

# Constitutional Remedies

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# Synopsis

- INTRODUCTION OF ARTICLES
- WRITS AND SCOPE
- JUDICIAL REVIEW
- JUDICIAL ACTIVISM
- PIL
- CONCLUSION

# Introduction

- Any provision of Fundamental Rights in any Constitution is **meaningless** unless there are **adequate safeguards** to ensure enforcement them.
- This right( Right to Remedy) is one of the cherished rights provided under Article 32
- It is important **and integral part of the basic structure** of the Constitution
- It cannot be abrogated by any Act
- The power under Article 32 has been described as “**heart and soul**” of the Constitution
- Because of this Article Supreme Court is called as ‘**protector and guardian**’ of fundamental rights
- If there is no remedy there is no right. **It makes the right real**
- Article 32 itself is a fundamental right – right to go to supreme court

- *“If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution would be a nullity – I could not refer to any other Article except this one ..... It is the very soul of the Constitution and the very heart of it “ – Dr. Babasaheb Ambedkar*
- 32(1) empowers **the right to move to supreme court** by **appropriate proceedings** for the enforcement of fundamental right
- 32 (2) confers the power on Supreme Court to issue **appropriate directions, orders or writs**
- 32(3) **Parliament may by law empower any other court** to exercise all or any of the powers exercisable by the SC
- 32(4) right guaranteed by Article **shall not be suspended** except provided by the constitution
- Article 32 provide inexpensive and expeditious remedy for the protection of fundamental right

# Article 32

- 32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.**
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), **Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court** under clause (2).
- (4) The right guaranteed by this article shall **not be suspended** except as otherwise provided for by this Constitution.

- TRUE PEACE IS NOT MERELY THE ABSENCE OF WAR, IT IS THE PRESENCE OF JUSTICE
- (JANE ADDAMS)
- The essence of justice lies in Rule of law i.e. supremacy of law
- Ensured by Supreme Court, High Court and lower courts

# Role of Judiciary in democracy (Judicial Review)

- Constitution envisages a strong, independent, impartial and well-organized judiciary
- **To Prevents the arbitrary use** of governmental authority
- **Judicial review** is a process under which executive and legislative actions are subject to review by the judiciary
- A court with judicial review power may invalidate laws and decisions that are incompatible with Constitution
- It Safeguards the rights and liberties of citizens
- It is Guardian of the constitution and maintain the rule of law

# Writs

- **Writ is an order issued by a monarch** exercising his authority of extraordinary powers under special circumstance to its subordinates.
- A writ is an "order in the name of a state or other competent legal authority, **commanding the addressee to do or refrain from doing, some specified act**"
- It is prerogative power of the King means –
  - ----The power is exclusive domain of the Crown
  - ----Statute is not the source of the power to issue writs
  - ----It is a personal power enjoyed by the Crown
  - ----The purpose of such power is to control the subordinates and other courts

# Historical background of Writs

- The **origin** could traced from **British legal system**.
- They are the result of **orders passed by King's Bench in England under the Royal seal** hence considered as a Royal Order.
- This prerogative power took shape due **to inability of the regular court** system in providing the remedies which were inadequate
- It forced them to approach King's Council and the Council to issue the written orders known as writs, by exercising its extraordinary powers
- Initially such writs are issued **to protect the interest of the Crown**, but later the operation of the writs was **extended to the citizens**.

# Writs during British India

- **The Regulating Act, 1773** established Supreme Court at Calcutta. The Charter 1774 empowered Supreme Court to issues the writs
- **In 1801 and 1823 Supreme Courts were established at Madras and Bombay** with the power of issuing writs
- However the **High Courts Act 1861 established High Court** by replacing all the Supreme Courts
- **All the powers of the Supreme Courts were inherited by new High Courts**
- As a result, these three high courts were conferred with the power of issuing writs.
- The writ jurisdiction of these courts is restricted to their original civil jurisdiction under Specific Relief Act

# Who can apply for Writs

- **The rule of locus standi means** - the aggrieved person can approach the court for relief.
- The general rule is that one has to have a locus standi to file a petition.
- The traditional rule of locus standi presupposes that only a person whose right is violated alone has a standi to approach the court.
- However, **Supreme Court under Public Interest Litigation has relaxed the rules of standing.**
- As a result many times any public spirited person can approach the court for issuing of writs for protection of interest of public at large.

# Writs



# Writ of Habeas Corpus

- It is a Latin term which means **‘you may have the body’**
- Writ of Habeas Corpus is aimed at **protecting personal liberty.**
- **It secures liberty** by releasing person whose detention is illegal and the **object is to give quick and immediate remedy**
- The writ is to direct the detaining authority **to produce the person before the court** who has been illegal detained and let the court know by what authority he has detained the person
- However production of the person before the court is no longer essential ingredient of Habeas Corpus, held in *Kanu Sanyal v. District Magistrate, Dar* (AIR 1974). Naxalite leader Kanu was arrested without trial in the Vishakhapatnam Jail. SC said production of the body of the person was not essential
- It ensures to follow procedural requirements while detaining a person

# Who can file Writ of Habeas Corpus

- The **general rule is that illegally detained person** can file but in certain cases application can be made by any person on behalf of the prisoner – **friend or a relation - , any public spirited citizen can prefer this writ in the interest** of the person in illegal custody
- **Burden of proof** to prove illegal detention lies on the detaining authority
- **No strict rules of pleadings** are insisted upon
- In the view of socio-economic conditions prevailing in this country the Court has adopted **a liberal approach**
- Supreme Court **can award compensation** for loss of life due to illegal detention

- **In Sunil Batra v. Delhi Administration, (1980)** Supreme Court of India extended the ambit of Habeas Corpus to **inhuman treatment and torture** in the prisons.
- Responding to a letter written by the petitioner alleging the torture to one of his cellmate by the prison authorities, the court issued writ of Habeas Corpus to stop the abuse on the prisoners.
- The detention could become unlawful if **the detention is not in accordance with law, or failure to follow the procedure establish by law** .
- **Sheela Barse v. State of Maharashtra**  
If the detained person is unable to pray for the writ of habeas corpus, someone else may pray for such writ on his behalf.
- **Nilabati Behera v. State of Orissa**  
The petitioner was awarded compensation of Rs. 1, 50, 000.

# Circumstances when Writ can be issued

- Detention under the law which **contravenes fundamental rights**
- Detention order by an authority **without jurisdiction**
- Detention order in **contravention with the law**
- Detention by a person **without the authority of law**
- Detention **beyond the period** prescribed by the law
- **Failure to comply with the procedure** established by law
- Failure to comply with **the requirements by law**
- Detention made under subordinate law contravening the parent law
- Non fulfilment of conditions of Article 22.

