CHAPTER VII

CONCLUSION

The Constitution makers have given us one of the most remarkable documents for ushering a new socio-economic order, a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objectives of the Constitution. Indian Constitution is not merely what it contains in its Articles and Schedules. It probably would not be wrong to say that the Constitution is what the Supreme Court says in its different interpretations. The role of justices in shaping the Constitution cannot be underestimated.

Many Justices of the apex Court have interpreted the Indian Constitution. One of them is Justice Krishna Iyer. It is he who made efforts to make the Constitution and the Supreme Court 'people oriented' so that justice could reach the common man. Justice Iyer finds the Constitution as the basis, law as means and justice as an end. Although he says that social and economic justice are inter-dependent but he has tried to deal with them separately. Social and economic justice are the illuminating values enshrined in the Constitution.
It is true that the Constitution ensures justice and justice speaks of it. But where lies the value of justice if only tongue speaks and pen writes. Does the Constitution enshrining economic justice ensured bread to every poor man of this nation? Is it the effect of ensured economic justice that the poor men live in mud huts and anathema of storm and flood may fall on them any moment? Did God differentiate between lower class and upper class? Do the people belonging to these classes have special dignified bodies or souls? Krishna Iyer also penetrates into the matter of the welfare of the backward people. He while favouring reservation for the scheduled castes and scheduled tribes, holds that this is no solution for the problem. But his cross favouring of both the sides is also not a solution. Solution lies in raising the standards of the real educationally and economically backward people and not the people having entry in the schedules. Construct a building on a strong base and get a strong building. Bless the poor and the backward people with the facilities to rise and not with the fruit without labour. This showering of privileges will make them inefficient and for how much time the nation will stand on the shoulders of inefficient and weak administration. This will cause frustration among the other classes and this frustration will bring inner revolution. This will effect national integrity. Has anybody ever thought that if this 'reservation' continues it will become a custom and one day there will be reservation
for other classes. Cure the disease instead of showing false sympathies. Reservation is a sympathetic view towards scheduled castes and tribes which will suppress their skills and talents. So their personality must be developed instead of crowning them without recognising their 'person'.

Does this Constitution - a living virtue of nation or the saviour of Constitution, have the eyes to see that their recognition of social justice does not provide the downtrodden a social standing? Preamble to the Constitution is decorated with the dignity of the individual. Are the bonded labourers dignified? Justice Krishna Iyer's life has been an incessant struggle for the cause of justice and holding the dignity of the man. He envisages 'Dharma' as the fulfilment factor of justice. The 'Dharma' of a man is to be human, of being true to the dignity and worth of the human person, of showing reverence for life, love compassion and equal regards for fellow beings. So according to him, in ultimate terms, justice is fulfilment, and that is why he describes injustice as inhuman because man must be a 'whole' and not fragmented being. He defines individual justice as an offer of full play for the endowments latent in him without interdict or inhibition, without injury inflicted on others. Justice Iyer's concept of social justice is not 'exact', 'static' or 'absolute' concept. It is rather flexible, dynamic and relative one. All basic requirements
of man - material, cultural and spiritual - must be fulfilled. He sees the creative aspect of social justice in the opportunity to unfold each person's human potential - aesthetic, intellectual, technical, physical or other. His concept of social justice can be summed up in the following words:

"Social justice is a generous concept which assures to every member of 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 injustice."(1)

Thus Krishna Iyer marks social justice as the basis of progressive stability in society and human progress.

Justice V.R. Krishna Iyer treats even the 'right to life' as an integral part of social justice which starts in the womb of the mother.(2) In the year of the disabled(3) he wrote, justice must come to the aid of the disabled persons along with other persons. The true perspective of habilitation of the handicapped is an inseparable part of social justice because the full and free development of every individual is the 'kernel' of a just society. He agrees that poverty is a show piece of injustice and if man cannot get justice peacefully, he must accomplish it.

