CHAPTER - VII

ACHIEVING SOCIAL JUSTICE TO THE POOR THROUGH PUBLIC INTEREST LITIGATION

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CHAPTER VII

ACHIEVING SOCIAL JUSTICE TO THE POOR THROUGH PUBLIC INTEREST LITIGATION

A. INTRODUCTION

In this chapter of the study, the present researcher is trying to explain, Firstly, what is the concept of poverty? Secondly, what is meant by poverty syndrome? Thirdly, what was the position of the poor prior to the advent of Public Interest Litigation? Fourthly, what is the position of the poor in contemporary judicial system? Fifthly, How Public Interest Litigation is used as a strategy to achieve 'Social Justice' to the poor and downtrodden masses in India? And lastly, how Public Interest Litigation has helped the poor to vindicate his rights in the court of law?

B. WHAT IS POVERTY?

In this context, Lawrence Harworth has very aptly observed:

"One is poor not because he has no money, but because, possibly owing to lack of money, he lacks access to the social instrumentalities that make humanly significant action possible. In part, it is a simple matter
of not having the price of admission....But in larger part it is a matter of not having the character or competence (e.g., lack of verbal facility, lack of motivation, destructive orientation) that establishes one's capability of taking up an opportunity that is formally open."

Poverty is inequality. The real problem if the disparity between the low 'access' of poor to resources, and large control over resources of the elite. Poverty has been inherent in Indian social structure. Even in present India, the upper classes are enormously rich and the lower classes miserably poor. Workers who create the wealth, in fact receive the smallest share. Due to a natural tendency of the strong to oppress the weaker, workers have always been oppressed. The exploiting wealthier classes, having the 'means', squeeze more and more out of the poor, and the poor knows no way to get justice. Karl Marx's theory of 'surplus value' says that it is value created by the wage worker's labour over and above the value of his labour power, and appropriated by the capitalist without remuneration. Capitalists try to, constantly, expand production by utilising for this purpose the value created by workers. It cannot be denied that

2. M.I. Volcov, A Dictionary of Political Economy, (Progress, Moscow), at pp. 348-49.
toiling masses in India continue to be exploited despite so many welfare statutes on the book.

In Indian society, the rich have been dominating the poor, and the higher castes have dominated the lower castes. During the pre-British days, the economic structure and individual vocations were also divided on caste lines. Though, inequality is based on caste and difference of wealth, inequality in fact is based on the capability, actual and potential, of any individual class or caste to dominate over the other.

Therefore, inequality can be defined as a power relationship or relationship of domination by an individual group or class over the others. The bases or sources of domination may be many, like property structure, the organizational, the network of status and cultural values, some being more important than others. Thus, inequality may be understood as social relationship characterised by some form of domination.

Infact, disparity in wealth leads to disparity in rights and privileges.

Poverty is the greatest barrier to justice. Even though, Article 14 of Indian Constitution, guarantees 'equality before law', we are not socially and economically equal. It is true, all can not be absolutely equal - one may have better qualities,

better nature, better mind than the other - yet, human beings are entitled to be treated as if they are equal in all matters that are common to them. A deep rooted principle of human thought is that no one should be preferred to another without sufficient reason.

Poverty often blocks a civil litigant's path at every stage of the proceedings. A penniless suitor may lose his day in court because he has no ready money to pay the fees for his writ, for serving process, for entering suit, and for other similar official acts. Or even if he may get into the court, still be helpless because he cannot pay for a lawyer, or he may become helpless in the midst of the case because he lacks funds to bring his witnesses, or to pay to the stenographer.

In short, a poor man must, surmount four financial barriers: costs, fees, expense of legal services, and sundry miscellaneous expenses incident to the litigation. These barriers are not separate fences, to be pulled down one by one. They form a maze of obstacles throughout every law suit. Even if one takes the simple step of abolishing costs and fees for the poor man, it is not enough. There are many other contributing causes.

Though we are equal before law, we are not socially and economically equal. Yet, fact remains that human beings are

entitled to be treated as if they are equal with respect to all matters that are important to them, and matters really important to them are matters that are common to them.

Poverty is a great social and moral challenge. In the context of a poor country like India, poverty has to be carefully understood.

Since mass poverty cannot be eliminated within a short period, and is a question of access to the justice system, the present researcher is concentrating on the most vulnerable and numerous sections of Indian population for whom poverty is not merely a state of 'stagnation', but is a state of 'destitution' and 'regression'.

C. POVERTY SYNDROME

Human societies, throughout the world, have experienced oppression, repression, exploitation, and inequalities in varying forms and degrees due to many reasons. The resultant is - division of man into 'haves' and 'have nots', powerful and powerless, the privileged and the under-privileged.

In India, there has been inequality, exploitation and injustices, for centuries. Backward classes, particularly, the Harijans and Girijans, which are the notified communities, the

landless labourers, and such other groups, have not only suffered economic exploitation but they have undergone, and they are still being subjected to social indignities of all kinds. The caste system has divided men for their initial chances in life. The Jajmani system tied the households of artisans, village servants, and the agricultural labourers to the households of the dominant castes. The system implied bondage for generations. Same way, notified communities lived in a stigmatized and restrictive existence, generation after generation. There are numerous examples of such exploitative relations in Indian society.

After independence, there came an urge to bring about change in the status of down-trodden and backward communities. Democracy took upon itself the task of attacking five giant evils - want, disease, ignorance, squalor, and idleness - which basically thrive on the fundamental evil of poverty.

Therefore, under the concept of 'welfare state' the primary function of the state is to attack the problem of poverty. It is realised that this problem, which concerns large number of it's citizens, cannot be successfully met unless a wise use of weapon of law is made.

Therefore, the new Constitution was heavily inclined in favour of the oppressed groups, and set the tone for a new social policy. There was provision for legislation and programmes to relieve them of bondage, poverty and exploitation.

But the issue is - Have our hopes been realized after more than forty three years of massive planned efforts? It is argued
that inspired of four decades of national planning no visible impact can be scene on poverty scene. Poverty continues to be mass phenomenon.

Infact, there are in-built structures and patterns in the ways of life of the poor, which apart from being self-perpetuating, also militate against any effort to movement from poverty conditions. Such internal deficiencies provide ground for exploitation and continuation of oppressed society. Poverty is a complex phenomenon. It owes it's origin and perpetuation to varied sources - both internal and external - to the poverty group. Poverty is not simply a product of economic deprivation alone. But it is the result of a set of social traits that inhibit the poor person's participation in the efforts for the improvement of their lot.

