CHAPTER-V

SOCIO-ECONOMIC JUSTICE AND
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In a welfare state like India, it is the paramount obligation of the state to secure justice to all its citizens in its three essential forms viz. social, economic and political. Therefore, Preamble to the Constitution mandates that justice be done to the citizens as an essential functions of the state. Fundamental rights which have been given special importance recognize the importance of the individual in the affairs of the state and seek to assure to every citizen full freedom to enjoy life, liberty and happiness as he likes. Further, the Directive Principles of State Policy highlight the importance of securing justice to the people through a variety of means. The goal of the combined desire of the preamble, fundamental rights and directive principles can only be achieved when person from any walk of life has an access to justice. Judicial process is a means to that end. Thus, when in this 21st Century we are talking of providing justice to the poor and vulnerable section of the society, particularly the women, the necessity of legal-aid arises because the agonizing gap between the ideal of access to justice and availability of legal justice has raised at a point where the long arm of law has gone beyond the reach of those vulnerably group. In this context, making justice accessible to all solely depends on
the effective judicial process which is the central pillar of a democratic setup.

Justice S.B. Sinha has very rightly said that "while discussing the concept of access to justice, it also becomes necessary to understand the very notion of 'Justice' itself as one cannot appreciate the 'means' unless the 'ends' are understood"¹. Social Justice is said to be a generous concept which assures to every member of the society a fair deal. Any remedial injury, injustice, inadequacy or disability suffered by a member, for which he is not directly responsible falls within the liberal connotation of social justice. Justice is being equated with truth and there is no denying the fact that quest for justice is the quest for truth. Thus, where there is no truth there is no justice i.e., denial of intended relief to the person of which he has been deprived of. It then becomes the duty of the judiciary to poise the glory of the judiciary as it is said that justice is the ultimate objective of law. For this the judiciary is expected to come out with more openness and should not shut its door to the citizen who finds the legislation not responding and the executive indifferent to him.

1. SOCIO-ECONOMIC JUSTICE

In our country law and judiciary have played a vital role in shaping and moulding the society. Laws of the land are meant to promote and render justice. While doing so it has to take into consideration the socio-economic condition of the people as well as their capability. But after fifty nine years of the adoption of the constitution one question still eludes us whether the judiciary have been able to provide justice to the needy in the true sense of

the term? Quite for a long period it was strongly felt that the courts are for the rich people and are not accessible to the poor, downtrodden and vulnerable sections of the society. There lies some truth in it because in our country, half of the population are illiterate and they lack the legal awareness. Legal expertise and advice is not easily available to them and they hardly have any means to justice. But the situation could not last long and it is in the late 70’s and particularly in the post Maneka period, the judiciary has come closer to the millions of poor and downtrodden and succeeded in bringing justice to them whenever it felt the necessity of providing justice to these vulnerable section of the society. In the process, the Indian Judiciary has not hesitated to innovate new methods and device, new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning.

Thus, down the fifty nine years of Indian history, the Indian judiciary has laboured hard to bring about changes in the existing judicial process to make it simple and thereby accessible to large sections of society. In the absence of appropriate legislative action the judicial innovations are undoubtedly remarkable. Besides the Indian judiciary has also stimulated the legislative process to rise to the occasion and a lot has been done to make a smooth path to reach the door of justice where every person, rich and poor, men and women have an anxiety to reach to lead a life like a human being.

In a modern welfare state, it is the duty of the State to see that justice is not denied to one because of inequality - economic or otherwise. In the
words of Aristotle, injustice arises when equals are treated unequally and also, when unequals are treated equally. The framers of the constitution of India with a view to ensure social justice incorporated the very principle in the Preamble to the constitution that justice, social, economic and political will be available to all. Further, the concept of justice has been enshrined in Part IV of the Constitution, wherein the states have been directed to secure a social order in which social, economic and political justice shall inform all the institutions of national life\(^2\) and in Article 14\(^3\) and, Article 22(1)\(^4\) equality before law and a right to counsel have been guaranteed. The expression social justice connotes the idea of providing to every one what is due to him. That is to say, social justice assures to every member of society a fair deal. It is used in two senses. In a limited sense, it implies rectification of justice in the personal relations of the individuals in the society. In the wider senses, it seeks to remove imbalances in social, economic and political life of the people. It is in the former sense that the idea of legal aid to the poor is associated with the concept of social justice. In other words, legal aid in obtaining justice is a community concern and a constitutional obligation.

But, in the absence of effective steps undertaken by the State to implement the constitutional promises by providing legal aid and legal services to the indigent, the concept of social justice and the phrase ‘Equality before law or the equal protection of the laws’, remain a mere

\(^2\) Constitution of India, Article 38
\(^3\) Article 14 states that: "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India"
\(^4\) Article 22(1) says "No person who is arrested shall be ... denied the right to consult and to be defended by a legal practitioner of his choice"
pious declaration of high ideals. In fact, equality before the law in a true democracy is a matter of right. It cannot be considered as a matter of charity, or of favour, or of grace, or of discretion. A true democracy cannot endure a system of administration of justice of which the poorest are not able to take full advantage. It would not be an exaggeration to say that the very existence of free government depends upon making the machinery of justice available to humbles of citizen.

In any democratic set-up like ours, governed by the rule of law, judiciary has a special place. It is like the conscience in a man. Unseen, yet its presence is felt. The role of judiciary, which has given importance to the rule of law, is that of an arbiter of dispute between man and man, and man and state. The judge has a role in transforming people’s frustrations into a revolution of expectations of a humane tomorrow. The Indian Supreme Court is admittedly the most powerful judiciary in the world today and the function of the court is to find out the intention of the framers of the Constitution. And further, we can see the law courts exist for the society and they have an obligation to meet the social aspirations of citizens and responds to the needs of the people. Judiciary is the ultimate protector of “Rule of law”. It is the Brahma Astra in the armoury of the body politic to protect itself from disease and derangement. A State with a vigilant and

8. M.S.Grewel v Deep Chand Sood (2001) 8 SCC 151 at p.166
effective judiciary must be a State where the "Rule of Law" prevails.

On the economic plank of India, poverty, unemployment, population explosion, limited resources, industrial backwardness, glaring division amongst the rich and the poor, imbalanced development of various regions, indebtedness of the population, exploitation of the toiling millions, perpetuation of feudal system etc. are present\textsuperscript{9}.

The answer to the Indian poverty, therefore, lies not in class struggles and armed rebellions and revolutions but in the welfare measures and approaches of justice, where the resourceful and reasoned should have a sharing thought by their behaviours, norms, laws and the constitutions\textsuperscript{10}. Indian society is socially stratified into castes and sub-castes; religions and creeds, geographically split, linguistically varied; habits, folkways and mores are different and many and the way of life is different not only in various regional segments of the country but also in urban and rural localities of the same region\textsuperscript{11}.

The monetary and moral assistance is required to be delivered in the package of legal aid, which India should offer to a vast population of destitutes, depressed and down-trodden. The welfare state, however, has a promise to fulfil to wipe tears from their eyes and provide them a living\textsuperscript{12}. Our culture has made us to rear content and remain optimist for an improved lot.

