(A) Prelude

Of all labours, toils and efforts of human race, the choicest fruit which the seeds of human endeavour have bore is law and the administration of justice. To perpetuate the victory of righteousness and to eradicate the doing of wrong, though seemingly hidden and obscure, have always been the essence and crux of human activity. For, it is inherent in the nature of man and only in line with the divine image of which he is constituted that man should have a very strong sense of justice, of right and of wrong. Equal justice for all is the cardinal principle on which our entire system of administration of justice is based. It is deep 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. The law derives its legitimacy from justice and the end point of law, therefore, must be justice. There should not be any disharmony between law and justice. Law must accord with justice. And when we talk of justice, we mean socio-economic justice which takes in its compass not only a fortunate few belonging to the privileged class, but large masses belonging to under-privileged segments of the society. In the war against poverty, it has been realised, that ensuring equal rights by securing socio-economic justice to the poor is one of the indispensable pre-requisites to prepare the poor for the combat. The wheel work of law and justice is sophisticated and complicated machinery. It needs an expert to set it in motion. A man on the street may not even know the extent of his rights or the way to move the wheels of justice, or he may not have the required resources to take action. In India the rich and influential

sections have for too long used the law and legal machinery to serve their exclusive interest despite the fact that the Constitution of India and other laws have, in recognition of the inequities in society, conferred preferential treatment, rights and privileges to the weaker sections. A large body of laws intended to ameliorate the conditions of the poor including women and children remained unimplemented or underimplemented. When the poor got involved in legal proceedings, they hardly received competent legal aid, with the result the system became oppressive and unjust often denying justice to them.  

The noble promise of our constitution will be fulfilled only if the justice is prompt and inexpensive. Explaining the quality of justice, a scholar has pointed out that "justice should be handy, cheap, speedy and substantial." But unfortunately, a large majority of people are unable even to approach the courts of justice and have to suffer in silence.

In India there are large oceans of poverty, dotted with small islands of affluence, where the rules of law has yet to be infused in the constitutional order; a massive dynamic programme of legal aid for the weaker sections, organised by the State and the society becomes vital and inevitable. Although our Constitution has established a "Socialistic Welfare" state, yet one of the most striking features of the Indian scene is the massive ignorance of the people of their constitutional and other legal rights. They are ignorant of what law and lawyers may do for them. They are ignorant of the availability of lawyers and the system of justice delivery.

7. Supra note 3. See also V.R. Krishna Iyer, "Inaugural Address at the Second State Lawyers' Conference Andhra Pradesh at Rajmuthy" (1976) 2 S.C.C. 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."
So either we should surrender to the justiceless law or we must inject the equal justice\(^\text{11}\) into legality and that can be done only by a dynamic and activist scheme of legal aid.

With this back drop in mind, an attempt would be made in this chapter to analyse the concept and philosophy of legal aid. What is the constitutional mandate and other statutory developments in this regard. While discussing the jurisprudence of legal aid, an attempt would also be made to discuss the judicial role in developing the concept of legal aid in consonance with the spirit of the constitution. An attempt will also be made to discuss the institution of Lok Adalats, which have emerged as the new institutions of cheap and speedy justice for the have-nots. Lastly, the concept and philosophy of public interest litigation, which is strategic arm of legal aid movement and which is intended to bring about justice within the reach of the poor masses of the country will be discussed. Particularly, an emphasis would be laid on the judicial role in developing the concept of public interest litigation.