The evil of poverty is a 'syndrome' of particularly poignant harships and particularly denials of opportunity. It is not the grosser, materialistic deprivations of food and shelter, but rather "severe deprivations with respect to capability to act in humanly decent ways."

The poor often set their insights upon mere survival, and set upon their individual progress and then they cannot be expected to have the inclination to aim at intentional, concerted and cooperative effort to remake the society. Poor resist changes

6. Supra note 1, at p. 38.
that appear to threaten their basic securities. They resist proposed changes that they do not understand. They resist being forced to change. But if they are given a more favourable social climate and trust, and if they are freed to think freely, they will participate in changes which promise to meet their communal needs. Because without their participation, no lasting solution to the problem of poverty can be found.

But the task of ensuring participation of the poor in social change is not an easy one. It calls for realisation of their needs and knowledge of the nature of their adversaries. It calls for a strategy which seeks to change their defective sub-culture which emphasises - 'fate, fortune and luck' - and bring about the consciousness, a critical consciousness.

What is required, thus, is a strategy which would also demonstrate to the poor, the existence of possibilities in their lives and link them with a system which might serve their interests. In other words, the poverty-stricken people are required to be moved from their position of powerlessness and despair.

In accomplishing this enormous task, the poor need support and leadership of the champion of their cause, to begin with. They need the advocacy of 'public spirited actionists', who can argue out their cause against insensitive structure, who can operate as 'community activist' or 'class activist' seeking

support for the cause, and influence the decision-making to benefit the poor.

Today, advocacy of the cause of the poor and the victimised has become matter of great interest in legal profession. Lawyers, as well as, judges have realised the fact that the protection of law has so far been available to a privileged few, who have taken full advantage of the legal institutions in promoting self-interests. The concern for the less privileged has been, till now, more symbolic than reality. Even though of India is heavily inclined in favour of weak and exploited, very little has been done by the legal institutions of the country to protect the rights of the common man, which are being flouted every now and then. Although, the traditional legal aid movement and the programmes of legal literacy had been in existence for quite some time for the problems of injustices being perpetrated on the illiterate, ignorant and helpless masses, they proved too small to the task. Thus, greater imagination and a stronger will power were needed to make the law courts as the courts for the struggling masses.

Here, it is to be pointed out, that the cause for concern is to be found, not in some repugnant discrimination which may accompany a deprivation, but in the severe deprivation itself. And this is true even though such deprivations may take the form of, or be known through the observation of, particular kinds of 'extreme inequalities'.

Equality means that 'equal opportunities' are open to all.
But equal opportunities does not necessarily mean equal benefits, as all of us cannot be treated in the same manner unless all of us are equal in upbringing and education which is unthinkable. Children who come from poor families, sometimes even hungry, to school, cannot profit by education in the same manner as those who are coming from rich families. Although natural differences cannot be prevented, but their injurious effects on society may be minimised by welfare laws. Thus, weaker sections should be given more chance.

Equality needs no justification for belief in equality, namely, one man should not be preferred to another without sufficient reason is a deep rooted principle of human thought. The assertion that all persons are equal in law implied that in some fundamental respects, which are crucial to the very existence of the person as dignified individual, regardless of obvious differences between them, as better qualities, better nature, better mind than others, get the same treatment in society.

Thus, an anti-poverty strategy focusing exclusively on severe deprivations would be construed as an attack on symptoms rather than on disease itself. The role of courts and other rights enforcing agencies in an anti-poverty war would be restricted to the treatment of symptoms. If treatment at issue is the setting of conditions under which a person will be granted access to a good, then 'equality' would normally reside in access to goods at the same market price which everyone else must pay,
while 'discrimination' would consist of price discrimination.

**D. WAY OUT**

Then, what is the way out?

The cure lies in setting right the conditions of 'access' to justice. It is realised that the rigours of present day system may be considerably mitigated by devising ways and means for 'access to justice'. Albeit, it may not be possible to bring about a radical transformation of the whole system, something may be done, as far as practicable, to remedy the evils from which our judicial system suffers. In order to make the right to 'access to justice' a reality, the judiciary, the legislature, and the executive have to join hands.

**E. ACCESS TO JUSTICE**

All human beings are not equal. Human society is full of inequalities. There are many reasons contributing to these inequalities. There may be differences of physical and mental capacities; of ability; of aptitude; of efficiency; of skill; and talent. The society is constituted of rich and poor, master and servants, employers and employees, landlords and tenants, landowners and landless labour, manufacturers and consumers, Brahmans and Khashatriya, Vaishya and Sudras, privileged and underprivileged, physically strong and weak. The inequalities may be
natural or it may be unnatural. The natural inequalities are due to natural differences among men. They are established by nature and consist of differences among men. They are established by nature and consist in difference of age, health, bodily strength, and the qualities of mind or of the soul. Whereas, the unnatural inequalities depend on the convention and is established by the consent of men. It consists of different privileges which some men enjoy to the prejudice of others, such as that of being more rich, more honoured, more powerful, or even in a position to exact obedience.

The economic and social inequalities are the greatest impediments in the enjoyment of human rights. Though there are rights, persons in socially and economically disadvantaged positions are not able to enjoy them. For poor, human rights are just the teasing illusions. Despite the Constitutional protections, the poor, the women, and the children are being exploited. Albeit, there are voluminous commentaries speaking for the rights of individuals and their enforceability in the courts of law, only the golden key can unlock the door of justice. Accordingly, different strategies have to be developed to help the poor, the unequal to get the benefits of Constitutional rights available under the law of the land.

In this context, it is appropriate to quote Justice Krishna Iyer, who said:

"social engineering, which is 'law in action' - must

8. Supra note 7.
adopt new strategies to liquidate encrusted group injustices, or surrender society to traumatic tensions. Equilibrium, in human terms, emerges from the release of the handicapped and the primitive from persistent social disadvantage, by determined creative and canny legal maneuvers of the state, not by hortative declara-
tions of arid equality."

The present state of affairs may be summed in the words of Krishna Iyer as:

"Bonded labour, notwithstanding rhetoric to the contrary, flourishes in the land, even slavery in substance, prevails, if we have eyes to see. Women are subject to gender injustice in hundred ways. Children suffer juvenile injustice, medical justice to the masses is insufficient. Environmental justice to the poor is unknown. Economic justice to the tribes is but printed proclamation. Elimination of disparity, by effective enforcement of egalitarian laws is none's concern."

F. EQUALITY IN ACCESS TO JUSTICE

It must be possible for the poor to invoke the protection of law through proper proceedings in the court of law for any invasion of his rights by whomsoever attempted, otherwise freedom and equality vanish into nothingness. There cannot be political, social and economic equality, and there cannot be democracy in the real sense unless substantive law gives reality to 'equality' by fair and equitable rules.