In order to give effect to the mandate of Article 39(A) of the Constitution of India, The Legal Services Authorities Act, 1987 was passed

\textsuperscript{9.} Sujan Singh, Legal Aid Human Rights to Equality, Deep & Deep Publication, 1998 at p.50
\textsuperscript{10.} Ibid at p.49
\textsuperscript{11.} Ibid at p.53
\textsuperscript{12.} Articles 41, 42, 43 and 47 are noteworthy in the chapter on Directive Principle of State Policy
and later it was suitably amended and the procedural laws were also suitably modified to give access to the vast majority of population who are not able to approach the court to redress their grievances. But, any piece of legislation can have its successful implementation only if there is a wholehearted support and cooperation from different sections of the society who are directly concerned with it.

We must accept the reality that many people in this country still have no access to justice. It may be due to various reasons such as ignorance of their rights, their indigent conditions, or their illiteracy. There may also be social or geographical barriers for them. The fact remains that there are unmet needs of the millions of people in this country.

Law has to be interpreted according to the current societal standards. The law when enacted, inspite of the best efforts and capacity of the legislators, cannot visualise all situations in future to which that law may require application. New situations develop and the law must be interpreted for the purpose of application to them, for finding solutions to the new problems. That is the area or field of judicial creativity which fills in the gap between the existing law and the law as it ought to be. If you have proper perception and proper values, those will influence your thought process and the exercise which you then perform in the form of judicial creativity would be tempered more by morality and ethics. In this connection, Justice J.S.Verma has rightly remarked that:

"Complete justice or true justice must encompass within it morality and ethics. Mathematically stated-abstract law plus morality or ethics is equal to justice. That is the task, which we judges are required to perform in the
course of administration of justice. This is the kind of role, which the judiciary has to perform, and by judiciary I mean not merely judges but lawyers as well, because it is together that we form the machinery for the administration of justice”.

In *Keshavananda Bharati v State of Kerala* 14, it was observed that both the directive principles and fundamental rights are fundamental and the directive principles are the constitutional commitments to bring about social and economic changes for the teeming millions.

The innovation of the Indian judiciary to enforce socio-economic rights has seen parallels in courts of other jurisdictions as well. For instance, the South African Constitutional Court in *Minister of Health and others v. Treatment Action Campaign and others* 15 ruled that the State must act reasonably to provide access to the socio-economic rights identified in Sections 26 and 27 [for the South African Constitution] on a progressive basis and that the state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflict our society ....[by ensuring that] legislative and other measures taken by the state are reasonable.

The Indian constitution envisages justice-social economic and political for all citizens. Article 39A reads - “The *State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and*

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14. AIR 1973 SC 1461
shall in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". The Directive Principles of State Policy, also impose a duty on the state to promote as effectively as it may, a social order in which, justice, social, economic and political, shall inform all institutions of national life\textsuperscript{16}.

In *Hussainara Khatoon v State of Bihar*\textsuperscript{17}, the Supreme Court observed that Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. Legal aid is no doubt an important element in ensuring that equal opportunities for access to justice are available to all persons irrespective of their social or economic position. The mere provision of legal aid facilities is however, insufficient to ensure access. As has rightly been noted by the Supreme Court, unless the indigent are informed of their right to legal aid and the facilities available, the right would remain illusory\textsuperscript{18}.

There are three instrumentalists in all court proceedings to reach justice viz. the Judge and the two rival sides. All the three must involve in the process and hence, the court has a dynamic role to play. When the charges are framed by courts lengthy orders are seen passed to state why the charge is framed. It is suggested not to waste time in passing orders while framing charges\textsuperscript{19}. The judgement in all cases should also be short. If the judgement is very lengthy, normally your stenographer alone reads it.

\textsuperscript{16} Constitution of India Article 38(1)
\textsuperscript{17} AIR 1979 SC 1377
\textsuperscript{19} U.P.Pollution Control Board v M/s. Mohan Meakins, AIR 2000 SC 1456
learn the art of writing short judgements. He who succeeds in learning it would succeed in achieving the required speed in justice delivery system.\(^{20}\)

In *Sheela Barse v Union of India\(^{1}\)* the Supreme court held that in a Public Interest Litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bipolar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare state. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system.\(^{22}\)

Further the Court observed that “the grievance in a public interest action, generally speaking, is about the content and conduct of the governmental action in relation to the constitutional or statutory rights or segments of society and in certain circumstances the conduct of Governmental policies.”\(^{23}\) Also the court treating a letter by the free legal aid committee as writ petition observed that the rule of law requires to be played for the poor and ignorant who constitute a large bulk of humanity in

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20. Justice K.T.Thomas, Suggestions to Improve & Speed up Court Procedures AIR 2002 Journal 113
21. AIR 1988 SC 2211
22. Ibid, at p.2214
23. Ibid at p.2215
this country and the Court must uphold the basic human rights of weaker sections of the society\textsuperscript{24}.

It is therefore, absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners\textsuperscript{25}. The proceedings in a Public Interest Litigation is intended to vindicate and effectuate public interest by prevention of violation of the rights, constitutional or statutory, or sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert their rights and quite often not even aware of those rights\textsuperscript{26}.

In the opinion of Justice R.C. Lahoti "......the emphasis on providing quality legal aid requires to be noticed as well. It is useful to recall Justice Venkatachalaiah’s warning that: 'legal aid to the poor should not degenerate to poor legal aid'. A constant review and evaluation of the existing legal aid services is a must if we have to improve the quality of our services. The issue requires to be addressed from the point of view of the person being assisted. It must be remembered that for such a person the right of access to justice is a substantive one and not merely a measure of welfare. Standards are measurable by definite parameters that have now been evolved by the American Bar Association in the context of the public defender programme. The criticism that standards need to be evolved in advance and not wait to be evolved on a case by case basis holds good for the Indian scene as well. Closely linked to the question of quality is that concerning the fees paid to lawyers doing legal aid work. While comparisons

\begin{thebibliography}{99}
\addcontentsline{toc}{section}{References}
\bibitem{24} Veena Sethi v State of Bihar AIR 1983 SC 339 at p.340
\bibitem{25} Sheela Barse v State of Maharashtra AIR 1983 SC 378 at p.380
\bibitem{26} Sheela Barse v Union of India AIR 1988 SC 2211 at p.2214
\end{thebibliography}
of the levels of earnings of lawyers in relation to their counterparts in other
countries may not be appropriate to determine what should be the right
figure, the legal profession can come up with realistic proposals in this
regard"27.

The seeds of our Constitutional ethos on legal aid which guarantees
'access to justice' are clearly found in these words. Professor Roscoe Pound
prefaced his classical work on Jurisprudence by referring to Daniel Webster
as saying that justice is the greatest interest of man on earth. The same
was true of our founding fathers. In their arduous quest for justice during
our National Freedom Struggle, they felt the prime importance of framing a
Constitution for a free nation where justice for its citizen becomes easily
accessible. That is why, abiding concern for justice is the first premise in
the Preamble, and the cornerstone of our Fundamental Rights is equality
which is rightly called the 'mother of justice'28.

Providing equal access to law to the poor and indigent is global
problem. Obviously, it has not been completely solved anywhere. It is equally
ture that there is no simple solution. Different countries have evolved
different strategies and have tailored plans to suit their own particular
system and situation. In United States, Legal Aid, is one of several
programmes that provide legal services to the people who cannot afford to
hire lawyer in the event of any legal redress when they are involved in a civil
case either as plaintiff or defendant. The part of the Legal Aid is funded by

27. Justice Lahoti said this while addressing the All India Meet of State Legal Services
at pp.10-11
2007 p. 15 at p.16
the Government, Local States, and Federal levels. Some are private legal aid, which is provided by the individual lawyers, Lawyers’ Association, and Society and other organisations\(^{29}\).

