21.1. In summing up the whole issues coming up right from the purpose and/or background, scope, concept, problems to the requirements and/or liberalisation of standing for the purpose of Social reliefs in respect of Public Interest litigation in India, it is observed that much have been said and advocated for the people of India to ensure justice social, economic and political. Before independence, India was under foreign rule and it had legislations, administration and the judiciary controlled by the rule of convenience suited to the purpose of a foreign ruler mainly based on Anglo-Saxon Model. But since the people of India has solemnly resolved to constitute India into a sovereign, socialist, secular, democratic Republic by adopting their own Constitution, public interest has become the main stream keeping the individual interest protected as not being variant from the social interest.

21.2. The Constitution of India has ensured for its people fundamental rights in Part III within Articles 12 to 35 and beyond that, interalia, it has provided
directive principles of State policy within Articles 36 to 51 in Part IV prescribing fundamental duties in Part IVA within Article 51A. The directive principles confirm the aims and objectives of a 'Welfare State' (Keshavanonda A. v. State of Kerala) of the Republic. Naturally, since independence to date, various legislations of the State and Centre have been passed, to fill up the gaps in the legislations in the administration of the State in the public interest. Accordingly, we have already discussed about the series of legislations and judgments of the Supreme Courts and the High Courts in the public interest.

21.3. As already discussed, a host of respective enactments have since been passed for protection of public interest in respect of monopolies and restrictive trade practices, consumers, women protection, welfare laws, anti-corruption by appointing Lokayuktas/Lok Pal, anti-discrimination laws, Panchayat System, environment-air, and water, noise, wild life, forest conservation, distribution of essential commodities, introduction of statutory Lok Adalats to facilitate reliefs for suffering humanity.

446. (1973) 4 SCC 225
21.4. Access to justice, for such human rights as are guaranteed or otherwise protected in the Constitution for the people of India, is required to be ensured and should not be allowed to be stifled or baffled for the ignorance, poverty, lack of initiative and organisation of the suffering humanity. Right to life and equality cannot be secured only in respect of those richer and enlightened sections of the people denying those who are ill afford to avail themselves of such benefits. As justice is secured to all people irrespective of their standing in social life, steps should be taken to see that every citizen of India is given easy access in getting justice for his suffering and deprivation at the cause of others. Here is the necessity for public interest litigation taken to court for justice by the suffering person or his representative or by anybody showing sufferance of public interest. Accordingly, standing for the cause of relief should not be strictly construed so as to fetter access in obtaining justice. Litigations of epistolery jurisdiction or of public significance or of representative standing are of such nature that they call for immediate intervention providing interim relief pending determination of the same on merit.
Plight of an eighty-year-old Sainik's widow for pension, Ranchi Mental Hospital's case for mismanagement, Kalahandi (Orissa) Starvation deaths' case, Bandhu Mukti Morcha case for bonded labour etc. are, among others, striking instances calling for urgent reliefs. In all these cases, the formalistic approach and procedural technicalities of Courts did not stand in the way.

21.5. It is found that at the High Court and Supreme Court levels, constitutional reliefs are granted by way of directions, interim orders and injunctions in the matter of public interest litigations by access to justice through Article 32 and Article 226 of the Constitution. At the subordinate levels, right from the block levels to the District levels, there now exist Panchayats, Civil and Criminal Courts and Lok Adalats, which were previously occasional, have now become statutory. Besides, there are Special Courts, Commissions of Enquiry and Tribunals to hear Consumers' and public grievances. But they are not all and sufficient to solve the problems. What is needed that there should be some agencies properly equipped with ideas and legally trained and also socially motivated at block levels, to iron out differences and disputes and to solve grievances of
the public at grass root levels before they are referred to Panchayats, Lok Adalats and Civil/Criminal Courts. This will, perhaps, eliminate the substantial aspect of the problems in coming up.

21.6. The unjust and exploitive structures rooted in the legal systems of India are required to be changed with the changing national economic and social orders. Collaborative relationships with social action groups and victim groups are gradually assuming in numbers to thwart and/or to repel actions against the insurgents. Victimisation of rural and urban people in different forms have held to believe that there should be working of social action groups in collaboration with investigative journalists to confront abuses and excesses in both the spheres of public and private. The Government administration and funding of legal resource groups may counter the predominating forces of the private sector having national and trans-national business.

21.7. Sometimes, the Governmental attitude at the executive levels in not complying with Court orders in public interest litigations pose problems in providing urgent reliefs to the sufferers. Quite often the Courts
also are found to avoid ordering affirmatively on the administration for getting the things done or undone towards relief of the social actions instantly and instead they issue orders for enquiry, investigations, so, it is desirable that every court should provide a public interest litigation cell and some authorised agencies of Advocates holding 'amicus curae' briefs are required to bear the responsibilities of providing correct information and accurate submission of facts so that the initial troubles in providing correct testimony to the facts may be shared by both the Bar and the Bench. This will save the valuable time of the Courts in actual determination of facts in public interest matters. Care should also be taken to see that information essential to social action matters should not be withheld by the executives in the Government as real justice should not suffer on presumption of secrecy and non-disclosure. As opined by Sir Alfred Denning, the law is changing with the change in three human instincts such as:

a) instincts for justice i.e. right and not might is the true basis of Society, b) instinct for liberty i.e. free will and not the force is the true basis of Government and c) practical instincts i.e. balancing of rights with duties. Accordingly, it is apparent that
instinct for justice finds its expression in the rule of law and it is depended on four fundamental requisites – a) as it must be certain so that the people safely rely upon it and b) that it must be just to be enforceable, and c) that it must be readily ascertainable so that people may know their rights and duties and d) that it must be enforced by independent and upright judges on whom people have confidence.

21.8. It is for the protection of the Judiciary, Judges of Superior Courts remain largely free from shackles of accountability, while the executive and legislative branches are accountable for their acts and omissions. Although, commentaries of the Laws of England – the renowned British Jurist once commented that "a judge is sworn to determine, not according to his own private judgment but according to the known laws and customs of the land, not delegated to pronounce a new law but to maintain and pronounce the old one." That approach to the Judiciary has since been changed in England within limited bounds as law was found an objective reality through analogical extension of rules contained therein. In

England, despite clear mandate of the people for parliamentary supremacy, the legislative authority has shown utmost respect for the judiciary, while in the U.S.A., according to U.S. Constitution – Articles 1 and III, the Judicial power vests in the Supreme Court as much as the legislative power resides with the Congress having net work of checks and balances operating against all the organs. The Scope of judicial review for determining constitutionality of legislative acts has been ever increasing and receiving popular acceptance in the USA. In India, in a number of cases the court has travelled much beyond the limits which it had set for itself in the judicial process. Here the traditional rules of standing were not being strictly adhered to by the Court in the matter of public interest litigations avoiding constitutional issues, where, necessary, for the ends of justice. The Court here has virtually dispensed with rules and procedures which are required to be complied with in admitting petitions in the cases of under privileged and weaker sections of the society. It is more or less well settled in public interest litigation, the requirements regarding standing have been diluted to an extent that any person could activate the court in taking up such cases.
21.9. In India, the liberal view as to the doctrine of standing in the matter of public interest litigation where the questions of accountability and answerability in the performance of public duties can be traced to the decision of Mr. Chagla, Chief Justice, Bombay High Court in Municipal Corporation -Vs- Gobind Laxman, where it was held that every member of the Corporation has a right to file a suit to prevent the Corporation from so acting in misapplying its funds. The same principle applies to the rate payer.

