19.1. The background of the Public Interest litigation in America may be traced to Legal Aid Society founded for German immigrants in New York City in or about 1876. In 1909, the National Association for the Advancement of Coloured People mainly relied upon test litigation. In 1930, the NAACP received grant from the American fund for public service to halt attack on racial discrimination. In 1920 also, there already grew American Civil Liberties Union out of violation of Civil liberties during World War I. It moved against Government to halt prosecution by the Government in Espionage and Sedition Acts. It did amicus curiae work. In 1963, there grew organisations, inter-alia, like Law Students Civil Rights Research Council (LSC RRC) and Lawyers' Committee for Civil Rights under Law (LCCRVL). There was New Deal and young lawyers joined during Roosevelt's administration. The period under Kennedy and Johnson was fertile for law reform. Later, Chief Justice Earl Warren opened the doors to the claims of minorities, the poor and the various social reform groups. In the Department of Justice, Civil Rights Division was created by Attorney General Robert Kennedy. In 1967, there was
creation of the office of the Economic Opportunities Neighbourhood Legal Services Programme having a dominant official ideology of legal services.

19.2. Centres were created to strengthen neighbourhood offices and they were organised around specific areas like mental health housing, education, welfare and employment discrimination. Between 1960 and 1970, the public advocacy gathered momentum. Regulatory bodies have become captives at the hands of the industrialists whose economic abuses they intended to curb. Direct governmental advocacy and subsidised private advocacy were started. Economic conflict between owners and consumers and other affected public called for popular pressure for regulation. Limitations were imposed in the USA by Zahn -Vs- International Paper Co.\textsuperscript{394} and by Eisen -Vs- Carlisle & Jacquelin\textsuperscript{395} and Aleska Pipe Line Case\textsuperscript{396}.

In Sweden, Consumer Ombudsman of 1970 was appointed against improper marketing and advertising practices to bring suits in market court. In England, Director General of Fair Trading, 1973 was appointed against monopolistic practices contrary to public interest. Race relations Board was there for bringing civil proceedings against

\textsuperscript{394} 414 US 395 417 US 156 396 421 US 240 (1975)
racial discrimination. In France there was 'ministere public' to mean French Government Attorney General and the Statute 'loz Royer' had given standing to consumers' association. There was 'pere patriae' to mean representation of public interest. In Bavaria, there was popular Klage or citizen action. In Italy, law of Aug 6, 1967 gave standing to sue against unlawful construction. Federal Republic of Germany's Statute of 1909 as amended in 1965 allowed consumers to challenge unfair competition. In India, Italy and Tansania, actiones popularis i.e. citizens' actions are allowed to attack unlawful electoral activities. In Ghana, Environmental Protection Council 1974 was there for civil litigation in the interest of environmental protection. In India, MRTP- Registrar for Restrictive Trade Agreements act as Advocate of public interest. In America in late 1960s the funding of private foundations led to rapid development of public interest litigation. The Council for the Public interest law set up by the Ford Foundation in the U.S.A. opted for legal representation to previously unrepresented groups. It was there to ensure that citizens whose lives may be affected by Government policies, have a right to participate in the formulation of the policies, groups, courts and other
administrative agencies. Before 1969, the benefit of this right was available to the holders of civil rights and civil liberties and also to the poor, blacks, social and political dissidents but by 1975, it extended to consumer and environment protection, land and energy use, tax reform, occupational health and safety etc. Besides education reform, employment benefits, ordinary citizens, workers, prisoners etc. Regarding access to justice Cappelletti and Garth viewed—""............the legal system like other institutions of contemporary society, is seeking to give the citizen a means of making his impact felt more directly on the Governmental process".