(B) Legal Aid: The Concept, Its' Basis and Scope

To provide equal justice is an age old problem. The Magna Carta of 1215 also dealt with the same problem by providing:

To no one will we sell, to no one will we refuse, or delay the right of justice....\(^\text{12}\)

The purpose of legal aid is to enable the people to seek justice under the law. This is a formidable challenge in a country of India's size and heterogeneity where more than half of the population lives in far flung villages steeped in poverty, destitution and illiteracy. The programme of\(^\text{11}\)

\(^\text{11}\) Article 14 of the Constitution provides:"The State shall not deny to any person equality before the law and equal protection of laws within the territory of India." The philosophy underlying the Constitution, reflected in the provision for equal protection of laws and in the Chapter of Directive Principles, show that the Constitution is imbued with respect for human rights. The philosophy is sufficient to furnish inspiration for a provision that will put an end to the individual discrimination that otherwise arises between person and person because of poverty. Where a poor man has to defend himself without a counsel, there is lacking that equality which is demanded by the spirit of the Constitution. See Law Commission of India, Forty-eighth Report (Some Questions under the Code of Criminal Procedure Bill, 1970), 9 (1972).

\(^\text{12}\) Clause 40 of Magna Carta.
legal aid has to extend its protective umbrella to cover rural have-nots and handicapped and provide legal service to them. Unfortunately, the traditional system has operated to close the doors of justice to the poor and has caused gross denial of justice in all parts of the country to millions of Indians. However, legal aid is no longer a matter of charity or benevolence but is one of constitutional right and the legal machinery itself is expected to deal specifically with it.

The philosophy of legal aid envisages that the 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 poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in their way of obtaining justice, otherwise, it would not only constitute a denial of equal protection of laws which is guaranteed by the constitution, but also produce in them a sense of frustration and injustice which would breed bitterness and contempt for democratic institutions and rule of law. Legal aid is, therefore, an essential requirement of administration of justice in its true sense.

The concept of legal aid had existed and drew the attention of the central and provincial governments even in the pre-independence period. Initially legal aid movement started in Bombay as a voluntary movement. The government of Bombay in 1949 appointed a Committee on legal aid and advice. The Committee in its report envisaged that the 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 poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in their way of obtaining justice, otherwise, it would not only constitute a denial of equal protection of laws which is guaranteed by the constitution, but also produce in them a sense of frustration and injustice which would breed bitterness and contempt for democratic institutions and rule of law. Legal aid is, therefore, an essential requirement of administration of justice in its true sense.

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13. The need of the poor for justice had moved poet Ovid to write "Curia Pauperibus clause est" (the courts are closed to the poor). Quoted by Cappalleti and Gordley, "Legal Aid", 28 Standford Law Review, 347(1972).
14. Supra note 2 at 210. The primary object of legal aid is to make it impossible for any man, woman or child, to be denied of equal protection of laws simply because he or she is poor. Sometimes the poor accused had no chance to save himself and establish his innocence because of high cost of litigation. In this regard Lord Devlin has rightly pointed out that it is surprising that although there was a presumption of innocence, a person had to spend good amount of money to establish his innocence in court. This is the fundamental underlying idea of legal aid. See Legal Aid Newsletter, Vol. 1, Part 2 at 3 (August 1981).
15. After the Report of the Committee on legal aid and advice in England and Wales, appointed in 1944, under the Chairmanship of Lord Rushcliffe, the government of India enquired from the provincial governments about the possibility of extending legal aid to poor in all cases. But the provincial governments were not inclined to take up additional schemes of legal aid, and felt satisfied with the existing legal service provisions like pauper suits under order XXXIII of the Civil Procedure Code and legal aid to indigent persons under High Court rules. See B.B. Pande, "Institutionalisation of Legal Aid in India", XI J.C.P.S. 77 at 82(1977).
report submitted that article 14 which lays down "equality before the law" and "equal protection of the laws" to all persons, 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. The Committee was also of the view that problem of legal aid under the modern conception of a welfare state is an obligation of the state and like other social insurances (free medical aid and educational facilities), the State should take upon itself the responsibility of giving legal aid. According to the Law Commission of India:

Equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought must have an equal opportunity of access to the court and of presenting their cases to the court. But access to the courts is by law made dependent upon the payment of court-fees, and the assistance of skilled lawyers is in most cases necessary for the proper presentation of a party's case in a court of law....Unless some provision is made for assisting the poor man for the payment of court-fees and lawyer's fees and other incidental costs of litigation, he is denied equality of opportunity to seek justice. The rendering of legal aid to the poor litigant is, therefore, not a minor problem of procedural law but a question of a fundamental character.