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1. Iyer, J., Justice and Beyond 157-158 (1980)
3. 1981 - was the year of the Disabled.
violently. Justice Iyer condemns the concentration of wealth in a few hands. From the works of Krishna Iyer it can be derived that by 'economic justice' he does not mean to distinguish man from man on the basis of economic value. It rather means equality of reward for equal work. Everyone should get just remuneration for his labour. It ultimately also means the removal of those economic conditions which ultimately result in the inequality of economic value among men inter se and concentration of wealth and means of production in the hands of few. Justice Iyer suggests that economic justice can be achieved by liberation of nation's wealth, resources from private hands. This will require acquisition and nationalisation of property. Proper livelihood should be available to every individual. Justice Iyer has rightly observed that in the name of 'trade', the tycoons exploit the general public. They create an artificial shortage of essential goods and carry on anti-social economic activity in the name of trade. He suggests that every economic justice must promote the Constitution's economic-justice concept and anything which results in injustice to the poor and deprived can't be deemed a permissible economic activity. He believes in the prevention of concentration of wealth in the few hands and further that anti-poverty laws should be promulgated.

Krishna Iyer, Bhagwati, JJ extended the meaning of Article 21, by introducing the due process clause thus
numerous rights (e.g. right to free legal aid, speedy trial, easy access to justice, right to livelihood, rights of prisoner's against torture) resulting from such extension helped in providing socio-economic justice to the masses.

Justice Iyer also holds that right to equal participation in the polls also speak of justice - social, economic and political and that if this right is denied, the great democratic ideal of social, economic and political justice would remain a distant dream eluding our grasp.

It is submitted that life of law is justice and it is for the judiciary to inject life into law. Judiciary in India has undoubtedly rendered great service to the cause of social justice and human rights. But the judicial system will be reduced to a mere hoax if it could not deliver justice to the down-trodden. It is painful to record that law and justice are now becoming a game at the hands of a few privileged persons. Thus the judicial system must be overhauled, so that common people must get justice through legal process and not through illegal means.

While dealing with the chapter on fundamental rights and directive principles, it is found that in the very first case of Champakam Dorairajan involving the relative scope of part III and IV of the Constitution, the Supreme Court gave a death blow to the most dynamic part of the Constitution.

4. State of Madras v. Champakam Dorairajan
AIR 1951 SC 226
The Court laid down the least warranted and most deviating proposition that the directive principles have to conform to and run subsidiary to the fundamental rights. It took nearly a quarter of a century for the court to slowly resile from their position. However, the hard fact remains that till this day, neither the judgement in Champakam has been expressly overruled nor the supremacy of the directive principles accepted unreservedly. If the court had at the very outset reversed its proposition, in all probability we would have made significant progress towards the realisation of constitutional ideals of justice. In that even, some of the constitutional amendments would have been unnecessary.

The hopes raised by Twenty-Fifth amendment which inserted article 31C saw judicial approval in Keshwananda Bharti. Justice Krishna Iyer realising the importance of directive principles and further that socio-economic development cannot be achieved without directive principles observed in Mumbai Kamgar's case that in the statutory interpretation, the courts looked for the light to the 'lode star' of directive principles and where two statutory choices were available, the construction in conformity with the social philosophy of directive principles had to be preferred. Thus, Justice Iyer in this case gave importance to the ideals enshrined in the directive principles. Felt encouraged by this, the Parliament passed the Forty-Second Amendment. The amendment which aimed at giving supremacy to the directive principles,

suffered a serious setback in Minerva Mills Case.\(^6\) In this case C.J.Chandrachud observed that to destroy the guarantee given by Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic-structure. Because fundamental rights occupy a unique place in the lives of civilized society and have been variously described in our judgements as transcendental, inalienable and primordial.

But we see in the later cases\(^7\) again reliance was placed on Part IV of the Constitution. Justice Iyer is of the view that directive principles which are so vital to the well-being of the country and the welfare of the people, it is impossible to conceive that any law passed for such a purpose can at all violate Articles 14 and 19. Justice Iyer realises the sanctity of fundamental rights and at places he has given importance to the doctrine of harmonious construction.\(^8\) In the case of CIWTC\(^9\) the doctrine of