# Writ of Mandamus

- Mandamus means **the ‘Order’ or the ‘Command’**.
- It is thus an **order issued by the Court to any public authority to do or forbear to do something** in the nature of public duty
- This writ is mostly used **for enforcement of public duties** when such authority failed to perform or to refrain the act which it ought not to do.
- The purpose of the Mandamus is **to keep the public authorities within the limits of their jurisdictions**.

# When Mandamus will lie

1. **Mandatory Duty** - When there is a failure to perform a mandatory duty not a discretionary duty.
2. **Demand and refusal** - It must be shown that he has made a distinct demand to enforce that duty and the demand met refusal
3. **Public Duty** - Mandamus could be issued only to enforce a public duty. For example such a duty is imposed by the Constitution, by a statute or executive order. writ cannot be used for enforcing any right arising out of private agreement. A private right cannot be enforced by writ of Madamus
4. **Enforceable Right**
  - Mandamus could be claimed only when the petitioner has a right to compel the authority for performance of some duty.
  - If it is purely a concession or discretion mandamus could not be issued a

## 5. Existing Legal Right

- The enforceable right must be existing when the petition is filed before the court.

## 6. Legal Duty

- The public authority must be under legal duty to perform.

### **Grounds for granting Mandamus**

when the public authority -

- 1. acting without jurisdiction
- 2. acting under excess of jurisdiction
- 3. abusing the jurisdiction
- 4. violating principles of natural justice
- 5. error of law apparent on the face of the record
- 6. performing an act not authorized by law

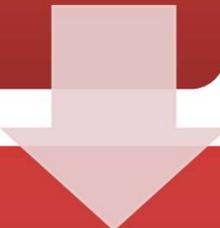
- **When the writ could not be claimed**
- Mandamus cannot be issued **against private person**
- No mandamus could be issued **against Parliament, Legislature or any rule making body to direct for making law, rules or regulations.**
- Courts usually reluctant to issue Mandamus for giving **general directions** e.g court declined to issue directions for improvement of railways services.
- Mandamus is not issued to **enforce liability under contract or torts**

# Writ of Prohibition

- Prohibition means ‘**to prevent**’, preventive in nature
- It is generally issued to prevent an inferior court or tribunal from exceeding its jurisdiction or acting against principles of Natural Justice.
- It is a judicial writ **issued by a superior court to inferior court restraining from continuing the proceedings.**
- Prohibition is almost similar to certiorari.
- The only difference is that prohibition is issued when the **proceedings are pending** before the authority whereas Certiorari is issued when the **proceedings are already completed.**
- It can be issued **only against Judicial and quasi-judicial Authorities**

# Grounds for granting Prohibition

Lack of or Excess of  
Jurisdiction

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Violation of  
Fundamental Rights

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Violation of Natural  
Justice

# When the writ of prohibition could not be issued

**When the proceedings are already completed**



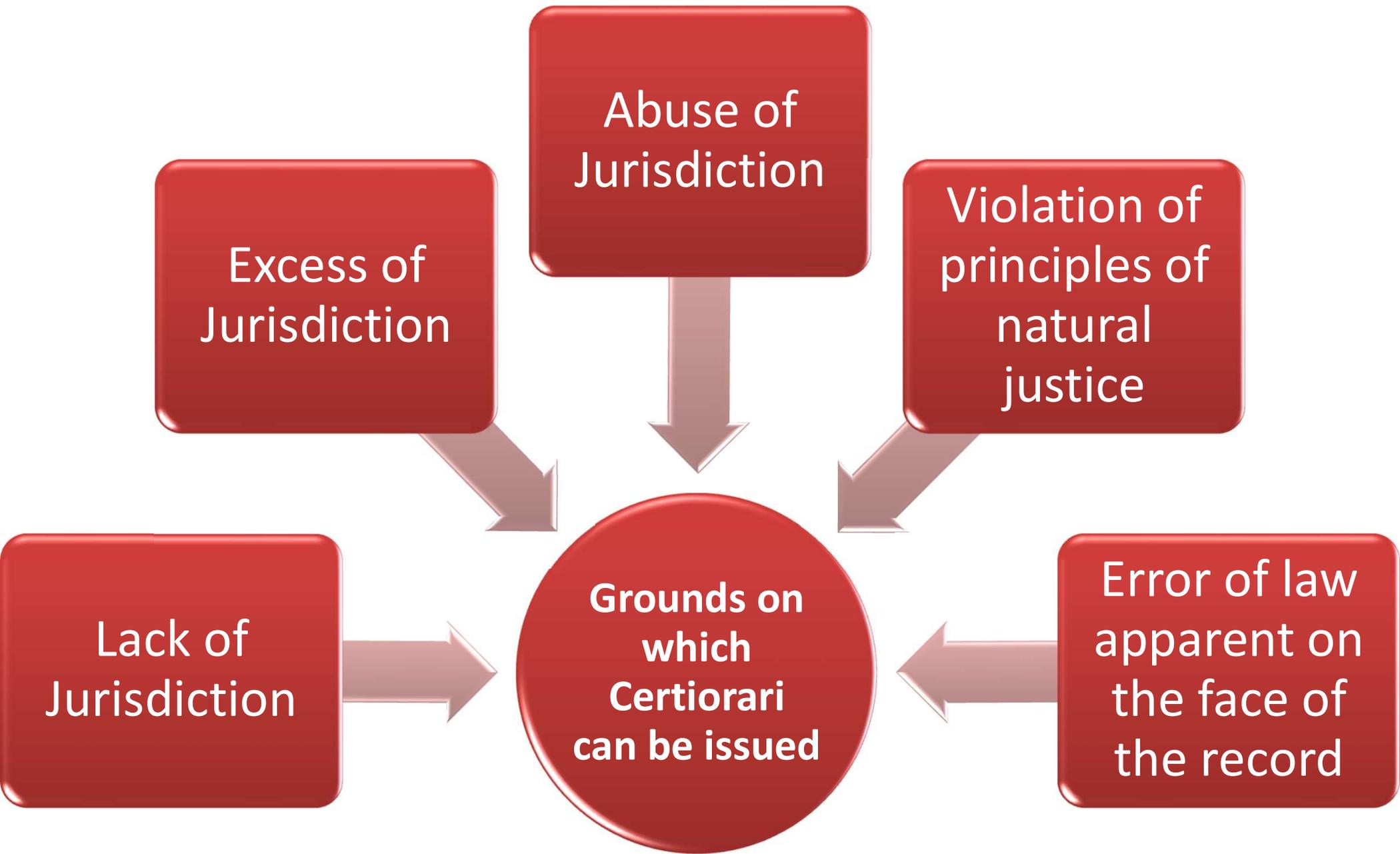
**To prevent executive actions**



**Against administrative , executive or ministerial functions**

# Writ of Certiorari

- Certiorari means to 'inform' or to certify
- It is an order by the court to any judicial or quasi-judicial body to transmit the record of proceedings disposed of or pending therein for scrutiny.
- It is issued to correct the gross errors made by the lower courts.
- The purpose of this writ is to keep the inferior courts within the limits of their jurisdiction.
- By issuing the writ, the superior court would quash the orders of the inferior courts when they exceed their jurisdiction.
- In that sense it is a writ corrective in nature.