It is, therefore, submitted that legal aid should be appreciated as a dynamic concept of socio-economic justice and rule of law. In 1970, a national conference on legal aid was convened in Delhi under the auspices of the Institute of Constitutional and Parliamentary Studies. Several recommendations for restructuring legal aid delivery system emerged out of this conference. One of the landmark developments of this conference was that a new awareness in the government and in the legal profession was generated which led to the setting of expert committees on legal aid at the level of Centre and State governments in the following years.

17. Law Commission of India, Fourteenth Report (Reform of Judicial Administration) Vol. 1 587 (1958). 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.
18. At the State level, the report of the Legal Aid Committee appointed (contd.)
The Central government appointed the first Expert Committee on Legal Aid in 1972 under the Chairmanship of Justice V.R.Krishna Iyer. The Committee submitted its report in May, 1973. The Committee observed that "the spiritual essence of legal aid movement" is said to consist in "investing law with human soul". Krishna Iyer Committee studied the problem and need of legal aid in India indepth and made number of significant recommendations. Some of the major recommendations were as under:

1. It identified the groups who deserve legal aid. However, the Committee was silent on the enforcement of rights dealing with unorganised labour bonded labour, enforcement of minimum wages and indebtedness.

2. The indigent person should be allowed to file a suit free of cost with the assistance of legal aid. The Committee also recommended that apart from means test, the person claiming legal aid has to satisfy two more tests. First, that he has a prima facie case that he has a legal right which should be asserted. Secondly, he should also satisfy that his case is reasonable.

3. Legal aid is not a charity but should be considered as a matter of right and this is integral part of our legal system.

4. Legal aid should be statutory based and the statute should provide for a national legal aid body which should not be conceived as a government scheme only.

5. That the resource personnel in the legal aid scheme should be drawn from the bar, law teachers and senior law students with organisations of legal aid clinics at the law school.

by Gujarat Government(1971), the report of the one-man Committee on Legal Aid to Poor appointed by State Tamil Nadu(1973), the report of the Preparatory Committee for Legal Aid Schemes appointed by M.P.Government (1975) and the report of the Law Reform and Legal Services Committee appointed by the Government of Rajasthan(1975), are important documents which studied the regional problem of legal aid and provided the blueprints for appropriate action on the part of their respective governments.


20. Id. at 10.

21. Id. at 21. The groups mentioned were(a), the geographically deprived, that is, those living in distant islands and high mountains; (b) the villagers; (c) the agricultural labour; (d) industrial labour; (e) women; (f) Children and youth; (g) Harijans (h) Minorities and (i) prisoners.

22. For critical evaluation of the report on Processual Justice to People, (conted.)
(6) There should be mobile courts for trying minor offences on the spot.27

(7) The Committee also recommended that the functions and powers of Nyaya Panchayats should be increased and low cost justice be encouraged.

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.29

Krishna Iyer Committee report in its conclusion stated:

The rule of law underlies our entire social, economic and governmental structure as well as constitutional order. The Indian way of life will lose its soul if social justice ceases to be the dharma holding us together as a nation. And so it is that we want legality not be wet with tears of poverty. For, surely the law of life will outlaw lawyer's law unless the strategy of bringing law-in-action into rapport with the norms of justice is put into operation and the cost of legal system is brought into fair concord with the economic conditions of the country. In this humanist perspective, our concern has been to view the welfare inspired legal aid programme not as a professional gratuity but as the juridical arm of Garibi Hatao. For this reason, we have given a social sweep to our scheme which exceeds the court room, the Lawyer's chamber, the traditional legal aid and advice, thinking, techniques and machinery.30

The government did consider the various recommendations of Krishna Iyer Committee Report but before they could be actually implemented, the Central Government in order to give a fresh look at the problem of legal aid and for an "extensive revision, updating and revaluing" the Krishna Iyer Committee Report, set up another Committee with Justice Bhagwati (as see Upendra Baxi, "Legal Assistance to the Poor: A critique of the Expert Committee Report", Economic and Political Weekly, 1005(1975).
he then was) as its Chairman and Justice V.R. Krishna Iyer as its member. This Committee submitted its report in 1977. In fact Bhagwati Committee Report may be read in conjunction with the report of the Krishna Iyer Committee.