In Golok Nath -Vs- State of Punjab and in Kesavananda Bharati -Vs- State of Kerala, first noticed the tirades of judicial populism. Later both Justice Krishna Iyer and Bhagwati tried to their best unfolding an era of Swadeshi jurisprudence minimising reliance on foreign models of adjudication strictly on procedures and stare decisis and they called for judicial reforms consistent with the requirements of the land and the spirit of the Constitution. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings came up in the wake of this.

447. AIR 1949 Bom. 229
448. AIR 1967 SC 1643
449. (1973) 4 SCC 225 at 947
spirit. In 1976, in Mumbai Kamgar Sabha -Vs- Abdulbhai the concept of public representation came to be highlighted by Justice Krishna Iyer. The socialist content of the Preamble and the Directive Principles of State Policy have become sources for populistic judicial reasoning. Emergency excesses brought new sensitivity among the journalists which made a lasting gain for the free press in India. Chief Justice Chandrachud publicly welcomed calls for judicial accountability through the open letter and even received women's delegation.

21.10. At the bar, names mentionable among lawyers are Mrs. Kapila Hingorani, who brought the undertrials as well as the Bhagalpur blinding cases, Mrs. Indira Jaising, who was after fundamental right of people in Bombay to live on pavements and Vimal Dave of the Supreme Court Legal Aid Association, Tarkunde, a senior Advocate of the Supreme Court and a retired Bombay High Court Judge was the Advocate against Naxalites repression in Andhra Pradesh and Punjab. Gobinda Mukhoty, a Senior Advocate of Supreme Court is another radical social activist. Shri A.K. Roy of Dhanbad a dedicated engineer and a trade

450. AIR 1976 SC 1465
union leader was the main initiator and architect in Fertilizer Corpn. Kamgar Union, Sindri -Vs- Union of India, A.K. Roy -Vs- Union of India. Besides, there were enthusiastic younger members among law students and at the bar like Mr. Mandita Haksar, Arun Tyagi, Ananta Barua, Shashibhusan Upadhyaya of New Delhi and Kapil Saibal, Prof. U. Baxi, and Professor Lotika Sarkar and also as petitioner in Baxi -Vs- State of Uttar Pradesh brought the barbaric conditions of detentions in the Agra Protective Home for Women in a Writ petition under Article 21. Similarly, there were social action groups, mostly lawyer led, e.g. the citizens for Democracy (CFD), the People's Union of Civil Liberties (PUCL), People's Union for Democratic Rights (PUADR) Association of Social Action and Legal Thoughts (ASALT). The National Committee on the implementation of Legal Aid Schemes, The Consumer Education Research Centre, Ahmedabad, The Free Legal Aid Clinic at Jamshedpur, The Public Interest Litigation Services, Cochin. The National Legal Aid Committee, The Rural Litigation and Entitlement Kendra in U.P. Socio-legal Aid Research and Training Centre, Legal Aid Society, West Bengal (LASWEB) Calcutta against child abuse etc.

The Indian People's Front though its Chairman Nag Bhusan

452. (1981) 3 Scale 1601
453. (1981) 3 Scale 1136
454. AIR-1989 SC 594
Pattanayak wanted directions, The Citizen's Action Committee filed petition in the public interest for sanitation and public health in the City of Nagpur and so also the Association of Socio-legal Literacy in Bhopal disaster case. People's participation in bringing justice to common man has yielded favourable result as the same will be found in a number of such public interest litigations like Baxi -Vs- State of Uttar Pradesh where the State Government was willing to amend its rules and to prescribe new schemes for rehabilitation and similar steps were taken in the Bhagalpur Blinding Case. In Hira Lal -Vs- Zilla Parishad the Court ordered Socio-legal investigation on a complaint by 'Chamars' that their fundamental right to trade, profession and business was unreasonably taken away by the highest auction bidders in carcass utilization - Vide "The Chamars and the Supreme Court" by Upendra Baxi and Krishan Mahajan. Similarly, in People's Union for Democratic Rights -Vs- Union of India, there was commission to look into the conditions of migrant bonded labourers in Faridabad brick-Klin industries. There was also orders for investigations by officials appointed by the Court to

455. AIR 1989 SC 677
456. AIR 1986 Bom 136
457. AIR 1982 SC 1473
investigate into alleged violations of labour welfare laws for migrant and contract labour in the construction of Asiad Stadium and related flyovers in New Delhi. In Dr. Upendra Baxi –Vs- State of U.P.1981 and in Khatri –Vs- State of Bihar extensive investigations were ordered by the Court to ascertain the precise agent and scope of blindings by the top ranking eye specialists in India. In Kanpur under trial rape case the Hon'ble High Court asked the District Judge to investigate and report.

21.11. In the matter of initiating public interest litigation, the press is a dominant media through which public grievances are brought to light for change of social outlook and to stop offensive developing mutuality in societal aggression, breach and oppression. Now, indignation and behavioural difference with the untouchables and adivasis, the plight of prisoners, women and children under protective custody and other harrowing tales towards the sufferings of common people attracting violations of fundamental human rights of the people are the material substances to find relief under the

458. UP 1981 (3) Scale 1136
459. (1981) 2 Scale 531
public interest litigations.

21.12. **Epistolary Jurisdiction of the Supreme Court** and the State High Courts in various such litigations is now giving recognition to the 'Open letter' taking it as writ petition and at the same time extending relief after getting the same confirmed through the reports of the subordinate judiciary or any other noted persons. As for an example, it may be cited that an open letter to the Chief Justice of India, by four law teachers accusing the Court for its reversal of conviction of two police persons for raping a tribal girl led to a nation-wide mobilizations of women's organisations and groups and even Justices of the Supreme Court had to adopt techniques of Juristic activism. The Courts began to expand the frontiers of fundamental rights and of natural justice. The right to life and personal liberty under procedure established by law in Article 21 was now converted de-facto and de jure into a due process clause contrary to the intendment of the makers of the Constitution. Justice Krishna Iyer and Bhagwati, since retired, began the right to bail, the right to speedy trial and has given due status to the right to proper treatment in custodial institutions, prisons...
detentions with right to legal services to the poor. Epistolory jurisdiction was given thrust by Justice Bhagwati. Dr. Upen Baxi has pointed out some adverse outcome on the acceptance of this jurisdiction as it deprives Chief Justice of India of his control in docket management and allocation of work to his companion justices - besides growth of factionalism among the justices in their not getting exposure to public interest litigations. Moreover, it also added to the mounting pressure in the matter of disposal of cases creating further problems in the priority of handling the same. But these are all too sundry in the greater interest of the public in amelioration of their sufferings. Since Constitution has thrust upon the State to do justice to common man in securing to them the availability of the same. The primary approach to these litigations is to give relief on being satisfied with the existing violations mainly of the fundamental rights without questioning prima facie the validity of such rights if there is urgency to set right the situation particularly when the right to life is threatened. A letter written by Shri Kishen Pattnanayak and Shri Kapil Narayan Tiwary two social and political workers brought to the notice of the Hon'ble Chief Justice of India in a letter describing the miserable
conditions of the inhabitants of the District of Kalahandi in order to save them from starvation deaths. It is also noticed in AIR 1988 Rajasthan 124 that the Hon'ble High Courts in Rajasthan took newspaper's report as Writ petition to give relief to a eighty-year-old freedom fighter's wife.