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   - Waman Rao v. Union of India. AIR 1981 SC 271
harmonious construction has been reiterated. It is submitted that the fundamental rights and directive principles are of common origin. They are the products of the national and social revolutions inseparably interwined in the character and culture of Indian politics itself. It was the Constituent Assembly that separated them into justiciable and non-justiciable rights apprehending the practical and administrative difficulties that might have arisen if the latter were to be enforced at the behest of the citizens. Otherwise, the founding fathers did not visualise any distinction between two categories. Both the categories of rights are fundamental i.e. fundamental rights are fundamental in the life of an individual whereas directive principles are fundamental in the governance of the country. Directive principles impose binding obligations upon the state. The State is bound to observe them while framing laws or formulating policies for implementing them. A time will come when most of the directive principles will turn into fundamental rights and vice-versa. Such as the right to work, a living wage, old-age pension and social security benefits etc. may turn to fundamental rights and the right to untouchability or the rights contained in Articles 15(4) and 16(4) may turn into directive principles. To-day the political theory which acknowledges the duty of the government to provide jobs, education, social security benefits extends into the field of human rights, thus promising justice to all the
citizens. That is why the reasoned and efficacious implementation of directive principles assume importance for the future governance of the country. Therefore, it becomes necessary that whenever there is a conflict between a fundamental right and directive principles, it is the latter which should be given precedence over the former. The same was rightly observed by Justice Iyer in number of judicial and extra-judicial writings.

If we consider the right to equality guaranteed under the Constitution, the existing legal provisions are adequate. They have the mark of the best draftsmanship. But the crux of our problem lies in their satisfactory and efficient implementation. We have to anatomise as to how far the state has succeeded in making the benefits of reservations available to the weaker sections of the society.

Earlier the provisions enumerated in Article 15(4) and 16(4) were interpreted as exceptions to the main provisions of their respective articles. But the Supreme Court through Justice Krishna Iyer rose to the occasion in Thomas and A.B.S.K. Sangh and attributed a positive content and meaning to these clauses particularly Article 16(4). The obvious effect of these decisions is to broaden the state's powers to implement its policies of protective discrimination and to provide justice to the weaker sections of the society.

Another significant impact of these decisions made by Justice Iyer has been with respect to the quantum of reservations. These decisions cast doubts on the accepted view that the reservations cannot exceed fifty per cent of the total posts. Now it appears that the state is not bound by the rules that the reservation must be less than fifty per cent of the total posts.

It is submitted that the moral claims of the members of Scheduled Castes, Scheduled Tribes and other backward classes should be justified as reasonable restrictions under Article 14 upon the rights of the members of the advanced sections of the society.

It is a matter of common knowledge that the posts reserved for scheduled castes and scheduled tribes remain unfilled because of the non-availability of the qualified candidates from those classes. Justice Iyer laid down that such posts should be carried forward and added to the quota for subsequent years. It is submitted that while doing so it must be kept in mind that this carry-forward rule does not lead to monopolization in favour of weaker sections. Justice Iyer has rightly laid down that only those people of weaker section should be granted reservation who are really needy, so he suggested that a class as a whole should not be declared as scheduled caste or backward class, only those who are below the poverty line i.e. those who are economically
backward should be included in the reserved classes. Once the benefit is given to someone, then next time it should be given to someone else who really needs it. He made this suggestion keeping in view that mostly this benefit is grabbed by the top creamy layer. Thus many persons by virtue of their belonging to a particular caste or class continue to enjoy the benefit even though they are economically well off. Therefore, it is necessary to make a distinction between a backward and most backward classes. It is submitted that like this the benefit of reservation will go to more number of people and also this will help in the process of integrating the S.C's and S.T's with the common stream of people.

This whole problem is a complex one. It is no doubt true that those who belong to scheduled caste and scheduled tribe categories have remained backward inspite of constitutional benefits for the last more than three-and-a-half decades. Efforts made by the Judiciary in the distribution of these benefits have not improved the situation substantially. It is time to give serious thought to this vital matter. The Constitutional Scheme needs a review. It is submitted that provisions relating to these Special Categories in the Constitution be deleted. Now provisions should be incorporated based upon economic considerations. Caste should not be the consideration. One who is poor needs help. It does not matter to which caste one belongs. One may be low caste
and yet rich. Therefore, he does not need and deserve special benefits. On the other hand, one may be belonging to high caste and yet poor. He would need all the help.
Economic backwardness should be the base. There should be no reservations. Help from the beginning should be provided.
Free education. Free books. Free food. Free clothes. Special coaching. In sum total, those who are economically poor should not feel any kind of handicap. They should have all those facilities which are enjoyed by others. They should be the integral part of the main stream. They should grow with them. Thereafter, no special privileges. No reservations. All to be treated at par. In the ultimate, it would prove beneficial. Admissions and appointments would be based purely on merit. It would improve the over-all administrative health of the country. It would generate unity and one-ness in the country. It would eliminate the social evil of casteism. The sooner we bid it farewell, the better it would be. It would go a long way in achieving the goal of social justice as contemplated by Justice Iyer.