Equality, however, still remains the exception rather than the norm and there are only a few instances where women are given equal treatment, and that too, not without a fight. While continual efforts have been made by the legislature, judiciary and women’s organization to secure to them a position of equality and their basic human rights, a significant change is yet to be brought about. Despite all the safeguards, the women in our country continue to suffer due to lack of awareness of their rights, illiteracy and oppressive practices and customs. In order to ensure that women are not discriminated against and that their rights are not violated, what is necessary, is a change in the attitude of society towards women. Unless the members of society consider women and men as equals and treat them equally sans their inherent prejudices, the rights of women cannot be adequately secured\(^{30}\).

Our Constitution assures to each citizen not mere political justice, but more importantly social justice and economic justice. In fact, mere assurance of political justice is of no substance if the citizens are denied their social or economic rights. Similarly, mere social justice would be hollow if it is not accompanied by just distribution of economic resources geminated with equitable access to the opportunities.

When we talk of justice in the broader sense, we have to bear in mind the definition given in Justinian’s Corpus Juris Civilis which states that

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‘Justice is constant and perpetual will to render to everyone that to which he is entitled’. Similarly, Cicero described justice as ‘the disposition of the human mind to render everyone his due’. Thus, the rights guaranteed to persons are inherent in the very notion of justice. Given that justice is defined in terms of rights, access to justice, most simply put would include the ability of any person to approach the appropriate authority and effectively claim the enforcement of rights. Thus, access to justice, in more real terms, would include the sum total of all those rights and remedies available to a person through which he can seek the enforcement of his or her rights\textsuperscript{31}.

The concept of legal aid is rightly stated to be the spirit of equality and its movement is dedicated and devoted to the philosophy of equal justice to the indigent. Equal justice is a fair treatment within the purview of judicial process. Equal justice is, therefore, corrective of inequalities which cause social imbalance, without which justice in society cannot be propounded in reality. Equality of law and equality before law is an imperative provided in the fundamental right in the Indian Constitution. With a view to make this right a reality, for those largely depressed and deprived, downtrodden and destitute, dejected and rejected, forlorn and forgotten, lowly and lost, legal service has been a remedy, which is provided in our Constitution.

Access to justice which is basic to human rights, has itself assumed the importance of being an inalienable right as the provisions for human rights in the Constitution and Statutes would have no meaning unless people are in a position to get those rights enforced. However, stark reality is that

millions of people in this country are illiterate and poverty stricken. Therefore, in the first instance, they may not be knowing what their rights are and even if they know about their rights, they have no means to enforce those rights for want of necessary resources as it is well known that approaching the court of law for such purpose through normal process is a costly affair. Therefore, for providing effective access to justice, provision for free legal aid is a necessary concomitant and it is the obligation of the State to make such provision which is a Constitutional obligation.

Justice V.R.Krishna Iyer in an interview has said: “my experience as minister, my professional involvement in social and economic issues and the sense of injustice prevailing in society and other spheres of life convinced me that a judge in the art of judging also moulded the law to make justice available to the humbler sector of humanity, to ensure human rights to women and children.” He also said that ‘Be you ever so high the law is above you.’ The entire forensic system of the judiciary requires simplification reducing the number of reviews, appeals and revision and should be decentralised and upholding free legal services.

The Supreme court liberalized ‘access to justice’ not only in view of the Preamble and the Fundamental Rights but, also in view of the clear mandate under Article 38 of the Constitution which is based on the concept of Article 14. Article 38 imposes a duty on the State, which obviously includes the judiciary, to usher in a social order in which justice-social, economic

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33. Quoted by, P.M. Bakshi, Public Interest Litigation, Ashok Law House, New Delhi, 2006 at p. 533
34. Ibid.
and political, must inform all institutions of national life. So, by widening the 'access to justice', the Court is discharging its Constitutional duty to promote a just social order. Thus, free and unrestricted 'access to justice' is the hallmark of an independent judiciary which is committed to the Rule of Law.

'Equality before the law is constitutionally guaranteed and to promote justice, the legal system has been directed by Article 39-A' to ensure that opportunities for securing justice are not denied to any citizen by reason of economic ...... disabilities'. In the opinion of Justice Krishna Iyer, 'that right of effective access to justice has emerged in the Third World countries as the first among the new social rights with public interest litigation, community based actions and pro bono publico proceedings'35.

The system of governance established by the Constitution is based on distribution of powers and functions amongst the three organs of the State. It is the prerogative of the Legislature to enact laws; responsibility of the Executive to enforce the laws and administer the country; and the duty of the Judiciary to adjudicate upon the disputes that arise between individuals, between an individual and the State or between different States. In this scheme of things, Supreme Court has been assigned the duty of being the final arbiter, including on the question of interpretation of the Constitution and the laws. It is the majesty of the institution that has to be maintained and preserved in the larger interest of the rule of law by which we are governed. Each of us as individuals is transitory, but the institution

is perennial. It is the obligation of each organ of the State to support this important institution.

Today, the crisis before the Nation is not the dearth of economic means. India has already achieved the economic sovereignty; the challenge is to distribute the fruits of the free economy in equitable manner to the most poor and marginalized sections of the society. The goals of justice-social, economic and political; liberty of thought, expression & belief; and equality of status and opportunity - the promises made in 1950 have not yet been fully secured to the multitude of Indians. The increased economic activity, globalization, influx of latest technological tools, legal obligations under various international treaties, IPR regime, concern for environment, all have given impetus to activity in the field of law which translate into new and more complex issues and disputes. These new and changing socio-economic trends coupled with rapidly growing population, which includes a large section of underprivileged, and the hydra of communalism in this highly competitive world, add to the lurking dangers to the rule of law. The warning of Aristotle has relevance even in this new millennium. He had said in 4th Century BC, 'Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice'.

In *S.P. Gupta v Union of India*, the observation of Justice P.N.Bhagawati (as the learned Chief Justice then was) "Today a vast revolution is taking place in the judicial process; the theatre of the law is

37. Ibid at p.6
38. AIR 1982 SC 149 at p.189
fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way, in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal rights have been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief".

There is also a need to deliberate on the methodologies to be adopted for encouraging justice dispensation through the traditional forum of Panchayats. This age-old institution has found new vigour with the introduction of the 73rd Amendment to the Constitution, and must accordingly be considered another pillar in the edifice that symbolizes justice. Strengthening the institution of Panchayats and empowering people at the grassroots level to resolve their disputes amicably would solve many of the problems that is faced by conventional justice dispensation machinery in its attempts to percolate to the lowest levels. This would provide a solution to the problem of access to those living in remote regions.

2. NEW DYNAMIC ROLE OF JUDICIARY

Of late a judiciary has entered into a new era and in its new creative period it has come down heavily against the government and the administrative mechanism to entangle itself in bringing socio-economic justice. Post emergency scene and particularly the post Maneka period
witnessed the change in the style of functioning of the Supreme Court. The court became more practical and has come very close to the poor and the downtrodden and succeeded in bringing justice to them whenever it felt the necessity of providing justice to these vulnerable section of the society. Thus, in the process although after a hard struggle, the courts started deviating from their conservative stand to protect social interest by innovating new ideas and principles. The concern for the problems of the weaker sections of the society got reflected in their judgment and importance was attached to real practical justice. In the process the courts began to take up the challenges of the downtrodden by accelerating the process of judicial creativity for the interest of the common masses. Declaring that 'the rule of law runs close to the life', the Supreme Court deviated from the traditional adversarial litigation procedure and evolved new investigative procedure to investigate facts while coming to the rescue of millions of people. This has put the concept of locus-standing of an individual to bring a case before the court on a very broad basis.