21.13. By epistolary jurisdiction the Hon'ble Courts take the matter of distress of the suffering humanity in their own hands for redress through the exercise of creeping jurisdiction over the administration of the State by necessary directions for getting the things done or undone towards immediate relief. According to directive principles of the Constitution, the State takes the responsibility of doing good to suffering people, the administration of the State is the functional machinery in administering affairs for the good of the people and for any reason when it lacks in such functioning as desired, there arises an imbalance which is necessarily set right by the other organs of the State and the Judiciary being asked to come to the operational rescue temporarily to tide over the situation, it has got to

460. AIR 1989 SC 677
give directions and interim orders pending finalisation of the whole affairs. Sometimes, situation may so arise that new enactments may be urgently required to be passed to stop some age-long malpractice or to give a fillip to the void arena causing sufferings.

21.14. People's hardship due to inaction of the municipal authorities, sufferings of patients at the mental hospital at Ranchi, eviction of pavement dwellers, tragedies of bonded labours, sufferings of blinded undergraduates and women of protective homes and such others could not find relief as such unless there were interim orders and directions forthcoming from the concerned Courts taking up matters of public interest litigations.

21.15. In view of the *extra-ordinary jurisdictional powers* of the court that are usually exercised in handling the public interest litigation matters, the strict rules of evidence and procedures in the public interest are dispensed with to secure justice for the people which would have been impossible otherwise because the determination on merits taking all evidence on record on the points of standing, the bona fides, violation of rights are matters of time which would definitely defeat the purpose
of social justice in ensuring ready relief for the suffering humanity. Accordingly, the court refuses to view the proceedings in such litigations as adversarial in nature leaving the matters to stand on the reports on an independent body or person on which or whom the State and the petitioner can repose faith and trust to act upon. Initially, socio-legal Commissions of enquiry constituted with social activists, teachers and researchers as members were ordered by Justice Bhagwati. In AIR 1986 Bom. 156, the High Court appointed an Investigative and Remedial Measures suggestive Committee comprising of leading public men, two doctors and two members of the Bar. It is a fact that the State usually finances the cost of these Committees in the public interest since the State is responsible under the constitution of India in its directive principles to ensure to all citizens equal justice as backwardness, ignorance and economic disadvantage cannot stand in the way to ensure such justice. In various cases, the High Courts in public interest litigations have utilised the services of its own officials or those of the subordinate courts to investigate and report and also to monitor the implementation of the various directions given by the Court. The monitoring services are found to have greater importance
in urgent cases asking for reliefs as they were of imminent requirement in Kanke Mental Hospital case and in Kalahandi Starvation deaths case in Orissa besides many other such cases as in water pollution case as discussed earlier.

21.16. Opposite forces tending to discourage public interest litigations often grudge against judicial activism or populism as may be called and trenchantly criticise the creeping jurisdiction on the part of the judiciary into administrative and legislative arena disbalancing the separation of powers and indulging anti-national forces to be active to destabilise the Government. Conflicts between Justices surfaced on common individualistic issues have bewildered the masses. On the acceptance of letters as writ petition and the same being addressed to individual judges, Justice Tulza Parkar opined that such practice would develop forces subversive of judicial process and Justice R.S.Pathak also viewed that it would lead to impropriety. The suo moto intervention by the judges is certainly a major breakthrough in the delivery of social justice. Justice K.Bhaskaran when acting as C.J.in Kerala High Court

461. AIR 1988 SC 115
mentioned that of the vast approaches to the Judiciary for relief a little could be done as out of 300 letters only ten percent could be taken as writ petitions.

Similarly Justice M.P. Thakkar, as a Judge of Guzarat High Court converted a letter to the editors in newspapers by a widow mentioning her plight. It is the bold creativity and correctional humanism that brought Justice Krishna Iyer closer to the people affected by the administrative inaction and legislative gaps. On the contrary, H.M. Seervai made certain oblique reference to Justice Krishna Iyer and Bhagwati for their contending in favour of the public interest litigations.

21.17. A research note in America published in Law and Society Review about the S1APP cases means -strategic law suits against public participation cases which brought to determine the social dynamic processes and extra legal outcome of them for answering the micro and macro sociological questions involved in these cross institutional disputes. It is held by the judiciary that the SLAPP cases shall effectively chill public participation as Supreme Court there observed that a law suit

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462. Spl.Civil Application No.2785/79
463. Law and Society Review -Vol.22, No.2 of 1988
no doubt may be used .... as a powerful instrument of coercion and litigation ... regardless of how unmerito-
rious the suit is. In Webb -Vs- Fury, it is further observed by the Supreme Court "We Shudder to think of the chill .... were we to allow this law suit to proceed. The cost to society in terms of the threat to our liberty and freedom is beyond calculation .... To prohibit robust debate on these questions would deprive society of the benefit of its collective thinking and..... destroy the free exchange of ideas which is adhesive of our democracy". SLAPPs were filed against people who lodged Government complaints about police brutality, attorney malpractice and industrial polluters includig a citizen sued for writing to the President of the U.S. to oppose a political appointment, consumer complainants sued by their public utilities, women's rights, anti-nuclear and environmental activists sued by a local and State Governments, for their protests and home owners sued by a real estate developer. However, all these attempts upon public complaints necessarily created a discouraging phenomenon and accordingly there were restrictions in filing a SLAPP case which stated that to be a SLAPP, a case must be :

a) a civil claim for money damages,
b) filed against non-governmental individuals and organisations,

464. 282 SE 2d 28; 43 (W.Va 1981)
c) based on advocacy before a Government branch official or the electorate and
d) on a substantive issue of some public or societal significance.

21.18. Sociological approaches in America are manifold and aggressive in all respects. Affluence and intolerance although find out means through cross institutional disputes but these are shortlived and problem arresting measures by influential coteries which cannot, in the long run, be effective to chill the buoyancy of public participation in litigations. To meet the requirements on the current problems of the society, there is a gradual process of social change yielding laws to that purpose. Moreover, there are changes in the physical environment of the society and also there are changes in the genetic constitution of the population. However, contact with other societies, internal social change, social movements and new technological and social inventions have become the basis of cultural change. Social engineering comes to operate to eliminate social frictions, Creative role of the Judiciary between the two opposite forces of judicial activism and passivism solves the burning problems on the felt necessities of the time. Distributive justice by a democratic process

465. The Basis of Cultural change (1953) - Barnett
in a developing and underdeveloped country like India can cure the ills prevailing in the society. Now, the craving need of the society is to formulate an inexpensive, informal and accessible forums for vindicating rights of public interest litigation. Regular Court reform, general division of cases, specialised courts, simplification of the substantive rules for small claims are the current need to cope with the growing volume of disputes. In India, liberalisation of standing in public interest matters, the institution of new Panchayats, Lok Adalats, appointments of Lokaytaks/Lok Pal to weed out public corruption are major breakthrough in the public interest litigations. We are aware that in China, Cuba and Eastern Europe there are neighbourhood or social courts for resolving community disputes. For effective dispute resolution mechanisms reference can also be made to the Bulgarian and 'Soviet Comrade Courts' and the Polish Social Conciliatory Commission.

