This is a matter of prudence and not as a rule of law.

183. In Chhetriya Pardushan Mukti Sangharsh Samiti **(supra) this court again emphasized that Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. The superior courts have to ensure that this weapon under Article 32 should not be misused or abused by any individual or organization.**

184. In *Janata Dal v. H.S. Chowdhary & Others* (1992) 4 SCC 305, the court rightly cautioned that expanded role of courts in modern 'social' state demand for greater judicial responsibility. The PIL has given new hope of justice-starved millions of people of this country. The court must encourage genuine PIL and discard PIL filed with oblique motives.

185. In *Guruvayur Devaswom Managing Committee & Another v. C.K. Rajan & Others* (2003) 7 SCC 546, it was reiterated that the court must ensure that its process is not abused and in order to prevent abuse of the process, the court would be justified in insisting on furnishing of security before granting injunction in appropriate cases. The courts may impose heavy costs to ensure that judicial process is not misused.

186. In *Dattaraj Nathuji Thaware* (supra) this court again

cautioned and observed that the court must look into the petition carefully and ensure that there is genuine public interest involved in the case before invoking its jurisdiction. The court should be careful that its jurisdiction is not abused by a person or a body of persons to further his or their personal causes or to satisfy his or their personal grudge or grudges. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

187. In *Neetu* (*supra*) this court observed that under the guise of redressing a public grievance the public interest litigation should not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.

188. In *M/s. Holicow Pictures Pvt. Ltd.* (*supra*) this court observed that the judges who exercise the jurisdiction should be extremely careful to see that behind the beautiful veil of PIL, an ugly private malice, vested interest and/or publicity-seeking is not lurking. The court should ensure that there is no abuse of the process of the court.

189. When we revert to the facts of the present then the conclusion is obvious that this case is a classic case of the abuse of the process of the court. In the present case a practicing lawyer has deliberately abused the process of the court. In that process, he has made a serious attempt to demean an important constitutional office. The petitioner ought to have known that the controversy which he has been

raising in the petition stands concluded half a century ago and by a Division Bench judgment of Nagpur High Court in the case of *Karkare* (supra) the said case was approved by a Constitution Bench of this court. The controversy involved in this case is no longer *res integra*. It is unfortunate that even after such a clear enunciation of the legal position, a large number of similar petitions have been filed from time to time in various High Courts. The petitioner ought to have refrained from filing such a frivolous petition.

190. A degree of precision and purity in presentation is a *sine qua non* for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is *res integra* or not. The lawyer who files such a petition cannot plead ignorance.

191. We would like to make it clear that we are not saying that the petitioner cannot ask the court to review its own judgment because of flaws and lacunae, but that should have been a bona fide presentation with listing of all relevant cases in a chronological order and that a brief description of what judicial opinion has been and cogent and clear request why where should be re-consideration of the existing law. Unfortunately, the petitioner has not done this exercise. The petition which has been filed in the High Court is a clear abuse of the process of law and we have no doubt that the petition has been filed for extraneous considerations. The

petition also has the potentiality of demeaning a very important constitutional office. Such petition deserves to be discarded and discouraged so that no one in future would attempt to file a similar petition.

192. On consideration of the totality of the facts and circumstances of the case, we allow the appeals filed by the State and quash the proceedings of the Civil Miscellaneous Writ Petition No. 689 (M/B) of 2001 filed in the Uttaranchal High Court. We further direct that the respondents (who were the petitioners before the High Court) to pay costs of Rs.1,00,000/- (Rupees One Lakh) in the name of Registrar General of the High court of Uttarakhand. The costs to be paid by the respondents within two months. If the costs is not deposited within two months, the same would be recovered as the arrears of the Land Revenue.

193. We request the Hon'ble Chief Justice of Uttrakhand High Court to create a fund in the name of Uttarakhand High Court Lawyers Welfare Fund if not already in existence. The fund could be utilized for providing necessary help to deserving young lawyers by the Chief Justice of Uttarakhand in consultation with the President of the Bar.

194. We must abundantly make it clear that we are not discouraging the public interest litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by

the courts for improving ecology and environment, and directions helped in preservation of forests, wildlife, marine life etc. etc. It is the bounden duty and obligation of the courts to encourage genuine bona fide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the Laws.

195. The Public Interest Litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalized and vulnerable section of society have significantly improved on account of courts directions in the P.I.L.

196. In our considered view, now it has become imperative to streamline the P.I.L.

197. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments.

198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the 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. Consequently, we request that 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 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 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.

(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.

199. Copies of this judgment be sent to the Registrar Generals of all the High Courts within one week.

200. These appeals are listed on 03.05.2010 to ensure compliance of our order.

…….……J.
(Dalveer Bhandari)

.……..…..……...……..……. J.
(Dr. Mukundakam Sharma)

New Delhi;
January 18, 2010.