Life and personal liberty are the most prized assets of an individual which are basic and primary. As long as the spirit of liberty is alive in the society, individual rights will be safe enough. If the flame of liberty should go out, no bill of rights, however impressive on paper can possibly guarantee the continued rights of the people in any vital sense. In India, judicial activism after Maneka
has gradually but surely produced a new jurisprudence, the evolution of which may be hailed as evolution in our society and politics. It is a vast and fast developing era. Realms after realms develop as the horizons of personal liberty go on expanding.

The Supreme Court from Gopalan till Maneka adhered to restricted approach. The minority judgement of Fazl Ali, J. in the former became the voice of majority in the latter case. Maneka has been the turning point and a spark thrower of a new revolution in the sphere of personal liberty. Post Maneka era has been the most fertile period in which the concept of personal liberty has acquired newer heights and experienced all-side growth. Thus Article 21 whose potential was never discovered in the past ultimately was pulled out of its slumbers and harnessed to engineer social justice which is one of the goals proposed to be attained by the Constitution. The following two factors have been responsible for this newer approach:

1. Personal liberty was the main casualty during the period of Internal Emergency in India.

2. In the presence of Right to Property, other fundamental rights remained in a constipated form. The removal of right to property from part III which was the centre of scathing attack, liberated the other rights and provided them, inter alia, right to life and personal liberty.
1978 onwards has been the judicial era of expanded and widened rights where new social, political rights emanated from the galaxy of cases. The Supreme Court is rising to the occasion to expand the parameters of personal liberty, accepting it in the spheres of socio-economic justice.

The credit of providing socio-economic justice to the masses by expanding the parameters of right to life and personal liberty goes to Krishna Iyer and Bhagwati JJ. Krishna Iyer is a great prison reformist. His new movements regarding prison reforms, legal aid to the poor, speedy trial and easy access to justice heralds the dawn on the surface of judicial horizon. With the advent of landmark cases of Sunil Batra, Hoscot, Prem Shankar, the Supreme Court has added various projectiles in its armoury to be used against the war for prison reforms and prisoner's rights. Justice Iyer in Sunil Batra I & II observed that prisoners are not denuded of their fundamental rights to human dignity just because they have committed a crime. They are entitled to the right to dignity even within the four walls of prisons. Third degree methods should not be used against them as that would amount to torture and violative of rights to human dignity implicit in Article 21. They should not be forced to do harsh and degrading jobs. A prisoner could move the court in regard to the alleged torture of another prisoner. He laid down in this case only that a prisoner cannot be put to solitary confinement unless death sentence has been confirmed on him,
and that also can't be for a longer duration at a stretch.

Regarding the question of putting iron on prisoners, Justice Iyer clearly laid down that it should be resorted to only when there is clear and present danger of escape breaking out the police control and for this there must be clear material, not merely an assumption. The escorting authority must lay down the reasons for doing so, otherwise the procedure shall be unfair. This is implicit in Article 21, which insists upon fairness, reasonableness and justice in the procedure for deprivation of life and liberty. He held that integrity of physical person and his mental personality is an important right of a prisoner and must be protected from all sorts of atrocities.

It is submitted that the law laid down by Justice Iyer regarding non-hancuffing of prisoners in jail custody is healthy but on a deeper thought, one has to analyse whether this is a practical measure or not? In reality we know that when an accused person or hardened criminals are transported from one place to another, there is a lot of security involved. In fact, there is a constant danger of the accused person escaping the escort, if the person will not be handcuffed, it would be difficult and almost impossible proposition for the prosecuting authorities to carry out their duties of transportation. Therefore, it is suggested that the prosecuting authorities should be given the liberty to assess each individual case and decide as to whether handcuffing
is necessary or not.