The liberalisation of the rule of locus standi came out of the following considerations (1) To enable the Court to reach the poor and the disadvantaged sections of society who are denied their rights and entitlements; (2) To enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance, and (3) To increase public participation in the process of constitutional adjudication.

39. M.C.Bhandari Memorial Lecture on Public Interest Litigation as Aid to Protection of Human Rights by Justice A.S.Anand (2001) 7 SCC (Jour) 1
Justice Krishna Iyer in *Mumbai Kamgar Sabha v Abdulha* explained:

"Test litigations, representative actions, pro bono publico and like, broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings ... Public Interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker".

The Supreme Court found that the main obstacle which deprived the poor and the disadvantaged of effective access to justice was the traditional rule of *locus standi* which insists that only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest can bring an action for judicial redress. This rule of standing was obviously evolved to deal with the right-duty pattern which is to be found only in private law litigation, but it effectively barred the doors of the Court to large numbers of people who, on account of poverty and ignorance, are unable to avail of the justice system. It was felt that even if legal aid offices were established for them, it would be impossible for them to take advantage of the legal aid programme because of their

40. AIR 1976 SC 1455
41. Ibid, at p.1458
socially and economically disadvantaged position. The Supreme Court, therefore, took the view that it was necessary to depart from the traditional rule of *locus standi* and to broaden access to justice by providing that where a legal wrong or a legal injury is caused to a person or to a class of persons, who, by reason of their poverty or disability or socially or economically disadvantaged position, cannot approach the Court for relief, any member of the public or social action group or interest group or any pressure group acting bona fide can maintain an application in the High Court or the Supreme Court seeking judicial redress for the legal wrong or injury caused to such person or class of persons.

Endorsing the actions of the public spirited persons Justice Sameresh Banerjee in *State v. Union of India*\(^2\) observed:

"Thus, when even a public spirited person or association not having normally any locus standi to move a petition can be allowed to move a public interest litigation in public interest for vindication and protection of the constitutional or legal right of a determinate and oppressed class unable to approach the Court, in his view there cannot be any justification whatsoever to deny such right to the State itself in a fit and proper case to move public interest litigation for protection and vindication of the legal and constitutional right of the underprivileged and of a determinate class of persons who are unable to approach the Court who sometimes are not even unaware of their rights to save themselves from exploitations. It is now the consistent

\(^{42}\) AIR 1996 Cal 181
view of the Supreme Court that every action of the State is for public interest and must be for public good and therefore every action of the State is to be tested in the touchstone of the Article 14 of the Constitution of India. Thus, if every action of the State is to be for public interest and for public good, the State can safely be said to be responsitory of public interest. Under such circumstances if by the impugned action of a body or person amenable to writ jurisdiction complained of, the right and interest of a determinate oppressed class unable to approach the Court, is affected, the State can also be allowed to maintain a public interest litigation in a fit and proper case, particularly in absence of suitable legislation and inability to legislate in the particular field, to protect and vindicate the rights of such determinate class before the Court of law and if the basic ingredients of the public interest litigation are found to be present, the application can not be thrown out at the threshold merely on the ground the petition has been moved by the State.

In a public interest litigation, in my view, the emphasis has to be on the object and purpose of the same, namely, rendering of social and economic justice to the weak and underprivileged and vindication and protection of their rights and interest they being unable to approach the Court, and not on the person who sets the Court on motion. Any person should be allowed to move the Court, except a busybody, interloper, person having his own interest, publicity seeker etc. 43.

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43. State v Union of India AIR 1996 Cal 181 at pp.197-198
The Judiciary, invoked the constitutional provision in the administration of justice in cases involving the poor and weaker sections by holding the right to legal aid a fundamental right. Consequently, the court in a number of cases also declared that the trial would be vitiated if the accused was unable to engage a lawyer owing to poverty or similar circumstances unless the State offered free legal aid or his defence.

The law relating to locus standi has undergone a vast change. Now, any person prompted by public interest and social welfare can bring a petition for a proper remedy to those who cannot file such petition in the court on account of their poverty, ignorance and backwardness. Moreover, the court has taken this liberal view on the concept of locus standi so as to uphold personal liberty of the unattended and neglected class of society.

I. Emergence of Public Interest Litigation

The concept of ‘Public Interest Litigation’ originated in the United States in the mid 1960s. This period in U.S.A. was the important period of social embroilment during which not only manifold changes to many institution took place; but also significant reforms of which public interest litigation was proposed and tried. Over the march of years the concept has passed through various changes and modifications in their common law based systems. However, the various movements and programmes that contributed to shaping the underlying ideology of public interest law reach back to 1876, when the first legal aid office was established in New York City. The Council for Public Interest Law was set up by the Ford Foundation in USA. The council in its Report stated: "Public Interest Law is the name that has been given to efforts to provide legal representation to previously
unrepresented groups and interests. Such efforts have been undertaken in recognition that the ordinary market place for legal services falls to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial and ethnic minorities, and others.”

In our country, the seeds of the concept of Public Interest Litigation was initially sown by Justice Krishna Iyer, in 1976 (without assigning the terminology) in *Mumbai Kamgar Sabha v Abdulbhai* a case involving an industrial dispute with regard to the payment of bonus. After the germination of the seeds of the concept of Public Interest Litigation in the soil of our judicial system, this rule of Public Interest Litigation was nourished and developed by the Apex Court of this land by a series of outstanding decisions. In *Fertilizer Corporation Kamgar Union v Union of India* the terminology “public interest litigation” was first used by the learned judges (Justice Krishna Iyer assigned the jargon ‘public interest litigation’ while delivering the judgement on behalf of learned Chief Justice P. N. Bhagwati and himself).

The rule, on gaining momentum, further, blossomed and took its root firmly in the Indian Judiciary through *S.P.Gupta v Union of India*. Public interest litigation is a strategy evolved by the Supreme Court of India with a view to securing observance of the law by the State and its agencies and reaching social justice to large masses of underprivileged persons in this country. It is

45. AIR 1976 SC 1455
46. AIR 1981 SC 344
47. AIR 1982 SC 149
a product of judicial activism on the part of the apex judiciary.

Public Interest Litigation in India is perhaps the most striking innovation in the recent past in the delivery of Legal Services. It has emerged as a part of Legal Aid Movement directed towards the protection of down trodden masses of the country. Public Interest Litigation offers new challenges and opportunities for the advocate to serve society better by imparting Legal Services to a much wider section of the people who are sufferers of injustice.

A major bulk of Indian population fall below poverty line. They live in sub-human conditions, poverty has broken their back, and weakened their moral strength. They are the innocent, victims of oppression, repression, exploitation, lawlessness, injustices due to lack of action on the part of the Government officials concerned, and those who have purse and the sword to silence their protests. For poor men and women, fundamental issue is of 'survival' and 'security'. Public Interest Litigation is a strategic weapon to clinch this major problem evidently existing in India it has been rightly observed. “Public Interest Law is especially directed at furthering the growth of Public Interest Litigation as a most powerful efficacious tool to render remedial justice through judicial process to socially, economically and politically disadvantaged ignorant sections of Indian society. In India, given such circumstances, albeit it is desirable that there should be citizen participation in the decision making process of all the social and political institutions, but, practically speaking it is not only unthinkable but also unreasonable to think of it in near future.”