Excess of  
Jurisdiction

Abuse of  
Jurisdiction

Violation of  
principles of  
natural  
justice

Lack of  
Jurisdiction

Grounds on  
which  
Certiorari  
can be issued

Error of law  
apparent on  
the face of  
the record

# Grounds on which Certiorari can be issued

- **Lack of Jurisdiction**: If the authority takes an action without having jurisdiction.
- **Excess of Jurisdiction** : when it exceeds its limits
- **Abuse of Jurisdiction**: When the authority uses its jurisdiction for improper purpose, bad faith or for extraneous considerations
- **Violation of principles of natural justice**
- **Error of law apparent** on the face of the record: It means the error is self-evident.
- It is not a mere error but a manifest error based on clear disregard to established practice of law.
- Such an error must be patent on the face of the record which requires no evidence to prove. The decision arrived by the authority is patently objectionable or plainly inconsistent with any provision of the law.

**When the writ  
could not be issued**

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graph LR; A((When the writ could not be issued)) --- B([To correct errors of facts]); A --- C([Against any person having no judicial or quasi-judicial authority in deciding the disputes.]); A --- D([To declare any law is ultravirus to the constitution]);
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**To correct errors of  
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quasi-judicial authority in  
deciding the disputes.**

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ultravirus to the  
constitution**

# Writ of Quo Warranto

- Quo warranto means "by what authority".
- It is writ to take the office back from the person who is holding such office without authority.
- It is a judicial order issued by which a person who is occupying any post is asked to show by what authority he is holding such office.
- The aim of the writ is to oust the unauthorized persons from holding the public offices.
- Quo warranto confers jurisdiction to the court to control executive actions in matters of appointment to public offices.
- It protects the citizens from the holder of the public office to which he has no right.
- Writ of Quo warranto could be used to scrutinize when qualifications are prescribed for a public post

- **Conditions for granting Quo Warranto**
- Office must be **a public office**.
- Quo warranto could be issued only against the public office.
- An office is public office if it **is created by the constitution or a statute**
- Public office must **be permanent in nature**.
- It should **not be terminable at will**.
- Person must be in **actual possession** of the office
- Writ could be issued only when a person wrongfully possess the office.
- Hence mere issuing an appointment letter to an undeserving candidate would not attract quo warrento unless the candidate accepts the position and joins the office.
- **Person must be holding the office in contravention of law**

- **Who can apply?**
- General rule is that a writ could be claimed only by a person whose rights are infringed (*locus standi*).
- However, Quo Warranto is an exception to this general rule.
- Any person can seek the writ of Quo warranto even though he is not personally aggrieved.
- Such a petition would be valid even if the petitioner is not qualified to apply for the position. The reason for such an exception is to prevent the misuse of public funds.

# When the writ of Quo warranto could not be issued

- **When an alternative remedy is available:** In *V.D. Deshpande v. State of Hyderabad*, 1955, Court refused to issue the writ against a MLA who became disqualified under office of profit as there is an alternative remedy under article 192.
- **When the office is not a public office:** No writ can be issued against any private office. In *Amarendra v. Narendra Basu*, 1953, court refused to issue the writ against a managing committee of a private school.
- **When issuing of the writ would be futile:** *P.L.Lakhanpal v. A.N. Ray*, Chief Justice of India, 1975, In this case Delhi High Court refused to issue the writ against appointment of A. N. Ray as CJI by superseding three senior most judges. Court rightly pointed out that the writ would be futile as the three senior most judges resigned immediately after the appointment. Even if the writ issued Justice Ray becomes senior most and therefore can be reappointed

- This Writ cannot be issued to remove any person who is elected by an election process.
- However, such a person can be removed by the writ when such person incurred the disqualification.
- Similarly the writ cannot be issued to test whether the Council of Ministers enjoys the majority of the house. Such a decision can be taken by the house itself

# Curative Petition (Writ)

- Constitution of India provides elaborate judicial proceeding to prevent miscarriage of justice through Articles 32, 136, 137, 141, 226 and 227
- The Judges of the highest Court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice
- The question is can the petitioner approach the Supreme Court for further hearing the case? Is there any further remedy?
- This question was raised in Rupa Ashok Hurra v. Ashok Hurra. The issue involved in this case is whether an aggrieved person is entitled to any relief against a final judgment or order of the Supreme Court, either under Article 32 of the Constitution or otherwise after dismissal of review petition.
- the court allowed the petition under the name of Curative Petition

# Grounds for Curative Petition

- violation of principles of natural justice where the person was not a party to the dispute but the judgment adversely affected his interests
- if he was a party, he was not served with notice of the proceedings
- where a learned Judge failed to disclose his connection with the subject-matter – biasness
- If the Bench feels the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner

- Prerogative remedies are the backbone of our Constitution, without which our fundamental Rights are meaningless.
- These are special and extraordinary remedies
- These remedies are provided by Supreme Court and High courts which may be used sparingly
- However, in modern era use of writ jurisdiction is increased due to extension of state activities.
- Writs are mostly sought remedy for enforcement of fundamental rights.