Millions of people belonging to the deprived sections of humanity are looking to the courts for improving their life condition and making basic human rights and personal liberty meaningful for them. They have been crying for justice and their cries have so far been in the wilderness. It is pointed out that poverty was their crime and these souls lost faith in the judicial system which denied them a bare trial for so many years and keeps them behind bars, not because they are guilty but because they are poor to afford bail and courts have no time to try them. Justice Iyer laid down that it is evidently deprivation of liberty for the reason only of financial poverty. Keeping an undertrial behind bars for a longer time which he otherwise would have spent in the jail if convicted is not just, fair and reasonable. He rightly emphasised on the speedy trial of all the undertrials.

The Supreme Court has found that an unsatisfactory bail system and delays in courts had frustrated the under-trials quest for justice. It is a crying shame on the political system which permits incarceration of men and women for such long durations without trial. It is a denial of human rights to those persons who are languishing in jail for offences which perhaps they might ultimately be found not to have committed.
The doctrine of fairness of procedure in Article 21 introduces principles of Natural Justice in it. Justice Iyer has been invoking rules of natural justice in his judgements.

The expression 'procedure established by law' has been interpreted by Justice Iyer as a reasonable, just and fair procedure but at the same time Justice Iyer laid down that the law enacting the procedure should be a valid law and perhaps this was the reason why Sec.303 IPC in Mithu's case had been invalidated by the Supreme Court because, Sec. 303 IPC provided for mandatory death sentence on a prisoner undergoing life imprisonment without giving him an opportunity of being heard.

Process of justice is luxuriously luminated for those whose purchasing power or influence knew no bounds. No democracy can survive if the justice be the mirage to majority. This spells out the political need for the programme of legal aid to poor which is now an essential ingredient of Article 21. Article 39-A, the fundamental constitutional directive also emphasises that free legal service is an unalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. It must be held implicit in Article 21. Justice Iyer's contributions towards legal aid are noteworthy. Justice Iyer headed the Expert Committee on legal aid where he
commented that legal aid should be viewed as a part of social planning. But even apart from that, it can certainly be related to the concurrent list. He observed that indigence should never be a ground for denying fair trial or equal justice. Competent advocates should be appointed by the State which enabled the poor litigant to have an easy access to the court of law as well as equal protection of laws against his well-to-do opponent. Justice Iyer emphasised the great need of legal aid to the indigent prisoners because he treats prisoners as an handicapped class and says that legal remedies are often beyond their physical and even financial reach unless legal aid is available within the prison. Copy of the judgement should be made available to the prisoner so that he could file an appeal in time, and if the prisoner is suffering from any disability, it is the duty of the state to assign him a lawyer who may help the prisoner in filing an appeal in time otherwise Article 21 would be violated. Justice Iyer is not oblivious of the torture by police during interrogation so he rightly held that an advocate of the accused choice should be present at the time of police investigations. He apprehends greater danger of police coercion when a woman is taken to a police station. For this he did emphasise that the advocate be provided by the police authorities. He simply laid down that the accused may secure the services of a lawyer of his own choice but if the accused is poor and is unable to engage a lawyer
immediately after his arrest he did not make any provision for that which will clearly be violative of equality clause. It is submitted that such a right should be made available to the accused immediately after his arrest as such a right is apparent from article 22 (1) which obligates intimation of the grounds of arrest to every accused person and allows him right to counsel for advice and defence. The right to legal aid means that counsel's assistance should be provided at the State's expense.

Justice Iyer's suggestion for the establishment of legal aid clinics and workshops can be of great help to an indigent if the people involved in such clinics and workshop perform their duties sincerely. Justice Iyer says that lawyers are the necessary link between the distributor of justice - the court and consumer's of justice i.e. the people, lawyers should come forward to help in these clinics.

It is submitted that practice of law is a means of livelihood, so free services cannot be expected from the profession beyond a reasonable limit. The State will have to own the entire financial responsibility for securing legal aid to the indigent. As the right to legal aid now stands recognised as a fundamental right, it should be made enforceable through writ petition.

Justice Iyer attaches great importance to the right to life of an individual and depriving a man of his
right to life is not just, fair and reasonable. Therefore, he opposes death-sentence. He emphasises that special reasons be given by the judge that why is he imposing death sentence and why not life imprisonment. He believes in eradicating crime not the criminal. He observes that we should try to rehabilitate the criminal by imparting lessons on TM. According to him only those murderers should be hanged who are real hardened criminals.