The Bhagwati Committee rejected, and rightly so, the traditional narrow concept of legal aid programme which was court oriented and litigation oriented. The Committee pointed out that the traditional view of legal aid was understood as financial assistance to a person who wishes to assert or defend his rights in the court of law and who would not be able to do so without such financial assistance in view of his financial means. The Bhagwati Committee further pointed out that the traditional system of legal aid consciously or unconsciously identified legal justice with social and economic justice and lawyers with law, with the result that the tasks of the legal aid lawyers are conceived as to be aid to law and legal justice only. It fails to recognise that legal justice may conceal and some times even may help real injustice and that law itself may be unjust, which may have to be resisted and challenged by the legal aid lawyers. Also one to one relationship between a lawyer and client, cannot provide effective and permanent legal services to the weaker classes qua other classes.

Thus, the Bhagwati Committee postulated a wider conception of legal aid as a goal which embraces in its scope the following aspects.

1. Spreading awareness and consciousness among the poor and ignorant about their rights and benefits.

2. Treatment of the class problems of the poor such as fighting against all institutions which deny to them basic needs like food and essential requirements.

3. Socio-legal research into the legal and non-legal problems of the poor.

4. Helping the poor to organise themselves so that they can

32. Id. at 1-2.
33. Id. at 61.
assert their rights and to organise institutional changes so as to secure socio-economic justice to all.\(^{34}\)

(5) The Committee also emphasised the role of voluntary organisations, social action groups, and legal aid clinics in the universities and law schools.\(^{35}\)

With a view to implement the Bhagwati Committee Report, the government of India in September, 1980 set up a Committee known as "the Committee for implementing Legal Aid Scheme"(CILAS) with Justice Bhagwati (as he then was) as its Chairman. 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.

Litigative legal aid has a limited scope to meet the problems of poverty in India and to deliver socio-economic justice. This is because legal equality pre-supposes social and economic quality. Furthermore, such an approach accepts that laws are basically fair and lawyers are required only to correct its unfair incidence. Change of law and use of law for socio-economic equality are not part of traditional model of legal services. Thus, the recent thrust is on the preventive or strategic legal aid the focus of which is to eliminate the poverty itself by altering the conditions which create or perpetuate poverty rather than just enabling the poor to have the services of lawyer in court. Its concern is with the problem of the poor as a class rather than looking only at the problem of individual poor litigant. In other words, institutional changes towards an egalitarian socio-economic structure and organising the poor towards self-reliant development are intended by strategic or preventive legal aid. Following are the major components of strategic or preventive legal aid.\(^{36}\)

\(^{34}\) Id. at 65-79. See also B.Sivaramayya, \textit{supra} note 16 at 139.

\(^{35}\) \textit{Supra} note 31 at 141-143.

1. Promotion of legal literacy and creation of awareness among the weaker sections of the community. It is only through an awareness of rights and benefits conferred by law on citizens that the poor can assert their rights and repel any attacks against the suppression of rights. Legal education in schools, colleges, para legal training of grass root level social workers, audio-visual programmes on law in mass media, public legal education through adult and continuing education programme etc. are some of the legal literacy programmes.

2. Organisation of legal aid camps and Lok Adalats for carrying the legal services to the door steps of the people.

3. The introduction of "entitlement centres" in key urban and rural areas. The poor in certain situations may not have legally articulated rights but may be entitled to legally conferred and officially dispensed welfare benefits. Because of a variety of reasons, including illiteracy and disorganised composition of the beneficiaries as well as corruption and lethargy of the officials in charge of the governmental agencies concerned, the benefits may not reach the really deserving poor. The social activists and village social workers if made aware of such benefits and the procedures to secure their rights, can help the poor to assert themselves and seek the benefits.