ARTICLE 32	ARTICLE 226
FUNDAMENTAL RIGHT	CONSTITUTIONAL RIGHT
CAN BE SUSPENDED DURING EMERGENCY	CANNOT BE SUSPENDED
LIMITED SCOPE	WIDER SCOPE
JURISDICTION ALL OVER INDIA	CONCERNED STATE

- What is PIL and its origin
- In which cases it can be filed
- When it cannot be accepted
- Grounds for rejection
- cases

# Public Interest Litigation

- PIL is an instrument to **achieve the goal of justice**.
- Legal action initiated in the court **for enforcement of public interest**
- Aim is **to redress genuine public wrong** or injury
- The Constitution has set up the **mechanism to address the violation of fundamental rights**. But the peculiar socio-economic conditions that are prevailing in India would not allow to strictly follow the rule of **locus standi** i.e., whose right is violated alone can approach the court .
- It would result in restricting access to judicial process
- blindly following the rule of locus standi would cause greater injustice

PIL is litigation introduced in a court of law, not by aggrieved party but by court itself or by any other private party

- Court can itself take cognizance and proceed **suo motu** or cases can commence on the petition by public-spirited person
- PIL is **judicial doctrine** that has tried to address circumstances in which a person is **poor, ignorant, indigent or illiterate and cannot afford to handle the litigation** but also **used in enforcing social rights**
- Justice delivery system is brought to his **doorsteps** through PIL
- **The focus is shifted from individual rights to group rights**
- Any **public spirited person** who has interest in pursuing the wrongs done to others or a group of persons, can access the courts and fight for disadvantaged and needy group

- In order to achieve the constitutional goal of Justice, **the judiciary through the judicial activism has evolved Public Interest Litigation**
- The concept of PIL **stem from the power of judicial review**
- The chief **objective** behind PILs are ensuring **justice to all** and promoting the welfare of the people.
- **The Supreme Court of India and the High Courts have the right to issue PIL u/A 32 and 226**
- the expression ‘Public Interest Litigation’ means a legal **action initiated** in a Court of Law for the enforcement of **public interest or general interest** in which the public or a class of the community have pecuniary interest or some interest by which their legal rights and liabilities were affected
- It is **filed by a person or an organization** that has no personal gain or interest except to protect general interest or public interest

- **Architect of PIL** – Justice Bhagwati and Krishna Iyer
- **Reasons** – Lack of availability of common Public remedies ----Expensive Legal proceedings ---ignorance ----Emergency
- **It is extra judicial remedy**
- **Article 39 A** - *The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*

# Importance of PIL

- The original purpose of PILs have been **to make justice accessible** to the poor and the marginalised.
- It is an **important tool to make human rights** reach those who have been denied rights.
- It democratizes the access of justice to all. Any citizen/agency who is capable can file petitions on behalf of those who cannot or do not have the means to do so.
- It helps in judicially **monitoring state institutions** like prisons, asylums, protective homes, etc.
- It is an important tool in **judicial review**.

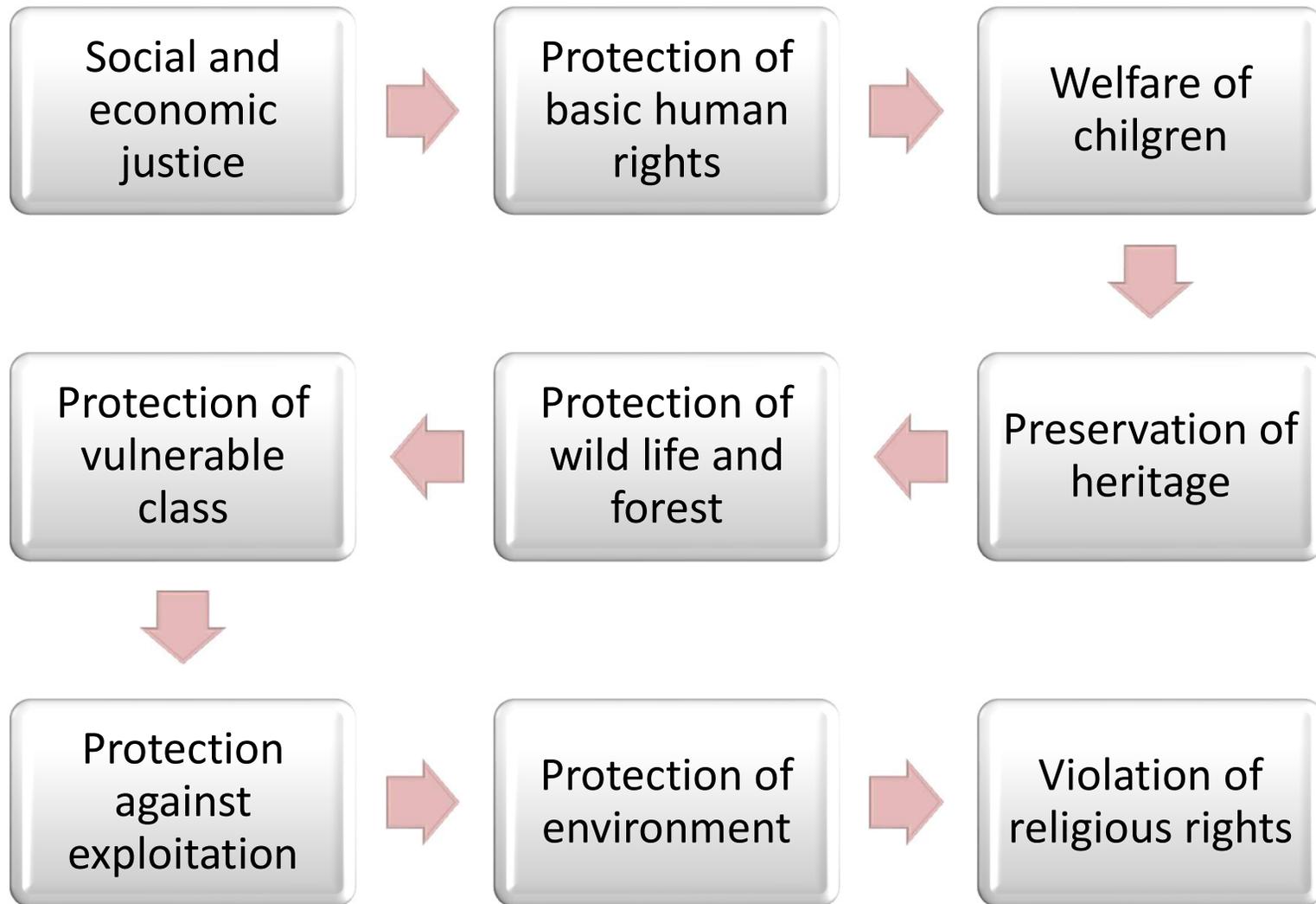
# Origin of Public Interest Litigation

- The concept of Public Interest Litigation originated in the United States of America in late Nineteenth century.
- The famous Gideon's case of U.S.A. formed the basis for the concept of Public Interest Litigation.
- The Clarence Larl Gideon sent a scrawl letter to the Supreme Court of United States pleading before the Court
- that he was a pauper and the Florida Trial Court had denied his request to appoint counsel for his defense contrary to the American Constitution.
- The Supreme Court treated the letter as petition and allowed his plea by relaxing the procedural law which created history.
- This case led to recognition of first Legal Aid Office in New York City established in 1876 as a primary defender in criminal matters
- In 1960s was evolution of Public Interest Litigation