48. Dr. Sonia Hurra, Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad, 1993 at p.89
There are various factors responsible for this state of affairs viz., lack of initiative and general failure of political process to bring in social changes in the country which could solve problems of the people, over-all mal-administration in the country; absence of enough number of alternative 'public forums' to discuss and negotiate the issues affecting the large number of people etc.

The increasing awareness of the rights of the common man due to wide-spread press coverage and information received about day to day happenings even in remotest area world-wide human rights movement. Due to deprivation of basic rights during post emergency era and increasing democratic consciousness in the people, incessant desire to get justice cutting across the barriers of technical procedural necessities, germination of a new middle-class political elite outside party politics and exercise of apower of judicial review are the factors responsible for initiation and acceleration of Public Interest Litigation and the strategy of PIL has been developed by Supreme Court.

Besides, lately social or democratic organisations have, gained a growing acceptance by the people and the judiciary and are recognised as legitimate representatives of the interests of the people. They have become indispensable to fight for the democratic rights of the people. There is clear mass movement, although in different form, but surely achieving the desired vindication of rights of the people. For instance, there is Trade Union movement, Dalit movement, Agrarian Reform movement, Civil Liberties movement etc. Since most of these organisations are with lawyers as its
members which convinced the people about its legitimacy, magnitude, calibre and vigour. Thus, people started approaching these social organisations straight away to seek judicial redressal of their grievances. Then, they did not think of other forms of protest49.

In last few years, the tangible signs of emergence of Public Interest Litigation were discernible in petitions before the Indian Supreme Court and various High Courts covering many issues, such as that of under-trials in jails50, the torture of prisoners in jails51, the blindings of under-trials in jails52, the plight of rickshaw pullers53, pavementdweller’s right to live on pavements54, right to human dignity of inmates of Agra Home55, trafficking in women56, plight of ASIAD labour57, issues of bonded labour58, and so on. A perusal facts of these case goes to show that judiciary was forced to act in these areas because of utter carelessness of the part of governmental machinery which showed a blind eye to these problems of the helpless masses in India. Infact, it is due to the gross violation of basic human rights which compelled the juridiary to discard its conservative cloak and come to the rescue of the suffering masses59.

49. Ibid.at p.90
51. Sunil Batra v Delhi administration, AIR 1980 SC 1579
52. Khatri v State of Bihar AIR 1981 SC 928
54. Olga Tellis v State of Maharashtra 1985 (2) SCALE 5
57. People’s Union For Democratic Rights v Union of India, AIR 1982 SC 1473
58. Bandhu Mukti Morcha v State of Haryana AIR 1984 SC 802
59. Dr.Sonia Hurra, Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad, 1993 at p.91
For the enforcement of the basic Human Rights of the weaker section of the community, letters addressed by the Public spirited individuals and organisations. It was a letter dtd. 15th Jan. 1982 addressed by the Free Legal Committee Hazaribagh to one of the Judges (P.N. Bhagawati) which set the judicial process in motion and drew the attention of the court to the illegal detention of certain prisoners in the Hazaribagh Central Jail for almost two or three decades without any justification what so ever. The letter of the Free Legal Aid Committee, Hazaribagh brought the plight of these prisoners to the notice of the court and treating this letter as a writ petition, the court issued notice to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners.

The process of approaching the Courts by way of letters, telegrams and postcards started continuing and in number of cases, for instance, and matter of complaint received from Delhi Judicial Service Association, Tis Hazari Court, Delhi, the Supreme Court entertained telegrams letter and postcards as PIL cases. Procedural objections as regards to treating letters etc., as writ petitions were raised and the Supreme Court in *S.P. Gupta v. Union of India* held as follows:

"It must not be forgotten that procedure is but a handmaid of justice and cause of justice can never be allowed to be thwarted by any procedural technicalities. This Court, would, therefore, unhesitantly and without any qualms of conscience cast aside the technical rules of procedure in the exercise of a dispensing power

60. J.P.S. Sirohi, PIL, Legal Aid & Para Legal Services, Allahabad Law Agency 2003 at p.62
61. AIR 1982 SC 149
and treat the letter of public minded individual as writ petition and act upon it"\(^{62}\).

Justice P.N. Bhagawati, views Public Interest Litigation as a strategic arm of legal aid movement as it attempts to deliver justice to the poor downtrodden masses who cannot get access to court of law due to their poverty conditions and other disabilities from which they suffer\(^{63}\).

The concept of Public Interest Litigation has created deep impact on the minds of Indian population, and now, it becomes the duty of the legal profession to see as to what are the ways in which the concept can be utilised for enforcing the rights of the poor man as against the state, thus, fulfil the mandate dictated in Preamble to Indian Constitution to build a social order where there is justice: social, economic, and political for all alike, where rich or poor\(^{64}\).

The poor and the marginalised in India have long been denied justice, unable to afford access to, or comprehend intricacies of a judicial system tilted in favour of the rich and the powerful. The emergence of a public interest litigation movement has ushered in a new era, where the judiciary provides the last ray of hope for the deprived and dispossessed\(^{65}\).

The Economic Opportunity Act 1964 gave statutory basis to Legal Aid and provided federal funds for National Legal Services in USA.

The Council for Public Interest Law set-up by the Ford Foundation

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62. S.P. Gupta v Union of India AIR 1982 SC 149 at p.189
63. People's Union For Democratic Rights v Union of India AIR 1982 SC 1473 at p.1476
64. Dr.Sonia Hurra, Public Interest Litigation in Quest of Justice Mishra & Co. Ahmedabad, 1993 p.94
65. Bhagavanji Raiyani, 'For Justice is not a Privilege' Combat Law, Vol.5 Issue 1 Feb-March-2006 p.56
in USA defined the "Public Interest Litigation" in its report of Public Interest Law, U.S.A., 1976 as follows:-

"Public Interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others"66.

The issue of equal protection, regardless of race or colour an issue over which the civil war was fought and which is enshrined in the Bill of Rights (Article XV) of the United States Constitution has been another vital matter in which the Supreme Court has been compelled to reappraise the hierarchy of values explicit or implicit in the Constitution. Here the Court has gradually reversed the priority of constitutional values by according to government and legislature the right to experiment in social affairs, and, on the other hand affirming far more strongly than at any previous time the substantive meaning of racial equality67.

In the United States, the provision of the 14th Amendment guaranteeing equal protection of the laws was not found sufficient, at least for a long time, to prevent racial discrimination in various segments of the American social and political life68.

66. Quoted by Justice Arijit Pasayat in Dr. Ambedkar Basti Vikas Sabha v Delhi Vidyut Board AIR 2001 Del 223 at p.225
In United States of America the issues within the sway of Public Interest litigation are primarily concerned with the civic participation in the governmental decision making. There are Public Interest Law Centres, concentrating in issues affecting vast number of citizens, such as those concerning consumer protection and environmental protection. Besides, Public Interest Lawyers are also helping to ensure that governmental agencies are implementing the statutes as Congress and State Legislatures intended while legislating. Also, Public Agencies are serving people in health care, especially for children and poor. Another major role of Public Interest Law has been to assert new constitutional theories directed at achieving reforms of public institutions, such as schools, mental hospitals, and prisons. In several cases, when attempts to make reform had failed, it was the court actions brought by Public Interest Lawyers which brought in those changes successfully69.