Under the Constitution of India, preamble speaks of justice, social and political, and equality of status and opportunity. Article 14 provides that state shall not deny to any person 'equality before the law' and 'equal protection of the laws'. Thus equality in the administration of justice forms the basis of Indian Constitution. Such is the equality as the basis of modern system of jurisprudence and administration of justice, that all the parties to the proceedings in which justice is sought, must have equal opportunity of 'access' to justice and of presenting their cases to the court.

Indian Constitution aims at equality of status and opportunity for all citizens, including those who are socially, economically and educationally backward. And to remove the inequality of those who unequal in wealth, education or social environment, an idea of compensatory discrimination has been

developed by the courts from the Constitutional provisions.

Ex C.J. P.N. Bhagwati remarked in *Peoples' Union for Democratic Rights v Union of India*, that if protection of law is available to only a fortunate few, it will be violative of rule of law. The poor too have civil and political rights, and the rule of law is meant for them also.

Indian Constitution shows deep interest in the poor and weak, and is anxious to remove the inherited imbalances and injustices, and to ensure justice to the wide humanity - indigent and proletariat. Directive principles embody a commitment which was imposed by the constitution makers on the state to bring about economic and social regeneration to the teeming millions who are steeped in poverty, ignorance and social backwardness. They incorporate a pledge to the coming generations of what the state would strive to usher in, to fulfil the commitment made by the fathers of the Constitution to the masses of India.

The rights guaranteed are of no use if any individual has no means to enforce them. Rule of law envisages that all men are equal before law, all have equal rights. But unfortunately, all cannot enjoy the rights equally. The enforcement of the rights

has to be through the courts and judicial procedure is very complex, costly, and dilatory, thus putting the poor person at a loss. The poverty exhausts the patience, and ultimately delay helps the rich and defeats the poor.

G. THE IMPORTANCE OF EFFECTIVE ACCESS TO JUSTICE

The right of effective access to justice has emerged with the 'new social rights'. Indeed, it is of paramount importance for the enjoyment of traditional as well as new social rights, to have mechanism for their effective protection. Such effective protection is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can be, thus, seen as most basic requirement - the most basic 'human right' - of a system of justice which purports to guarantee legal rights.

H. SYSTEM OF JUSTICE - UNJUST IN PRACTICE

Whatever may be the law in books, law in practice, often results in great injustice to the socially and economically disadvantaged sections of society. Indian legal system, based on Anglo-saxon jurisprudence, is tilted in favour of the rich class. It was made for a laissez faire economy of olden times, and is unsuitable for today's welfare state. In nineteenth century, i.e., during laissez faire era, the state had only three-fold
functions, viz., defending the borders of the country, maintaining law and order, and administration of justice and to collect taxes for all these functions. The State had not to interfere into the affairs of it's subjects. The access to court for vindication of legal rights of an aggrieved person meant person's formal right to litigate or defend a claim. The incapacity of the aggrieved person to make full use of law and it's institutions was not the concern of the state. Justice could be bought by those who could afford it's cost, like any other commodity.

In the late eighteenth and nineteenth centuries, the procedure for civil litigation reflected the 'individualistic' philosophy of rights then prevalent. A 'right of access' meant the aggrieved individual's formal right to institute or defend a claim. 'Access' might be natural rights, but like other natural rights, it did not require state action for it's protection. The rights existed prior to the state. It was enough that the state did not allow the infringement of rights by others. The state remained passive with respect to the ability of a party to enforce his legal rights in practice. The law was mainly concerned with property.

But in twentieth century there is progressive evolution of laissez faire state into a welfare state. The modern welfare state has recognized that equal enjoyment of social rights presupposes affirmative state action.

Such passive role of the state could not survive in
twentieth century popular democracy. Due to wide spread of literacy, popular education, improved communications and universal suffrage, the olden concepts have become obsolete. Now social welfare programmes alleviate individual distress, allowing all citizens, whatever be their financial position to enforce their private legal rights, to defend their personal liberty, status and property.

Accordingly, law and it's machinery is increasingly being used as a device of organised social action for the purpose of bringing about socio-economic changes. The result is that the human actions, relationships and conflicts are assuming a 'collective' character, rather than remaining merely 'individualistic', as was the case in olden times. Now such human actions refer to groups, categories, and classes of people, rather than to one or a few individuals alone.

In modern societies, there has been forceful emergence of a new general, collective, 'public' needs and interests. Such 'public' needs and interests are an interesting outgrowth of the most basic characteristic of our twentieth century civilization, i.e., 'massification'. Now even basic rights and duties are not exclusively individual rights and duties, but rather they are collective, 'social, and 'diffuse' rights and duties of associations, communities and classes. In today's setting, social rights are necessary to make these individual rights effective and really accessible. And many of these rights are: freedom from indigence, exploitation, ignorance and discrimination; right
financial, commercial, corporate and governmental oppression, repression, exploitation and frauds; right to free legal aid; and right to access to justice.

In collective interests, either none has the right to remedy, or the share of interest is too small to induce the individual to enforce the right. For instance, a public authority orders for deforestation of a particular area which threatens serious and irreversible harm to the natural environment affecting all the individuals living in the area. But for an individual person, a law suit against deforestation will cost more than what he aspires to gain. Thus, it would be unjust, unreasonable, if right to 'access to justice' is not afforded by the judiciary to the new societal needs and interests that are quickly becoming vital to the very survival of human activities.

Thus, in twentieth century, welfare state is having maximum interference into the affairs of its subjects, and there does not exist absolute freedom of contract. For instance, as per the decision in ASIAD case, the acceptance of wages less than the 15. Cappelletti, "Vindicating the Public Interest", in, Cappelletti & Garth, ed., Access to Justice - Emerging Issues and Perspectives, (Milan: Sijthoff and Noorthoff, 1979), vol. III, at pp. 517-519. Mauro Cappelletti says, "...Modern Societies are characterized by mass production, mass commerce and consumption, mass urbanization and mass labour conflicts, all of which require regulation."
fixed minimum amounts to 'forced labour'. And so even if the
labour is ready to render its services for the wages less than
those fixed by the state, the employer cannot employ any labour
for wages less than the minimum fixed by the state under the
Minimum Wages Act. Thus, in modern welfare state, the legislature
has created many social rights in favour of the individuals.

In practice, however, in past few centuries, the judicial
system has developed 'barriers' against the enforcement of the
rights of the poor and disadvantaged sections of Indian society.
High priced lawyers, complex adversary proceedings, relatively
passive judges, often stand in the way of enforcing the rights of
indigents, consumers, tenants, labour, and the like. Justice
Krishna Iyer has even suggested for debunking the adversary
system as it is an abettor of injustice and is untruth in India's
uneven socio-economic terrain.