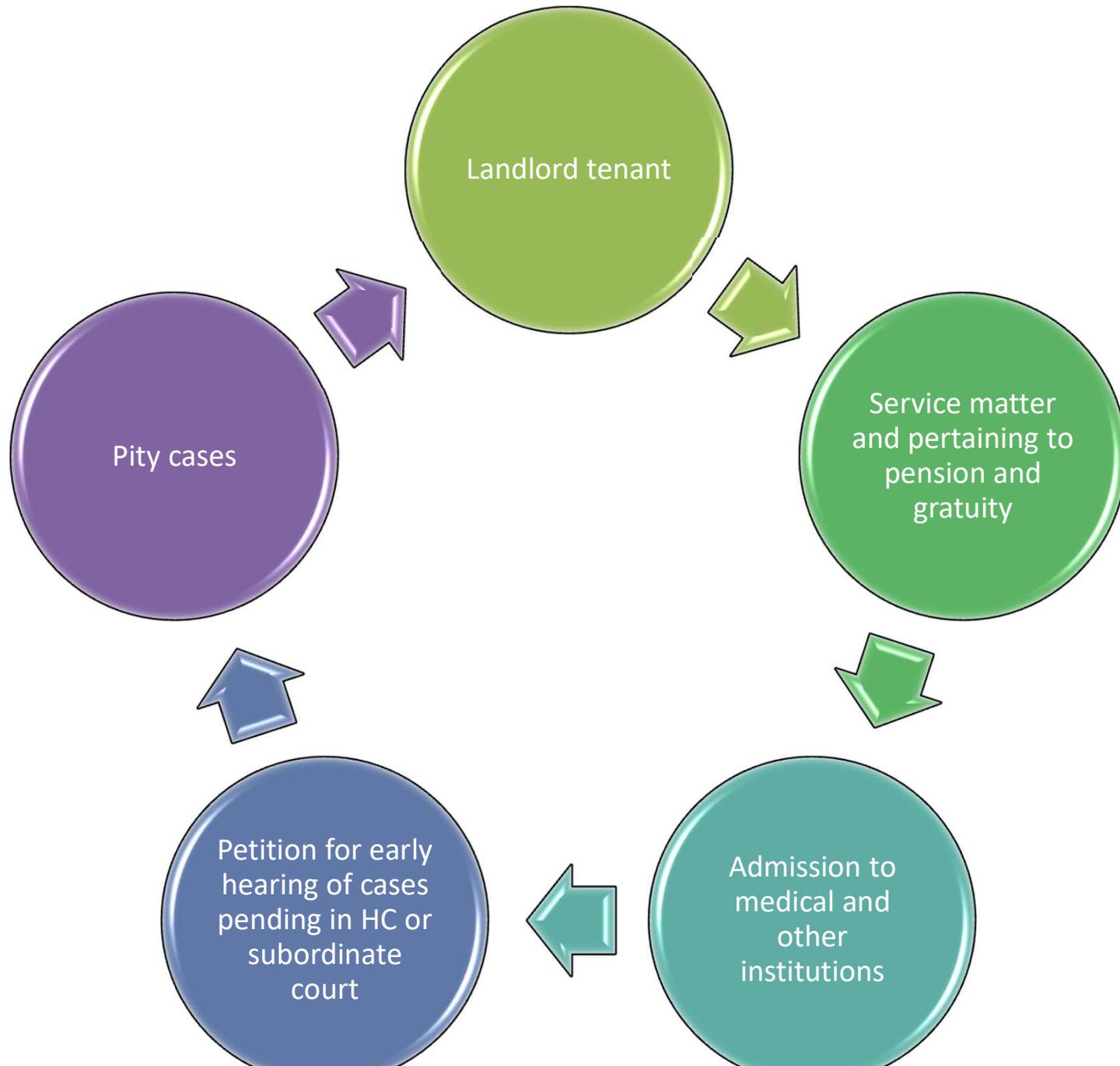
# Indian scenario

- Public Interest Litigation in India has been a part of the constitutional scheme and not any ordinary statutory law
- The main tools employed to achieve such social change are Fundamental rights and Directive Principles of State Policy
- The Fundamental Rights are attributed its true scope by providing a constitutional remedial mechanism for enforcement of these rights through an independent judiciary
- The remedy to approach the Supreme Court directly in case of violation of Fundamental Rights is in itself a Fundamental Right under Article 32 of the Indian Constitution.