21.19. Now, the global movement is on in the direction of public law litigation as important public policy issues involving large groups of people are now demanding extension and/or liberalisation of standing, legislative reforms and, modifications in the basic concepts in
respect of 'notice', 'right to be heard, and 'res judicata' in their application to public interest litigations. Rethinking and necessary changes in the very basic traditional actions of civil procedure and of the role of the Courts are required in view of the growing requirements of litigations in the public interest. The laws of standing, rules of procedures and roles of the judges should be congenial in this process of vindication of public rights.

21.20. In India to-day the people have become more conscious than before about their public rights in the social, economic and political spheres and are gradually coming up before the Courts against their infringement. There were grievances for long against the party in power in the Government that information and broadcasting medium including visual ones like television are being utilised without conforming to the Constitutional norms affecting the interest of class or groups or the public in having the correct information about all situations in the administration of public affairs. We have taken a careful note when it is found that on July 21, 1989, a Division Bench of the Supreme Court of India admitted a petition seeking to declare the present functioning of All India Radio and Doordarshan unconstitutional. The
Bench comprising Mr. Justice R.N. Misra and Mr. Justice Kuldeep Singh, while admitting the petition of Common cause - a society registered under the Societies Registration Act and engaged in taking up causes of public importance - also issued notice to the Union of India and others on the application seeking an interim order directing the Union of India not to denigrate any political opponent without allowing it adequate opportunity to refute the denigration.

21.21. Mr. Sali Sarabji, Counsel, for the petitioner contended that section 4 of the Information Act as implemented by the (Indian) Govt. was violative of Art 194 of the Constitution. It is contended that broadcasting was a public function and there was an inherent duty which obligates the Govt. to perform this function, with objectivity and impartiality which were not being observed at present. Manipulation of the media in promoting the interest of the ruling party was also violative of free and fair elections guaranteed by the Constitution.

21.22. The legal system now, without being merely a static collection of rules, is looked upon as a dynamic
and self-evolving modulation to attain a societal goals and aspirations. It is no longer confined within the traditional blindfolded balance of justice as its dynamics confront legislators, judges and administrators at every stage with problems of choice in law making, adjudication and administration of the law and simultaneously it demands legislatures, judges, and administrators to be progressive, activist and forward looking. There has been gradual transformation of attitudes, values, and habits and ways of life requiring laws befitting the situation and hence there has been simultaneous changes in the notions of equality and traditional forces of the legal system. Accordingly, in all important public interest matters, the Courts have departed from observing traditional legal process and procedures to provide relief to affected persons or groups or community by devising new forms of action in appropriate cases which may not be strictly within the purview of the Judiciary. Now, the Court's directions have taken up the blending of legislative, executive and judicial functions on the inevitable exigencies of the modern welfare State. Courts have given directions to various States for obtaining statistical data in respect of undertrials and so also the Orders of the Court in Bhopal Gas Leak Case motivating the
conclusion of the settlement overshadowing niceties of legal principles on compelling need for urgent relief.
In Shriram Foods and Fertiliser Industries case, the Courts impressed upon the Govt. of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and to see human habilitation does not go around them. The Supreme Court also directed the Government to totally stop the operation of mining in certain areas on the ground of environment protection and the Supreme Court also directed the Government to set up Rehabilitation Committee with representatives of various State Governments and accordingly a Committee was set up by the Govt. of India in the Department of Environment, Forests and Wildlife for monitoring purposes. It was also seen in Olga Tellis Case that proceedings prescribed under Section 314 of the Bombay Municipal Corporation Act was found arbitrary, unfair and not the procedure established by law within Articles 21 and 39(a)(i) of the Constitution as the procedure established by law must be reasonable and conform to norms of justice and fair play and as such any statute in this behalf prescribing procedure impermissible under the Constitution must
be struck down as held by the Supreme Court. Directions are also given by the Court stating the mode of running a protective home Upendra Baxi Vs State of Uttar Pradesh, or of Welfare measures to be provided to labours and their families like legislative prescriptions. The Judiciary has got to exercise its powers so as to fulfil the mandate given by the Constitution and as such it should be free from Colonial hangover while deciding questions as to socio-economic consequences. The Courts now issue affirmative directions which resemble more executive or legislative matter than judicial acts. It now issues schemes for improving living condition of workers in stone quarries or for any other humanitarian purpose. It has appointed Commissions to collect facts and has further undertaken the onerous duty of monitoring the implementation and compliance of its orders and directions.

It has ordered payment of monetary compensation as interim relief in cases of administrative wrongs involving violation of fundamental right of personal liberty. Thus in all "crisis of human affairs" there is responsibility bestowed upon all the organs of the Government and to which the Judiciary has an unenviable role to play on failure of other organs to meet the required commitment.

468. AIR 1987 SC 191 472. AIR 1983 SC 1086
469. AIR 1984 SC 1985 473. AIR 1984 SC 1026
470. AIR 1986 272 474. AIR 1985 SC 494
471. AIR 1986 1773
The public interest litigations have some special features. The petitioners in these litigations may be few individuals covering the interest of many others although they may not be the parties to the proceedings. Alternatively, they might be termed as interests potential on the consequences of the proceedings. Secondly, the said proceedings may deal with important questions of policy, substantive and remedial in connection with any enactment or policy decisions of the Government. Thirdly, as the decisions in these litigations affect numerous persons, the Court assumes greater responsibility beyond its normal discharge of duties tending towards more legislative and/or administrative functions by appointing Commissions to collect facts ensuring participation by potential litigants and adopt a more active role in just determination of the dispute unlike those in adversary form of private law litigation between two contesting individuals. Accordingly, the traditional approaches in resolving the dispute having regard to strict compliance of the Statute, judicial restraint, precedent, rules and technicalities of the Court procedures subside in the greater policy interest in terms of those assured in the Constitution. Rights to life, liberty and equality of justice as assured in the Constitution necessarily take
priority in duties towards suffering humanity in tune with the social philosophy of the time.

21.24. There is a separate set of arrangements for PIL in America and so in India, the feasibility may be considered. In the Department of Justice, public Interest litigation Cell should be formed to deal with PIL matters with special judges having a co-ordinating unit with members of other executive and legislative departments to aid the court with expertise knowledge where necessary and to comply with the directions of the Courts and to work in harmony in keeping with the directives of the Constitution. It should ensure narrowing of the gaps that may exist to preserve the cherished wishes of the people of India for which the constitution of India stands to ensure justice economic, political and social. In implementing the above, Special Courts may be created with the sitting Judges of the High Courts in all States to deal with all PIL matters and these judges must be free to devise their own procedure in consonance with the basic rules of due play having powers to give affirmative directions and to take necessary actions interim and final with special ability and exposure to multidisciplinary approach to deal with
varied facets of public interest litigations. If shall lie with the discretion of the judges to merge both the adversarial and inquisitional procedures with liberal application of the Evidence Act to bring out ready solution to the disputes and problems in the above cases which may cause substantial injury to public interest.

21.25. The Code of Civil Procedure 1908 as modified in 1977 provides in Order 1 r - 8 that one person may sue or defend on behalf of all in the same interest upon notice to all parties while r-8A of O 1 gives further powers to the Court to present opinion or to take part in the proceedings. According to Section 91 and 92 of the Code, in public nuisances and other wrongful acts affecting the public and in public charities the code itself has provided that a suit for declaration and injunction or for such other relief as may be appropriate, may be instituted by the Advocate General or with the leave of the Court, by two or more persons in the public interest. In these sections it was already contemplated and considered that some of the affected persons upon consent by the Advocate General may sue without joining the others as one of representative standing. Here the person suing need not have personal interest in the matter of the suit except as members of the public and in such case the person suing may not have a personal interest. They need
not have cause of action in themselves though no special damage has been caused to them.