II. Importance of Public Interest Litigation

The Public Interest Litigation is not a new phenomenon in India. In U.S.A., it was invoked largely for the purpose of improving the life conditions of the Blacks and ensuring human right to them. Lawyers represented clients and interest of non-represented people in judicial system. These interests include not only the poor and disadvantaged but also the ordinary citizens of the country. Public Interest lawyers attempted to provide systematic representation to these excluded individuals or groups in order to assure justice to them. The main reason of the growth of Public Interest

69. Dr.Sonia Hurra,Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad, 1993 at p.5
Litigation in U.S.A. was the failure of administrative agencies to protect public interest.

In India, the concept of PIL emerged to represent genuine cases of downtrodden masses of our society before the court. It is one of the strategies of legal services to the poor. Article 39-A of the Indian Constitution ensures equal justice and provides that no person should be deprived of justice only on the ground of poverty. The Parliament has enacted the Legal Services Authorities Act, 1987 and the states have framed rules and regulations and also created infrastructure. The Governmental efforts, however sincere can't bring about desired result, therefore, voluntary organizations and social service spirited people have to come forward and boost the movement of PIL for the cause of weaker sections of Indian society.

Any discussion on Access to justice therefore, has to address the situations of (1) justice denial occurring due to procedural stringencies in the trial, appellate judiciary or (2) underutilization of the Judiciary due to (i) inaccessibility to the forums of redressal based on various socio, economic and geographical reasons or (ii) the ignorance of legal rights.

Whatever be the criticism, the fact remains that Indian judiciary has done a remarkable job to ameliorate the human sufferings. Those who oppose to the growing judicial activism of the higher courts do not realize that it has proved a boon for common men. It has set right a number of wrongs committed by the states as well as individuals.70

The philosophy, which has guided the Indian Judiciary, is truly reflected in the quotation of Rabindra Nath Tagore:

"Into the mouths of these
Dumb, pale and meek
We have to infuse the language of the soul
Into the hearts of these
Weary and worn, dry and forlorn
We have to minstrel the language of humanity".71

Thus, law should not merely recognise the rights of citizens, it should also provide for remedies to be resorted to in case of violations. However, even where law provides for remedies, and forums for the enforcement of basic rights, the same would hold no meaning unless they can be accessed by all, equally, regardless of religion, sex, caste, race, colour or status.

It has been rightly pointed out that access to justice is not only a fundamental right but also the key to defending other rights. In other words, unless people can access justice, they would be deprived of the remedies for the violation of their rights and consequently also deprived of their rights.

It is important to ensure that the people have the ability to approach an institution and claim the enforcement of a right. An institution must make procedures as simple as possible for persons to gain access to it. An institution must ensure that the remedy it is able to offer in fact reaches those who need it most. The best example of an effort made in this area is the Social Action Litigation (now more commonly known as ‘Public Interest Litigation’) a movement that started in the mid 1970s. The Supreme Court’s

71. Ibid. at p.84
efforts in this direction began with the relaxation of the rule of locus standi to a great degree. Earlier, during its more traditionalist phase, the Supreme Court would only entertain petitions by those who were aggrieved parties and had a direct interest in the matter. However with the knowledge of the millions of people in our country being denied their fundamental rights, the Supreme Court allowed petitions to be made on their behalf by 'public-spirited' persons or organizations. Even letters written to the Supreme Court were treated as sufficient for the Court to take cognizance. Thus, those who were aware and could access the courts had the opportunity to serve the cause of those who were unaware (or at least unable to reach the courts themselves). Through this development, the Court was able to rule upon the rights of undertrial prisoners, guarantee legal aid and speedy justice, grant compensatory monetary relief, demand the end of custodial violence, etc. Thus, the Supreme Court was able to expand the ability of people to approach it and seek redress.  

The basic commitment and determination are to ensure that the promises made are actually kept. Such commitment, devotion and determination is a must for all institutions. In practice, it is often found that the implementation is very tardy and faulty and resultantly the benefits of the scheme and the laws do not reach for whom these are made.

These principles, though broad, deserve to be kept in mind by any institution that aims at serving the cause of the poor and the deprived.

sections of society and must be used to form the basic framework for the functioning of every legal institution and other institutions as well.

On analysis of some cases Justice N. Santosh Hegde has observed that the Supreme Court has at no point of time tried to be a roadblock in the government's initiative's to bring about socio-economic change nor has it tried to impose its ideology on the people against the will expressed by the people through their elected representatives. Further the analysis of the manner in which these cases reached the Supreme Court as also the decisions in these cases indicate that the Court has always recognised the fact that the Government of the day is the best judge of the socio-economic policies to be pursued. However, what must be noted is that "in each of the cases the endeavour of the court was to ensure that any such decision must be made in accordance with the provisions of the law in force at that given point of time"73.

The nature of Public Interest Litigation in a legal system depends on the social, political, legal and economic development of that particular legal system. Inspite of social, political, economic and geographical differences, there are certain general characteristics of Public Interest Litigation which are dominant features of most of the legal systems in the world today.

If the High Court intends to pass an order of an application presented before it by treating it as a Public Interest Litigation the High Court must precisely indicate the allegations or the statement contained in such petition

relating to Public Interest Litigation and should indicate how public interest was involved and only after ascertaining correctness of the allegation, should give specific direction as may deem, just and proper in the facts of the case.

The policy underlying Public Interest Litigation is to give otherwise unrepresented, unorganised and unprotected interests an access to justice. According to Justice V.S. Deshpande, "Public Interest Litigation is a strategy to bring about a silent and peaceful revolution in enlarging the socio-economic equality without harming the principle of meritocracy. It's a new course in constitutional litigation to uphold such egalitarian economic rights of the people even though they may not even be either expressly written or enforceable in the Constitution."

To make 'access to justice' equal for all classes of citizens a reality, the judiciary is endeavoring to dismantle the barriers of poverty that exist between poor man and the justice system. And this task is accomplished by liberalizing the scope of 'locus standi', and developing 'Public Interest Litigation', wherein the courts are now allowing even the 'third' parties to vindicate the socio-economic rights of weaker sections.

Public Interest Litigation is a litigation in which a person, even though not aggrieved personally, brings an action on behalf of the downtrodden masses for the redressal of their grievances. Public Interest Litigation may be defined as - a litigation undertaken for the purpose of redressing public

74. Giani Devendra Singh v Union of India AIR 1995 SC 1847 at p.1850
75. Cited by Dr. Sonia Hurra in Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad 1993 at p.92
injury, enforcing public duty, protecting social, collective and diffused rights, interests or vindicating public interest. The greatest service done by Indian Supreme Court to the poor of the country is the development of Public Interest Litigation.

In *Sachidanand Pandey v State of west Bengal*, the learned Judge highlighted the necessity to delineate the parameters of public interest litigation. The learned Judge noted that today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must, however, inspire confidence in Courts and among the public, and must be above suspicion. Hence, it is imperative to lay down clear guidelines and outline the correct parameters for entertaining such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation alongwith justice will suffer. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.

Rajeev Dhawan has defined Public Interest Law as:

‘Public Interest Law is part of the struggle by, and on behalf of, the disadvantaged to use ‘law’ to solve social and economic problems

76. AIR 1987 SC 1109
77. Ibid. at p.1134
arising out of differential and unequal distribution of opportunities and entitlements in society. In an effort to procure 'justice between generations' it is also concerned with preventing the present and future needless exploitation of human natural and technological resources'.