19.3. In the U.K. the doctrine took a more liberal turn. Lord Denning exhibited a strong belief in the performance of public duties and of accountability and answerability of public institutions. In R -Vs- Paddington Valuation Officer exparte Peachy Property Corporation Ltd397, a rate payer was given the locus standi to challenge as invalid a valuation list which was improperly prepared though he himself could not show that his property had been wrongly rated. In another case R -Vs- Commissioner of Police of the Metropolis exparte Blackburn398, the

397. (1966) 1 QB 380
398. (1968) 2 QB 118
petitioner as a citizen was granted standing vis-a-vis complaint that the owners of the gambling class were flouting the law but were not being prosecuted in pursuance of policy direction. Lord Denning opined that where orderly existence of Society is at stake the Court is swayed by social necessity. Yet again Lord Denning observed in Attorney General -Vs- Independent Broadcasting Authority 399 "we live in an age when Parliament has placed statutory duties on Government department and public authorities- for the benefit of the public but has provided no remedy for the breach of them. If a Government Department or Public authority transgresses the law laid down by Parliament or threatens to transgress it, the citizen who has been aggrieved has a locus standi to come to Courts.

19.4. Our litigations in the public interest have its origin in that followed in American Courts and as per A. Chajes (1) the scope of the law suit is not limited by a specific historical event such as breach of contract or personal injury but is consciously shaped by the Court and parties, (2) the party structure is not limited to individual adversaries but is sprawling and amorphous, (3) the fact inquiry is not a simple investigation of

399. (1973) QB 629
past historical events but rather resembles the kind of inquiry into current problems undertaken by legislative bodies (4) relief is not limited to compensation for a past wrong, instead it is often prospective, flexible and remedial having broad impact on many persons not party to the law suit (5) the relief is often negotiated by the parties rather than imposed by the Court, (6) the judgment does not end the Courts' involvement but requires a continuous administrative judicial role, (7) the judge is not passive but takes an active role in organising and shaping the litigation and, (8) the subject matter of law suit is not a private dispute rather a grievance about public policy.

19.5. The rules of standing in India have been deliberately shaped by the Courts and the parties together in order to accommodate matters under the public interest litigation on the plea of socio-economic objectives for the benefit of the suffering people. The special problems that the Indian society is now facing with the growth of the complexities of the modern era are that due to socio-economic factors most of the people who are suffering from certain imposition and injustice on them have no
means and aptitude to approach the Courts for their relief. As a result, certain senses of necessities have grown up to counteract these inadequancies in overcoming the situations. In some cases, some enlightened public or citizens with or without some members of the suffering people place the matters for redress before the Supreme Court and High Courts as the case may be, which some one called as the 'citizen standing' and the Court sensing the gravity of the situation in some cases order for interim relief and in others for investigation and report for assessing properly the relief that may be required to ease the situation. A citizen when files petition, he files in his own right as a member to whom a public duty is owed. It is to vindicate rights that are diffused among the public. Public inquiry is the most question which may be found in gas leak disaster, consumers death in adulterated rape seed scandal, building hotels near gardens, replacing public parks by shopping centre, judges' transfer case on political issues, foreigners' right to adopt children, enforcement of human rights, pollution of environment by eliminating forests and wild lives etc. The rule of standing in so far as to the above context has brought a significant dynamism in the Court's role from the traditional one to the holder of the rule.
of law. By the time from the old traditional views, the Supreme Court of India has come across a major change on in a number of decisions of which a few that are mentionable in this domain of litigations are the issues of President's power to transfer judges in which any member of the public with sufficient interest to assert diffuse, collective and meta individual rights was allowed to file petition - Reference S.P. Gupta -Vs- Union of India 400 at 149, M. Cappelletti's Views in Access to Justice Vol. III on the acceptance of public interest litigation on necessary rejection of Laissez faire notion of traditional jurisprudence to the modern phenomenon of 'massification' bear strong relevancy to the above issue. Change is the outgrowth of flowing life and society. We may cite here the views of Lord Denning in- Foreword to 'The Supreme Court of India' as "Many of the Judges of England have said that they do not make law. They only interpret it. This is an illusion which they have fostered. But it is a notion which is now being discarded everywhere. Every new decision- on every new situation - is a development of the law, Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put