21.26. Public nuisance has been defined in section 268 of Indian Penal Code as an act or illegal omission which causes common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity which must necessarily cause injury, obstruction or danger or annoyance to persons who may have occasion to use any public right. Where a person commits public nuisance -

a) he is liable to criminal prosecution under the Indian Penal Code and/or

b) he is liable to damages in a suit at the instance of a private individual who suffers special damage by reason of nuisance, that is damage beyond what is suffered by him in common with other persons affected by the nuisance. Where a number of persons have suffered special damage a representative suit under order 1 r. 8 can be brought and the consent of the Advocate General is not necessary. - Murugesa -Vs- Basunda. The above remedies are concurrent. The institution of a criminal prosecution does not bar a suit
under the Section nor does the institution of a suit under this section bar a criminal prosecution, though cases may occur where the Advocate General may, in the exercise of his discretion, refuse his consent under this section, where a criminal prosecution is pending in respect of the same act or omission.

21.27. Proceedings for a public nuisance in England were formerly commenced by an injunction filed by the Attorney General in the High Court of Chancery. They are now instituted by action in the High Court of Justice (RSC O-1, r-1). The action may be brought like the information by (a) the Attorney General acting ex-officio or (b) the Attorney General at the relation of a private individual or (c) by two or more persons having obtained the consent in writing of the Advocate General.

21.28. Judges have jurisdiction to part with the compliance of the procedures especially in constitutional matters at the High Courts and Supreme Court to do that substantial or real justice. According to Section 141 of the CPC, the procedure provided in this Code is not
applicable to any proceeding under Article 226 of the Constitution. All Courts have inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court (Sec-151) as the Code of Civil Procedure is not exhaustive. Durga Dihal Das -Vs- Anoraji. Jogendra Chandra Sen -Vs- Wazidunisa Khatoon (1907) 34 Cal 860, the Court has, therefore, in many cases, where the circumstances require it, acted upon the assumption of the possession of inherent power to act ex debito justitiae and to do that real and substantial justice for the administration of which alone it exists Hukum Chand -Vs- Kamalanand Shankar Hari -Vs- Dadodar Vigankaji. The law cannot make express provisions against all inconvenience, it is, therefore, the duty of the judge to apply them to all such cases, where a just application of them may be made. It is observed by the Supreme Court in Monohar Lal -Vs- Seth Hirali that "The inherent power has not been conferred on the Court it is a power inherent in the Court by virtue of its duty to do justice between the parties before it." Moreover the Supreme Court by virtue of Article 141 of the Constitution has powers to declare the law. Accordingly, in matters of treating letters or

476. 17 All 29, 31
477. (1906) 33, Cal 927, 931-32
478. (1946) Bom 463
479. (1962) SC 527
newspaper reports as writ petitions by way of epistolery jurisdiction or in accepting citizen or representative standing in matters of public importance, the Supreme Court or in that view the High Courts have made the doors wide open for the genuine cases of public interest litigations in India in order to bring the law in harmony with social changes - (Dhanwantey _Vs_ CITA^®®. 480.

21.29. The superiority and independence of the Supreme Court in enforcement of its orders in preference to other organs of the State are quite visible, inter-alia, in Article 142 and 144 of the Constitution, and all authorities are required to act in aid of the Supreme Court and in that view the Supreme Court has creeping jurisdiction to implement its orders through other organs of the State and to that end the executive and legislative functions of the State have major role to play to perform the objectives of a Welfare State by meeting the gaps by way of executive functions and legislative enactments.

21.30. The major task of reform is upon the judiciary to explore, reform and repeal the exploitative laws which

480. 1968 SC 685 (696)
erode livelihood for social reliefs by removing and/or liberalising the requirements for approach to justice that stand in the way as under in respect of public interest litigation:

a) requirement of Standing and justiciability, the rule of proper party etc.
b) formalities of the legal process,
c) uncertainties and anxieties about the facts, law, competency of lawyers, reaction of the judge and ultimate outcome therefrom,
d) Cost of litigation,
e) poverty and ignorance of common people,
f) geographical distance between reliver courts and the places for cause of action,
g) individualistic conception of civil procedure,
h) career judges - rigid conception about the separation of powers,
i) traditional reluctance to accept groups etc.

Considering the gravity of the above situation, section 91 of the C.P.C. may be adequately broadened and/or expanded with a corresponding setting up of liberalised rules for access to justice in respect of these litigations and the requirement of notice to all affected persons may be waived as the circumstances may demand in matters of
public significance.

21.31. The multidimensional facts of the problems, affecting human existence and their rights, coming from different aspects against the public interest in the form of environmental pollution, starvation deaths, child abuse, torture of women, decline in public morality, abuse of power, unlawful prevention from access to information and knowledge of the actual state of affairs in the administration of the State, compelled the people of India to take resort to Courts and in that respect the Supreme Court under Art. 32 and the State High Courts under Article 226 have made major contributions evolving certain principles and reforms through public interest litigations. Let us track those problems of humanity that seizes beyond measure and are slowly eating up the vitals with our humble efforts to their solutions.

a) Adoption of the American doctrine of state action in respect of private action in India affecting fundamental rights is necessary to bring within the fold of the benefits under Article 12 and 32 of the Constitution inasmuch as Article 15(2) of the Constitution already provides against private action affecting fundamental rights. This will provide steps against environmental
pollution through the hazardous activities of large enterprises (- M.C.Mehta -Vs- Union of India 481 ensuring respect for human rights and social conscience and reducing to a minimum the hazards to workmen and people living in the locality.

b) The power of the Supreme Court under Article 32 in the matter of awarding compensation has since been extended to all appropriate cases involving violation of fundamental rights as in 482, formerly, it was limited to cases of wrongful arrest or detention - Rudal Sah -Vs- State of Bihar 483 - the supreme Court awarded damages to Rudal Shah for illegal detention as also a politician was awarded compensation for illegal detention in Bhim Singh -Vs- State of J & K

c) The right to livelihood (Right to life) and the right to work should be effective fundamental right as to be enforceable by judicial action. But, in effect, after the decision in Olga Tenis -Vs- Bombay Municipal Corporation, by the Supreme Court, other Courts are found reluctant to provide any relief as such by issuing directions as in Matter No.57 Block Bastuhara Committee - and even in Vincent Panikulangara -Vs- Union of India

481. (1987) 1 SCC 395
482. (1985) 4 SCC 141
484. (1985) 3 SCC 545
(1987) 2 SCC 165, the Court refused to interfere with the drug policy case admitting the expansion of Art 21 for protection of public health in maintaining the Standards of Drugs by banning the injurious drugs recommended as such by the Drugs Consultative Committee and accordingly the Social purpose brought by the PIL Service Society under Art 32 of the Constitution got defeated. R.N. Misra and M.M. Dutta JJ held that the right to live with human dignity enshrined in Art 21 derived its life breadth from the Directive Principles contained in Article 39(c) and (f) and Articles 41 and 42. Mentionable are the miseries of the people in the District of Kalahandi and Koraput for starvation deaths, droughts, diseases and famine arising out of negligence and callousness of the administration of the Govt. of Orissa as pointed out in the writ petition in AIR 1989 SC 677 which highlighted the requirements of above views within the expansion of Art 21.