In theory, Indian Constitution guarantees perfect equality.
Freedom and equality of justice are the twin basic conceptions
which run through the entire justice system. The preamble to the
Constitution of India speaks of justice, social and political,
and equality of status and opportunity. Article 14 provides that
state shall not deny to any person equality before law and equal
protection of laws. Equality in the administration of justice,
thus, forms the basis of Indian Constitution. Infact, such is the
basis of modern system of jurisprudence and administration of

justice that all the parties to the proceedings in which justice is sought must have equal opportunity of access to court, and of presenting their cases to the court.

But there cannot be political, social and economic equality, there cannot be democracy in the real sense unless the substantive law gives reality to equality by fair and equitable rules. "It must be possible for the humblest to invoke the protection of law, through proper proceedings in the court, for invasion of his rights by whomsoever attempted, or freedom and equality vanish into nothingness."

In practice, unless one can afford expansive and time consuming litigation, one must constantly forgo one's undoubtedly guaranteed rights, to which, in form, the statute gives full security.

I. INJUSTICES OF POVERTY

Due to poverty, an indigent suffers many injustices. List is long but the present researcher is attempting to point out only a few instances, where a poor man suffers injustice for no other reason but only due to his weak economic conditions. Scales of justice are heavily weighted in favour of the rich person who can afford best lawyers and advice, whereas the person of average income may be excluded from realisation of his rights.

17. R.H. Smith, Justice and the Poor, at p. 9.
Firstly, 'sentencing', i.e., imprisonment of the an indigent for non-payment of fines, is discriminatory because here poor has to suffer merely for non-payment of fine, that is for his poverty. For example, a statute imposes a fine as punishment for a specific offense, and provides that failure to pay the same should automatically result in imprisonment. Now, a poor man, not in a position to pay the find, is consequently imprisoned, while a rich man with means can purchase his immediate freedom. Thus, 'sentencing' has inherent social inequities. One can argue that in this case, the sentence is not imposed upon the poor man because of his indigence, but because he has committed a crime. The answer to this argument is that the poor man is sent to imprisonment only because he is unable to pay the fine. Albeit, in principle, law is not discriminatory, but in actual practice sentencing results in hardship to poor only. In such a case, only a rich person with enough money can pay the fine to avoid the imprisonment and indigent alone is exposed to the risk of imprisonment. And if the law is discriminatory in its operation, it is violative of guarantee of equal treatment.

The second glaring example of law being discriminatory in practice is law of 'bail'. Poverty has a very severe impact upon the indigent defendant of bail. Hussainara Khatoon case is a pitiable example of undertrials languishing in jails because of their poverty. A poor man when accused of an offense is brought  

before the magistrate who has wide discretion in fixing the amount of bail considering the seriousness of the offence. And when accused, because of his poverty, is not able to arrange the required sum, he spends inconsiderably long period in the prison awaiting trial. In case he is finally acquitted, found innocent, then is he not punished for his only crime of being a poor. On the other hand, a rich man accused of the same or even more heinous crime, having adequate funds to meet the bail bond, will spend the time taken in trial, comfortably at home and will prepare his defense in a better way. His life will not be seriously disturbed, and his chances at the trial will also improve as he can get better lawyer as compared to poor one, who being in detention cannot prepare his defense properly. Thus, a poor man detained for not furnished security is an example of justice denied. it is an example of a man imprisoned for no reason other than his poverty.

Thirdly, it is usually the 'petty criminals' who come from poor and unprivileged class and are usually compelled by starvation or other wants to commit crimes like theft, robbery, 'thuggi', picking-pockets, etc., who suffer in the hands of police. The police resorts to third degree methods to extract confessions or elicit evidence. At times, the petty criminals are even tortured to death or diability of important human organs. The most shocking instance of 'police torture' is Bhagalpur Blindings. Police torture is never against big criminals who commit crimes not for their bread and butter, but they commit
crimes to satisfy their lust for women and wealth. And if there is hue and cry in Press, big hardened criminals are detained temporarily with their consent, and are released lateron. If anytime there is a drive against crime, it drives mostly against poor, unemployed slum youth, who, at one point or another, make their living by committing 'petty' crimes. In jails, such petty criminals are tortured, whereas big criminals are given all the facilities. The facilities that were given to Charles Sobhraj in Tihar jail are not hidden from the public anymore. Instead of relieving poverty and combating crimes by generating employment, the state has authorised a routing system of torture to be carried out against petty criminals.

Fourthly, the attitude of the courts and the bar is also discriminatory. The general tendency of the bar is to treat the arrested indigent as guilty. Even if he is innocent, the lawyer engaged by the indigent will convince him to plead guilty. In adversary system of law, generally, the defense and the prosecution struggle to bring out the truth, but in reality there is not opposition because there is not class conflict in the class interest of the judge, defense, and the prosecution.

The defense lawyer defends to prove the innocence of his client when the client is wealthy and influential. But defense lawyer engaged by a poor, whether reimbursed by client himself or by the state or by private agency, is more interested in seeing that court functions smoothly - meaning thereby that poor should plead 'guilty'.

It is humbly submitted that so long as the social conditions which are productive of poverty, continue to exist, no reform in criminal justice system will eliminate the inequality of 'access to justice'. The poor will continue to be arrested more often; convicted more frequently; sentenced more harshly; and rehabilitated less successfully than rich of the society.

J. SOCIAL JUSTICE TO THE POOR AND PUBLIC INTEREST LITIGATION

Social justice has a special significance in the context of Indian society. The social inequalities present a serious problem to democracy in India. This vice of social inequality assumes a particularly reprehensible form in relation to the backward class and communities.

Anglo-saxon jurisprudence cannot be adopted in Indian milieu as Anglo-saxon law is transactional, highly individualists, concerned with an atomistic justice, incapable of responding to the claims and demands of collectivity, and is resistant to change. Such law has developed and evolved in an essentially individualist society to deal with situations
involving the private right/duty pattern. It cannot meet the challenge raised by the new concern for the social and diffused rights and collective claims of the under-privileged and vulnerable sections of Indian society.

The concept of social justice takes within it's sweep the objective of removing all inequalities, and affording equal opportunities to all citizens, in all affairs. Thus, the concept of social justice is a revolutionary one which gives meaning and significance to the democratic way of life and makes the rule of law dynamic.

