CHAPTER VI
CONSTITUTIONAL PROVISIONS RELATING TO SOCIAL JUSTICE
(Other than Equality and Liberty)

Social justice is a multidimensional concept permeated in whole of the Constitution of India. To provide equality and liberty for all, reservation and compensatory action for the deserving and special rights for the needy are some of the facets of social justice. Constitutional provisions relating to social justice other than the basic concepts of equality and liberty covered under various Articles of different Parts of the Constitution include special rights to property, minority groups and workers, and their enforcement schemes and strategies viz. Public interest litigation, Legal Aid, Lok Adalats and Panchayati Raj Institutions etc. are discussed in this chapter.

PROPERTY RIGHTS:

Property is one of the most important right which everyone in every country whether Capitalist, Socialist or now Communist has, to some extent, may be large or small, lusts to own. Most of the rivalries in the society as well as in the world as a whole are on account of ownership or control over property. In a society which lays down some norms or exercises some control in the matter of distribution, control and use of the property, there is
more scope of ensuring social justice for all. On the other hand, in a society permitting total freedom without any control, some people are likely to usurp major part of the property leaving very little for larger community and that upsets equilibrium in the society, leading to social disparities and injustices. Thus, the society must allocate right and control over land and goods at its disposal as a prerequisite of social justice. In a country, to ensure social justice and also peaceful existence of people with rival claims and interests, it is necessary that material resources of the country are so allowed to be owned, controlled, distributed or used that they serve the common good.

By property, we generally mean, an exclusive right to control an economic good. By public property, we mean the exclusive right of a political unit - city, state, nation, etc. - to control an economic good. By private property, we mean the exclusive right of a private person to control an economic good. Property is not a thing, but the rights which extend over a thing. In short property is the right and not the object over which the right extends. The essence of property is in the relations among men arising out of their relations to things. Law of property helps a person directly only to exclude others from using the
things which the law assigns to him. Improper or inequitable grant of rights relating to private property causes social disparities and social injustice among the individuals leading to imbalance in the concentration of wealth in a society. Therefore, the major cause of social injustice with regard to property rights is the private property, which has two sides: the individual side and the social side. The social side of property finds illustration in the right of 'eminent domain' and taxation. The two necessarily must go together so that, if one perishes, the other must perish. The social side limits the individual side, and as it is always present, there is no such thing as absolute private property, for the great Professor Von Ihering said, "it would result in the dissolution of society." Therefore, the institution of property really operates on a paradox of dual ownership vested both in the society and the individual. The individual retains possession of property in the public good and the society can any time take over

2. To appropriate the property of the citizens for the necessities of the State is known as the right of 'eminent domain'. This is the right inherent in the severity of every state. The Constitutional provisions do not virtually confer this right but only recognise and generally surround it with safeguards to the interest of private owners in property.
3. Supra note 1 at 55.
any property from any individual if the public good so demands. All depends on the changing concept of the public good. The dynamic forces of social philosophy have been moulding this concept to suit the varying needs of society at various times.4

Welfare consists in adjusting individual interests with social interests by the aid of law as social engineering, which would mean public restraints on property designed to mitigate the privileges which property offers in enjoyment of the things that life has to offer. Restraints on the power to use the property as a delegated power of command, as a means as quasi governmental private control over the major assets of a nation. Property, thereby, is subject to regulation.5

The rights and interests of a person or persons are subordinated to the larger interests of the public. Measures for public good or social reform may call for a sacrifice on the part of particular individuals in favour of the community. The individual is a part of the social whole and the interests of the whole, may, with justification, except a sacrifice from the part. Right to property is, therefore, the weakest of all social rights, and the

appropriation of private property in the public interest is an incident of social justice. It is conceded by jurists that political power weighs heavily on the side of eminent domain than on private domain.\(^6\)

Constitutional right to property\(^7\) signifies every possible interest which a person can clearly hold or enjoy.\(^8\) In \textit{R.C. Cooper v. U.O.I.},\(^9\) property was defined as:

"...In its normal connotation, 'property' means the highest right a man can have to anything, being that right which one has to lands, tenements, goods or chattels, which does not depend on another's courtesy: it includes ownership, estates and interests in corporeal things and also rights such as trademarks, copyrights, patents and even rights \textit{in personam} capable of transfer or transmission such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession and to their capacity of being injured........"\(^10\)

Ghulam Hasan J. also observed:

\begin{itemize}
\item[6.] \textit{Supra} note 4 at 495.
\item[7.] Constitutional right to property provided under Article 300-A was originally a Fundamental Right under Art. 19 (1) (f) and Art. 31.
\item[8.] \textit{Ahmed G.H. Ariff v. Wealth Tax Commissioner, Calcutta, AIR 1971 SC 1691} at 1695, para 8 per A.N. Grover J.
\item[9.] AIR 1970 SC 564.
\item[10.] \textit{Ibid.}, p. 591, para 40 per majority, Shah C.J.I.
\end{itemize}
"The word ‘property’ used in Article 31 must be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. This word has not been defined in the Indian Constitution and there is no good reason to restrict its meaning".11

It is the proprietary and not mere property right that is the heartland of right to property. All movables, immovables and interests therein are properties e.g. the interests of a mortgagee, donee etc. as well as easements.12 Property must be understood in a corporeal sense as having reference to all those specific things that are susceptible of appropriate appropriation and enjoyment as well as in its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the use and enjoyment of those things to the exclusion of all others.13 Since the commencement of Constitution several Constitutional amendments were incorporated within the

right to property. It was said that the absolute and unfettered right of property is against the principle of human rights and social justice. It shall stagnate capital and national money in a few privileged hands. Society at large and poor masses shall not be able to develop themselves causing concern to the nation as a whole. The entire purpose of Directive Principles and Preamble to the Constitution shall go away. Therefore, for proper and equitable distribution of property and to avoid concentration of wealth and material resources, the first step was taken by introducing the agrarian reform measures.

To implement agrarian reforms and for the abolition of zamindaris, state legislations were passed firstly in the states of Bihar, Uttar Pradesh and Madhya Pradesh, by enacting legislations (Zamindari Abolition Acts). Certain zamindars, feeling themselves aggrieved attacked the validity of these Acts in courts of law on the ground that they contravened the Fundamental Rights conferred on them by Part III of the Constitution. The High Court of Patna held that the Act passed in Bihar was unconstitutional, while some other High Courts

upheld the validity of the corresponding legislations in their respective States\textsuperscript{16}, which rendered the fate of agrarian reforms uncertain and obstructed their implementation. Some appeals were also filed from those decisions in Supreme Court. Upholding the validity of all these agrarian reforms, the apex court held that the purpose behind these Acts is to establish direct contact between tillers of the soil and the Govt., and to eliminate the intermediaries for the welfare of the society as a whole. \textsuperscript{17} At this stage, the Union Government, with a view to put an end to all this litigation and to remedy what they considered to be certain defects brought to light in the working of the Constitution, brought forward a bill to amend the Constitution, which after, undergoing

\textsuperscript{16} Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 were challenged in High Courts of Allahabad and Nagpur respectively.

\textsuperscript{17} In State of Bihar \textit{v.} Kameshwar Singh, AIR 1952 SC 252, the Supreme Court delivered a consolidated judgement on 2.5.1952, for all these cases relating to Bihar Land Reforms Act, 1950 (Case No. 299 of 1951), U.P. Zamindari Abolition and Land Reforms Act, 1950 (Case No. 283 of 1951) and relating to M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Case No. 166 of 1951).
amendments in various particulars, was passed by the requisite majority as the Constitution (First Amendment) Act, 1951\(^\text{18}\) which inserted Arts. 31-A, 31-B with Schedule IX validating 13 laws with the object to abolish the zamindari system and feudalistic pattern of society.

The prime object of incorporation of Articles 31-A and 31-B was to abolish the hurdles which were present while implementing zamindari abolition laws. All laws providing for acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights were immunised from attack on the grounds of violation of Fundamental Rights under Articles 14, 19 and 31 of Part III of the Constitution. Article 31-B was introduced with a view to protect the Acts listed in the Schedule IX from being declared unconstitutional and also to validate some of them which had already been declared unconstitutional by the courts. The combined effect of these provision was to prevent judicial interference in the land reforms.

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18. President signed the Constitution (First Amendment) Bill on 22.1.1951 published in Gazzette on 27.1.1951 vesting of all property rights in State w.e.f. 3.3.51.
At that time, the aggrieved zamindars centred their plea around the claim of ‘compensation’, its adequacy and justiciability and the Supreme Court of India also interpreted the word ‘compensation’ as the market value of land. Thus the government was required to pay the market value to the landlords, if their land was acquired or acquisitioned for distribution to tenant which was almost impossible.\(^{19}\) The problem of ‘payment of compensation’ was further aggravated in the case of State of \textit{West Bengal} v. \textit{Bala Banerjee},\(^{20}\) when the Supreme Court interpreted the term ‘compensation’ to mean ‘just compensation’ a just equivalent, of what the owner has been deprived of and a full indemnification of the expropriate owner\(^{21}\). All this had an adverse effect on the socio-economic progress of the community. It was difficult for the State, which was having meagre economic resources to pay full value of the property which was to be acquired for the benefit

\(^{19}\) In the cases of \textit{Shankari Prasad v. U.O.I.}, AIR 1951 SC 458 and in \textit{State of Bihar v. Kameshwar Singh}, AIR 1952 SC 252 the Supreme Court held that Art. 31 (2) prescribes three conditions for the acquisition of property by State : (i) Law for acquisition (ii) Public purpose (iii) Payment of compensation.

\(^{20}\) AIR 1954 SC 170.

\(^{21}\) \textit{ibid.}, p. 172, para 6 per Patanjali Sastri J.
of the community at large. 22

In order to overcome this hurdle created by the issue of payment of 'just compensation' which was contrary to the spirit of the Constitution, Parliament again amended Article 31 by enacting Constitution (Fourth Amendment) Act, 1955. The issue of adequacy of compensation was kept beyond judicial scrutiny by amending Art. 31 (2). A new Article 31(2) (A) was added to Article 31 (2) and 31-A (1) was given clauses (b) to (e). However, the fourth amendment reduced the protection given to laws by Article 31-A under the first amendment by limiting the protection to a challenge under Articles 14, 19 and 31. Schedule IX was also amended by adding to it seven more Acts or parts of Acts. Therefore, the fourth amendment restored to some extent what was laid down by the Constituent Assembly but changed by

22. In State of W.B. v. Subodh Gopal, AIR 1954 SC 92 at 100, para 18 per Patanjali Sastri C.J., the Supreme Court held that social welfare is not inconsistent with the ownership of private property and does not demand arbitrary expropriation of such property by the State without compensation. Dwarkadas Shrinivas v. Sulapur Spg & Wvg. Co. Ltd., AIR 1954 SC 119 at 127, para 18 per Mahajan J., the Court held that Art. 31(5) comprehensively includes within the ambit all the powers of the State in exercise of which it could deprive a person of property without payment of compensation. The ratio of these cases was followed by and Sagir Ahmed v. State of U.P., AIR 1954 SC 728.
judicial interpretation. After this amendment it was hoped that the legal controversy about the meaning of the ‘compensation’ would come to an end and it would facilitate the passing of legislations embodying socio-economic reforms.