Thus we can see that after the landmark case of Maneka, Article 21 is the sanctuary of human values, prescribes fair procedure and forbids barbarities. It would not be wrong to say that Justice Iyer has made full use of Article 21 in his various judicial and extra-judicial writings.

The ambit of Article 21 has been extended further by the Supreme Court even after Justice Iyer's retirement in cases of Bandhua Mukti Morcha and Neerja Chowdhury. In the former, the Supreme Court recognised the right of the bonded labourer to live with human dignity and in the later the Court went a step further to glorify Article 21 in securing effective rehabilitation to the freed labourers.

It is submitted that Article 21 has witnessed the visitation of sociological school of jurisprudence under Indian Constitutional scheme. It has been interpreted most liberally and given widest possible meaning so as to make life and personal liberty a reality. It can be pointed out
that still more can be done in the area of personal liberty. Article 300 provides for state liability. Since the said article continues to be enforced without any modification, it can be better utilised in consonance with Article 21 for providing compensation to a person whose life or personal liberty have been taken away by a procedure which is not fair and reasonable.

The Criminal jurisprudence aims at only punishing the criminal and not rehabilitating the victim or his aggrieved family. Article 21 has not taken into consideration the victim's family which has been left in the ditch and starve to death. The judicial discretion under Article 21 should be exercised to divert the fine collected from the culprit to the victim so as to provide some financial stability to him and his family - this will be a bright aspect of Article 21.

The Legal development after post-emergency era has marched towards a new dimension. Court is rising to the occasion. Social organisations have a role to play. Still more can be done by legislative and judicial measures.

Under the traditional rules of standing a 'person aggrieved' by the administrative action could come to the court for relief. If a person suffered injury along with other members of the public he had no access to the court, unless he suffered an additional injury over others. A person could have standing to vindicate a public right or
interest if he could show that he had been specially aggrieved by injuries to the public. Judicial activism plays an important role in bringing in the societal transformation. It is the judicial wing of the State that injects life into law and supplies the missing link in the legislation. Thus, where the legislature falters, the judiciary corrects. Having been armed with this power of review, the judiciary comes to acquire the status of a catalyst or change. In the field of locus standi also, it is again the judiciary which has enlivened the dead law by sharply deviating from the traditional rule of private interest to public interest litigation.

While discussing public interest litigation, it is pointed out that the State or Public authority against whom the public interest litigation is brought should be as much interested in ensuring basic human rights (constitutional as well as legal) to those who are in a socially and economically disadvantaged positions as the petitioner himself who brings the public interest litigation before the court. This would provide the state and public authority an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or public authority.

It is Krishna Iyer, J. - the messiah of masses, who deviated from the rule of locus standi and recognised the
the rule of public interest litigation for the first time in 1975 in Dabholkar case. He observed that traditionally used to the adversary system we search for individual persons aggrieved. But a new class of litigation - where a section or whole of the community is involved (such as consumer's organisations or NAACP - National Association for Advancement of Coloured People) emerges. In a developing country like ours, this pattern of public oriented litigation better fulfills the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within this category of organisations when a lawyer is involved. So we can clearly say that Justice Iyer initiated this process of public interest litigation in this case and not only emphasised its importance time and again in future cases but further widened its scope also. Justice Iyer again for the first time entertained a letter as a writ petition written to him by a convict in Tihar Jail alleging brutality by a head warden on a fellow prisoner. After this, the practice of entertaining letters as writ petitions was followed by other judges also in future cases and till now it is being followed.

13. Id. at 323.
   Gandhu Mukti Morcha v Union of India. AIR 1984 SC 802.
Justice Tulzapurkar has criticised the development of PIL by observing that in the name of vindicating public interest, the Supreme Court is taking over the administration. He further laid down that 'epistolary jurisdiction' can be misused also. A party applying for the PIL may not be a genuine party that would just waste the time of the court. Justice Iyer has a reply for this also when he observes that a letter is to be treated as a writ petition only after making full enquiries and investigations. He rightly says that some cautionary rules are necessary before action follows upon informal communications. Those in dire distress and extreme disability may reach the court without restrictive formalities. Once the court cognises the grievance, there must be some machinery which may not be fail-safe but must give prima-facie assurance that a litany of woes is not a pack of lies. He further suggests to ascertain whether a prima-facie action exists, it would be worthwhile to have referral bodies i.e. social action groups or other approved organisations which may be asked to verify facts on the court's authority so that officious busy body may not walk into courts and waste its time.