Public Interest Law rests on the belief that the 'public interest' is more likely to emerge, and the legal process is to function more intrinsically, if all sides to a dispute are represented. Public Interest law has been responded to the problem that policy formulation in our society is usually a one-sided affair, it is a process in which only the voices of economically or politically powerful are heard. Those with big purse and sword bargain with the lawyers and other experts to plead their best before the courts and administrative tribunals. The formulation of public policy is often shaped by one-sided master minded advocacy, whereas in total contrast, Citizen Groups, are under-financed and poorly organised, accordingly disadvantageously placed while asserting their claims. They are unable to pay for expensive lawyer's services necessary to assert policy-decisions. In numerous cases, regulatory or welfare schemes established by centre and the states to protect the public interest or to protect particular segments of public have been undermined in their implementation because the protected groups were not able to demand effective enforcement.

78. Rajeev Dhawan, Whose Law, Whose Interest in Public Interest Law, Basic Blackwell, 1986, Edited by Jeremy Cooper and Rajeev Dhawan, Cited by Dr. Sonia Hurra, Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad 1993 at p.57
79. Dr. Sonia Hurra, Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad 1993 at p.57
Public Interest Litigation entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature was to be co-operative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests.

Priorities are a matter of policy and so it is a matter for the policy making authority. Public interest litigation can be brought to the Court for the purpose of upholding the rights of the people, who are poor and who are under the veil of ignorance of their rights and obligations. In the United States, the standing has been conferred by various decisions of environmentalists and that the Supreme Court of India by various decisions have in fact and in substance extended the concept of locus standi to such an extent that in case of any illegality or irregularity the Court may intervene even at the instance of the stranger inasmuch as personal or legal interest principle is not required to be satisfied in case where a writ petition is filed to espouse the cause of a larger number of people who are poor and ignorant of their rights and who have no means to reach the Court and where the interest of the people and the society are involved\(^8^0\).

\(^{80}\) P.M. Bakshi, Public Interest Litigation, Ashoka Law House, New Delhi, 2006 at pp. 134-135
It is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and entitlements under the law, and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy they cannot become self-reliant; they cannot even help themselves. 

The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world.

III. Judiciary and Legal Aid

The Constitutional provisions on Legal Aid helps in realisation of ideals of Justice through the instrumentality of Legal Aid. For effectively realising this objective the Judiciary has got a major role to play. It is the duty of the state and judiciary to provide the needy persons the equal access to the Courts of Law. Justice is considered to be the foundation of all governments.

81. Suk Das v Union Territory of Arunachal Pradesh, AIR 1986 SC 991 at pp.993-994
82. P.M. Bakshi, Public Interest Litigation, Ashoka Law House, New Delhi, 2006 at p.57
and that justice is to serve its purpose in fulfilling the aspirations of these people. Judiciary through its creative role moulds and directs Legal Aid related policies and programmes in such a manner that it creates a ray of hope and confidence in the minds of the public. Thus, the judiciary led by the Supreme Court has played a pioneering role through a plethora of cases in administering Legal Aid to the poor, thus giving the rule of equality a proper place in realising socio-economic justice Public Interest Litigation which has been evolved by our judiciary aims at providing access to justice to the poor and vulnerable sections of the society.

A Public Interest Litigation can also be maintained for protection of oppressed class by a person who has no personal interest of his own. In this connection the Calcutta High Court is of the view that "there can be a situation when the underprivileged and the socially and economically or otherwise oppressed class of the society may not even be aware of their rights and about violation thereof and their exploitation. But it cannot be said that under such circumstances a public interest litigation cannot be maintained for protection and vindication of rights of such oppressed class by a person who has no personal interest of his own".83

In M.H.Hoskot v State of Maharashtra84 the Supreme Court has expanded the scope of Article 21 by holding that if and when circumstances so demand 'free legal services' is also implicit in Article 21. It was further held that the Article 21 is the most important ingredient of a 'fair procedure' for a person whether detained punitively or preventively, thus seeking

83. State of West Bengal v. Union of India AIR 1996 Cal. 181 at p.215
84. AIR 1978 SC 1548
liberation through court procedure, is 'lawyer's service'. The idea here is that the 'Judicial justice' is full of legal intricacies and involves legal submissions and critical assessment of evidence, and which is in turn almost entirely dependent upon professional expertise. And if professional skill is absent on one side, the Constitutionally cherished goal of 'equal justice' would fail. Thus, it is denial of fair trial when accused is deprived of the services of a lawyer\(^5\).

It is pertinent here to quote Justice Brennan who says that 'Nothing rankles the human heart more than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law as doubtful luxury, and the poor who need it most, cannot have it because its expenses put it beyond their reach, the threat to democracy is not imaginary but real, because the democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness'\(^6\).

Accordingly, it is well established, accepted and recognised that free legal aid to the poor is an essential right falling within the protection of Article 21.

In *Hussainara Khatoon v State of Bihar*\(^7\), justice Bhagawati interpreting Article 21 of the Constitution declared in unequivocal terms that:

> The right to free legal services is clearly an essential ingredient of reasonable fair, and just procedure for a person accused of an offence

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\(^5\) M.H.Hoskot v State of Maharashtra AIR 1978 SC 1548 at pp.1454,1455

\(^6\) Cited in M.H.Hoskot v State of Maharashtra AIR 1978 SC 1548 at p.1555

\(^7\) AIR 1979 SC 1377
and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence, or incommunicado situation and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.\(^8\)

The same principle was also followed by justice Bhagawati in *Khatri V State of Bihar*\(^9\) where he again reiterated that providing legal aid to the poor is a duty of the state and the state is under a constitutional obligation to provide the same.

After declaring the state to be bound to provide legal aid, justice Bhagawati also calls upon the judiciary to provide a helping hand to the needy and poor. He went on to observe that 'the Magistrate or the Sessions Judges before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state.'\(^\)\(^10\)

If we take into consideration the views of the Supreme Court, one thing becomes clear that the apex court by making a departure from earlier cases ultimately vested round the view that it is the duty of the state to provide free legal aid to the indigent litigant. In this way, one could notice

\(^{88}\) Ibid, at pp.1380-1381

\(^{89}\) AIR 1981 SC 928

\(^{90}\) Ibid, at p.931
the softening attitude of the judiciary towards the weaker sections and gradually the legal aid was held to be a part of the fair trial and equal justice.

In *R.M. Wasawa V State of Gujarat* the Supreme Court held the same view by declaring:

"Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates equal to handling the complex cases, not patronizing gestures to raw entrants to the bar. Sufficient time and complete papers should also be available so that the advocate chosen may serve the cause of justice with all the ability at his command".

Thus, in order to enhance a sense of confidence of the public particularly the person who are in dire need of legal aid and 'to enable the poor litigant to achieve an easy access to justice and also to secure him equal protection of laws against his well-to-do opponent that the scheme of affording legal aid and assistance to the poor has been conceived'.

The law, the Constitution as well as the statutes, do not make any distinction between the rich and the poor in the matter of access to justice but because of the high cost of litigation, lack of awareness of their rights and the inordinate delay in the disposal of cases by courts, it has become quite unaffordable for the poor to approach the court for the enforcement of their rights and for the redressal of their grievances. Thus, for the poorest sections of the society even after the commencement of the Constitution,

91. AIR 1974 SC 1143
93. Krishna Iyer Committee, Processual Justice to the People, May 1973
justice remained a distant dream because of their social and economical backwardness. The situation was sought to be improved by the passing of the Constitution 42nd Amendment Act in 1976 which provided for equal justice and free legal aid with a view to ensure that opportunities for securing justice are not denied to any citizen by the reason of economic or other disabilities. The main thrust of such a move was to help the weaker sections of the society from the executive inaction and confer on them the rights and benefits and also to evolve mechanism to ensure that equal justice can be realised.