The Constitution (Seventeenth Amendment) Act, 1964 further expanded the scope of term ‘estate’ under Art. 31 A. This Amendment also gave life to certain Acts (Land Reform Acts and Land Regulation) or policies which were made ineffective by judicial orders.\(^2\)\(^3\) Forty four acts were also added to the Schedule IX of the Constitution.

The land owners made several attempts to fight to their last to prevent the implementation of land reforms. The Constitution (Seventeenth Amendment) Act was challenged before Supreme Court: \(Sajjan Singh v. State of Rajasthan\).\(^2\)\(^4\) By this time, it had become abundantly clear that while implementing agrarian reforms the government was reacting to the judicial resistance by resorting to the technique of entrenchment of legislation by enlisting any number of Acts in the Schedule IX thus making


\(^2\)\(^4\) \textit{AIR 1965 SC 845.}
them completely immune from court's jurisdiction. The Supreme Court observed that:

"....the genesis of the amendments made by Parliament in 1951 by adding Articles 31-A and 31-B to the Constitution, clearly to assist the State Legislatures in this country to give effect to economic policy in which the party in power passionately believes to bring about much needed agrarian reform. It is with the same object that the second amendment was made by the Parliament in 1955. ... Parliament desires that agrarian reform in a broad and comprehensive sense must be introduced in the interest of a very large section of Indian citizens who live in villages and whose financial prospects are integrally connected with the pursuit of progressive agrarian policy... it would be clear that Parliament is seeking to amend Fundamental Rights solely with the object of removing any possible obstacle in the fulfilment of the socio-economic policy in which the party in power believes."\(^{25}\)

From the above observations, it is evident that the court was realising the need for agrarian reform. Though the petition was dismissed, the Constitution (Seventeenth Amendment) Act was

held valid, the bench was sharply divided on the question as to the power of Parliament to amend Part III of the Constitution, which led to a lengthy debate in many subsequent cases.\textsuperscript{26}

Land owners once again succeeded battle, when the reverse stand was taken by the Supreme Court in \textit{Golak Nath v. State of Punjab}.\textsuperscript{27} This again halted the tempo of progress of agrarian reforms and other socio-economic legislation in India. Then to remove the barriers created by Golak Nath's judgment the Constitution (Twenty-fourth Amendment) Act, 1971 and the Constitution (Twenty-fifth Amendment) Act, 1971 amended Art. 31 (2) and added new sub-Articles 31 (2A) and 31-C. All this was done to put an end to controversies with regard to compensation and acquisition; and to implement some of the Directive Principles of State Policy in preference to Fundamental Rights. The basic object of this Amendment was the prevention of concentration of wealth in the hands of few and equitable distribution of the same so as to subserve the common good.

Article 31 C is the beacon light of social justice. Upholding the greater power to implement the socio-economic programmes, Mathew J. observed, "in building up a just and equal social order.

\textsuperscript{26} \textit{Ibid.}, pp. 859-860, paras 37-38.
\textsuperscript{27} \textit{AIR} 1967 SC 1643.
it is sometimes imperative that Fundamental Rights should be subordinated to Directive Principles - economic goals have an incontestable claim for priority over ideological ones on the ground that excellence comes only after exercise. It is only if men exist that there can be Fundamental Rights.28

Barring initial hurdles created in implementation of agrarian reforms, judiciary responded well in full measure to the philosophy implicit in the Directive Principles vis-a-vis scheme of agrarian reforms in India. Guided and inspired by the Directive Principles of State Policy, the court felt that the concept of agrarian reform was broader than the conventional notions of land reforms.29

Krishna Iyer J. in State of Kerala v. Gwalior Rayons Silk Mfg. (wvg.) Co30 observed:

"The concept of agrarian reform is complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land...The village man - his welfare is the target...It is thus clear to those who understand

30. AIR 1973 SC 2734.
developmental dialectic and rural planning that agrarian reform is more humanist than mere land reform and scientifically viewed, covers not merely abolition of intermediary tenures, zamindaris and the like, but also restructuring of village life itself - taking in its broad embrace the socio-economic regeneration of the rural population. The Indian Constitution is a social instrument with an economic mission and the sense and sweep of its provisions must be gathered by judicial statesmen on that seminal footing." 31

The Supreme Court in Kesavananda Bharati v. State of Kerala32 recognised the importance of the socio-economic directives in Arts. 39 (b) and (c) and held that any law giving effect to them would be valid even if it infringes Articles 14, 19 and 31. In the other words, for the first time, the court recognised the Supremacy of a few Directives Principles over Fundamental Rights. Thus, the Supreme Court played extremely creative and


32 AIR 1973 SC 1461 [Several Constitutional Amendment Acts were challenged in this case on the ground that they were void being in contravention of Art. 13 (2) of the Constitution as per the law declared by the majority in Golak Nath's case].
imaginative role and interpreted the concepts such as agrarian reform in their widest amplitude. This case set up a stage for future development in the area of agrarian reform and for the prevention of concentration of wealth in the hands of a few to the common detriment.

In *Godavari Sugar Mills v. S.B. Kamble*\(^{33}\) it was held that the concept of agrarian reforms is bound to acquire new dimensions. The agrarian reform would require distribution of surplus land among for poor peasant and landless persons living in village.\(^ {34}\) In subsequent cases\(^ {35}\), it could be found that the judiciary also started appreciating socio-economic policies enshrined in Part IV and upheld the various Acts and regulations giving meaning and content to the Directive Principles of State Policy irrespective of the fact that they infringed certain Fundamental Rights under Articles like 14, 19 and 31. In *Assam Sillimanite Ltd. v. U.O.I.*\(^ {36}\), the Supreme Court held that:

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33. AIR 1975 SC 1193.
"...vesting of material resources in the community leads to more economic equality because the resources would then be controlled and owned by the State or the community on behalf of the people as a whole rather by some individual. The use of the word 'distribution' recalls the concept of 'distributive justice' first propounded by Aristotle. There cannot be any doubt that according to Art. 39(b) common good would be better served when the resources are owned and/or controlled by the community rather than when they are owned and controlled by a few individuals."37


The Constitution (Forty-second Amendment) Act, 1976 widened the ambit of Art. 31C. It extended the protection to any legislation enacted in view of implementing any of the directives enumerated in Part IV of the Constitution, this extension had far reaching effects causing an injury to the doctrine of judicial review. The attempt of the Parliament to widen the scope of Art.

38. See Entry Nos. 65 to 124 of the Ninth Schedule.
31-C was foiled by the Supreme Court in the case of Minerva Mills v.U.O.I.\textsuperscript{39} The Court held that such an omnibus withdrawal from judicial review of legislation would undermine the basic structure of the Constitution. As 'judicial review' of the Constitutionality of laws was one of the basic and essential features of the Constitution, thus the Minerva Mills' case placed Art. 31-C in the position as it existed prior to the Constitution (Forty-second Amendment) Act, 1976 so that the immunity to any legislation remain confined to the laws enacted in implementation of directives contained in Art. 39 (b) & (c)\textsuperscript{40}.

In 1978, the Government passed the Constitution (Forty-fourth Amendment) Act, 1978. This Amendment deleted Art. 19 (1) (f) and Art. 31 which reappeared as new Arts. 300-A and 30 (1-A) in the Constitution. The provisions contained in Articles 31A, 31B, 31C and in the Schedule IX were saved from the massive attack on the right of property. By retaining Arts. 31-A and 31-C and validating 31-B, the Parliament has kept the wheel of economic and social justice going. In the case of Woman Rao v. U.O.I.\textsuperscript{41} the Amendment was declared Constitutional and

\textsuperscript{39} AIR 1980 SC 1789.
\textsuperscript{40} See, \textit{Ibid.}, pp. 1807-1809, paras 63, 64, 70 per majority Chandrachud C.J.I.
\textsuperscript{41} AIR 1981 SC 271.
consequently Arts. 31-A, 31-B and Schedule IX were held not against the basic structure of the Constitution. The Supreme Court observed:

"... Amendment has thus made the Constitutional ideal of equal justice a living truth, it is like a mirror that reflects the ideals of the Constitution; it is not the destroyer of the basic structure. The provisions introduced by it...strengthen rather than weaken the basic structure of the Constitution"\(^\text{42}\).

In *Ambika Prasad v. State of U.P.*\(^\text{43}\), while upholding the validity of Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961, Krishna Iyer J. observed:

"The march of the Indian national to the promised land of social justice is conditioned by the pace of the process of agrarian reform. This central fact of our country’s progress has made land distribution and its inalienable ally, the ceiling on land holding, the cynosure to legislative attention"\(^\text{44}\).

From the total analysis of property rights given under Indian

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\(^{43}\) AIR 1980 SC 1762.

Constitution, it can be concluded that 'Right to Property' contained in 19 (1) (f) as well as in Art. 31 has been expunged in the Constitution (Forty-fourth Amendment) Act, 1978. The "fundamentalness" of right ceases to exist, only the legal right remains. On the other hand, the laws empowering the states to acquire property of persons with or without compensation have been saved by Articles 31A and 31 B which are allowed to remain in fact under the "Fundamental Rights".\(^{45}\)

**MINORITY RIGHTS:**

**Minorities in General:**

The problem of minorities is the most baffling question confronting modern democracies. Minorities and ethnic groups should in no case be suppressed or prosecuted in a democratic set up; they should rather be allowed to develop their peculiar and particular characteristic features freely and fully.\(^{46}\) The first criterion of a democratic system is the recognition of equal rights and duties for all, irrespective of religion, race, caste or language. It is only democracy that recognises different minorities and provides them equal treatment. It is also often stated that the

\(^{45}\) It is interesting to note that while the Fundamental Right to property is gone, the right to expropriation is allowed to stand under Fundamental Rights.

efficiency of democracy lies in giving fair treatment to all. The Indian Constitution specifically recognises religious minorities, linguistic minorities, cultural minorities, minorities possessing special script of their own, untouchables, socially and educationally backward classes, Scheduled Castes and Scheduled Tribes.