d) In a free country, the children should be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity. In Sheela Barse -Vs- Union of India486 Bhagwati CJ and

486. (1987) 1 SCC 76
R.N. MISRA J emphasised the significance of the dignity of youth and childhood in a civilised society. Voluntary organisations holding custody of the children should be treated as State within Art 12 and the mandatory provisions of Articles 21 and 24 and the relevancy of provisions under Article 15 (3) and 39 (f) of the Constitution are required to be considered by the Judges in public interest litigations. Unnecessary delay in adoption of children and illegal sale of babies must in all cases be prevented. Direction of the Courts to visit the Jails and upon Juvenile Courts and Ministry of Social Welfare and the Central Social Welfare Board for the minor children in Jails are required to be complied with.

e) The women are required to be protected against, inter alia, dowry, unequal pay, illegal detention and traffic in human beings etc. otherwise the holders of lives will be in utter peril the right to live. The Govt. of India has become very much conscious and the Judiciary has a major role to play against deep rooted evils prevailing in the demand for dowry which now amounts to cruelty entitling the wife to get a decree for dissolution of marriage - Sobha Rani -vs- M. Reau beside illegal detention of women, sex discrimination
and unequal pay. Towards betterment of the status of women, India is now a signatory to the Draft National Perspective Plan for Women 1986–2000 A.D. In Joint Women’s Programme Vs–State of Rajasthan488, the Supreme Court gave an interim order to the State of Rajasthan and the State of Haryana to proceed with investigation of unnatural deaths of Kanta and Prasani Debi and as a result special Dowry Cell was created having association with one or two leading women. Further illegal detention of women and the delay in producing them before the Court was seriously viewed by the Supreme Court in Milima Priyadarsini–V–State of Bihar.489. The question of paying equal wages to men and women workers and the International Labour Organisation’s view about ‘work of equal value’ in paying equal wages led to the enactment of Equal Remuneration Act, 1976. The Constitution of India in its Article 39(d) directed the State to ensure equal pay for both men and women, C.B.Mutuamma–V–Union of India490 or AIR India–V–Nagesh Neerza 491, and M/S. Mackinon Mackenzie and Co.,Ltd.–V–Andrey D’Costa492 are some of the cases highlighting the requirement of equal pay.

488. AIR 1987 SC 2060
489. AIR 1987 SC 2024
490. AIR 1979 SC 1868
491. AIR 1981 SC 1029
492. (1987) 2 SCC 469
in respect of men and women for equal work.

f) Cleaner public life and raising of values, standard and morals in public life are the sine qua non for our existence enlivening the values of our lives lest the whole nation will find bankruptcy in building up. In a public interest litigation between Shivajirao Nilangekar Patil -Vs- Mahesh Madhava Goswai\(^{493}\) the Supreme Court observed that "This court cannot be oblivious that there has been a steady decline of public standards or public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cryout, the courts should not and cannot remain mute and dumb." It was also further observed, if any question of public importance such as the conduct of examiners in a medical college or the misuse of power by man in authority and power, it was the duty of the court to the public that the truth and validity of the allegations made be inquired into and in such even a private litigation be regarded as public interest litigation. In this

\(^{493}\) (1987) 1 SCC 227
case, to please the Chief Minister of Maharashtra, tampering of marks in M.D. examination was made to pass the daughter of the said Chief Minister.

g) It is through public interest litigation, the essence of the rule of law can be maintained by not allowing the executives in power to act beyond their constitutional limits. It was noticed in D.C. Wadhwa - Vs - State of Bihar that the Government of Bihar promulgated 256 ordinances and kept them alive by repromulgation from time to time to serve political ends in flagrant and systematic violation of constitutional limitations as being fraud on the constitution of India.

21.32. The petition under Article 32 of the Constitution now finds new dimension of its results depending upon the reliefs required. The Supreme Court as under Art. 32 being the highest writ Court usually provides correction and prevention of illegal administrative and legislative actions. But now it has extended to granting compensation and determination of its quantum as it has done in Rudal Sah, Sebastion and Bhopal Gas Leak Case.

494. (1987) I 300 378
Deo J's award of interim compensation against the Union Carbide for the victims of Gas tragedy in Bhopal is particularly mentionable on this point. Further, it has also dealt with the measure of civil liability of an enterprise which is engaged in an hazardous or inherently dangerous industry by imposing upon it an absolute duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of activity which it has undertaken as in Hylands -Vs- Fletcher and Doneghe -Vs- Stevenson.

21.33 - Extension of Writ jurisdiction to all other Courts in terms of Article 32(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), "Can be made possible, if the Writ petitions in the public interest litigation matters mount in High Courts and Supreme Court interfering with all other matters. Of course, it will involve separate establishments and pressure on all other Courts. The constitutional power may thus be given by parliament empowering any other court to

495. (1866) L R 3 HL 330
496. (1932) AC 562
* of the Constitution of India
exercise powers under Article 32(2) which provides "The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of habeas Corpus, mandamus, prohibition, quo warrants and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part" Notwithstanding this power given for the enforcement of fundamental rights, any other courts may be given power for issuance of the aforesaid directions, orders or writs for any other purpose in terms of Article 226 of the Constitution. All these require amendment of the Constitution. The Circuit Bench, District Courts and other Special Courts at the District and Sub-division levels may, upon the above special or constitutional powers, if given, relieve the sufferings of the weaker sections of the society who are not in a position to bear the trouble and costs involved in coming and staying at metropolitan cities for relief at the State High Courts. In addition to ensure above relief, expedited justice should be brought for these poorer sections by constituting Lok Adalats, Family Courts, Circuit Sittings of Session courts at the District, Sub-Divisional towns and Block levels. Moreover, the Constitution and services of Naya Panchayats should be enlivened and linked with the services of the State Judiciary and

* Article 32(2) of the Constitution of India
necessary enactments be passed in every state to ensure proper justice at the grass root levels. Proper training of personnel connected with these levels for pleading the cases and delivery of judgements or orders should also be ensured for the purpose of covering the people's grievances of the total area of the land, such a change in the law of the land would be in keeping with the Directive principles which are indicative of the dreams of our founding fathers so that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Meanwhile, necessary steps for accelerating the growth of legal aid movement in terms of the Committee for Implementing Legal Aid Schemes (CILAS) should simultaneously be taken. First mass public education should be sponsored by the Union Law Ministry of India to bring awareness to promote legal literacy through education course, seminar workshop, exhibition on know your rights which should tempt many people in this country even among the educated mass to impress upon them what are their fundamental rights and how they are breached and enforceable in the eye of law before the courts. Not to speak of India even in the USA a public opinion research organisation conducted by the University of Connecticut it was found that half of people questioned
could correctly describe the Bill of Rights, the first set of 10 amendments enacted to the US Constitution guaranteeing freedoms of one sort or another. Secondly, District Legal Aid Camp should be held twice a week or so for carrying this mission of legal aid to the door steps of the weaker section of the community through rendering voluntary consultations, pre-litigation advice, selection of lawyer or conciliation where required. Thirdly, counselling centres should be opened for in house counselling in the office and also under Family Courts Act, 1984. This would ensure solution of the urgent problems confronting the affected persons avoiding tension and delay in the matter. Incidentally, it may be noted that the Family Courts have since been set up in different States in India under Family Courts Act, 1984 including that in West Bengal for the first time in October, 1991 at the Bankshall Court and thereafter in a phased manner the said courts will be constituted in the Districts of West Bengal within a span of 3 years. Fourthly, in determination of strategy for taking steps in every sort of disputes the committee should examine whether the matter be fit for pre-litigation advice or reference to Lok Adalat Schemes or conciliation. Lastly, failing all steps necessary advice should be given
towards demand for justice before the appropriate court of justice after identifying the problems of the community.