4. Training of para-legal persons or development of a cadre of bare-foot lawyers for the purpose of providing support to the legal aid programme. A crash training programme for women, retired civil servants, teachers, social workers, trade union people and youth leaders will render first aid in law besides giving para-legal support to legal aid committees.

5. Setting up legal aid clinics in Universities and law colleges with a view to make legal education socially relevant and attempting to make the legal profession sensitive to social justice issues and the problems of the poor. Introduction of the subject of "Law and Poverty" in LL.B. curriculum with the active support and co-operation of the Bar Council of India. Students must be exposed to "the socio-economic realities" of Indian life and of the use of law for the improvement of the lot of the common man and as "an instrument of socio-economic change."
6. The use of law for public interest litigation through class action.

Thus, it is submitted that the legal aid movement in India has come out from the embryonic stage and has contributed to Indian jurisprudence by emphasising that pure legalism on pure legal positivism cannot resolve the problems of the poor. If the dream of the father of the nation to "wipe every tear from every eye" is to be translated into a reality then the new emphasis and new priorities to the expectations of the poor have to be developed as a part of the legal system.

Our State is a welfare State whose policies are inspired by the directive principles of state policy. Our country after achieving its independence in 1947, adopted its own Constitution in 1949 which has many provisions in it which fertilise the concept of legal aid. There are also some other statutory provisions in this regard.

(i) Constitutional Mandate And Statutory Developments

The Objectives Resolution, which formed the basis of various provisions of the Constitution including the provisions dealing with socio-economic justice, inter alia, stated:

The Constituent Assembly declares its firm and solemn resolve...to draw up for the future governance a Constitution.... wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law...and wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes....

This Resolution was a vital document and all the provisions dealing with socio-economic justice, that is, preamble, fundamental rights and the directive principles were based on it. Part III and Part IV of the Constitution dealing with fundamental rights and directive principles respectively, provided a frame work for translating the preambular promise into a reality. They serve as the light-posts for the exercise of state power through the instrumentality of law and administration.

37 1 C.A.D., at 57 See clauses 1, 5 and 6 of the Objectives Resolution.
Besides article 14 of the Constitution, which enshrines in it the basic principle of equality, article 21 of the Constitution declares that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." Article 22 provides a right to be defended by a legal practitioner of his choice. In part IV of the Constitution dealing with the directive principles of state policy, there are many provisions which are aimed at removing the inequities of the system. The State is under an obligation to secure a social order for the promotion of welfare of the people in which justice, social, economic and political shall inform all institutions of life. The State is also directed to minimise the inequalities in income and eliminate inequalities in status, facilities and opportunities. On the credit side of the balance sheet article 39-A of the Constitution must also be mentioned which deals with equal justice and free legal aid. It provides:

The State shall secure that the operation of the legal system promotes justice, on the basis of the equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Thus, it gives constitutional status to free legal aid to the poor and envisions the prospect of inequality in access to justice being abolished. These provisions of the Constitution constitute the basis for social justice through law. Legal aid is its operational arm. Legal aid is not just a dogma but a dynamic instrument for access to justice to be developed imaginatively through law and practice at every level of the socio-economic system.

38. Article 22(1) provides:"No person who is arrested shall be...denied the right to consult, and to be defended by, a legal practitioner of his choice."(Emphasis added).
39. See article 38(1) of the Constitution.
40. See Article 38(2) of the Constitution.
41. This article was instituted in the Constitution by section 8 of the Constitution(Forty-second Amendment)Act, 1976 (w.e.f. 3.1.1977).
42. See V.R.Krishna Iyer, Law Versus Justice, 66(1980). Earlier some doubts were expressed about the competence of the Central Government to legislate on legal aid matters under the constitutional provisions. There was no specific entry as to legal aid in the Seventh Schedule. It was thought that it was covered under entry 3 of list II of the Seventh Schedule dealing with "administration of justice". The Constitution(Forty-second Amendment)Act, 1976 has included the "administration (conted.)
In addition to the above mentioned constitutional provisions, in 1973, a new 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.