Articles 29 and 30 explicitly stand guarantee to the protection of the interest of minorities in India. Article 29 intends to preserve the special traditions and characteristics of the minority which distinguish it from dominant group. Article 29 (1) talks about the conservation of language, script or culture of any section of citizens of India. Similarly, the judiciary in India has

48. The term ‘minority’ can be defined as “any section of citizens; being small in number in a definite area, in respect of religion, language or any other ground, seeking equal or preferential treatment either to maintain its identity or to be assimilated with the majority”. For details see, *supra* note 46 at 21.
49. The term ‘Conservation’ has been given a wide connotation in the Constitution. It is not limited to the liberal meaning, ‘to retain or to preserve’. It includes both positive and negative aspects *viz.* the right to profess, practice and preach its own religion, if it is a religious minority; the right to follow its own social, moral and intellectual ways of life; the right to impart instructions in its tradition and culture; the right to perform any other lawful act or to adopt any other lawful measures for the purpose of preserving its culture. For details see, D.K. Sen, *A Comparative Study of Indian Constitution* 638 (1967).
interpreted this word very liberally. According to Supreme Court, the right to conserve the language of the citizens includes the right to agitate for the protection of the language. The right conferred by Art. 29 (1) is an absolute right and cannot be subjected to reasonable restrictions in the interest of general public like the rights enumerated in Art. 19(1).

Since the right to conserve the language and culture includes the right to develop the same, one important method of conservation of a language, script or culture is through educational institutions. In the words of J.A. Laponce, "the school is to a language what the church is to a religion - the condition of survival". The access to academic institutions maintained or aided by State funds is the special concern of Article 29 (2). It recognises the right of an individual not to be discriminated under the aegis of religion, race, caste, language or any of them. This is one of the basic principles of a secular state. The discrimination based solely on the ground of a citizen's particular religion, race, caste or having any particular language is absolutely prohibited in educational institutions maintained by the State or receiving aid out of State funds. It applies to minorities as well as to non-

minorities. When other qualifications being equal, the religion, race, caste, language of a citizen shall not be a ground of preference or disability.\(^5\)

Art. 29(2) is a counterpart of the equality clauses of Art 15. There should be no discrimination against any citizen on the ground of religion etc. in the matter of admission in any educational institution maintained or aided by the State.\(^5\)

Article 30(1) guarantees to religious or linguistic minorities the right to establish and administer educational institutions of their choice. The State has no right to impose upon it any particular mode or method of administering the institution but regulations in the interest of efficiency of teacher, discipline and fairness in administration are permissible by the State in any educational minority institution which is the recipient of government aid. These regulatory provisions cannot be said to be destroying basic rights of minority institutions as embodied under

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53. Art. 29(1) protects the rights of a section of the citizens. The right conferred by Art. 29(2) is an individual right given to the citizens as such and not as a member of any community. This Art. offers protection to all citizens whether they belong to the minority or majority groups. See, *State of Bombay v. Education Society*, (1955) 1 SCR 568.

54. The 'minority' referred to in Art. 30 must be a minority based either on religion or language, need not be both.
Arts. 29 and 30.

The right guaranteed under Art. 30 (1) is not absolute but is subjected to reasonable regulations for the benefit of the institution as the vehicle of education for the minority community consistent with national interest. A new provision Art. 30 (1-A) was added by the Constitution (Forty-fourth Amendment) Act, 1978 to provide necessary safeguards to minorities' educational institutions for compulsory acquisition of property made by the State. Unlike educational institutions belonging to an individual or to majority community minority educational institution can file a petition under Art. 32 before the Supreme Court in case of any compulsory acquisition of its property by the State. This means that if the State seeks to acquire property belonging to a minority educational institution, the relevant law must provide for such compensation as would enable the minority community to replace the acquired educational institutions by a new one comparable to the acquired one as regards to the site, size and shape. Therefore, by reason of the present provision, the State is scared away from acquiring any property belonging to minority educational

55. Virendra Nath Gupta v. Delhi Administration, AIR 1990 SC 1148 at 1151, paras 7,8 per K.N. Singh J.
Institution at all.

Under Art. 30 (2), the State has been told not to discriminate against any educational institution in granting aid. Recently Madras High Court has also held in the case of State of Tamil Nadu v. Melapalayam Muslim Magalir Kalvi Sangam57, that the minorities could not be asked to maintain their educational institution without State aid.

So, to conclude, Arts. 29 and 30 are complementary to each other. One without the other is incomplete and insignificant.

Apart from Articles 29 and 30 certain special provisions to safeguard the rights and interests of linguistic minorities are thereunder Art. 347 of the Constitution to use of minority’s language in the administration. It authorises the President to issue directive to a State Government for the recognition of a minority language as official language in that state58.


58. In such a situation, where linguistic minority groups do not have adequate knowledge of the official language of the state, some safeguards should be evolved in order that they may understand the purport and implication of State administrative measures affecting them. Important laws, government notices, rules, regulations, correspondence with government offices etc., must be in a language intelligible to the linguistic minority groups. For details see, Mohd. Imam, *Minorities and the Law* 378 (1972).
The recognition of minority language for the official purposes is not enough unless there are positive provisions for its instructions made by the State. But the makers of the Constitution of India failed to incorporate any such safeguard in the Constitution as originally framed. This was a lacuna in the Constitutional provision. The States Reorganisation Commission examined this problem in detail and suggested accordingly a number of steps. As a sequel to the Commissions' recommendations, the Constitution was amended, incorporating Arts. 350-A and 350-B. Article 350-A is limited to providing facilities for instructions in mother tongue at primary stage of education, and Article 350-B is for the appointment of a special officer for investigating the safeguards provided for linguistic minorities. As a result of the said amendment, a Commissioner for linguistic minorities (special officer) was appointed at the Union, under the Ministry of Home Affairs. Recruitment of the service is another area where linguistic minorities like to have certain safeguards.

59. Inserted by the Constitution (Seventh Amendment) Act, 1956.
60. For further details see, supra note 46 at 110.
Other Minorities:

Weaker Sections

Weaker sections of the people is a wider term which includes 'backward classes of citizens'. Backward classes constitute important sections of Indian society. They are a category of people who are for the most part officially listed and given special recognition in a variety of contexts. It is a comprehensive term and consists of three broad divisions, each having its own distinctive background and particular problems. These divisions are the Scheduled Castes, the Scheduled Tribes and Other Backward Classes. They together account for more than 30% of the total population of India. All these divisions of the depressed classes are largely in the Hindu Community.61

Scheduled Castes (SCs):

The term 'Scheduled Castes' is an expression standardised in the Constitution of India. The Scheduled Caste category comprises of those groups which are isolated and disadvantaged by their untouchability - that is, their low status in the traditional Hindu Caste hierarchy which exposed them to invidious treatment, severe disabilities, and deprivation of economic, social, cultural

and political opportunities. Broadly speaking, these depressed classes are now called Scheduled Castes. Art. 366 (24) defines Scheduled Castes as under.

'Scheduled Castes' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are defined under Art. 341 to be Scheduled Castes for the purposes of the Constitution.

Under Art. 341, the President of India may specify 'the castes, races or tribes, which shall for the purposes of this Constitution be deemed to be Scheduled Castes' and Parliament may by law include in or exclude from the list of Scheduled Castes. It is a Schedule of castes entitled to benefit from the various special arrangements.

Scheduled Tribes (STs):

The Scheduled Tribes were defined partly by habitat and geographical isolation but even on the basis of social, religious or linguistic and cultural distinctiveness - their tribal characteristics under the Constitution the formal mechanism of designating the Scheduled Tribes is identical with that of the Scheduled Castes. Article 366 (25) provides:

62. Scheduled Castes Order was promulgated in Aug. 1950. Also see, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.
‘Scheduled Tribes’ means such tribes or tribal communities or parts of or group within such tribes or tribal communities as are deemed under Art. 342 to be scheduled tribes for the purposes of this Constitution.

The President may specify after consulting with the Governors, the tribes or the tribal communities for the purposes of this Constitution to be deemed to be Scheduled Tribes and Parliament may by law include or exclude any tribe or tribal community or part of or group within any tribe or tribal community. Once promulgated, the list can be altered or varied only by the act of Parliament\(^\text{63}\).

Both the SCs and STs are the backward classes largely in the Hindu Community. Tribal people are concentrated in blocks, the Harijans are scattered throughout every state and practically every district\(^\text{64}\). Thus one of the crucial problems faced by all the tribal communities in India is the problem of integration into the wide social, economic and political system and whereas for Scheduled Castes, the main task is to uplift the community socially and economically\(^\text{65}\).

\(^{63}\text{Art. 342.}\)
\(^{64}\text{Supra note 61 at 109.}\)
\(^{65}\text{Ibid.}\)
Other Backward Classes (OBCs) :

Apart from the Scheduled Castes and Scheduled Tribes, the other backward classes, by contrast are a more vague category. They are mentioned in the Constitution of India in the most general way. There is neither an all India list, nor are they separately enumerated in the census. In this respect, the other backward classes are the least homogeneous and the most loosely defined of the three sub-divisions. Their problems also are in many ways different from those of the first two and it may be misleading to consider the three together beyond a certain point. 

J.L. Nehru disliked the term ‘Backward Classes’ and remarked that “it was basically wrong to label any section of people as backward even if they were so, particularly, when 90% of the people in the country were poor and backward”. Prof. U.C. Sarkar also says “... there is a lot of difference between minority and backward class though both of them imply some weakness”. The former is indicative of weakness in number and the latter means the weakness of intellectual level and cultural progress, or in other words, one refers to quantity and the other refers to quality. Both these kinds of weaknesses are emphasised.

66. Ibid.
in view of the fact that in case of democratic rule, controlled by majority, they could be subjected to tyranny and persecution or injustice in unbridled control by the majority. Hence the fear was expressed that oppression and injustice might be perpetrated. In any case it was exaggerated and magnified before the alien rulers. Hence from the side of the national leaders, it was again and again assumed that no such threat will ever materialise. Therefore, these provisions were found in the Constitution 68.

Anglo Indians:

Anglo Indians constitute a religious, racial as well as linguistic minority. While the Constitution of India declares that religion, race and language shall have no qualification for political and other rights, the Constitution made an exception in the case of this community. The community had for long been enjoying special privileges of various kinds including economic and cultural, because of its affinity with the rulers. Consequently, the founding fathers of the Indian Constitution have provided political and economic safeguards to the community under Arts. 331, 333, 336 and 337 of the Constitution.

Part XVI (Art. 330-342) of the Constitution of India

68. U.C. Sarkar, “Minorities: Religious Cultural and Educational Rights” in Seminar on Law and Minorities in India, p. 3 held on 24-28 April, 1971 at Indian Law Institute, New Delhi, quoted in supra note 46 at 20.
contains special provisions relating to Scheduled Castes, Scheduled Tribes, Other Backward Classes and for the Anglo-Indian community. The founding fathers incorporated in the Constitution provisions for safeguarding the interests of these minorities and to give them a sense of security and to help them to join the mainsteams of national life. These provisions along with other provisions mentioned in other Parts of the Constitution provide for the protection and promotion of the social, economic, political and educational interests of the weaker sections of the society.