400. AIR 1982 SC 149
on a higher place. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason laying brick on brick, without thought to the overall design. He must be an architect — thinking of the structure as a whole — building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends*. Jerome Frank also viewed 'the judges unconscious play an enormous role in the exercise of the judicial process, particularly where it closely touches contemporary economic and social problems'. It is also argued that the justification for development of citizen standing is not to develop access to justice for the poor but to vindicate rights that are so diffused among the public generally that no traditional individual right exists to be enforced. But in fact this standing has its own force apart from any other inasmuch as it enforces the performances of the public duty as if there is no one to maintain an action for redress of public wrong or public injury, it will be open to the State or public authority to act without any liability beyond its limit or power or in breach of public duty owed by it, which, if allowed, is sure to be disastrous for the rule of law.
19.6. Besides the applications for relief in respect of the poor and the oppressed, there are many cases where public interest called for immediate relief as we have seen in the cases of Lakshan Kant Pandey -Vs- Union of India 401 the foreigners' adoption of Indian children and on environmental impact of limestone quarrying in the Mussoori Hills in Rural litigation and Entitlement kendra, Dehra Dun -Vs- State of U.P. 402 and in M.C.Mehta -Vs- Union of India 403 known as Sri Ram Fertilizers Gas Leak Case in the matter of leak of chlorine gas from a chemical plant. These cases are concerned with right to life and naturally they evoked early or immediate relief by the courts.

19.7. The emerging, growing, and lasting need of modern societies and its reflections in the field of civil litigation as envisaged by M.Coppelletti characterises social relationships, feelings and conflicts as well. The emergence and growth of such phenomena practically unknown in pre-industrial societies has practically given birth to massive organisation of

401. AIR 1984 SC 469
402. AIR 1985 SC 652
403. AIR 1987 SC 965
labour, the unprecedented dimension of class conflicts, the rise of the man-oriented welfare State. Besides above, the growing political and economic interests have led to manifold class interests. It is further envisaged that false corporate information, unfair competition, industrial unrest, imposition of unconstitutional tax, illegal discontinuance of social benefit, discharge of waste into a lake or river, defective and unhealthy packaging of consumer products, environmental pollution, deforestation measures, obscene drama or film shows, undue police repression, loss of peace and troubles faced for anti-social elements in everyday livelihood sufferigs due to callous and indifferent administration of the State, hardships and unhygienic condition of localities for indifferent attitude of municipal authorities are different causes of mass injuries. An individual right against such injuries may prove to be too 'diffuse' or too 'small' to counteract against strong violators or the poor individual may be shy of facing costs and expenses or he be may be unaware of his such rights. All these forces tend to make every such affected individual to unite to have judicial relief, by forming groups, class or committees and in this form grew different sorts
of class actions. These are also the outgrowth of
the people's awareness in social, economic and basic
human rights which cannot be thrown off in this socialist
and democratic form of their Government.

19.8. In the European Countries the traditional
document of standing (legitimatio ad causam) attributed
to the right to sue either to the private individual
who held the right and was in need of judicial protection
or in case of public rights to the State itself which
sued in courts through its organs like the 'ministere
public', i.e. the Government Attorney General. They
were alien to the growing realities of the modern problem
in 'meta-individual' or 'diffuse' interests. Juticiabili-
ity of collective and diffuse interests was denied for
long in many countries outside India. In the cases like
warth vs. Selden, United States vs. Richardson not only
Schlesinger vs Reservists Comm to stop the
War 418 US 208 (1974), there was denial of standing
to tax payers and citizens, but the strong language
used there indicated the liberalisation of standing
requirements in the previous cases as United States vs.-
SCRAP. As pointed out by M. Cappelletti, Belgian,

404. 422 US 490 (1975)
405. 418 US 166 (1974)
407. 412 US 669 (1973)
French and Italian experience in the area is enlightening. Since 1881 in Belgium, since 1913 in France and since 1942 in Italy, the 'ministere public' has been entrusted with a general right to sue or intervene in civil cases involving 'ordre public' or 'public interest' to protect effectively newly emerged meta-individual interests; such as fundamental freedoms of ethnic, political or religious minorities, the conservation of natural resources and the rights of consumers. But these were found not so effective notwithstanding the unlimited growth of the 'Prokuratura's powers in civil litigation in the Soviet Union including similar measures Mexico, Japan and others.