Justice Iyer generated a new kind of accountability of the State agencies by saying that the dynamics of judicial process have a new enforcement dimension. The officer-in-charge and even the elected representatives

will have to face the penalty of the law if what the court and follow up legislation direct them to do is defied or denied wrongfully and poor finance will be poor alibi when people in misery cry for justice. (17) Recently in a case (18) Venkataramiah, J. delivered the judgement on the same lines as was delivered by Justice Iyer in Ratlam's case. Justice Venkataramiah observed that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue.

Although Supreme Court had been widening the ambit of PIL for quite some time but recently it has rightly taken a serious view regarding the role which a petitioner is expected to play in initiating and pursuing the PIL issues. (19) The Supreme Court refused permission for withdrawal of public interest litigation filed by her to highlight the gross violation of constitutional and statutory rights of juveniles below sixteen lodged in various jails. The petitioner had made exceptional submissions by saying that the court had become 'dysfunctional' in relation to and in the context of

the gravity of the violations of the rights of the children, and further that the court had not been able to exact prompt compliance of its own orders and directions.

Submitted that PIL jurisdiction does not mean open to all and free for all. The major focus is on the public interest involved and not on an individual or a group who brings the matter to the court. If the effort of the petitioner is to have central focus not on the issue but on the petitioner, it is paramount duty of the court to check and eliminate such efforts. The liberal approach of the court in regard to the jurisdiction does not mean that under the garb of a social worker, he or she gets an absolute right to say anything or do anything even with regard to the Supreme Court. If such a practice is allowed to go on, in due course of time it would emerge as a big factor which would jeopardise the PIL remedy itself.

Public Interest Litigation is a new devise. It is a devise if used constructively can make social and economic justice a reality. There is need to use care and caution in the expansion of this new Jurisprudence. The possibility of the misuse of this tool cannot be ruled out. Therefore, the courts will have to adopt a balanced approach. The strict rule of locus standi is not warranted at all to make the constitutional rights available to the people of India.
At the same time, the liberal rule of *locus standi* does not mean that the court must entertain any one for whatever cause one wants to agitate. The Courts will have to keep a watchful eye on those who come with public issues. Behind this issue, there may not be other considerations. With this caution, if the Jurisprudence of public oriented litigation is developed, it would prove to be substantially useful in enforcing and executing rule of law.

The Constitution of India is a social document in which great emphasis is placed on socio-economic justice designed not only to bring about the real satisfaction of the fundamental needs of the common people but to go much deeper and bring about a fundamental change in edifice of Indian society. Part IV of the Constitution calls for the amelioration of the people's social and economic condition. These principles ordain that state shall strive to promote the welfare of the people by securing and protecting a social order in which justice social, economic and political shall inform all the institutions of national life.

Justice Iyer has also made significant contributions towards these directive principles and few of the directive principles have been picked up where his contributions are noteworthy. Justice Iyer's contributions towards Article 39-A i.e. free legal aid has been discussed under Article 21.

Article 40 deals with organisation of village panchayats which was an important institution of ancient
India and it served as a media between the State and the Community. These panchayats were entrusted with dispensing of justice. There was no need for a poor farmer to go out of his village and spend time and money for months together. Justice Iyer attaches great urgency for setting up of Nyaya Panchayats. He laid down that majority of the people in India live in villages who on account of their economic or any other disability cannot come to the courts in cities. Therefore, the rule of might is right is adopted, which ultimately results in injustice. So nyaya panchayats should be established in villages so that they could get justice easily. Justice Iyer believes that in the panchayati courts, the whole emphasis is on conciliation and promotion of better relations. It is submitted that this may be true to some extent but not completely because there is friction and disharmony among the panches themselves and thus they don't want to cooperate with one another when motivated towards a particular joint endeavour. Justice Iyer emphasises on the fact that nyaya panchayats can lift a considerable part of load from the regular courts. These should be given power to dispose off small civil and criminal cases. Those who are poor should be exempted from paying court fees. Justice Iyer is of the view that no appeal should be made against panchayati decisions and where subject-matter is above ₹ 2000/- then a single appeal may be permitted. It is understandable that normally there should be no
appeal against the decisions of the Panchayat. But the limit of Rs. 2000/- is too meagre in the present context. Therefore, this limit needs to be raised at least to Rs. 5000/-. He laid special emphasis on the fact that bigger bosses of the village politics must be kept away from the panels. Justice Iyer is aware of the intricacies of law. In view of this he has suggested that a legal member be attached to them who can be a judicial officer or a law teacher.