Under Arts. 330-334, provisions regarding reservation of the seats for Scheduled Castes and Scheduled Tribes in the House of the People and the Legislative Assemblies of the States are envisaged. Similar representation of the Anglo-Indian Community in the House of People and the Legislative Assemblies of the States have been contemplated under Arts. 331 and 333 of the Constitution. These reservations and representations initially introduced for ten years by the Constitution makers have been

70. Special provisions regarding reservation for SCs, STs and OBCs under Arts. 15 & 16 have been dealt in detail under Chapter IV, pp. 262-289.
extended from time to time and now, these would cease to have effect after the expiration of a period of sixty years from the date of commencement of the Constitution.  

Since economic amelioration deserves special mention in any welfare plan under Article 335, the makers of the Indian Constitution provided that the claims of the members of the SCs and STs should be taken into consideration in making appointments of posts and services under the Central Government and the State Governments. Art. 16(4) permits reservation in favour of BCs who are not adequately represented in services. There is neither any fixed percentage of jobs nor any fixed period for continuing this preferential treatment to these communities, all these things have been left to the discretion of the Government under Art. 335. The Anglo Indian community has also been given special reservation with regard to appointments in certain services under Art. 336.

Before independence, as a result of historical circumstances, Anglo Indians were enjoying some special concession in certain types of services, e.g. railways, customs, posts and telegraph in India. The whole economy of the

71. See, the Constitution (Seventy-ninth) Amendment Act, 2000.
community depended on these employments\textsuperscript{72}. The position was almost the same all over India. In view of this, the framers of the Constitution thought necessary that if the existing safeguards in this regard are not continued in some form for some years to come, the community will be subject to a sudden economic strain which it may not be able to bear\textsuperscript{73}. Accordingly, these special concessions concerning recruitment of Anglo Indians to these services were incorporated in the Constitution on the lines as stated above. Since these measures were to be withdrawn gradually and progressively, these special concessions came to an end w.e.f. 25 January, 1960.

Next to services, another field in which the community sought special favour was education. At the time of the framing of the Constitution, there were about 500 Anglo Indian schools in India. These educational institutions were getting special and liberal financial grants. The framers of the Constitution visualised this problem in all its perspective and came to the conclusion that any sudden reduction in the grant will seriously

\textsuperscript{72} According to survey then conducted by the Provincial Board for Anglo Indian Education in Bombay, it was seen that 76\% of the employable section of the community were dependent for their livelihood on these appointments. For details see, C.A.D., vol. V, p.250.

\textsuperscript{73} C.A.D., vol. V, p.250.
dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institution after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country\textsuperscript{74}.

The provision of special grants applied only to those Anglo Indian educational institutions which had been established prior to 1948 and the institutions established after 1948 had no special right as to such grants. These institutions stand on the same footing as an institution established by any other minority community and are covered under Arts. 28(3), 29(2) and 30 of the Constitution. Further, it is provided that atleast 40% of the annual admission in the Anglo Indian educational Institutions receiving such grants shall be made available to members of other communities. And on Jan. 25, 1960, this special concession of grants too ceases to be operative\textsuperscript{75}.

Inspite of the fact, that these special provisions for the Anglo Indians incorporated in the Constitution had transitory effect, in the words of Dr. M.V. Pylee, ‘these provisions on the whole show the genuine desire of the framers of the Constitution

\textsuperscript{74} ibid., p.251.
\textsuperscript{75} Art. 337.
to accommodate the special interests of a small community like the Anglo Indians and infuse confidence in them’. When the Britishers left India in 1947, the Anglo Indians were apprehensive of their future in free India. But soon, the members of this community found that not only were their interests safe, but the leaders of independent India were prepared to give them even special consideration so that they could continue as Indian citizens with hope and confidence.76

In order that safeguards and other preferential measures provided for the Scheduled Castes and the Scheduled Tribes are effectively implemented, Art. 338 provided for the appointment of a National Commission for Scheduled Castes and Scheduled Tribes.77 To exercise control and administration of the Scheduled Castes and for the welfare of the Scheduled Tribes and to draw reports, schemes and their execution thereof, the President is also to appoint a Commission under Art. 339. Similarly, backward

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77. Originally, under Art. 338, special officer for Scheduled Castes and Scheduled Tribes was appointed. For better and more effective arrangement, this Art. was amended by the Constitution (Sixty-fifth Amendment) Act, 1990 contemplating five member Commission appointed by the President. For further details see, National Commission for the Scheduled Castes and Scheduled Tribes Act, 1993.
classes Commission has also been contemplated and has been assigned the task of identifying the classes to be regarded as Backward under Art. 340 of the Constitution of India. Further, this Commission is appointed to investigate the condition of socially and educationally backward classes within the territory of India, to investigate the difficulties under which these classes labour and to make recommendations regarding the steps to be taken by the Union or any State to remove these difficulties and to improve their conditions, and as to the grants that should be made for the purpose by the Union or any state and the conditions subject to which such grants should be made.

The First Backward Classes Commission was appointed on January 29, 1953 popularly known as Kaka Kalekar Commission which submitted its report on March 30, 1955. The Central Government was not satisfied with the approach adopted by the Commission in determining the criteria for identifying the backward Classes. Then another Commission known as Mandal Commission was appointed on January 1, 1979, which submitted its report on December 31, 1980. According to this Commission, backward Classes constituted 52% of the Indian population.
excluding Scheduled Castes and Scheduled Tribes. After introducing modifications in the recommendations of this report, 27% of the vacancies were reserved for the backward Classes excluding the socially advanced persons (creamy layers), preference would be given to candidates belonging to the poorer sections of the backward classes.

The Supreme Court also directed the Union and State governments to appoint a permanent statutory body to examine complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of Other Backward Classes. To comply with these directions given by the Supreme Court, the National Commission for Backward Classes Act, 1993 was passed, which came into force on February 1, 1993. The functions of the Commission are to examine requests for inclusion of any class of citizens as a backward class in the list and hear complaints of over inclusion or under-inclusion of any backward class in such lists.

78. This Commission ignored economic criteria totally while identifying these backward Classes and also recommended 27% reservation for these Classes (excluding the reservations already provided to the Scheduled Castes and Scheduled Tribes), thus going against even the Supreme Court decisions where maximum valid reservations are held to be upto the extent of 50%. See, M.R. Balaji v. State of Mysore, AIR 1963 SC 649.

and tender such advice to the Central Government as it deems appropriate.

The problem of Scheduled Tribes is somewhat different from and peculiar to those of the Scheduled Castes. They were more subjected to social segregation from the rest of the population than social disabilities in which Scheduled Castes suffered. So, if the needs of the Scheduled Castes is emancipation and absence of discrimination, the Scheduled Tribes also require elevation and integration. For the proper administration of the tribal people, under Article 275, special grants are given by the Central Government to the State Governments for the purpose of promoting the welfare of the Scheduled Tribes in the States or raising the level of administration of the Scheduled Areas. Under the fifth Schedule, the Governor, with the approval of the President, is empowered to enact special legislation for protecting the Scheduled Tribes from exploitation by money-lenders, regulate the allotment of land and prohibit or restrict the transfer of land in this Scheduled Areas. Through these grants, the Union Govt. is in a position to correct inter-state financial disparities as may be conducive to an all-round development of the country and to exercise control and power of co-ordination in relation to the
Certain areas have been declared as Scheduled Areas under the Fifth Schedule of the Constitution. So that the tribes are governed in those tribal areas according to their own traditional institutions. Governor with the approval of the President is empowered to enact special legislation for protection of the Scheduled Tribes from exploitation and guaranteeing financial safeguards, and the laws can even be withheld in their application to such areas if they go against the interests of the Scheduled Tribes. The State Government is also charged with the duty of screening legislation unsuitable for extension to the tribal areas, and may make regulations for their peace and good government.

To give proper execution of the special plans, projects and schemes for the welfare of the Scheduled Tribes, the minister incharge of tribal affairs for the states of Bihar, Madhya Pradesh and Orissa has been assigned this specific charge under Article164 for the welfare of Scheduled Castes, Scheduled Tribes and other backward classes.

80. *Supra* note 46 at 120-121.
81. For details see, Fifth Schedule, Parts A,B,C : Administration -and Control of the Scheduled Areas and Scheduled Tribes.
After all being said and discussed about the specific safeguards for the Backward Classes in India, it may be noted that it is a unique feature, that of Indian society and Indian Constitution had provided protective discrimination and special concession for the upliftment of the backward classes of citizens so as to provide complete justice to the society.

OTHER CONSTITUTIONAL PROVISIONS
(PART IV AND IV A)

Participation of Workers In Industrial Management:

Art. 43-A contemplates participation of workers in the management of industry. The Constitution (Forty-second Amendment) Act, 1976 brought to light when it added some new directives in Part IV including Art. 43-A which provides for the participation of the workers in the management of industries. This addition was made to herald industrial democracy and to promote good relations and amity among the employers and workers and to mark the end of ‘industrial bonded labour’82.

Thus, the morality of law and Constitution mutation implied in

Art. 43-A bring about a new equation in industrial relations. Worker's participation in management of industry is a broad concept. It means the identification with the involvement in the day to day functioning for the achievement of the goals of the enterprise taking into account the reality of the situations which enables the worker to undertake responsibilities. In such a situation, he naturally becomes a partner in the decision-making process of the organisation, irrespective of the nature of organisational structure of participation machinery.

The worker's participation may mean sharing in decision making and policy making with the management, or it may be described as transfer of decision-making right in the enterprise or undertakings. It is a significant mode of resolving industrial conflicts and encouraging among workers a sense of belongingness in the establishment where they work. It affords due recognition to the attitude of workers and enables them to contribute their best in all-round prosperity of the country in general and industrial prosperity in particular. Moreover, in India which has launched a vast programme of industrialisation, the

84. V.P. Michael, *Industrial Relations in India and Workers' Involvement in Management* 167 (1979).
need for worker's participation is all the more important\textsuperscript{85}.

In Straw Board Mfg. Co. v. Its Workmen\textsuperscript{86}, Krishna Iyer J. observed:

"...the recent Constitutional Amendment (Art. 43A) which emphasises the workers' role in production as partners in the process, read in the light of earlier accent on workers' rights and social justice, gives a new status and sensitivity to industrial jurisprudence in our 'socialistic republic'. This social philosophy must inform interpretation and adjudication, a caveat needed because precedents become time barred when societal ethos progress"\textsuperscript{87}.