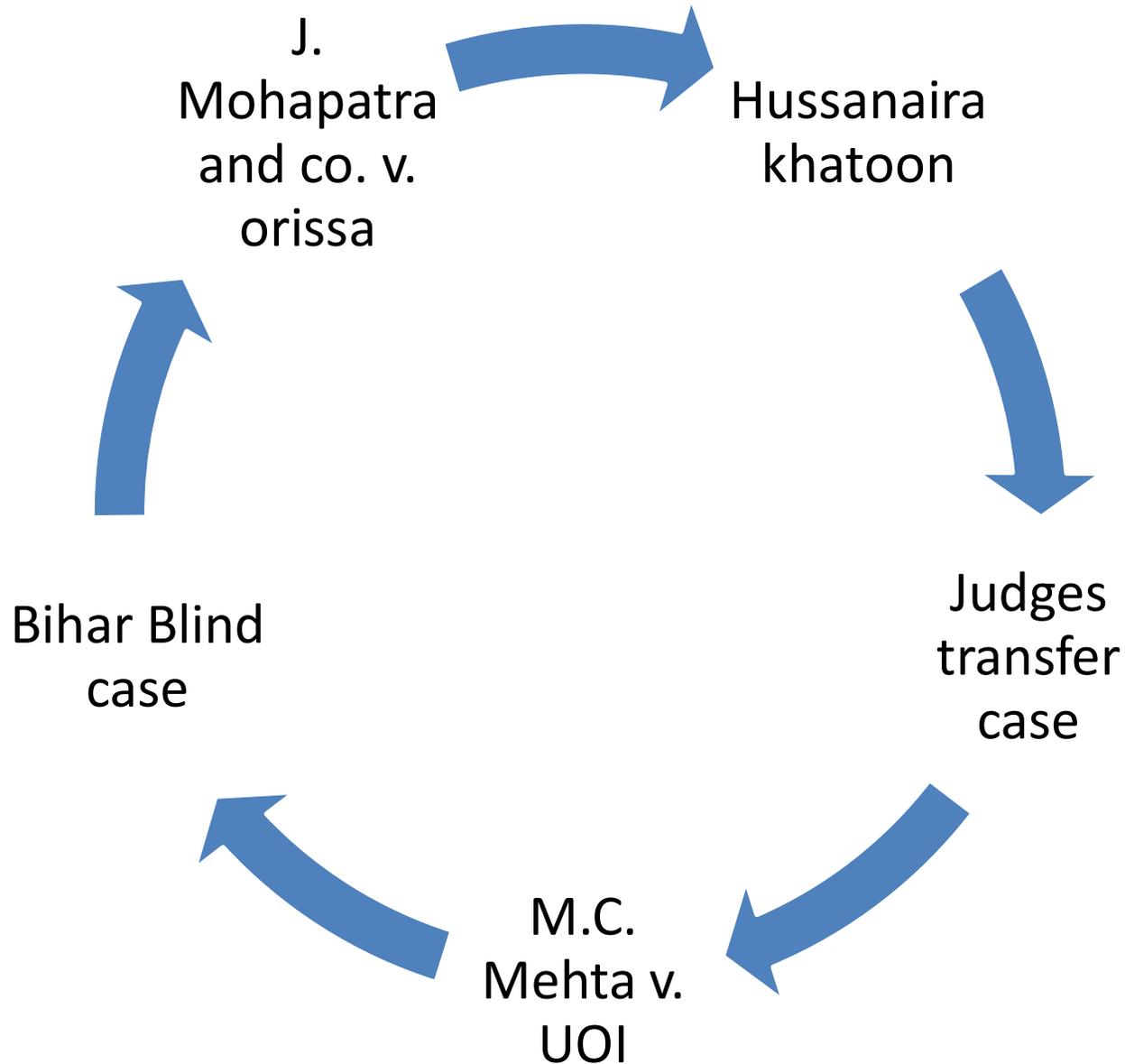
# When PIL can be filed



# Guidelines for not filing PIL for such cases



# Cases brought PIL in action



# Cases when it is rejected

- No Politically motivated
- No hidden agenda
- No alternative remedy
- Matter should not be pending in any other court
- No publicity
- No personal revenge
- No rivalry
- No malice

# Judicial Activism

- Public Interest Litigation is a new jurisprudence developed by the Supreme Court through judicial activism.
- It **protects the rights and interest of the under privileged and the weaker section** of the society who are oppressed, socially or economically or otherwise and are unable to approach the court themselves.
- It is developed for the purpose of **ensuring social and economic justice** for such under privileged and weaker classes
- The splendid efforts taken by the two judges, Justice P.N. Bhagwati and Justice Krishna Iyer, of the Indian Supreme Court from 1970s to 1980s in respect to legal aid to provide easier access to justice **played key role in bringing about the revolution of Public Interest Litigation**

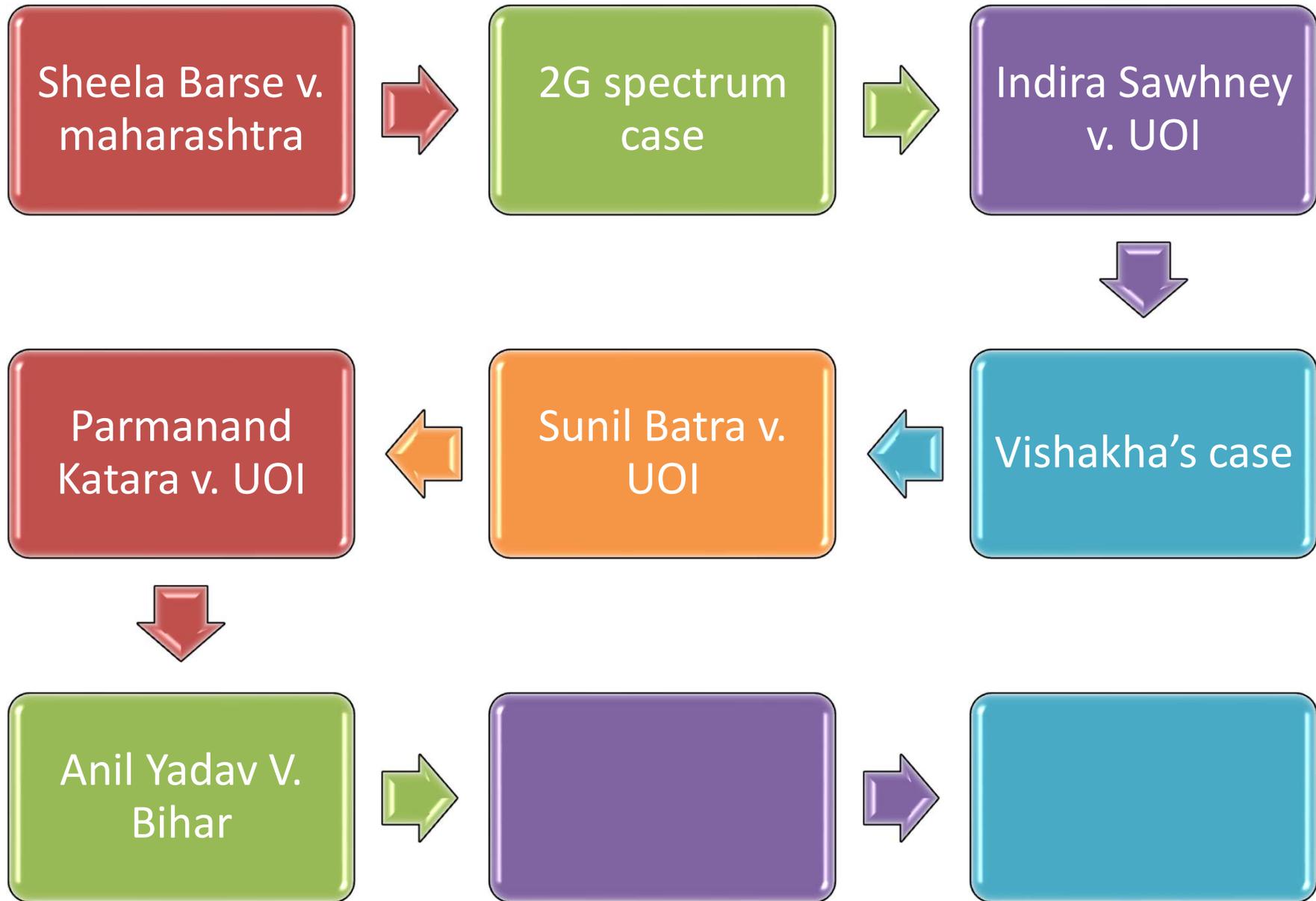
- The powers of the Supreme Court for the protection of constitutional rights are of the widest amplitude
- there is **no reason why the Court should not adopt** an activist approach similar to Courts in America
- Judiciary has been assigned this active role under Constitution
- They are not expected to sit in **an ivory tower** like an Olympian **closing their eyes, uncaring for the problems faced by the society.**
- They have to **exercise their judicial powers** for protecting the fundamental rights and liberties of citizens of the country.
- In order to achieve this mission the judiciary has to exercise and evolve its **jurisdiction with courage, creativity and circumstances and with vision, vigilance and practical wisdom.**
- This exercise of authority of the judiciary is not for vain glory but it is in discharge of its constitutional obligation