The rigours of present day system may, however, be considerably mitigated by devising 'ways and means', as far as practicable, for equality in access to justice system. 'Innovations' are required to make the law a dynamic agency for social justice, rather than remaining an upholder of status quo. Albeit, a radical transformation of the whole system is not possible, something can definitely be done to remedy the evils from which our justice system suffers. And it may be done through 'alternative strategies'; or administrative or legislative measures; or judicial activism of the judges.

Public Interest Litigation is an 'alternative strategy' found by the apex court to achieve equal access to judicial system for all, rich and poor. The concept of Public Interest Litigation is not new but it's use in India, particularly to protect the interests of the weak, represents a new focus.

In India, there are various enactments passed for the
welfare of the poor, but they remain only on paper - unimplemented and unknown to the poor. In post-emergency era, there emerged several voluntary groups, led by and consisting of middle class educated persons and lawyer dedicated to the cause of the poor, proposing to make use of the law in the interest of the poor, downtrodden in Indian society. This middle class base is name Public Interest Litigation. The term Public Interest Litigation is imported in India from the United States of America. It carries with it the cultural trappings of it's origin in the use of phrases like 'weaker sections' or 'vulnerable sections'.

By liberalising the doctrine of locus standi and developing Public Interest Litigation, the judiciary has taken upon itself the task of dismantling the 'barriers of poverty' that exist between poor man and 'justice system'. Silent revolution is surely in the making. The courts are allowing third party to intervene to vindicate the socio-economic rights of the weaker sections in the society. The higher judiciary is treating even the letters written to judges or the press complaining of the injustices to the socially and economically deprived classes

21. Mr. Girish Patel, Ex Member of Gujarat State Law Commission; Ex Principal, New Law College; President of 'Lok Adhikar Sangh' in Ahmedabad; presently practising as an advocate in High Court of Gujarat, Ahmedabad. The views of social activist, Mr. Girish Patel, are given to the present researcher during the 'interview' taken on March, 24, 1991.
as writ petitions. By amplifying the scope of Article 21 of Indian Constitution, judiciary has declared new rights which were never heard of before, as right to livelihood, right to human dignity, right to basic needs, right to free legal aid. The court has even granted money compensation to those who lost their fundamental liberties because of governmental lawlessness.

Of late, a large number of enlightened lawyers, students, voluntary social organizations and groups, and missionary institutions have become conscious towards the problems of poverty-stricken, lowly and the lost, poor and indigent people. Their contribution has primarily been in the shape of rendering advice, initiating Public Interest Litigation, class actions and suggesting reforms.

The development of Public Interest Litigation is one of the greatest service done by the Supreme Court of India for the poor citizenry of the country. Public Interest Litigation is undertaken for the purpose of redressing any public injury, enforcing any public duty, protecting social, collective 'diffuse' interests, or for vindicating public interest. Judges case, ASIAD case and Bandhua Mukti Morcha case, are the three cases that gave vigour to the concept of Public Interest Litigation in India.

Thus, as it is discussed above, on paper, the administration of justice system is based on the cardinal principle of equal justice for all, but in practice, legal system is discriminatory between rich and poor. Albeit, 'equality before law' in Article 14 is a fundamental principle of Indian legal system, but till recently, a poor man, even if with a valid claim to a particular right, could not enforce the same if he lacked money. Only the rich and the affluent could open the doors of justice with golden key. There was equal law for all, but not equal justice for all. Only the privileged few could approach the courts for protecting their vested interests.

But a change in the judicial attitude is clearly discernible in Golaknath, Bank Nationalization, and Kesavananda Bharati cases wherein the court interpreted the law in such a manner that the government's schemes to help the poor through land reforms and nationalization of Banks was set at naught.

And now with the introduction of the concept of Public Interest Litigation, the Supreme Court of India is attempting to bridge the gap between the 'haves' and 'have nots'—so far as delivery of justice is concerned.

There are numerous examples wherein the citizen suffer public injuries which do not affect the specific individuals or

determinate class of individuals, but affect the whole public. For instance, emission of noxious gases. Here, if people inhale it with the air, the injury is to a large number of people. Likewise discharge of waste in a lake or river will harm all those who enjoy its clean water.

Thus, where public injury is caused to an indeterminate class of persons or say an injury is to the general public, then it does not remain an affair between two parties as herein there is no specific legal injury caused to an individual or to a determinate class of persons. Therefore, any individual having sufficient interest, and acting bonafide, can move the court for the redressal of a public injury or enforcement of public rights.

In India, millions of people due to their poverty conditions, illiteracy, social and economic backwardness are denied access to the courts of law for seeking justice. Public Interest Litigation promises them relief without cumbersome formality and heavy procedure. With the result, new perspectives are opening before the judges, lawyers, and the state law agencies in the task of national reconstruction and developmental activities, and also law is not being utilised for the social and economic development. In pursuance of Directive Principles of State Policy, law is creating new social and economic rights including freedom from indigence, ignorance, and discrimination, as well as the right to healthy environment, right to social security, and right to protection from financial, commercial, corporate or governmental oppression. All these rights are
Public Interest Litigation is a strategic arm of legal aid movement, and is intended to bring justice within the reach of poor masses, who constitute low visibility are of humanity. There is injustice meted out in the society and worst affected is always the poor and the downtrodden, who have this pessimistic feeling that only wealth can buy them justice. Injustices may be - inherited or acquired, colonial, feudal, industrial, political, bureaucratic or economic. And to help the poor masses to fight out injustices for the redressal of wrongs and assertion of their rights, what is required is Public Interest Litigation, class actions and also representative proceedings.

Public Interest Litigation is not merely a jurisprudential concept but it is a challenge and an opportunity to the government and the officers to make the basic human rights meaningful to the deprived and vulnerable sections of the society, and to assure them social and economic justice which is the signature tune of our Constitution. Public Interest Litigation provides an opportunity to the government and it’s officers to examine whether the poor and the downtrodden are

28. Supra note 23, at p.1476.
29. Supra note 25, at p. 811.
getting their social and economic due. Public Interest Litigation demands objectively, forensic skill, procedural gamesmanship and socio-legal perception.

i. POSITION IN UNITED STATES

In United States, a citizen has a right to expect from the state the effectiveness, the access, the responsiveness, and the accountability. Out of these, right to access to political, governmental and judicial institutions is most important. Access to justice is desirable not only for it's value for democracy but because access insures the vitality of the institutions. And the two most important forms of access are adequate information, and means of participating. In other words, there should be right to know and the right to have one's way for all. Thus, Public Interest Law intends to re-establish this link between citizen and social, political and governmental institutions.

In United States, the Public Interest Law movement involved the innovative uses of law, lawyers and courts to secure civic participation in governmental decision-making process. The ferment of 1960s, i.e., 'Power to People' sloganism, led many lawyers to reformulate their professional roles in order to attack the problems of war, inadequate delivery of health service, environmental and water pollution, drug-addiction,

adulterated food and family instabilities.