21.34. In India, only the Supreme Court other than State High Courts maintains a separate public interest litigation Cell for scrutiny of the applications received in public interest matters and this is done on the direction of the Chief Justice of India under direct supervision of a Registrar of the said Court and thereafter in fit cases the matters are referred to appropriate Courts for taking cognizance of the applications treating the same as Writ applications. Issuance of Show cause notices are made to the appropriate authorities for redressal of the grievance with a copy each to the applicants for conducting the cases. Where it is found that the applicants are unable to bear the cost or to represent the matters the same are forwarded to the towards demand for justice before the appropriate court of justice after identifying the problems of the community.
respective Legal Aid Committees to each such Courts for conducting the cases. Sometimes amicus curiae briefs are given to certain Counsels on appointment by the Courts. In America and other countries, there are public interest law firms duly constituted for conducting such cases under State grant and private patronage to fill the gaps arising out of non-representation of such cases by the unorganised and underprivileged classes. Whereas in India the Committee for implementing Legal Aid Scheme (CILAS) appointed in 1980 has now developed legal aid programme and set up legal aid and advice Boards throughout the Country. But they are now found not adequate to cope with pressing need for representation in PIL. Hence the Constitution of public interest law firms out of funding by the respective State authorities in collaboration with the State Legal Aid Committees is now required. This will gradually obviate the difficulties faced by the State Legal Aid Scheme of the respective States. The Advocate General, State Bar Council of each State may help in the process in constituting the said legal firms for public interest matters with the active participations by the noted voluntary organisations and leading public men of eminence in doing help for the people, who are poor, unrepresented,
oppressed and under privileged classes. The State shall secure that operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide legal aid by suitable registration or schemes or in other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In Kaiser Bahadur Thapa *vs* State of Sikkim (AIR 1985 Sikkim) the Court upheld the validity of the provision of exemption from liability to pay court fees in favour of persons whose annual income does not exceed Rs. 20,000/- only/ the Sikkim Court Fees (Exemption and Miscellaneous provisions) Act 1983. The Sikkim High Court said "Article 39A of the Constitution expressly contemplated the existence of a class of people who suffer from economic disabilities and has mandated the state of ensure that people belonging to that, class are not deprived of access to justice by reason such economic disability. With the growth of this public sector in representing public interest law suits before the Courts in each State, grievances of the people living under acute problems or their lives and living in distant corners of each State would be voiced so that the Peoples' Republic of ours would be able to
find a meaningful real expression as enshrined in the Constitution of India. Although in that objectivity of real approach to give finality to the wishes of the sacred Constitution, utmost care and caution should always be there to watch upon as an eternal vigil that no undue grievances, vested interests and political opportunists creep in taking advantage of the situation by the ruling classes as this will frustrate the sanctity and objectivity of the actions to be taken in this regard. In this connection, reference may be made to the enactment of Canadian Charter of Rights and Freedom as a mandate for new ways of thinking about law, for the groups representing the under-privileged, the handicapped, ethnic minorities, aboriginal Canadians, women and labour found their grievances to be voiced for relief.

21.35. In order to aid and assist the Hon'ble Courts with proper and approved economic, social and scientific data and information in different types of public interest litigation matters requiring special knowledge, expertise and technical help, special committees should be set up in public interest litigation firm to be initiated in each State under the State sponsorship.
Besides above, it will have manifold functions as in one way it will help (a) doing investigative works to present the actual state of affairs of the grievances before the Courts and (b) on the other hand it will monitor the progress of compliance with the Court's orders and directions on the correct statement of facts placed by (a) above. If these twin agencies are allowed to operate smoothly on the active help and cooperation of the administration, problems in the way of administering appropriate reliefs to the public interest litigation petitioners may be solved substantially. The Committees imparting special knowledge, expertise and technical help should constitute members who are experts, scientists, technocrats of approved eminence. Renowned Sociologists and bonafide and competent officers of the Investigation branch of the Home Department of the State Governments should be the functional heads of all the works of investigation and feedback operations.

21.36. The extra legal activities that are required to find out truth in exceptional circumstances could not be dispensed with in public interest litigation for these being not in adversarial nature but summary disposal of such litigations where possible should be done with urgent
notice to the respective department of the State or public sector. Urgent steps should always be taken for the poor and vulnerable section of the community who are always deprived of their social and economic entitlements otherwise the purpose for which such litigations are being entertained will be frustrated. In tune with this spirit, Article 38(1) provides "The State shall strive to promote the Welfare of the people by securing and protecting as effectively as it may a Social order in which justice Social economic and political shall inform all the institutions of the national life." In Ratlam Municipality vs- Vardhichand it was seen that the Court should make a positive and mandatory order directing the Municipality to remove the public nuisance within a given time irrespective of the financial resources of the Municipality.

21.37. The growing stress on public interest litigations in assuming importance in view of quick deterioration or environment and loss of ecological balances through pollution in air and water besides colossal disorders in the affairs of the administration causing economic,

- Article 38(1) of the Court of India
497. 1980 SC 1622
social and political exploitations in various forms affecting directly the public lives for which the Judiciary alone was round the saviours as being one of the organs of the State to be in operation for betterment of the people. Now for the Judiciary the above circumstances have called for new formulation for rules to regulate the practice and procedure in dealing with public interest litigation matters. The Supreme Court, as such, is required to make rules as it may find suitable under Article 145 of the Constitution of India which provides (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President make rules for regulating generally the practice and procedure of the Court including, inter-alia, rules as to proceedings in Court for the enforcement of any of the rights conferred in Part III................. giving due weightage to the spirit in the Directives of the Constitution to speed up disposal of such matters departing from adversarial systems by collecting evidence and scrutinising technical presentation through inspection and on the spot studies, where necessary. Thus there is room for new jurisprudential approach to make orders on new social dimensions. In this
connection, it will be appropriate to refer to the constitutional policymaking by the Supreme Court as value judgments oriented in protection of human rights in non-interpretative review in America right from the case in Brown Vs- Board of Education to the move recently in Roe Vs Wade in America. In Brown Vs- Board of education the Court held the equal protection clause of the Fourteenth Amendment and forbade State officials to take action designed to segregate public schools on the basis of race like decision in Boiling Vs Sharp holding interalia, that no person shall be deprived of life, liberty or property without due process of law of the Fifth Amendment. Similarly, the Court held in Roe Vs Wade the due process clause of he Fourteenth Amendment as being the clearest example of non-interpretation reasoning on the part of the Court. The overriding virtue of and justification for vesting the court with power of judicial review is to guard against Governmental infringements of individual liberties secured by the Constitution. Under Articles 137, the Supreme Court has been given the power to review its judgement. However, this is subject to any law passed by Parliament, the power of the Supreme Court in India, it can make rules under Article 145(1)(c) of the Constituting for the

498. 347 Us 483 (1954)
410 Us 43 (1973)
347 Vs 497 (1954)
enforcement of any of the rights conferred under Part III of the Constitution.