It may be mentioned that, the Constitution does not define 'poverty' or 'the poor' nor does it have any specific provision providing indicators for determining 'poverty' or 'the poor'. However, the courts have in a large number of cases observed that social, economic and educational backwardness are clear indicators of poverty. Impliedly, members of Scheduled Castes and Scheduled Tribes and in some cases other backward classes also would come under the category of poor. None of the status also has any specific provision defining poverty or providing indicators to determine poverty. However, some statutes, especially those dealing with access to justice have some scattered provisions providing "criteria for giving legal services".

With an aim to help the arrested persons the Supreme Court held the view that "legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative

mandated not only by Article 39-A but also by Article 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners"95.

Through judicial activism the judiciary has been trying to enforce the fundamental rights of the weaker sections of the society. In this context, it would be quite relevant to quote the observations made by Justice Bhagwati, in *S.P. Gupta v Union of India*96.

"Today a vast revolution is taking places in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning"97.

96. AIR 1982 SC 149
97. Ibid. at p.189
Our judicial systems presuppose effective access to justice. The stress on 'access to justice' itself is a reminder of the fact that justice is not available to every person. Only in late 1970's we recognized the fact that justice is beyond the reach of most and that the right of access to justice or judiciary is universal and most fundamental of all rights and that it is to be given not as a matter of charity but as a matter of right.

In fact what must be noticed is that while entertaining petitions in public interest the Supreme Court on several occasions expanded the scope of the rights expressly mentioned in Part III to include several unenumerated rights, which were not expressly mentioned in the text of the Constitution. For instance in the case of *M.H.Hoskot v State of Maharashtra*, the Supreme Court extended the scope of Article 21 to include free legal aid by observing that free legal services is implicit in Article 21 and it includes a fair legal procedure. This was also reiterated in *Hussainara Khatoon v. State of Bihar*, which further held that Article 21 included within its parameters the right to a speedy trial. Thus the Supreme Court recognised the fact that considering the widespread poverty and illiteracy amongst the masses of the country, rights without the means of enforcement would be meaningless.

Like the Executive and the Legislature the Judiciary is also committed to facilitate the process of socio-economic equality amongst the masses of India. However the only concern of the judiciary has been to ensure that the same is done as per the procedure established by law, which is fair and equitable to all sections of the society.
3. THE REMARKS

An analytical perusal of Public Interest Litigation cases before the Supreme Court and High Courts show that the courts have been really very liberal in granting 'standing' to the persons coming from different fields. It is apparent that the courts are more concerned with the 'kinds of issues' raised than with the persons bringing those cases to the courts. This liberal trend is all the more apparent from the fact that the courts, especially the Supreme Court, have admitted the letters, post-cards, telegrams, and even newspaper items as writ petitions under Article 32 of Indian Constitution. In justifying its stand in expanding its judicial power, the court reasons that it must innovate 'new methods and strategies' to remedy injustices by providing 'access' to justice to larger masses of people who are denied basic human rights. The new judicial trend is not to allow 'poverty' to stand in the path of justice. In criminal cases, courts have dismantled the 'barriers of poverty' and an indigent accused can have free legal services of lawyer as a matter of right. The Court would ask the accused whether he wants legal aid as it is available to him at state expense. Thus, now courts have the responsibility of asking the accused and providing him with the legal aid unless accused specifically refuses to avail of the aid. So much so that Supreme Court has even quashed the conviction of an indigent accused who was not provided with the legal aid at the trial stage. The court negatived the argument of the government that accused did not ask for legal aid100.

Viewed as a reform of traditional model, in India, Public Interest

100. Dr. Sonia Hurra, Public Interest Litigation in Quest of Justice, Mishra & Co. Ahmedabad 1993 at p.252
Litigation can be surely seen as an improvement on the American doctrine of 'standing' which has intermingled two separate and distinct issues viz., Whether the petitioner is 'sufficiently motivated' to present good case to the court?; and Whether there is an 'injury' that requires judicial redress? In fact, American law presumes that only someone with personal stake can meet the first requirement of motivation. But, the Supreme Court has rejected this presumption in two ways. Firstly, by allowing any member of the public to seek judicial redress for a legal wrong done to a person or to a determinate class of persons, who by reason of poverty, helplessness or disability or socially or economically disadvantaged position is unable to approach the court directly. Herein the Court has granted standing to a 'representative' of another person or group of persons. This type of 'representative social action' evolved by the apex court is an expansion of 'standing exception' which allows a third party to file a writ of habeas corpus on the ground that injured party - the prisoner - cannot approach the court himself due to his incarceration. This is the kind of litigation called by Justice P.N.Bhagwati as Social Action Litigation because herein the Indian Supreme Court has settled the dismal problem of lack of 'access to justice' to the poor and oppressed sections of Indian society by empowering volunteer representatives or organisations to approach the court on behalf of the poor and oppressed.

Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens 101.

101.Ibid. at pp.253-254
in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position, should not go unnoticed and unredressed.

Any system, that is not keeping pace with the changing society cannot survive for a long time. Indeed, our judiciary has realized the changing situation and has shed the garb of traditional method of administering justice. This is what we call 'Judicial Activism'. It has adopted a proactive approach since last few years, particularly having regard to peculiar Socio-economic conditions prevailing in India. In a country like India, where we want to improve the life conditions and health of the people and making basic human rights available to them, it is necessary for a judge to adopt an activist approach.

The provisions for legal aid, legal services and Lok Adalat as well as Public Interest Litigations are reported to have benefited the poor to some extent in certain areas. The practical application of these provisions largely depend on the awareness of their rights and their response to the machinery that is available for the redressal of their grievances. Unless the poor are activated to avail of this facility and are made responsive, no amount of law and judicial innovations will change their positions. The NGOs and other social activists working for the poor and weaker sections of the society have a great role to play in properly educating them by spreading legal awareness and assisting them to obtain access to free legal aid services and to ensure
protection from exploitation and harassment.

It may be appropriate here to quote Justice V.R. Krishna Iyer who says "in a democracy the court belong not to the lawyers and judges but to the 'citizen', as Jerome Frank Wrote. Once we accept this democratic dimension of the judiciary, the rule of law gains a philosophical elevation". Thus it becomes imperative for our judiciary to shape the processes of law to actualise the constitutional resolve to secure equal justice to all. In fact, the Indian judiciary has indisputably deepened the rule of law arrangement.

The judiciary has played a commendable role in making the millions of people of this country leaning towards it with deep and abiding faith and high hopes. In spite of innumerable drawbacks, the judiciary thoroughly dealt with the matters with a pragmatic approach in protecting the basic rights of the citizens and more particularly the weaker sections. The citizens have placed the judiciary on a high pedestal and until recently it has been able to maintain their confidence by bringing about transparency in the system. In the process, the judiciary has been able to reach those people who needed it most by ensuring real practical justice. Thus, the judiciary which has been entrusted with the task of keeping every organ of the state within the limits of the power conferred upon it by the constitution and the laws, has made the rule of law meaningful and effective.