In United States, the Public Interest Litigation efflorescence owes much to substantial resource investment from the government and private foundations. There, Public Interest Litigation work is espoused by specialized Public Interest Law Firms. Given the nature of state and federal politics, Public Interest Litigation marched for public advocacy outside courts through well-established mechanisms like lobbying, negotiations, and mobilisation of public opinion.

In *Griffin v Illinois*, a new direction was set in judicial thinking that poverty shall not stand in the way of securing justice to the poor. In this case, the facts were that Griffin was tried and convicted of armed robbery in the criminal court of Cook County, Illinois. He was sentenced for too long imprisonment. In order to file an appeal, he applied for a free stenographic transcript of his trial as he was very poor to purchase one. Now appeal under law of Illinois is allowed as a matter of right, and to exercise this right, Griffin needed the transcript of the trial. But he had no money to buy the stenographic transcript to enable him to file an appeal. Thus, in given circumstances of the case, the appeal was barred by reason of 'poverty'. Griffin's petition for writ of error was rejected by


the Supreme Court of Illinois. On application, the United States Supreme Court granted writ of certiorari vacating the judgement of the Illinois Supreme Court, and remanded the case to accord Griffin some adequate means of appeal by giving him a free transcript or otherwise.

The Court observed that in criminal cases, during the trial, a state can no more discriminate on account of poverty than on account of religion, race or colour. The court held that ability to pay cost bore no rational relationship to defendant’s guilt or innocence. There can be no equal justice where the kind of trial a man gets depends on the money he has. On behalf of majority, Justice Black observed that the Constitutional guarantees of 'due process' and 'equal protection', both emphasized that all charged with crime must, as far as the law is concerned, stand on an equality before the bar of justice in every American court. He said further that no state of Federal Government could constitutionally provide that defendant who are unable to pay court fee in advance should be denied the right to plead 'not guilty' or to defend themselves in the courts. Justice Frankfurter, concurring with majority, observed that a state need not equalise economic conditions. But when a state has a general policy of allowing criminal appeals, then it cannot make 'lack of means' an effective bar to the exercise of this opportunity.

Thus, Griffin promised to stand as a milestone in the treatment of the poor by the American Supreme Court. It brought new vigour to American democracy. Albeit, it was a simple case of
a poor man's need of a transcript for filing an appeal before the Court of law, but it's reasoning is broad enough to apply to many other injustices that arise in American courts by reason of poverty of a litigant.

In other words, Griffin case lays down a command issued by the highest judiciary in the United States - on the basis of 'due process' and 'equal protection' - that state shall march, as far as possible, towards elimination of the consequences of poverty in constitutionally prescribed field of criminal procedure. After Griffin case, a number of cases followed, viz., Burns v Ohio, Roberts v La Valley, William v Oklahome City, Long v District Court of IOWA, Draper v Washington, Lane v Brown, Smith v Bennet, Douglas v California.


All these case followed the same line - that if access to court of law for vindication of legal rights is barred by reason of difference in financial situation of the defendant, then it will be repugnant to the Constitution.

In Harper v Virginia, the residents of Virginia instituted suits in the United States District Court for Eastern Virginia challenging the provisions of Virginia Constitution which required the payment of poll tax as a voting qualification. District court, however, dismissed the suit. On appeal, the United States Supreme Court, reversing the finding of the District court, invalidated the state poll tax which was to be paid prior to voting as a precondition of voting. Justice Douglas observed that if state makes the affluence of the voter or payment of any fee an electoral standard then state is violating 'equal protection clause' of the Fourteenth Amendment. A voter's qualification has no relation to wealth or to paying or not paying this or any other tax. Right of suffrage is a fundamental matter in a free and democratic society since the right to exercise franchise in a free and unimpaired manner was preservative of other basic civil and political rights. It was argued that state can exact fee from it's citizens for many kinds of licenses. That if the state can demand fee for driver's license, it can also demand from all an equal tax for voting. The court replied that the interest of the state, when it comes to

voting, is limited to the power to fix qualifications, and wealth, like race, creed, or color is not germane to one's ability to participate intelligently in the electoral process. And if the state introduces wealth or payment of fees as measure of voter's qualifications than it is an introduction of a capricious or irrelevant factor.

In Boddie v Connecticut, some female welfare recipients who were residing in Connecticut, wishing divorcees, challenged the state statute which required repayment of court fee and costs for service of processes as a condition precedent to have access to the court. By reason of their indigence, the plaintiffs were simply unable to bring the necessary actions for obtaining divorcees. The Supreme Court held that 'due process' prohibited a state from denying access to its courts, solely because of poverty and inability to pay the court fee and the costs, to individuals who sought judicial dissolution of their marriages. Justice Harlarn observed:

"The State's refusal to admit these applicants to its courts, the sole means in Connecticut for obtaining divorce, must be regarded as the equivalent to denying them an opportunity to be heard upon their claimed right to a dissolution of marriages, and in the absence of a sufficient countervailing

44. 401 US 371(1971).
justification for the state's action, a denial of due process."

In *United States v. Kras*, Kras filed a petition for voluntary bankruptcy in the United States District Court of Easter New York district. The petition was accompanied by a motion for leave to proceed without payment of filing fees because he was wholly unable to pay the fee due to his indigence. Kras claimed that filing fee requirement was unconstitutional. Relying on *Boddie* case the District court held that requirement of payment of filing fees in order to obtain discharge in bankruptcy violated the Fifth Amendment - right to 'due process', including 'equal protection'. The government filed an appeal against the decision. The United States Supreme Court reversed the ruling of the lower court. Justice Blackmun, in his majority opinion, held that since Kras's interest in the elimination of his debt burden and in obtaining his desired new start in life did not rise to same constitutional level as a married person's interest in dissolving a marriage, the decision in *Boddie* case did not control the disposition of the present case. Further, in contrast with divorce, bankruptcy was not the only method available to a debtor for adjustment of his legal relationship with his creditor. The filing fee requirement, he said, did not deny Kras 'equal protection of laws'. There was no constitutional

45. *Supra* note 44.

right to obtain discharge of one's debt in bankruptcy, and that principle of Boddie case would not be extended to no-asset proceedings.