Further, in National Textile Workers Union v. P.R. Rama Krishna\textsuperscript{88}, the Supreme Court, held that after the Constitutional mandate of Art. 43-A it is, clear and undoubted that management of the enterprise is not entirely in the hands of the suppliers of the capital, but the workers are also entitled to participate in it, because in a socialistic pattern of society, the enterprise which is a centre of economic power should be controlled not only by capital but also by labour. Therefore, after the introduction of Art. 43-A in the Constitution the workers would also have voice in the

\textsuperscript{85} S.C. Srivastava, \textit{Industrial Relations and Labour Laws} \textsuperscript{43}\textsuperscript{3}(1984).
\textsuperscript{86} A.R 1977 SC 941.
\textsuperscript{87} ibid., p. 944, para 8.
\textsuperscript{88} A.R 1983 SC 75.
determination of the question whether the enterprise should continue to run or be shut down.\textsuperscript{89}

Therefore, with the inclusion of Art. 43-A in the Constitution, the perspective ought to be people's involvement in the economic progress of the nation, as facet of economic democracy. Ideologically, this involves a reorientation of governmental attitude towards socio-economic changes. Industrially, this demands a willingness to welcome the worker as a managerial partner. Jurisprudentially, this involves exploration of new values about the contribution of workers and implementation of their functional role, from floor to the apex of the pyramid of the industry.\textsuperscript{90} Hence the ultimate purpose of proletariat jurisprudence is to give the worker the economic justice which he is entitled to in a socialist state. Economic justice, industrial progress, workers' contentment and active participation ultimately leads to social justice.

Some other important provisions added by the Constitution (Forty-second Amendment) Act, 1976 promoting social justice are Arts. 48 and 51-A.

\textsuperscript{89} Ibid., p. 83, para 6 per majority Bhagwati J.
\textsuperscript{90} Supra note 82.
Environment Protection:

Art. 48-A deals with State's endeavour to protect and improve environment and to safeguard the forests and wild life of the country. Article 48-A and 51-A (g) enjoin on the State and the citizens, the duty not only to protect but also to improve and to preserve and safeguard the forests, flora, fauna, rivers, lakes and all other water resources of the country. Art. 38 of the Constitution of India lays down that the State shall strive to promote the welfare of people. Providing a safe and hygienic environment viz. basic necessities of life i.e. air, water and other natural resources is a step to promote the welfare. Indian Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974 for providing and maintaining the wholesomeness of water. In 1981, the Air (Prevention and Control of Pollution) was enacted to prevent, control and avoid the pollutants in air. A general social welfare legislation applicable in every field of environment, the Environment Protection Act was passed in 1986, which provided for the protection and improvement of environment.

92. This Act has been studied in detail under Ch. VII, pp.597-599.
93. This Act has been studied in detail under Ch. VI, pp. 595-597.
which included water, air and land, prevention of hazard to human beings, other living creatures, plant and property. This Act was also provided for strict liability for damages arising out of any accident arising while handling hazardous substances and National Environment Tribunal was also established for effective disposal of cases. 94

**Fundamental Duties:**

Art. 51-A of Part IV-A deals with Fundamental Duties, which are addressed to citizens without any legal sanction for their violation 95. Therefore, legal utility of the Fundamental Duties is similar to that of the Directive Principles of State Policy order Part IV, as they are addressed to State, without any sanction. But the citizen owes the duties to the State and if he does not care for the duties, he should not deserve the rights.

Fundamental Duties are as such not legally enforceable but if the State seeks to promote any of these duties, that can be done only through methods permitted by and in

94. This Act has been studied in detail under Ch. VI, pp. 591-595.
95. These Fundamental Duties are incorporated in the Constitution on the recommendations of Swaran Singh Committee which suggested empowerment of Parliament to impose ‘punishment’ for breach of such duties, but that suggestion was not, however, accepted while drafting the Bill.
consonance with the Constitution 96.

Under Art. 51-A (e) it has been mentioned as a fundamental duty of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women. Therefore, apart from State's duty and endeavour to maintain harmony, peace, brotherhood and equal social order and putting our claims for religious, cultural and minority rights, every citizen is also under obligation to work on himself at his own self level to strive for similar immutable eternal societal principles, only then there is a possibility of achieving a society based on social justice

To develop the scientific temper, humanism and the spirit of inquiry and reform is another fundamental duty imposed under Art. 51-A (h) and 51-A (j) mentions that it is the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is the basic principle that if every single individual in a society is educated, informed enlightened and empowered, the whole of the

society would automatically be reformed and advanced. Therefore, if every citizen of Indian works hard for developing his ownself and improves others also under genuine humanistic spirit, the India society would certainly be an ideal society based on distributive and social justice. Under these duties, as they are not addressed to the State, only citizens are under obligation to strive for the best, what is within their capacity and resources available. They cannot claim from State under this chapter Part IV A of the Constitution, that he must be properly equipped by the State so that he may perform his duties well.\(^7\)

To value and preserve the rich heritage of our composite culture\(^8\) i.e. to nurture and respect India's 'secularism', to safeguard public property and to abjure violence\(^9\) are also some of the duties imposed upon Indian citizens which can help in promoting and implementing the Constitutional ethos of a just and equal social order.

**PANCHAYATI RAJ INSTITUTIONS:**

Social justice for poor residing in villages requires proper upliftment for rural life, development of villages providing basic, essential infra-structure for leading a dignified life including

\(^{8}\) Art. 51-A(f).
\(^{9}\) Art. 51-A (i).
medical care and education, development of village industries, improvement of agricultural techniques, improvement of cattle and animal husbandry etc. Basically, the villagers being innocent people not corrupted by cunningness and selfishness often associated with large number of urbanites need proper protection and empowerment for taking decisions for their welfare in their own manner and style. Even for resolving disputes among themselves, preference is given to some simple alternative dispute resolution mechanism like holding Panchayat meets, the so called Panchayati Raj system including the concept of Nyaya Panchayats etc. It has existed since time immemorial in India.

Panchayats have been playing a dominant role in resolving rural disputes. The members of the panchayat were being selected or nominated unanimously by the people of the village and the members enjoyed the confidence of the people. The panchayats had good reputation due to prompt and impartial decisions in the cases which came up before them. Now the provisions for establishment of Nyaya Panchayats manned by local persons who enjoy the confidence of the local people selected or elected by an informal procedure has been incorporated in the Constitution as
Panchayati Raj Institutions. The power to decide, specify category of disputes which mainly depend on questions of fact and which can be conveniently decided at no cost to the litigants are conferred on such institutions.

Jayaprakash Narayan used the words 'participating democracy' for Panchayati Raj Institutions. According to him, in order that the people might participate effectively in government, government must be brought as near to the people as possible. Effective political and democratic decentralisation, therefore, envisages the village community at the lowest level would manage village affairs from bottom level to the top. Each higher level would have less and less functions and powers. Democracy to be real at the village level must recognise the village community as a statutory collective body, the 'gram sabha.' The gram sabha meet as often as possible and all important matters, including the budget is placed before it for discussion, its opinion, approval and acceptance. ‘Panchayat’,

102. Arts. 243 (b) and 243-A. Gram Sabha is the electorate of the village panchayat whereas the panchayat is for one village or a group of villages.
the executive body, is constituted in every State by the village community and is responsible to it\textsuperscript{103}. The panchayats are to be constituted at the village, intermediate and district levels and the "panchayat area" means the territorial area of the panchayat\textsuperscript{104}.

Village Panchayats are the lowest level units of self-governance in the hierarchy of self-governing, democratic, policy making and administrative units. These are envisaged under Article 40 as the base democratic institutions of a pyramid of the democratically organised and functioning self-panchayats. The governed and the beneficiaries of these self-governing units have either a direct or an elective indirect representation in them and an effective participation in the conduct of their affairs including its plans, policies and programmes and their execution and experience in the governance of their own affairs. So long as the village panchayats are organised to achieve the said objectives, the Constitutional requirements are presumed to be complied with

\textsuperscript{103} Art. 243(d) defines 'Panchayat' and makes it clear that the institution so called must be of self-government in the rural area since the Panchayat Raj envisaged by the said part of the Constitution is for the rural, as against the 'municipalities' envisaged under Part IX-A of the Constitution for urban areas.

\textsuperscript{104} Arts. 243-B and 243-C. [However, in a State having a population not exceeding 20 lakhs, it is not obligatory to constitute panchayats at the intermediate level].
both in their spirit and in letter\textsuperscript{105}. Article 243-D makes provision for reservation of seats for the Scheduled Castes, Scheduled Tribes including women belonging to Scheduled Castes or Scheduled Tribes and also for other women in the panchayats at all the levels. The State legislatures may make any provision for reservation of seats in any panchayat or offices of chairpersons in the panchayats at any level in favour of backward classes of citizens also\textsuperscript{106}. These provisions for reservation even in panchayat at all levels for these weaker sections of society especially and specifically for women are affirmative, positive measures of protective discrimination for the implementation of social justice. The powers, functions and responsibilities of the panchayat to enable them to function as institutions of self-government are to be determined by the legislature of the State. Article 243-G, the legislature of a State has endowed Panchayats with powers and responsibilities to prepare the plans for economic development and social justice and for the implementation of schemes thereof in relation to the matters listed in the Eleventh Schedule\textsuperscript{107}.

\textsuperscript{105} State of U.P. v. Pradhan Sangh Kshetra Smitti, AIR 1995 SC 1512 at 1516, para 2 per P.B. Sawant J.
\textsuperscript{106} Art. 243-D (6).
\textsuperscript{107} Inserted by the Constitution (Seventy-third) Amendment Act, 1992.
The Eleventh Schedule carries a list of 29 matters which are necessary to be considered for the implementation of social justice as 'Panchayat' is only the financially and administratively viable unit which can undertake the schemes of development relating to them from the very grass root level, even if some matters have already been covered by the other lists viz. Union, State or Concurrent lists. Some important matters relating to social justice enumerated in Eleventh Schedule are – Agriculture, land improvement, implementation of land reforms, land consolidation and soil conservation; small scale, khadi, village and cottage industries, rural housing, drinking water, roads, culverts, bridges, ferries, waterways and other means of communication, rural electrification, including distribution of electricity, non-conventional energy sources, poverty alleviation programmes, education, including primary and secondary schools, technical training and vocational education, adult and non-formal education, libraries, health, sanitation and family welfare; women and child development; social welfare, including welfare of the handicapped and mentally retarded, welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes and Public distribution system etc.
Similarly provisions for ‘municipalities’ - the institution of self-government has also been provided under Part IX of the Constitution. It is a body politic created by the incorporation of the people of a prescribed locality invested with the subordinate powers of legislation to assist in the civil government of the State and to regulate and administer local internal affairs of the community. The Constitution of Nagar Panchayat, Municipal Council and Municipal Corporation in every State as the units of local self-government for urban areas depends upon various factors, but their powers, authorities and responsibility are similar to ‘Panchayats’ and other areas of concern have also been added in Twelfth Schedule.

