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COMMENT

STANDING AND THE LAW

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Critics of the law sometimes point to the procedural barriers that are part of our legal system. In certain cases these barriers "close" the courts to litigants by preventing the merits of a case being considered. One of these barriers is the necessity for standing to bring an action.

At the Third International Conference of Appellate Judges in New Delhi in March 1984, some attention was paid to broadened rules of standing that have developed in the Indian Supreme Court during the past few years. The changes have been due to that Court's concern for social justice and reflect a desire to protect the weak in their society. In one case, *People's Union for Democratic Rights* v. *Union of India*,[1] Mr Justice Bhagwati said that "[t]he time has now come when the courts must become the courts for the poor and the struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations".[2] Earlier, in *Gupta & Ors.* v. *President of India & Ors.*,[3] Mr Justice Bhagwati had said that the question of standing was "of immense importance in a country like India where access to justice . . . [is] restricted by social and economic constraints, it is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to Justice and promote public interest litigation so that the large masses of people belonging to the deprived and exploited

* A justice of the High Court of Australia.

[1] A.I.R. 1982 S.C. 1473.

[2] *Id.* 1478.

[3] A.I.R. 1982 S.C. 149.

sections of humanity may be able to realise and enjoy the socio-economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes".[4] In circumstances involving the weaker sections of the community "any member of the public can maintain an application for an appropriate direction, order or writ . . . seeking judicial redress for the legal wrong or injury".[5]

An example of the Court's willingness to ignore traditional rules of standing is provided by *Lakshmi Kant Pandey* v. *Union of India*,[6] a judgment handed down on 6 February 1984. The "writ petition" in the case was initiated on the basis of a letter from Mr. Pandey, an advocate practising in the Supreme Court. In his letter he complained "of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents". Mr. Pandey was not involved with such adoptions but referred in his letter to press reports on the issue. He sought relief restraining Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and directing the Indian Government, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in relation to overseas adoptions of Indian children.

The Court issued orders to those named to appear and assist it in laying down appropriate "principles and norms" to be followed for overseas adoptions. Ultimately affidavits and statements were lodged by a wide range of organisations, many as a result of the Court's active pursuit of groups whose activities would be relevant or would be affected by any order. In the light of the material as well as oral argument, the Court formulated a series of comprehensive principles and guidelines to be applied in foreign adoption of Indian children.

The full details of the judgment are of secondary interest here, although they could no doubt justify an entire article themselves. What is significant is the Indian Supreme Court's willingness to broaden the rules of standing in such cases. From a traditional viewpoint they have virtually abolished those rules. Consistently with what could be seen as an activist approach, the Court has also pursued organisations that could assist its consideration of a case, in a way unfamiliar to most Australian courts. There are differences between the Indian and Australian societies which to some extent explain this different approach in cases involving protection of the weak but, as in many areas, perhaps it is time Australian courts also threw off some old shackles in an effort to allow justice to be done.

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[4] *Id.* 185.
[5] *Id.* 188.
[6] (1984) 2 Supreme Court Cases 244.