It is submitted that no doubt such a system will certainly help the villagers in getting an easy access to justice but it is not completely free from shortcomings. Political interference from levels above the village is too conspicuous and is responsible for crippling the institution.

Justice Iyer has shown deep concern regarding the disabled people. He has suggested number of ways in which such people can be helped. He says the first thing is to provide work to them and the place of work should be adapted technically to the demand of different disabilities. Sheltered workshops should be established for them but before that attention must be paid for establishing schools where such disabled are prepared for working in those workshops because every vocational employment requires adequate previous schooling. They should have less working hours in a day as compared to others and should be given lighter jobs. It should be made compulsory for an institution to adjust the
disabled person in the same institution if he became handicapped while working at that place only. They should be provided scholarships to assist them to secure such education, academic, technical or professional as would enable them to earn living. It is submitted that although government has made provisions for the scholarship but the problem is that a disabled person who wants to avail of such an opportunity has to go through number of formalities making it quite difficult if not impossible, to get such a scholarship.

Justice Iyer suggests that a Minister for the Disabled should be appointed who should be assisted by a national advisory body consisting of representatives of all relevant government departments, voluntary and professional organisations and organisations of the disabled. They should monitor progress in preventing disability and stimulating rehabilitation within the nation.

It is submitted that if Justice Iyer's suggestions are followed in reality these would certainly help this section of people in their rehabilitation.

Provision of living wage enshrined in Article 43 should be made an essential condition on all the employers. Minimum wage can provide food, clothes and shelter but there are many more necessities in one's life. When a rich man can afford luxuries why not a poor man can have his necessities fulfilled. He cannot survive only on food,
clothes and shelter. He is entitled to a decent standard
of living, and full enjoyment of leisure and social and
cultural opportunities. Justice Iyer also lays stress on
the concept of living wage and suggests that all the facilities
should be provided to them and that can be done with the help
of living wage only. He lays down that it is the duty of
the head of the family to give to his family in addition to
food, clothes and shelter, a good education to the children,
protection against ill-health and other social requirements
which one has to fulfil when one stays in the society.

Justice Iyer lays emphasis on the worker's participation
in the management. According to him worker is the back-bone
of the nation particularly in the area of economic self-
reliance. He is a partner in the industry. It is the
labour and not capital which produces wealth. Thus, the
workers must be invested with some responsibilities of
ownership and management. He suggested that this can be
brought in action only if statutory provisions are made
regarding this. Of course, the level at which association
of the worker is to be made is important, so he suggests
that careful legislative moves, cautious industrial steps
and constant review and post audit on the performance are
essentials in this field if the workers are to be partners
in the industry. He applied Article 43-A for payment of
back-wages also. He observed that if the discharge of the
worker from service is bad, reinstatement is the rule.

The Supreme Court went to the extent of saying that workers should be heard on the question of winding up proceedings. It is submitted that if a company is to be wound up, it would certainly go against the interest of employees and workers. Therefore, it is desirable that they should be heard before an order of winding up is passed. It is submitted that in order to make workers' participation effective, workers should be given training in economics and management. They should be trained in the principles and practices of management so that they may be able to take part effectively in the management. Secondly, they should participate only in those matters which are likely to affect their jobs, welfare and not in the day to day management. Lastly, employers should change their attitude and create mutual trust. By statutory provisions, they should be bound to consult employees' representatives in all those matters which are likely to affect employees.

It is no doubt true that Justice V.R. Krishna Iyer's contribution to the development of Indian Constitutional Jurisprudence is sui generis. He provided a new approach. He gave a new meaning to various constitutional aspects. This does not mean that one must accept his interpretation always. One can genuinely differ with him. Ultimately, no study of Indian Constitutional development can be complete without the role and contribution of Justice Iyer.
Particularly, the post internal emergency era (1975 onwards) belongs to Justice Iyer. He practically provided new foundations. It is remarkable that without specific amendments in the Constitution, new meaning was given to different provisions in order to meet new circumstances and situations.