In Ortwein v Schwab, a recipient of Oregon old age assistance, whose assistance was reduced by his County Welfare Agency, and was confirmed by the Oregon Welfare Division, petitioned before the Supreme Court of Oregon, for a writ of mandamus requiring the Oregon Court of Appeal to accept his case, appealing against the decision of the Division, without payment of appellate court filing fee because he was indigent, and thus unable to pay the fee. The Oregon Supreme Court denied the petition. On appeal, the Supreme Court held that filing fee requirement was not a denial of 'due process', nor was it violation of 'equal protection clause' as unconstitutionally discriminating against the poor because the fee was rationally justified to meet the court expenses. But Justice Douglas, in his dissent, observed that it was a denial of 'equal protection of the laws' to exclude poor persons because they were unable to pay. In the same vein, Justice Marshall, also dissenting, held that it was unconstitutional to deny access to the courts because of indigence.

It is humbly submitted that the dissenting opinions appears to be more sound. The opinion of the majority is not convincing because an old man who is already surviving on old age

47. 410 US 656(1973).
assistance is definitely an indigent deserving exemption from filing fee requirement.

In Douglas v California, two defendants who were tried in a California state court on charge of felonies, were convicted. The defendants requested for separate counsels to represent them. But they were refused. On appeal, the District court of appeal affirmed the conviction, after denying their request for appointment of counsel, stating that it had gone through the record and had come to the conclusion that no good, what ever, could be served by appointment of counsel. They petitioned before the Supreme Court of California for hearing which was denied. But, United States Supreme Court on writ of certiorari vacated the judgement of the District Court of appeal on the ground that denial of counsel under California rule of procedure violated the Fourteenth Amendment.

Justice Douglas observed:

"The present case, where counsel was denied to the petitioners on appeal, shows that the discrimination is not between 'possibly good and obviously bad cases', but between cases where rich man can require the court to listen to the arguments before deciding on the merits but a poor man cannot. There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals, as right, enjoys the benefit of counsel's examination into the record, research of

the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself. The indigent where the record is unclear or the errors are hidden, has only the right to a meaningless ritual, while the rich has a meaningful appeal.”

Griffin. Harper. Douglas. and Boddie, all these cases have established that right to access to the courts is a fundamental right which cannot be denied because of poverty of an indigent. It is indeed a remarkable development in access jurisprudence which has come to the rescue of poor man to deliver him justice.

These decisions clearly show that the United States Supreme Court has taken upon itself, the responsibility of eliminating the inequalities based on poverty. Through this case analysis, it can be concluded that the United States Supreme Court is conveying a message to the government that it has the 'affirmative' responsibility for human rights of its subjects, and especially for the elimination of inequalities. The modern welfare states owes to its citizens various obligations, as - growth in economy, jobs, education, medical care, old age assistance, and so forth. These cases have extended the obligations of human rights also. Griffin and other cases have

49. Supra note 48, at pp. 357-358.
developed the idea of 'compensatory state action' to make the people who are really unequal, equal.

ii. POSITION IN INDIA

For a long period of time, the Indian Supreme Court remained an arena of legal quibbling for men with long purses. But now it is not so. The justices, bar, and the people are seeing the Supreme Court as the last resort for the oppressed and the bewildered. Courts are no longer absolutely indifferent or passive to the problems of the poor. In a country like India with vast differential, the Supreme Court can certainly not turn away from the claims and demand of social justice and still honour its claim to be a court for all the citizens of India.

For past few years, the court is trying to solve the problem of maintaining its credibility with the people by saying goodbye to formalism and is trying to survive the legitimation crisis. It has started wielding judicial power in a manner which is unprecedented in history of more than four decades. Court is now shedding its status-quoist approach, and is becoming sensitive to the causes of the poor to bring justice within their reach. Court has vowed to participate in the socio-economic reconstruction of the society.

The new jurisprudence is poverty oriented jurisprudence. The higher judiciary is now determined to deliver justice to the poor by progressive interpretation and affirmative action. The
court has taken the task of making the 'rule of law' a meaningful reality, and not merely a dream for a poor man. All individuals are equal in Indian society. All should enjoy their fundamental rights equally by having equal access to the court of law irrespective of their poverty, illiteracy, ignorance, and fear. With the swift change in political objective - from laissez faire to a welfare state - the judiciary is also undergoing transformation - from passive to activism.

Justice Krishna Iyer has urged upon the judges to shun their traditional passive role and become more active and interpret the Constitution and the law for the protection of the poor. He emphasises that there is a need for more activist judges accepting the human ideology of Constitution. He says:

"All the common people, the weaker sections, the handicapped groups, the minorities, religious, linguistic, and other, the toilers in towns and tillers in land, redressal of whose socio-economic grievances is a fighting creed, are a first charge on the jurisdiction of the judge."

Ex C.J. P.N. Bhagwati said in P.U.D.R. case that courts are now realising that social justice is the signature tune of

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Indian Constitution.

The important question is - Why should poverty be a reason for the law to treat any person unfairly or differently? Courts have taken to task to see that poverty of an indigent no longer acts as barrier to deprive the poor of the opportunity to seek justice in the court of law.

Then the question arises - Whether the Supreme Court, and the lower courts - who chronicle it's doings and sayings - are approaching the problem as they ought to?

Here, the present researcher doesnot want to criticise court's past holdings, but it is an attempt to suggest 'possibilities for future departures'.

It is humbly submitted that the explosion of recent times - the judicial 'equality' - has been ignited by an awakening, not to equality, but to a claim for 'minimum welfare' for the poor and downtrodden masses in Indian population. The recent judicial activism of the apex court can be hailed as an 'egalitarian revolution' wherein the court has directly shield the 'poor' persons from the most elemental consequence of poverty - the lack of funds to exchange for needed goods, services, or privileges of 'access'. Since economic inequality as such is repugnant to constitutional values, and the court's interventions are mainly designed to move the Indian citizenry towards a condition of economic equality.

52. Supra note 23.
The fact of the matter is that court's 'egalitarian' interventions are often occasioned by problems resulting from economic inequality. Yet, it is to make clear that in many instances, the court's purposes can be taken as vindication of state's duty to protect against certain hazards which are endemic in an unequal society, rather than vindication of a duty to avoid complicity in unequal treatment. In following part, the present researcher is attempting to elaborate this very theme.

Judiciary is trying to reach where either the government has failed or has remained indifferent. The court has expanded it's frontiers – of fundamental rights and of natural justice. And in the process, it has almost re-written some part of the Indian Constitution. For instance, right to life and personal liberty, under 'procedure established by law' in Article 21 of the Indian Constitution, has been converted, de facto and de jure into a 'procedural due process' occurring in United States Constitution. And this is what our Constitution makers had considered in the Constituent Assembly, but intentionally omitted to draft in, owing to uncertainty attached to the clause. Now, once brought in, by the activist approach of the highest judiciary, this expanded right to life and personal liberty has encompassed within it's sphere a variety of new rights and arenas which were never heard before as falling under Article 21, viz. prison justice, bar fetters, handcuffing, rights of women and children, right to life, human dignity and livelihood, execution of death sentence, right to legal aid, right to speedy trial,
right of prisoner to get wages, right to basic needs, right to be treated by doctor immediately after the accident, etc.