21.38. The existing practice on disposing of matters in public interest cases by the Hon'ble Courts exercising extra ordinary jurisdiction and inherent powers may appear to be uncommon in the absence of specified rules in disposing of such cases. Although it is noticed that by Clause 13 of the Letters Patent (1865) that High Court has been vested with extraordinary original jurisdiction which says "...... that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine as a Court of extraordinary original jurisdiction, any suit being or failing within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice the reasons for so doing be recorded on the proceedings of the High Court. It also appeared that the exercise of above jurisdiction in such cases depend on the individual judges and there was no guarantee in fact or law what and how the things would come out in effect. Accordingly,
an exhaustive Code, containing the rules procedural
and substantive, is necessary to cope with the different
situation arising ut of the above unadversarial
litigations. In the above approaches to procedural and
substantive laws, provisions should be made for the
manner, presentation and adaptation of the views of
the required new set of legal practitioners, social
activists, scientists and welfare workers. Incidentally,
views of the Supreme Court of India in M.C.Mehta -Vs-
Union of India⁴⁹⁹ may be appreciated which observed
"..... There is also one other matter to which we
should like to draw the attention of the Govt.of India.
We have noticed that in the past few years there is
an increasing trend in the number of cases based on
environmental pollution and ecological destruction coming
up before the Courts. Many such cases concerning the
material basis of livelihood of millions of poor
people are reaching this Court by way of public interest
litigations. In most of these cases there is need for
neutral scientific expertise as an essential input to
inform judicial law making. These cases require
expertise at a high level of scientific and technical
sophistication. We felt the need for such expertise

⁴⁹⁹, (1986) 2 SCC 176, 201-2
in this very case and we had to appoint several expert committees to inform the Court as to what measures were required to be adopted by the management of Shriram to safeguard against the hazard or possibility existed in the plant and which of them, though necessary were not installed. We had great difficulty in finding out independent experts who would be able to advise the Court on these issues. Since there is at present no independent and competent machinery to generate, gather and make available the necessary scientific and technical information, we had to make an effort on our own to identify experts who would provide reliable scientific and technical input necessary for the decision of the case and this was obviously difficult and by its very nature, unsatisfactory exercise. It is therefore absolutely essential that there should be an independent centre with professionally competent and public spirited experts to provide the needed scientific and technological input. We would in the circumstances urge upon the Govt. of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank for the Court and the Government
departments and generate new information according to particular requirements of the Court or the concerned Government department. We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up Environmental Courts on the regional basis with one professional judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for adjudication."

In the above view of things, it is quite pertinent to note that to deal with public interest litigation matters, the public interest Law must to be sponsored and funded by the state may go a long way in mitigating the sufferings of the petitioners by acting as a liaison unit between the Judiciary and other organs of the administration of the state so that all required services of the Courts may be suitably provided by the same. The Legal Services Authorities Act, 1987 has focussed the utility of this aspect of the State of affairs where it was commonly felt that representation of the poor and the depressed classes before the Judiciary
should be made possible though the model constitution of committees for Implementing Legal Aid Schemes where it has been envisaged that the Centre and the State should precipitate in building up a common strategy to fight against mass oppression, environment pollution and like other litigations affecting the public interest.

21.39. In the above process of entertaining public interest litigations by the State High Courts and the Supreme Court of India, there are problems experienced by the aforesaid Courts on the points of procedural difficulties in getting the letters admitted by the Courts. As 50 to 60 public interest letters are received daily by some High Courts and 23,772 such letters are received by the Supreme Court between Jan, 1987 and March, 1988, naturally there were problems in disposing of the said cases. Reports in this respect reveal that of the above letters, 110 were automatically posted as Writ petitions in the Supreme Court, 938 were referred to the Supreme Court Legal Aid Committee and 5857 to various State Legal Aid and Advice Boards for actions, and 4745 letters were referred directly to various Government departments for direct action and the remaining
10746 were either lodged or otherwise disposed of. These figures were provided by the PIL Cell, Supreme Court of India, New Delhi, April 15, 1988 - ker, Page 508. The American Journal of Comparative Law - Volume 37.

So, in the present system of disposing PIL matters, it appears that all such applications are first sent to the above Cell where it is so maintained for screening purposes, and thereafter to the Chief Justice for assignment in the ordinary way. Malicious applications or letters are discarded initially by the Cell before the matters are ready for disposal by the Chief Justice. Accordingly, for the discretionary role of the Cell, the concerned Chief Justice and the government departments, even 1% of the above letters is not being taken for ready relief. As a result, every year there has been accumulations of such applications in thousands in state High Courts and in the Supreme Court without having any relief as such. So, what I am on to say is that for relief of PIL matters, there should be a separate set of Judges for disposing of such matters and further there should be an independent code for determining modus operandi and ready disposal of such cases. As judges are mostly from the elite group and affluent sections of the Society, there should be

proper arrangement for training and schooling on the
felt necessities of time on economic and social condition
as now typically lying with the people of India. Now
the Chief Justice issues general guidelines to the Cells
which broadly categorize classes of complaints and sets
down procedure for their disposal.

21.40. The allegations that the Judges are usurping
powers of the administration and of the legislatures have
no real basis as it is the non-or mal exercise of adminis-
trative powers and non-implementation of required enact-
ments in their respective spheres that have caused so
much unrest and deprivation of constitutional rights
of people culminating in such applications before the
Courts for redress. In the prevailing circumstances, the
arms of the Courts are required to be more stretched and
expensive and the existing approved and genuine social
organisations and/or activists by being State sponsored
should be given powers for the enforcement of laws affecting
public interest and the said organisations should be
members of the public interest law firms helping the
Courts in deriving the actual state of affairs on the
allegations. Since the public interest matters commands
public confidence and credibility there is no point in arguing that the orders of the Courts in such matters often interferes with the administrative operations to the detriment of other priorities and programmes as the Courts being the keeper of fundamental rights and observer of directive principles cannot simply "shrug its shoulders and say priorities are a matter of policy and so it is a matter for the policy making authority". Similarly in the enforcement of laws or in making orders to fill the gaps in enactments, the Courts have substantial role to play in India being a Welfare State. The Courts also frequently order in conformity with the directive principles of the Constitution where such steps are found necessary in the public interest. As India's dominant groups constitute capitalists, rich professionals big farmers, and politicised bureaucrats, they often agitate as being champions of individual liberty against the social activists and organisations who take the matters of public deprivation to the Courts for relief. When Judges try to give relief towards Welfare of the community in PIL matters treating the allegations as being violations of fundamental rights without giving vent to the Dworkin and Rawl's approach to the express priority
of individual liberty it becomes subject to severe criticism at the hands of the above noted Capitalist sectors who used to domain the administratin and legislatures by polarising their forces. Since there is no strict concept as to the separation of powers through non-intervention in between the different organs of the State in the Constitution of India and as the power of judicial review by the Judiciary, as being one of the organ of the State, is left unharmed in the Constitution, there is ample scope for the Courts to set right the oblique intention of the other organs.

21.41. In view of the requirement of compliance of Court orders failing which contempt of Court's action should be initiated in all cases, no matter whether the same should affect the priority programme of the administration or that there is no adequate machinery for the enforcement of laws. Strict compliance of the above steps may gradually remove the hurdles that are in the way and in which events, people must once see that those days are no more where despite Court's orders bonded labours were not found free and Bombay pavement dwellers could not have their homes and in that view the independence of the judges is to be held in high esteem and the Judges should have no strings attached to any political groups, powerful mafias and influential capitalists.