18.9. Some illustration of newer solutions as recorded by Upon Barx on comparative analysis among different countries are worth mentioning here as under towards the gradual growth on this aspect of civil litigation in the eighties of this century.

(1) In Sweden, a 'consumer ombudsman' was created in 1970. His office is composed of 25 members, the ombudsmen, his deputy and a team of specialists including lawyers, economists and marketing experts. One of the consumer Ombudsman's tasks is to bring law suits before
the newly established Market Court in cases of improper marketing and advertising practices detrimental to consumers.

(ii) In England, a Director General of Fair Trading was created in 1973. One of his tasks was to initiate proceedings before the Restrictive Practices Court against monopolistic practices that are contrary to public interest with a view, inter alia, towards protecting consumers.

(iii) Again in England, since 1968, the Race Relations Board has been entrusted with the task, among others, of bringing civil proceedings against various kinds of racial discrimination that are unlawful but not criminal.

(iv) In India, based on the Indian Monopolies and Restrictive Practices Act of 1969, the Registrar for Restrictive Trade Agreements has the power to act as an "Advocate of public interest", by investigating and initiating proceedings against restrictive trade agreements and practices.

(v) Finally, in Ghana, an Environmental Protection Council was created in 1974, apparently it is endowed, inter alia, with the power to conduct civil litigation for environmental protection.
19.10. It should be emphasized that these are but a few examples of burgeoning phenomenon which is rapidly spreading over much of the world, a phenomenon which, while familiar to American lawyers for many years and especially since the new deal era, is essentially new to other nations. As for the United States, in addition to the numerous administrative agencies that have been operating for several decades such as the Food and Drug Administration, the Securities and Exchange Commission and the Federal Trade Commission - Congress has recently created an Environmental Protection Agency and a Legal Services Corporation and is trying to create a Consumer Protection Agency. Apparently, the principal task of this latter Agency would be to act, even to court, as an advocate, or ombudsman, for the consumer.

19.11. After the rigid and formalistic limitations imposed by "Zahn -Vs- International Paper Co." 408 Eisen -Vs- Carlisle and Jacquelin 409 and Alyeska Pipeline Service Co. -Vs- The Wilderness Society 410 in America newer kinds of solutions like private attorney general solution came to protect diffuse rights at the

408. 414 Us 291 (1973)
409. 417 Us 156 (1974)
410. 421 Us 240 (1975)
initiative of private persons or organisations. Some of these examples are found –

a) In Bavaria, every person physical and legal, even though not directly interested, has standing to bring proceedings before the Bavarian Constitutional Court to attack land legislation violative of civil rights (whether individual or social) proclaimed by the 1946 Land Constitution. The idea at the basis of popular Klage or citizen action is that when one person's fundamental rights are violated, everyone's freedom is indirectly violated. If the Court holds the challenged Statute unconstitutional, its decision has 'egna omnes' and retroactive effect.

b) In Italy, a law of 1967 grants 'everyone' standing to sue against the unlawful issuance of construction permits by local authorities. Here, too, the decision, if favourable, to the plaintiff has 'ultrapartes' effects.

c) In the Federal Republic of Germany, a statute of 1909 amended in 1965, allows consumer associations (in addition to merchants and their associations) to challenge in courts acts of unfair competition. There is no need to prove direct and personal injury.
d) Also in Federal Republic of Germany, the law on Standard terms of contract effective as of April, 1977, gave Consumer Associations standing to have certain contract terms declared invalid. Individual consumers may then use the judgment to invalidate the same clause in other contracts.

e) In various countries including India, Italy and Tanzania, 'actiones populares' or citizens' actions are allowed to attack unlawful electoral activities.

f) In France, a statute on December 27, 1973, known as 'Loi Royer' has opened the doors of the Courts of Justice to associations of Consumers granting them standing to sue in case of facts directly or indirectly detrimental to the collective interest of the Consumers. Similarly another French Statute was enacted to protect minority groups against certain racial offences and to deal with violations of urban planning regulations.

g) In America, Clean Air Act 1970 allowed also a private citizen, even though not directly injured, to bring a suit as a citizen action against polluters.