Twelfth Schedule contains the 18 important areas of urban development essential to achieve the goal of social justice, such as planning for economic and social development, urban poverty alleviation, provisions of urban authorities and facilities such as

108. Art. 243-P (e).
109. Part IX-A [Inserted by the Constitution (Seventy-fourth Amendment Act), 1992].
111. Art. 243 Q (1) (a), (b) and (c).
112. Art. 243 Q (2).
113. Art. 243-W.
114. Inserted by the Constitution (Seventy - Fourth Amendment) Act, 1992.
parks, gardens and playgrounds; public amenities including street lighting, parking lots, bus stops and public conveniences etc.

It is a common knowledge that the needs of the people change with the development in the economic, scientific and technological fields as also with the development in transport and communication. With them, the concept of self-sufficiency and the means, mode and range of self-governance also change. The units of self-governance at the lower level being interrelated and integrated with those at the higher levels as parts of the whole scheme of administration and development in the State, have to respond to and fall in line with the growth in the size and operation of the units at the higher level to form a co-ordinated democratic polity and administrative machinery. The concept of grassroots or lowest level administration must, therefore, necessarily change with the advance and progress at other levels. The governing units at all levels have to fit in a pattern, and a scheme for administration both for law and order and economic growth. They have to act as vehicles of overall stability and progress. For that purpose, their constitution and functioning have to be in conformity with the larger social, political and economic goals.\(^\text{115}\).

\(^{115}\) State of U.P. v. Pradhan Sangh Kshetra Smitti, AIR 1995 SC 1512 at 1522, para 7 per P.B. Sawant J.
The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of population, the needs of social and economic development, availability of resources, the transport and communication facilities, convenience of administration and other relevant factors. The nyaya panchayats are in addition to the gram panchayats. The Constitution does not prohibit the establishment of nyaya panchayats. On the other hand, the organisation of the nyaya panchayats will be in promotion of the Directive Principles contained in Article 39-A of the Constitution.

The *raison d’être* for nyaya panchayats is overwhelming. They threw open the doors of the temple of justice to those who are till new untouchables for courts of law due to indigence, distance and other social disabilities, for, the courts are located in the urban centres far away from the reach of rural masses, and are characterised by long delays. Nyaya panchayats secure social justice at the grassroots level. It promotes accessibility to the poor people to the institution of justice. Speedy and cheap justice, informality of procedure, carrier of secular, egalitarian, modernistic legal ideology for desired social transformation,

reducing the arrears of courts are some of the important aspect of justice through Nyaya Panchayats.\footnote{117}

**REMEDIAL RIGHTS:**

To provide justice to every individual and to the society as a whole was a dream of the Constitution makers. To translate this dream into reality, Constitution has provided judiciary a pivotal role for the development and enforcement of social justice by acting as a balancing agency for the enforcement of Fundamental Rights, legal rights and for the review of executive and legislative actions. Under Art. 32, the Supreme Court of India has been empowered to enforce Fundamental Rights and to exercise check on their violations, whereas under Art. 226 High Courts are required to exercise this power for the enforcement of Fundamental Rights, legal rights and also for many other rights conferred on the poor and the disadvantaged which are creations on the statutes and need to be enforced as urgently and vigorously as Fundamental Rights.\footnote{118} Therefore, the jurisdiction conferred under Art. 226 on the High Courts is much wider than upon the Supreme Court of India under Art. 32.\footnote{119}

\footnote{119} Scope of Art. 32 and Art. 226 being similar, both these provisions are dealt simultaneously. Separate mention is being made wherever necessary.
Art.32 of the Indian Constitution has been described as the corner-stone of the democratic edifice raised by the Constitution. It is one of the highly cherished rights. It is not merely a right of the individual to move Supreme Court but also a duty of the Supreme Court to enforce those guaranteed rights. The court is thus constituted "as the protector and guarantor of Fundamental Rights". It is regarded as a solemn duty of the Supreme Court to protect the Fundamental Rights. In discharging the duty, the court has to play the role of a 'sentinel on the qui vive'. This right has been held to be an important and integral part of the basic structure of the Constitution of India.120 Dr. Ambedkar also remarked:

"If I was asked to name any particular Article in this Constitution as the most important - an Article without which this Constitution would be a nullity - I could not refer to any other Art. except this one. It is the very soul of the Constitution and the very heart of it..... There can be no right unless the Constitution

provides a remedy for it. It is the remedy that makes a right real.\textsuperscript{121}

Art. 32 represents in a nutshell the entire law as to Constitutional remedies for the citizen when his Fundamental Rights are affected. Moreover, this Art. itself is a Fundamental Right guaranteed to the citizens. V.G. Ramachandran points out, "there is no other country where there is guarantee of Right to Constitutional Remedies as a Fundamental Rights in itself.\textsuperscript{122}" In the words of Dr. Pylee, "a declaration of the Fundamental Rights is meaningless unless there is an effective machinery for the enforcement of rights.\textsuperscript{123}"

Article 32(2) confers writ jurisdiction on the Supreme Court of India which empowers the Court to issue appropriate directions or orders or writs in the nature of \textit{habeas corpus, mandamus, quo warranto, prohibition or certiorari} as may be considered necessary for the enforcement of Fundamental Rights.\textsuperscript{124} The powers given to the Supreme Court under Art. 32 are, therefore, very wide including the power to issue these prerogative writs.

\textsuperscript{121} C.A.D., vol. VII, p.953.
\textsuperscript{123} \textit{Supra} note 76 at 304.
\textsuperscript{124} The writ jurisdiction conferred upon the Supreme Court of India under Art. 32 apply equally in relation to the exercise of jurisdiction by the High Courts under Art. 226.
The issuance of prerogative writs is an extraordinary remedy intended to be invoked in exceptional cases in which ordinary legal remedy is found to be inadequate.

The exercise of Constitutional powers by High Court and the Supreme Court under Articles 226 and 32 has been categorised as power of "judicial review". The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. It ranges from reviewing the constituent power to any legislative, executive or administrative power of the State.

Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can in exercise of the power of judicial review under the Constitution, quest the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Art. 14 read with other Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, including instrumentalities of the Govt. or those which can be legally treated as "authority" within the meaning of Art. 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of the Supreme Court.
under Article 32 of the High Courts under Article 226 and can be validly scrutinised on the touch-stone of the Constitutional mandates.\footnote{125}

Therefore, under Articles 32, 131-136, judicial review is an incident of and flows from the Constitution to secure and protect the welfare of the people as effectively as it may, according to justice - social, economic and political in all the institutions of national life. The paramount duty of the court is to protect their rights and translate the glorious and dynamic contents of the Directive Principles and the Fundamental Rights as a living law, making them meaningful to all manner of people.\footnote{126}

\footnote{125. Every executive, administrative, quasi administrative or similar action would be tested at the anvil of Art. 13 (2), the theory of basic structure and Principles of Natural Justice and fair play. Therefore, it can be seen that scope of power of judicial review is pyramidal in nature, constricted/restricted at the top i.e. Constituent power is to be assessed only in accordance with basic structure theory (after Kesavanand Bharati's case), Legislative actions should be tested at the touchstone of Art. 13 (2) and basic structure theory and the other executive or administration actions should be broadly, widely analysed or reviewed in accordance with Principles of Natural justice and also according to Art. 13 (2) and the theory of basic structure. For details see, Common Cause, A registered Society v. U.O.I., AIR 1999 SC 2979; Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Minerva Mills v. U.O.I., AIR 1980 SC 1789; Sampath v. U.O.I., AIR 1987 SC 386; Supreme Court Advocates v. U.O.I., AIR 1994 SC 268 (9 judges).

In the recent case of *Style (Dressland) v. U.T. Chandigarh*¹²⁷ the Supreme Court of India held that action of reviewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field. The State action which is not informed by reason can not be protected as it would be easy for citizens to question such an action being arbitrary. Non arbitrariness being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of power¹²⁸.

In exercise of jurisdiction under Art. 32 of the Constitution, this court has awarded compensation to the petitioners who suffered personal injuries at the hands of the officers of the Government and the causing of injuries which amounted to

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¹²⁷. AIR 1999 SC 3678.
tortuous act was also compensated by the Supreme Court\textsuperscript{129}. In the case of Nilabati Behara\textsuperscript{130} the Court held that:

"The purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of Fundamental Rights, it does so under the public law by penalising the wrong and fixing the

\textsuperscript{129} Rudal Shah v. State of Bihar, AIR 1983 SC 1086 at 1089, para 11. (Rs. 30,000/- were awarded as compensation for illegal detention); Bhim Singh v. State of J & K, AIR 1986 SC 494 at 499, para 3. (Rs. 50,000/- for illegal detention by the State authorities). Compensation for Police Atrocities was awarded in People's Union for Democratic Rights v. State of Bihar, AIR 1987 SC 355 at 356 para 6.; Saheli v. Commissioner of Police, Delhi AIR 1990 SC 513 at 516 para 14, 15. (Rs. 75,000/- was directed to be paid to the mother of nine years old child for death due to beating and assault of police officer). Compensation was also given in the cases of custodial deaths - Nilabati Behara v. State of Orissa, AIR 1993 SC 1960; State of M.P. v. Shyam Sunder Trivedi (1995) 4 SCC 262; People's Union for Civil Liberties v. U.O.I., AIR 1997 SC 1203; Kaushalya v. State of Punjab, (1996) 7 SCALE 13 and also in the cases of Medical Negligence: Legal Aid Committee v. State of Bihar, (1991) 3 SCC 482; Dr. Jacob George v. State of Kerala, (1994) 3 SCC 430.

liability for the public wrong on the State which has failed in its public duty to protect the Fundamental Rights of the citizens.\textsuperscript{131}

Under the remedy of judicial review, it is possible to review not only the merits of the decision in respect of which the application for judicial review is made, but the whole decision making process also. In Apparel Export Promotion Council v. A.K. Chopra\textsuperscript{132}, the Supreme Court reiterated that judicial review is not concerned with the correctness of the decision, but is confined to the examination of the decision making process, namely that the established principles of law and rules of natural justice and fairness given by the Government in support of an action but can not substitute its own reasons\textsuperscript{133}. A decision of inferior court or a public authority could be quashed by an order of \textit{certiorari} made on an application for judicial review where that court or authority acted without jurisdiction or exceeded its jurisdiction or fail to comply with the rules of natural justice or where there was an error of law apparent on the face of the record or the decision was unreasonable in the \textit{Wednesbury sense} (that is, no reasonable person could have come to the conclusion to which

\textsuperscript{131} Nilabati Behara v. State of Orissa, AIR 1993 SC 1960 at 1973, para 33 per Dr. A.S. Anand J.
\textsuperscript{132} AIR 1997 SC 625.
\textsuperscript{133} Style (Dressland) v. U.T. Chandigarh, AIR 1999 SC 3678.
the public authority had arrived at)\(^{134}\).