Article 22(1) of the Constitution was also a source of inspiration to the framers of Code of Criminal Procedure. Keeping in view its tenor, section 303 of the New Code, replacing section 340(1) of the Old Code, was incorporated with the addition of the significant words "of his choice" at the end.

Besides this, an important development with regard to the concept of legal aid took place through the various judicial decisions.

(ii) Jurisprudence of Legal Aid and Judicial Role

Austin has rightly pointed out that "the judiciary was to be an arm of the social revolution upholding the equality that Indians had longed for" even during the colonial days. Judiciary has played an important role in developing the concept of legal aid and in expanding its scope. In order to study the judicial role in its proper perspective, it is necessary to study the various aspects of legal aid where the judiciary has made its contribution.


44. The relevant part of section 304 of the Criminal Procedure Code provided: "(1) where, in a trial before the Court of Sessions, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader the Court shall assign a pleader for his defence at the expense of the State...."

45. See Supra note 38.

46. Section 303, which deals with the right of person against whom proceedings are instituted to be defended, provides: "any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this code, may of right, be defended by a pleader of his choice." (Emphasis added).

47. Granville Austin, The Indian Constitution - Cornerstone of A Nation, 164(1976 reprint).
In the absence of a clear provision on legal aid in the Constitution in the early period of interpretation, the Courts took the view that there was no duty imposed upon the state to provide an indigent accused with counsel. In Janardhan Reddy v. State of Hyderabad, the Supreme Court observed:

> It cannot be laid down as a rule of law that in every capital case where the accused is unrepresented, a trial is held to be vitiated, but the Court of appeal or revision is not powerless to interfere, if it is found that the accused was handicapped for want of legal aid that the proceedings against him may be said to amount to negation of fair trial.

It is submitted that from the above observations of the Supreme Court it is clear that the Court did show some concern for legal aid and fair trial but refused to rule that the trial would be vitiated if the accused is unrepresented in a trial. In other words, this was only a half-hearted approach of the Court. Probably, the reason for this kind of approach was that in those days our Supreme Court did not regard the "due process clause" of American Constitution as a part of Indian Constitution.

Janardhan Reddy's jargon was repeated by the Supreme Court in Tara Singh v. State, when it observed:

> The right conferred by section 340(1) of the Criminal Procedure Code, 1898, does not extend to a right in an accused person to be provided with a lawyer by a State or by the police or by the magistrate. That is a privilege given to him and it is his duty to ask for a lawyer and engage one for himself. The only duty cast on the magistrate is to afford him the necessary opportunity.

However, the judicial attitude softened in Bashira v. State of U.P., where the Supreme Court interpreted the High Court rules regarding the appointment of amicus curiae in a Criminal trial of a serious kind as being mandatory in nature.

49. Id. at 222. See also Powell v. Alabama, 287 U.S. 45 (1932).
51. Ibid. See also in Re Govind Reddy, A.I.R.1958 Mys.150; State v. Dukhi Dei, A.I.R.1963 Ori.144.
53. See also Kunnumal Mohd. v. State, A.I.R.1968 Ker.54 at 59 where it was
In addition to this, the introduction of section 304 in the Code of Criminal Procedure Code, 1973, brought further significant changes in this regard as it provided for legal aid at state expense in a trial before the Court of Sessions where the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage one. It is interesting to note that the words "of his choice" were not added in the new section 304 of the Code which specifically dealt with legal aid at the state expense. It is submitted that the omission was deliberately made because section 304 of the Code and article 22(1) of the Constitution of India are analogous. The statutory provision of section 304 of the Code cannot override the constitutional guarantee under article 22(1) and statutory change in section 303 of the Code, "of his choice", has to be kept in mind. In other words, even when the other conditions of section 304 are fulfilled, the court cannot thrust upon the accused a lawyer whose appointment he objects. Otherwise, the whole scheme of legal aid will crumble down.