- When the executive and legislature are apathetic and fail to discharge their constitutional obligations, bureaucracy shows a total **indifference and insensitivity to its mandatory duties**, the judiciary should check the excesses and also direct the authorities **to effectively implement the welfare legislation**
- The Supreme Court's role in **sensitizing the Authorities to discharge their legal obligations in** the various **scam cases** is observed and if various judgments ranging from the need for **Uniform Civil Code**, **pollution control**, **preservation of historical monument like Taj Mahal**, cleaning and **keeping the big cities more hygienic**, **directing removal of encroachments**, **interim compensation to rape victims**, **protecting working women from sexual harassment** etc. has attracted praise.

- The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners.
- In **Hussainara Khatoon v. State of Bihar**, 1979 PIL was filed by an advocate on basis of news item published highlighting plight of thousands of under trial prisoners languishing in various jails in Bihar
- These proceeding led to release of more than 40,000 undertrial prisoners. **Right to speedy justice emerged as a basic fundamental right which was denied**
- A new era of the PIL movement was heralded by Justice P.N. Bhagawati in the case of **S.P. Gupta v. Union of India, 1981**. In this case it was held that any member of the public or group acting bonafide can invoke the Writ Jurisdiction seeking redressal against violation of a legal constitutional rights of persons who due to social or economic or any other disability cannot approach the Court

- **J. Mohapatra and co. v. Orissa** – the hon'ble court observed that in the cases of PIL it is not necessary that petitioner should have a personal interest in the matter
- **Ashok kumar Pandey v. WB** – PIL should not be Publicity Interest Litigation. There must be a real public interest involved
- **State of Uttranchal v. balwant singh**
  - ---HC should frame rules
  - ---verify credentials of the petitioner
  - --- correctness of the contents
  - --- genuine public harm
  - ---urgency ----give preference

# Instrument of change



- By this judgment PIL became a potent weapon for the enforcement of public duties where executed in action resulted in public injury.
- And as a result any citizen of India or any consumer groups or social action groups can now approach the apex court where the interests of general public or a section of public are at stake
- In **Anil Yadav v. State of Bihar**, 1981 exposed the brutalities of the Police. News paper report revealed that about 33 suspected criminals were blinded by the police in Bihar by putting the acid into their eyes.
- Through interim orders Supreme Court directed the State government to bring the blinded men to Delhi for medical treatment.
- It also ordered **speedy prosecution** of the guilty policemen.
- The court also **read right to free legal aid as a fundamental right** of every accused. Anil Yadav signaled the growth of social activism and investigative litigation

- Protection against inhuman treatment in jail.-In **Sunil Batra v. Delhi Administration, 1980**
- it has been held that writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. The dynamic role of judicial remedies imports to the habeas corpus writ a versatile vitality and operational utility as bastion of liberty even within jails. Wherever the rights of a prisoner either under the Constitution or under other laws are violated the writ power of court can run and should run to rescue, declared Krishna
- In **Veena Sethi v. State of Bihar**, the Court was informed through a letter that some prisoners, who were **insane** at the time of trial but subsequently declared sane, were not released due to inaction of State authorities and had to remain in jails from 20 to 30 years. The Court directed that they be released forthwith.

- Child Welfare-**In Lakshmi Kant Pandey v. Union of India**, a writ-petition was filed on the basis of a letter complaining of malpractices indulged in by social organisation and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents.
- It was alleged that in the guise of adoption Indian children of tender age were not only exposed to the long dreadful journey to distant foreign countries at great risk to their lives but in case they survive they were not provided any shelter and relief homes and in course of time they become beggars or prostitutes for want of care.
- Bhagwati, J., laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents.
- With the object of ensuring the welfare of the child the Supreme Court directed the Government and various agencies dealing with the matter to follow these principles in such cases as it is their **constitutional obligation under Arts. 15 (3) and 39 (e) and (f) to ensure the welfare of the child.**

- *In Munna v. State of U.P. (1982)* a public interest litigation was filed in the Court on the basis of a news report about sexual exploitation of children by hardened criminals in Kanpur Jail.
- The Court directed the District Judge, Kanpur to visit the jail and report. The report confirmed the sodomy committed against the children. The court directed the release of the children from jail and their shifting them to children's home
- *M. C. Mehta v. State of Tamil Nadu*, it has been held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of Employment of Children Act, 1938.
- They can, however, be employed in packing process but it should be done in area away from the place of manufacture to avoid exposure to accidents. Every children must be insured for a sum of Rs. 5000/- and premium to be paid by employer as a condition of service

- *In Sheela Barse v. Union of India, 1986* the Court directed the Central Government to pay to the petitioner, a social worker, Rs. 10,000 for the expenses and to extend all necessary assistance who offered to personally visit different parts of the country to verify whether the information submitted by the authorities regarding children below the age of 18 years detained in jails in different states of the country was correct.
- The court directed that the Children's Acts enacted by various States must be brought into force and their provisions be implemented vigorously. It is desirable that Parliament should pass a Central legislation on the subject.
- *In Gaurav Jain v. Union of India, 1990*, the Court rejected the demand for providing separate schools and hostels for children of prostitutes as it was not in the interest of such children. The application under Art. 32 was made through public interest litigation asking school for direction to the government for making such provisions for children of prostitutes.