Judicial review lies not only against an inferior court or tribunal but also against persons or bodies which perform public duties or functions.\(^{135}\) But it would not lie against person or body carrying out private law and not public law functions. In such cases, the proper remedy is by way of action for a declaration and if necessary an injunction\(^{136}\). This is also a self-imposed restriction on the exercise of power of judicial review which is to the effect that the court would not normally grant judicial review where there is available another avenue of appeal or remedy\(^ {137}\). It may be pointed out that one of the restrictions on making an application for judicial review is that person has to disclose "sufficient interest" and obtain leave of the court\(^ {138}\).

The Supreme Court has in recent past expanded the jurisdiction of Art. 32, so much so that it has assumed the initiation or supervision of administrative action which traditionally belongs to the jurisdictions of executive. By making liberal use of 'directions' under Art. 32 and effectively enforcing

\(^{134}\) Common Cause v. U.O.I., AIR 1999 SC 2979 at 2998, para 57 per S. Saghir Ahmed J.

\(^{135}\) Ibid., p. 2999 para 60.

\(^{136}\) Ibid., para 61.


\(^{138}\) Ibid., para 58.
orders and decrees of Supreme Court under Art. 142, the court has sometimes been criticised as doing unnecessary ‘judicial activism.’ In realisation of the Constitutional obligation to protect and enforce Fundamental Rights, the court has innovated new methods, strategies and remedies, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning\textsuperscript{139}. The Court has resorted to several devices like expanding the list of Fundamental Rights falling under Art. 21, by modifying the original interpretation of ‘personal liberty’ and expanding the meaning of ‘life’ so as to include right to pollution free water, air, food, clothing and decent environment\textsuperscript{140}, cultural heritage\textsuperscript{141}, education\textsuperscript{142} etc. evolving positive duties and obligations under each of the Directive Principles of State Policy under Part IV and reading them into the Fundamental Rights\textsuperscript{143} and making an infinite use of public interest litigation etc. Therefore, according

\begin{itemize}
\item \textsuperscript{139} \textit{M.C.Mehta v. U.O.I.} \textit{AIR} 1987 SC 1086 at 1089, para 3 per Bhagwati C.J.I.
\item \textsuperscript{140} \textit{Subhash v. State of Bihar}, \textit{AIR} 1991 SC 420 at 424, para 7 per K.N. Singh J.
\item \textsuperscript{141} \textit{Ram Sharan v. U.O.I.}, \textit{AIR} 1989 SC 549 at 552, paras 13, 14 per Sabayasachi Mukherji J.
\item \textsuperscript{142} \textit{Mohini Jain v. State of Karnataka}, \textit{AIR} 1992 SC 1858 at 1864-1865, paras 9, 14 per Kuldip Singh J.
\item \textsuperscript{143} Ibid.; \textit{Supreme Court Advocates on Record v. U.O.I.} \textit{AIR} 1994 SC 268 (9 Judges Bench).
\end{itemize}
judicial activism guaranteeing access to justice to the poor and the destitute is a step towards humanisation of justice. For proper radicalisation and democratisation of judicial remedies in consonance with the real-life milieu of Indian society, Iyer J. spelt out five fundamentals: firstly, there would be the access to justice, civil criminal and other without any constraints. Secondly, procedures for judicial consideration of disputes must be streamlined, rationalised and rendered easy and inexpensive, informal and flexible, compassionate and realistic and devoid of any inherited technicalities, rigidities and legal complexities. Thirdly, instead of remedial plurality and institutional diversity, securing socially just relief to the suitors and restoring healing harmony among the disputants be a part of procedural social justice. Fourthly, people's participation in the delivery system of justice and versatile modes of judicial engineering including concretisation of equal justice principles, local trials, public interest law, social action jurisprudence etc. for 'judicure' and 'judicare' not cosmetic justice reform or lipstick legal aid, but seminal and substantial developments. Finally, preventive justice with prophylactic goals including legal literacy, settlements and

adjustments, reconciliation procedures, arbitral bodies and other non-formal variates to be explored, along with para-judicial agencies, para legal personnel and radical social action cells and voluntary service clubs and organs invested with statutory powers so as to function as defenders and promoters of social justice.\textsuperscript{145}

Therefore, Iyer J., emphasised on access to justice to all, simple, easy and streamlined court process, people’s participation in social and judicial engineering through public spirited litigation and to supplement chief judicial procedures with other methods of resolving conflicts with the help of para-legal personnel and legal literacy. Access to justice is extremely important so that the common people are attracted to it and the doors of the courts are not slammed against them.\textsuperscript{146} Cappelleti has very rightly said that an effective access to justice is one of the basic postulates of human rights. In his words:-

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured

\textsuperscript{146} \textit{Supra note 144 at 132.}
by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement of a system which purports to guarantee legal rights 147.

Equal justice for all is the cardinal principle on which our entire system of administration of justice is based. It is deeply rooted in the body and spirit of our jurisprudence. We cannot conceive of justice which is not fair and equal, which is given to one and denied to another 148. Equality in the administration of justice forms the basis of our Constitution. To provide 'equal justice to all and free legal aid' by giving equal opportunities, aid and assistance with the operation of our legal system is the Constitutional promise mentioned under Art. 39-A of Part IV of the Constitution 149. It gives Constitutional status to free legal aid to the poor and envisions the prospect of inequality in access of justice being abolished. Besides Art. 14 of the Constitution, Art. 22 provides a right to be defended by a legal practitioner of his

choice. These provisions of the Constitution constitute the basis for social justice through law.\textsuperscript{150}

Legal Aid:

The philosophy of legal aid envisages simple, quick, easy and inexpensive justice to everyone. Machinery of administration of justice should be easily accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal rights. The noble promise of our Constitution will be fulfilled only if the justice is prompt and inexpensive.\textsuperscript{151}

Explaining the quality of justice, a scholar has pointed out that “justice should be handy, cheap, speedy and substantial.”\textsuperscript{152}

Need for providing legal aid to the poor and needy was felt just after India got independence and for the first time this was manifested by the State Government of Bombay when it constituted the Committee on Legal Aid and Legal Advice under

\textsuperscript{150} In addition to the above mentioned Constitutional provisions, in 1973, a few code of Criminal Procedure was enacted on the recommendations of Law Commission of India and a specific Section 304 relating to legal aid in a trial before the court of session was incorporated.

\textsuperscript{151} V.R. Krishna Iyer, “Inaugural Address at the Second State Lawyer's Conference” Andhra Pradesh, (1976) 2 SCC 1,4 (where the learned judge has observed, “the spiritual essence of legal aid movement is said to consist in investing the law with the human soul.”)

\textsuperscript{152} D.N. Gupta, “The Quality of Justice,” AIR 1984 (Journal) 65.
the Chairmanship of Justice N.H. Bhagwati. This Committee submitted its report in 1950, in which it cast an obligation on the State to provide for legal aid to all who on account of poverty could not afford to engage a counsel\textsuperscript{153}. In 1957, the question of providing legal aid to the poor was also widely discussed in the Law Ministers Conference. It was agreed that each state would formulate a scheme for legal aid and forward it to the Ministry of Law, but no effective steps were taken by the states. Law Commission of India in its Fourteenth Report also asserted that rendering of legal aid to the poor is not a minor problem of procedural law, but a question of a fundamental character\textsuperscript{154}.

In 1970, a national Conference on legal aid was convened in Delhi under the auspices of the Institute of Constitutional and Parliamentary studies, which generated a new awareness in the government and in legal profession regarding the reconstruction of legal aid delivery system\textsuperscript{155}. The Central Government appointed the First Expert Committee on Legal Aid in 1972 under the Chairmanship of Justice V.R. Krishna Iyer. Iyer Committee

\textsuperscript{153} For details see, \textit{supra} note 117 at 136.
\textsuperscript{155} Expert Committees on legal aid at the level of Centre and State were constituted.
studied the problem and need of legal aid in India in depth and made significant recommendations. Need to identify groups deserving legal aid, assertion of legal aid as a right instead of charity, resource personnel and statutory based legal aid schemes, mobile courts, low cost justice may be with the help of lok adalats or Nyaya Panchayats was stressed. Thus, the provision of 'equal legal service' as much to the weak and in want as to the strong and affluent; and dispensation of socio-economic justice through the legal order is stressed as the principal, if not the paramount, objective of legal aid.

To revise, update and re-evaluate the Krishna Iyer Committee Report, another Committee with Bhagwati J. as its Chairman and Iyer J. as its member was set up, which submitted its report in 1977. Bhagwati Committee postulated a wider conception of legal aid as a goal embracing various aspects.

156. The Groups mentioned were (a) geographically deprived (b) the villagers (c) agricultural labour (d) Industrial labour (e) Women (f) Children and Youth (g) Harijans (h) Minorities and Prisoners.
including spreading of awareness, carrying out socio-legal research, organising poor to assert their basic rights, role of voluntary organisation, social action groups and legal aid clinics etc. With a view to implement the Bhagwati Committee Report, the Government of India in Sept. 1980 set up a Committee known as “Committee for Implementing Legal Aid Scheme” (CILAS).