Accordingly, a new regime of rights and new arenas have developed through the activism of the apex court in India, to help the poor persons.

As in the United States, in India also, the court has taken similar view to the problem of poor to get access to justice system. As in Hussainara Khatoon case, a writ of habeas corpus filed by Mrs. Kapila Hingorani, an advocate, brought to light the fact that a large number of persons were languishing in jails awaiting trial for years simply because they were too poor to furnish bail. Justice Pathak pointed out in his concurring judgement that thousand of undertrial prisoners lodged in Indian prisons included many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance.

Here, the only reason for incarceration was poverty. Ex C.J. P.N. Bhagwati was very critical about the present system of bail which operates very harshly against the poor.

53. All these aspects are discussed in detail with critical case analysis in Chapter VI of this study.
54. Supra note 18.
55. Ibid., at p.1367.
56. Ibid. at p. 1363.
In *Suni Batra v Delhi Administration*, counsel for the petitioner alleged that it was to deter the people from knowing the prison law and thus depriving the prisoner to enjoy his liberties, that the Punjab Jail Manual was not made available to the prisoners because its price was also raised to more than ten times. The counsel further alleged that if price of the Jail manual was raised beyond the means of a prisoner, the prisoner cannot have the same, and without the knowledge of the relevant provisions of law, prisoners cannot challenge the incarceratory injury. Justice Krishna Iyer observed that too high pricing of legal publications monopolised by government amounted to denial of equal protection of laws. The rule of law, which is basic to our Constitutional order lays down double imperatives implied by it, firstly, on the citizen - to know; and secondly, on the state - to make known. He further observed, "The freedom under Article 19(1) cannot be restricted by hidden or low visibility rules beyond discovery by fair search." The restriction under Article 19(2) to (6) must be reasonable if access to it is not available at a fair price or by rational search.

In *M.H. Hoskot v State of Maharashtra* the court ordered for the supply of transcript of the judgement free of

57. AIR 1978 SC 1675.

58. Ibid. at p.1721.

59. AIR 1978 SC 1548.
cost to the sentenced prisoner so that he may file an appeal to the Supreme Court. The Court laid down that in cases where petitioner, due to his poverty, was not able to engage a lawyer, it is the duty of the state to assist him at state costs to engage the same.

In *Kedar Pahadiva v State of Bihar*, the Supreme Court reiterated that an indigent had a right to free legal services. In *Khatri v State of Bihar*, the court endorsed its holding that an indigent accused had the right to free legal services not only at the commencement of the trial, but also at the initial state when he is produced before the magistrate for the first time.

In *Sukhdev v Union Territory of Arunachal Pradesh*, the Supreme Court held that if an indigent accused of a criminal offence was not offered legal aid, and was not represented by a counsel due to his poverty conditions, and due to the same consequently he is convicted, then the conviction was vitiated and is liable to be set aside. The court made it obligatory for the magistrate or the session judge to tell the accused that legal aid was available for him at state's cost, and to provide the same unless the accused himself refused to avail of the same.

Thus, a new direction has been given by the apex court in all these cases, to ensure the equality before the law courts.

60. AIR 1981 SC 939.
K. CONCLUDING OBSERVATIONS

The adversarial litigation more often than not is a weapon of the big to crush the small. The law may have laudable goals on book, but in practice, law and it's oppressive technicalities operate too hard to terrorise poor away. Laws grind the poor. The rich men rule the law.

But Public Interest Litigation is a people's forensic weapon to attack executive nonfeasance, malfeasance, and misfeasance, to pin down bid businessmen injuring community interests, and to defend the human rights of every citizen, by whomsoever they are injured.

Public Interest Litigation has really come to the rescue of poor and downtrodden. Every aspect of prison administration and prison justice is virtually checked on the touchstone of concept of 'fairness' of procedure evolved in Maneka Gandhi case by giving liberal interpretation to Article 21. Now procedure cannot be any procedure, but it has to be just, fair and reasonable procedure. New rights are generated and their implementation is effectuated by the judiciary taking an active part even to the extent of monitoring the compliance of it's rulings and keeping the case open.

This specious broadening of court's role, the new poverty jurisprudence is the result of providing access to justice to all. And to accelerate the pace of the process of giving liberal access, where ever lawless action is seen, is achieved by
broadening the concept of locus standi which in turn resulted in the birth of Public Interest Litigation.

Accordingly, if the first wave to make access to justice a meaningful reality for the poor masses was put in by Legal Aid movement, then the second wave aimed at providing access to justice system for vindication of rights of the poor is put in by Public Interest Litigation. Besides giving legal representation for 'diffuse' interests, especially in the area of human rights, consumer and environmental protection, Public Interest Litigation has ameliorated the conditions of poor persons - whether they are convicts in jail, or whether they are under-trials behind the bars due to non-furnishing of bail, or whether they are poor persons facing starvation deaths in remote areas, or whether they are labourers not being paid even minimum wages prescribed by the state.

In United States, Griffin, Harper, Douglas, and Boddie, all these cases have clearly established right to access to the poor in the court of law. It is a fundamental right and thus cannot be taken away because of the poverty of an indigent.

Similarly, in India also, the foundations of this modernisation have been laid by Supreme Court rulings as Ratlam case, Judges Transfer case, and the ASIAD case. In Ratlam case the core principle was stated as:

"It is 'procedural rules', as this appeal proves, which infuse life into substantive rights, which activate them to make them effective. The truth is that a few
profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British-Indian vintage. If the center of gravity of justice is to shift, as the Preamble of the Constitution dictates, from traditional individualism of locus standi to the community orientation of Public Interest Litigation, these issues must be considered."

Accordingly, it is unrealistic to say, in today's circumstances that people look at law solely to protect their interests in a narrow sense. There is wider breadth of interests that today's citizen expects the law to protect. And he expects from the court to provide that protection. He is not interested in procedural niceties of law, rather he is interested in its results. Public Interest Litigation is an answer to all these expectations. Rigours of adversarial system of justice is considerably mitigated by the devise of Public Interest Litigation. By Public Interest Litigation, law and its instrumentalities are becoming dynamic agencies for social justice. It is understandable that radical transformation of the whole system is not possible, but something is definitely done to remedy the evils from which the system suffered. First step is taken, which indeed is a welcome.

63. 1981 (1) SCC 588.