In *D. C. Wadhwa v. State of Bihar, 1987*

- The petitioner, a professor of political science who had done substantial research and deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the State of Bihar in re-promulgating a number of Ordinances without getting the approval of the legislature.
- The Court held that the petitioner as a member of public has sufficient interest to maintain a petition under Art. 32. Every citizen has right to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional limitations.
- The Court directed the State of Bihar to pay Rs. 10,000 to Dr. Wadhwa whose research brought in light this repressive practice
- Under Art. 32 of the Constitution the Supreme Court has power to award compensation by way of exemplary costs to the petitioner whose constitutional right is violated by the illegal and mala fide action of the State and its officials.

# Appointment of commissioner

- **Appointment of Commissions**
- In a Public Interest Litigation, the petition is filed directly in the Supreme Court or the High Courts Parties do not have a reasonable opportunity to present evidence on record.
- Therefore, the courts have to manage the collection of facts, data and evidence on their own. Hence SC make the appointment of Commissions to carry out an inquiry or investigation into the matter and to submit its report to the courts.
- Supreme Court in the past have appointed District Judge, a professor at law, a journalist, an officer of the court, an advocate and sometimes even a social scientist as a Commissioner.
- The rationale behind appointment of such Commission is to reduce the cost and burden on the public interest litigant to collect data and evidence.

- There is also need of impartial machinery for assessment of facts and materials on record as State officials may tend to be biased in conducting such inquiry and investigation. Another reason is that the courts do not have a separate and independent body to carry out such investigations.
- In Sunil Batra's case the Supreme Court used the services of two advocates to ascertain the truth of the complaint of torture done to a prisoner in Tihar jail. The advocates visited the prison, met the prisoners, reviewed relevant documents, interviewed necessary witnesses and prepared a lengthy report about the scenario in the prison. The Court appreciated the efforts of the advocates and also accepted their findings.

- *In Rural Litigation and Entitlement Kendra v. State of U.P. 1985*, the Court ordered to close down limestone quarries on the ground that there were serious deficiencies regarding safety and hazards in them.
- The court appointed a committee for the purpose of inspecting certain lime stone quarries.
- The committee suggested the closure of certain categories having regards to adverse impact of mining operation. A large scale pollution was caused by these quarries adversely affecting the safety and health of the people living in the area

# Bandua Mukti Morcha v. State of WB

- an organisation dedicated to the cause of release of bonded labours informed the SC through a letter that they conducted a survey of the stone-quarries situated in Faridabad District of the State of Haryana and found that *there were a large number of labours working in these stone-quarries under "inhuman and intolerable conditions" and many of them were bonded labours.*
- The petitioners prayed that a writ be issued for proper implementation of the various provisions of the Constitution and statutes with a **view to ending the misery - suffering and helplessness of these labours, and release of bonded labourers.**
- The Court treated the letter as a writ-petition, and appointed a Commission consisting of two advocates to visit these stone-quarries and make an inquiry and report to the Court about the existence of bonded labourers.

- held that where a public interest litigation alleging the existence of bonded labourers is filed it is not proper on the part of the Government to raise preliminary objection.
- On the contrary, the Government should welcome an enquiry by the court so that if it is found that there are bonded labourers of workers living inhuman condition such a situation can be set right
- *"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 significant tune of our Constitution

- *Pollution of Ganga water.-In M. C. Mehta v. Union of India,*
- the Court ordered the closure of tanneries at Jaimau near Kanpur, polluting the Ganga. The matter was brought to the notice of the Court by the petitioner, a social worker, through a public interest litigation.
- The Court said that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and the Environmental (Protection) Act, no effective steps had been taken by Government to stop the grave public nuisance caused by the tanneries at Jajmau, Kanpur.
- In the circumstances, the Court was entitled to order the closure' of tanneries unless they took steps to set up treatment plants

- *In M. C. Mehta (2) v. Union of India*, the petitioner brought a public interest litigation requiring the Court to issue appropriate directions for the prevention of Ganga water pollution.
- The Supreme Court held-The petitioner, although not a riparian owner (living on the river side) is entitled to move the court for the enforcement of various statutory provisions
  - which impose duties on the municipal and other authorities.
- He is a person interested in protecting the lives of the people who make use of the Ganga water.
- The nuisance caused by the pollution of the river Ganga is a public nuisance which is widespread and affecting the lives of large number of persons and therefore any particular person can take proceedings to stop it as distinct from the community at large

- *In M. C. Mehta v. Union of India, 1997, (Pollution of Taj Mahal)*  
the petitioner filed a PIL drawing the attention of the Court towards the degradation of the Taj Mahal due to atmospheric pollution caused by a number of foundries, chemically hazardous industries established and functioning around the Taj Mahal, and
- requested to issue appropriate directions to authorities concerned to take immediate steps to stop pollution .
- The Court directed **292 polluting industries** locally operating in the area as the main Source of pollution to change over within fixed time schedule to natural gas as industrial fuel and if they could not do so they must stop functioning beyond 31st Dec., 1997 and be reallocated alternatives plots in the industrial estate outside Taj Trapezium (TTZ).
- The U.P. Govt would render all assistance in relocation.

- The Court also took care of rights and benefits of the workers employed in these industries and issued necessary directions - continuity of employment - shall be paid to their full wages during shifting period - one year's wages as shifting bonus

### *Murli Deora v. Union of India , 2002*

- The Supreme Court has directed all States- and Union Territories to immediately issue orders banning smoking in public places and public transports, including railways.
- Hearing a PIL Court asked the Commissioners to submit status reports of action taken against cigarette manufacturers violating advertising code.
- The orders banning smoking in public places would include hospitals, health institutes, public offices, public transports including railways, court buildings, educational institutions, libraries and auditoriums

- The court must be careful that the members of the public who approach the court are acting bonafide and not in personal garb of private profit or political motivation or other oblique considerations
- The court should not take cognizance in such matters merely because of its attractive name.
- The petitioner must inspire the confidence of the court and must be above suspicion.
- The petitioner must point out that the legal rights have been infringed.
- Public Interest Litigation must indicate how public interest was involved in the case.
- No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a license to file misconceived and frivolous petitions.

- Petitioner is not entitled to withdraw the Public Interest Litigation at his sweet will unless the court sees reasons to permit withdrawal.
- It is well settled law that when a person approaches the court of equity in exercise of its extraordinary jurisdiction , he should approach the court not only with clean hands but with clean mind, clean heart and with clean objectives.
- The courts must do justice by promotion of good faith and prevent the law from crafty evasions.