In order to inject equal justice into legality through a dynamic scheme of legal aid, the Committee for Implementing Legal Aid Schemes has followed two major approaches, namely (a) Litigative Legal Aid and (b) Preventive or Strategic Legal Aid. According to Iyer J., litigative or conventional legal aid or legal services constitute the advice and presentation provided by a lawyer and related personnel in individual cases, resolving the problems which clients bring. The second aspect i.e. the strategic or preventive legal aid which is wider and deeper than the first, but equally urgent is the need to reform and revise our laws and procedures, courts and prisons, police and public services, to make them more responsive to all citizens including the poor. It is the need to make more citizen aware of their rights, to modify our curriculum of legal education to make law training an intellectual challenge, spread of legal education or literacy to

create rapid, inexpensive and honest means of dispute settlements, which utilise concepts and vocabulary native to our population. Finally, it is the spiral and seminal task of organising awareness in legal and judicial professions.¹⁶⁰

Under Art. 39-A, the State is obligated to ensure the operation of the legal system promoting justice on the basis of equal opportunity and to provide free legal aid by suitable legislations 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.¹⁶¹ In Hussainara Khatoon v. State of Bihar,¹⁶² Bhagwati J. held that it is the Constitutional right of every accused person; who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence, the State is under a Constitutional duty to provide a lawyer to such accused persons. Legal aid is nothing else but 'equal justice in action'. Legal aid is in fact the delivery system of social justice. If free legal services are not provided, the trial itself may run the risk of being vitiated. Free

¹⁶¹ Parliament passed Legal Services Authorities Act, 1987, which has been studied in detail under Chapter VII, pp. 545-547.
¹⁶² AIR 1979 SC 1369.
legal service is an inalienable element of ‘reasonable, fair and just
procedure and is implicit in the guarantee of Article 21’.\textsuperscript{163}

Therefore, it may be taken as a settled law that free legal
aid at State cost is a Fundamental Right of a person accused of an
offence and for the proper adjudication of the case, it is must that
the lawyer who is provided by the State should be of equal
competence, otherwise the idea of equal justice implicit in legal
aid will fail.\textsuperscript{164}

Cost of litigation should also not result in the denial of
effective access to justice.\textsuperscript{165}

\textsuperscript{163} Ibid.; Also see, \textit{Khatri v. State of Bihar}, AIR 1981 SC 928
at 930-931, paras 3, 4 per P.N. Bhagwati J. (The Supreme
Court also pointed out that the Constitutional obligation to
provide free legal services to an indigent accused
commences from the very initial stages when the accused
person needs competent legal advice. The State
Government can not avoid its obligation by pleading
financial or administrative inability to provide free legal
service to a poor, instead, it is the duty of Magistrate or the
Sessions’ Judge before whom the accused is produced, to
inform him that he is entitled to free legal services at the
cost of the State, if he is unable to engage a lawyer on
account of poverty or indigence).

\textsuperscript{164} \textit{Suk Dass v. Union Territory of Arunachal Pradesh}, AIR 1986 SC 991 at 993-994 paras 5, 6; Also see \textit{R.M. Wasawa

\textsuperscript{165} \textit{Central Coal Fields v. Jaiswal Coal Co.}, AIR 1980 SC
2125, para 2 per Krishna Iyer J.
Public Interest Litigation:

Public interest litigation, a strategic arm of the legal aid movement, which is intended to bring justice within the reach of the poor masses, who constitute low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation. A modern exception to the traditional doctrine of 'locus standi', namely that only a 'person aggrieved' by the impugned State action is competent to challenge its validity, is offered by the doctrine of 'Public interest litigation'.

Lexically the expression 'public interest litigation' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

In S.P. Gupta v. U.O.I., the Supreme Court held that:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in contravention of any

166. People's Union for Democratic Rights v. U.O.I., AIR 1982 SC 1473 at 1476, para 2 per Bhagwati J.
169. AIR 1982 SC 149.
Constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened, and any such person or determinate class of persons is by reason of poverty or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any Fundamental Right of such person or class of persons, in this court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class or persons”. 170

The Supreme Court also held in the case of People’s Union for Democratic Rights v. U.O.I.171, that procedure being merely a hand-maiden of justice should not stand in the way of access to justice to the weaker sections of Indian humanity and, therefore, where the poor and the disadvantaged are concerned who are barely eking out a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social

170. ibid., p. 188, para 17 per Bhagwati J.
171. AIR 1982 SC 1473.
action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. (Epistolary jurisdiction)\textsuperscript{172}.

Therefore, public interest litigation has broadened the concept of *locus standi* from tradition ‘individualism’ to ‘modern community oriented’ approach and also relaxed the formalities of judicial process. Access to justice through ‘class action’, ‘public interest litigation’ and ‘representative proceedings’ are the present Constitutional jurisprudence\textsuperscript{173}.

In *Janata Dal v. H.C. Chowdhary*,\textsuperscript{174} it was also held that in defining the rule of *locus standi* in public interest litigation no ‘rigid litmus test’ can be applied, since the broad contours of public interest litigation are still developing a pace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process\textsuperscript{175}.

However, only a person acting *bonafide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court for the

\textsuperscript{173} *A.B.S.K. Sangh (Rly.) v. U.O.I.*, AIR 1981 SC 298 at 317, para 63 per Krishna Iyer J.
\textsuperscript{174} AIR 1993 SC 892.
\textsuperscript{175} *Ibid.*, p. 910, para 66 per S. Ratnavel Pandian J.
poor and needy, suffering from violation of their Fundamental Rights. But a person for personal gain, private profit or political motive or any oblique consideration has no *locus standi*. Similarly, a vexatious petition under the colour of public interest litigation brought before the court for vindicating any personal grievance, deserves rejection at the threshold. The court should not allow its process to be abused by mere busybodies, meddlesome interlopers, wayfarers or officious intervenors having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity.\textsuperscript{176}

Moreover, it is of utmost importance that those who invoke the Supreme Court's jurisdiction seeking a waiver of the *locus standi* rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who

\textsuperscript{176} Ibid.

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are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. But this does not mean there is any retreating or recoiling from the earlier views expressed by the Supreme Court about the philosophy of public interest litigation.

Therefore, under the doctrine of public interest litigation, petition for the violation of Fundamental Right may be brought by a member of the general public, provided the injury complained of involves a public injury, or a breach of public duty, or the aggrieved person himself being unable to approach the court being in custody or such person belongs to a class or group of persons who are in a disadvantaged position on account of poverty, disability or other social or economic impediment.

Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. With the advent and

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advancement of public interest litigation, multi-dimensional socio-economic problems came before the courts. The need for social justice was emphasised and procedural/technical complexities were simplified. This spirit of 'social action litigation' also provided judiciary with a new kind of enthusiasm popularly known as 'judicial activism'. Judiciary encroached upon many never-touched areas which traditionally were considered under the sole control of executive, and gave much-sought after relief to the poor and needy.

Through public interest litigation relief has been granted to several categories of persons such as women\textsuperscript{181}, children\textsuperscript{182}.

\begin{itemize}
\end{itemize}
under-trials, prisoners, workers, bonded labourers and many others, who due to their ignorance and poverty could not get justice according to law. Other issues like environment protection as an extension of right to life under Art. 21 have also brought before as public interest litigation.

Every citizen has a right to fresh air and to live in pollution free environment. The Supreme Court issued directions for stopping mechanical stone crushing activities in and around Delhi, Faridabad, Ballabhgarh complexes and allotted new 'Crushing Zones' in State of Haryana, due to the health hazards created by

environmental and air pollution caused by these crushers\textsuperscript{189}. Similarly Kanpur Tanneries and Distilleries causing water pollution by discharging trade effluents in Ganga river were directed to be closed down without operating with their primary and secondary treatment plants\textsuperscript{190}. General notices were also directed to be published for the industries to take steps for preventing pollution and following the standard required by the notification issued by Ministry of Environment and Forests, lest the industry shall be required to be closed\textsuperscript{191}. The court also directed the sugar factory to fix effluent treatment instrument and to replace boiler system within the fixed time period to avoid any environmental pollution\textsuperscript{192}.

In the case of \textit{Indian Council for Enviro-Legal Action v. U.O.I.}\textsuperscript{193}, the Supreme Court directed the Central Govt. to consider and examine the ‘chemical industries’ separately as a different category regarding their establishment, pollution treatment, their lapses, negligence etc.

\begin{itemize}
  \item \textsuperscript{190} M.C. Mehta v. U.O.I., 1992 Supp. (2) SCC 633.
  \item \textsuperscript{191} M.C. Mehta v. U.O.I., 1993 Supp. (1) SCC 434.
  \item \textsuperscript{192} Satish Chander Shukla v. State of U.P., 1992 Supp(2) SCC 94.
  \item \textsuperscript{193} AIR 1996 SC 1446.
\end{itemize}
Similarly, deficiencies found in Agra Protective Home\textsuperscript{194}, poor conditions prevailing in tuberculosis hospital in Bihar\textsuperscript{195}. Eradication of female foeticide and Infanticide\textsuperscript{196} are some of the new areas where public interest litigation has successfully given appreciable and commendable results. Recently new dimension has also been provided to public interest litigation in the case of *J. Jayalalitha v. Govt. of T.N.*\textsuperscript{197} that any tax payer in the State has a right to challenge misuse or improper use of any public property by anyone, including the political party in power, where large sums of taxpayers' money have been spend to build such public property. Therefore, it can be seen that with the help of public interest litigation, new horizons of true democracy and social justice are not very far-off.

In public interest litigation cases, the petitioner is not entitled to withdraw his petition at his sweet will unless the court sees reason to permit withdrawal. In granting the permission the court would be guided by considerations of public interest and

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\textsuperscript{195} S. Lal v. State of Bihar, (1994) SCC (Cri) 50.  
\textsuperscript{197} (1991) 1 SCC 53.
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would also ensure that it does not result in abuse of the process of law.\textsuperscript{198}

\textbf{Lok Adalats:}

Lok adalats\textsuperscript{199} are additional arm of the existing judicial institution. The concept of lok adalats is based on dispensing quick, inexpensive and impartial justice in an atmosphere of mutual amity and goodwill. This novel para legal concept is very pious to settle claims promptly, without bitterness or acrimony, and to the satisfaction of all concerned.

Lok adalat can come into picture only when both sides agree to jurisdiction of it and this may be done by transferring a pending dispute in a court or by diverting future cases to this stream. It is thus meant to supplement rather than to supplant regular courts and to reduce the back log as well as to give quick and cheap justice to the people.

Lok adalats are especially useful in solving small disputes and cases involving poor litigants who can not bear costs of the regular trial. This forum is provided for enabling the common people to ventilate their grievances against the state agencies or


\textsuperscript{199} Lok Nyayalaya or people’s court are different names given to Lok adalats.
against other citizens and to seek a just settlement of their dispute, if possible. If lok adalat fails to get two parties to compromise or agree to a settlement, they are free to continue their litigation in the regular courts.

Lok adalats are the means to take justice to the doorsteps of the vast masses of poor people in the country. They also help in creating the necessary awareness among the people of their rights and obligations by providing some education in the basic laws governing day-to-day life, involving their in judicial processes at the grass-root level and preparing social workers to function as a para legal force to give ‘first aid’ in law.200

Social action groups, women organisations, law teachers, students, lawyers and judges are extending their support to the organisation of various lok adalats. Their role is to clarify law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement.

200. See, Paras Diwan, “Justice at Doorstep”, The Tribune, p. 4, 25 Dec. 1985 According to him, looked at closely, the ‘Lok Nyayalaya’ experiment seeks to give practical shape to the concept of ‘Swaraj’ and ‘Sarvodaya’, propounded by Mahatama Gandhi and J.P. Narayan. Swaraj implies not merely liberation from the foreign yoke, but also emancipation from backwardness, poverty and illiteracy. Sarvodaya means the well being of all and the obliteration of all distinctions between ‘haves’ and ‘have nots’.