h) The Belator action in England, Australia and certain other common law countries has become quite vital.
ror suits brought in the public interest by a private individual or groups that otherwise would have no standing but which sues in lien and with the consent of the attorney general in view of the rare use by the common law Govt. Attorney General in his capacity as "parens patriae" being the representative of 'public interest'. The frequent uses of relator actions are suits to stop public nuisance, to restrain conduct injurious to the public welfare, to restrain developers of land and to obtain prohibitions and restrictions directed towards public health and comfort and the orderly arrangement of municipal areas. The relief sought must be to benefit the public. By means of relator action, private persons (or groups) may fill the gap left by the inertia of the governmental attorney general to present frivolous suits and abuses.

1) In the USA, the compelling and typical need of modern societies also motivated the Government to provide flexible and efficient protection of group and collective interests against the abuses of mass economy and mass government upon the exigency of giving adequate protection to the emerging diffuse rights - the "newer property" which have become so fundamental in the modern world".
j) The appearance of class suitor as 'private attorney general' is not limited to the defence of his own rights. It is distinguished from relator suitor in England and Australia and is not subject to the control of Govt. Attorney General ad rather he is subject to and under control of the Court as determined by the legislature and by a large amount of judicial discretion.

k) Creation of Public interest law firms in USA to provide public interest legal services and New York legislations on class actions effective since September 1, 1975 despite hostility of the Supreme Court and Federal Courts towards public interest litigation was most encouraging. A part of the New York Civil Practice Law and Rules on the pre-requisites to a class action is set out below.

- 901: Prerequisites to a class action.
  a. One or more members of a class may sue or be sued as representative parties on behalf of all if;
  1. the class is so numerous that joinder of all members, whether otherwise required on permitted is impracticable;
  2. there are questions of law or fact common to the
class which predominate over any questions affecting only individual members;
3. the claims or defence of the representative parties' practices are typical of the claims or defences of the class;
4. the representative parties will fairly and adequately protect the interest of the class and;
5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy;
6. unless a statute creating or imposing a penalty or a minimum measure of recovery specifically authorises the recovery thereof in a class action, an action to recover a penalty or minimum measure of recovery created or imposed by the statute may not be maintained as a class action.

19.12. Thus preserving the basic features of class action, the New York law allowed precisely in that State what Eisen and Alyeska Pipe Line took away at the federal level. New York legislation addresses the Supreme Court holdings in United States v. Richardson and Schlesinger and Reservists Comm to stop the war as
well. Professor Homburger, the principal draftsman, described the development as follows:

"The need of effective group and public remedies in the United States is overwhelming. In view of the gradual attrition of public interest litigation in the Federal Court under harsh command of the Supreme Court, it is gratifying that we may perhaps expect a compensating upsurge in the states."

19.13. It should not be overlooked that despite the present limitations at the federal level, class action in the United States still represents a forceful and retain a great potential for serving public interest purposes.

It was found in European countries that –

a) the Judges were typically more bureaucratic and careeristic to deal with cases beyond the parties present in the matter of locus standi than their American counterpart.

b) There was a spirit of traditional reluctance prevailing in all those countries in accepting groups to represent unorganised interest, civil rights associations, environmentalists and consumer organisations which was gradually overcome with the formation of labour Unions and the spirit to fight against menaces.
of the polluters, self interested producers and tyrannies of racial, religious and political majorities besides other oppressions. The essential aim behind these was to represent the aggregate of many 'small rights' and the 'diffuse' rights, acting as 'ideological' and not 'Hohfeldian' plaintiffs. Checks and controls were there in England through the relator action and in America through the Judge and in France through the 'ministère public'. Towards this end, French and German Statutes granted standing to private organisations to sue for the 'diffuse' interests of consumers and racial minorities. Italy in 1973 granted standing to a private environmental association called 'Italia Nostra' like 'Sierra Club' in Europe, and in the administrative courts in Germany.

(c) Characteristic features and controls in public interest litigation rest mainly in the role of the judge and the procedural requirement for the right to be heard.