In Hussainara Khatoon v. State of Bihar, speaking for the Court 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, to have free legal aid provided to him by the State and the State is under a constitutional duty to provide a lawyer to such accused persons. He further observed that 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 vitiating as contravening article 21 of the Constitution.

The question, whether the 'right to be defended by a legal practitioner of his choice' under article 22(1) of the Constitution comprehends the held that where a proper counsel is not available to defend an indigent accused it becomes the primary duty of a court to aid the accused by putting timely and useful questions.

54. See supra note 44.
right of an accused to be supplied with a lawyer by the State, was considered in detail by the Supreme Court in Ranjan Dwivedi v. Union of India. It is heartening to note that Justice Sen, speaking for the Court observed:

"The traditional view expressed by this Court on the interpretation of Article 22(1) of the Constitution in Janardhan Reddy v. State of Hyderabad that 'the right to be defended by a legal practitioner of his choice' could only mean a right of the accused to have the opportunity to engage a lawyer does not guarantee an absolute right to be supplied with a lawyer by the State, has now undergone a change by the introduction of the Directive Principle of the State Policy embodied in Article 39-A by the Constitution (Forty-second) Amendment Act, 1976, and the enactment of sub-section (1) of sub-section 304 of the Code of Criminal Procedure."

He further observed:

"When the accused is unable to engage a counsel owing to poverty or similar circumstances, the trial would be vitiated unless the State offers free legal aid for his defence to engage a lawyer whose engagement the accused does not object."

Thus, it is submitted that from the above observations of the Court it is beyond any doubt that it is a fundamental right of the accused to have a 'Counsel of his Choice' at the 'State expense', otherwise the trial would be vitiated.

In Suk Dass v. Union Territory of Arunachal, the Supreme Court has again pointed out that now it may be taken a settled law that free legal aid at State cost is a fundamental right of a person accused of an offence.

But for the proper adjudication of the case, it is a 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.

59. Id. at 626-27 (Emphasis added).
60. Id. at 627 (Emphasis added).
62. Id. at 993.
(b) Professional Competence of a Lawyer And Equal Justice

Unless a lawyer provided by the State is of equal competence as that of special public prosecutor, it will violate the fundamental right to equality which is the founding faith of the Constitution. If while appointing a lawyer at the state expense, the professional competence is not kept into consideration, there is another danger of becoming legal aid scheme as a scheme to aid the poor lawyers. B.Sivaramayya, rightly sounded a note of caution in this regard when he observed:

[When in the legal profession 10 per cent of the lawyers handle 90 per cent of the work, and the other 90 per cent of the lawyers rush to grab remaining 10 per cent of the work, there is a real danger of legal aid degenerating into a scheme to aid poor lawyers.]

Emphasising the same theme, the Supreme Court of India speaking through Justice Krishna Iyer in R.M.Wasawa v. State of Gujarat, observed:

Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar.

In Ranjan Dwivedi v. Union of India, also the Supreme Court took into consideration the aspect of professional competency and equal justice. In this case, the Supreme Court admitted that it is impossible for a person facing a session trial on a capital charge to get a competent professional lawyer under the rules fixed by the High Court which provided for the payment of Rupees twenty-four only per day to a lawyer appearing in the Court of Session as amicus curiae. It was due to this fact that the Supreme Court by its interim order directed the State to pay rupees five hundred per day to the Senior Counsel and rupees two hundred and fifty.

63. Equality in the administration of justice forms the basis of our Constitution. Such equality is the basis of all modern systems of jurisprudence and administration of justice. If the justice becomes unequal then the laws which are meant for protection have no meaning and to that extent fail in their purpose. See Law Commission of India, Fourteenth Report(Reforms of Judicial Administration)Vol.1, 587(1958).

64. See B.Sivaramayya, Supra note 16 at 144.
67. Supra note 58.
per day to the junior counsel for representing the petitioner. 68

Krishna Iyer has rightly pointed that the legal aid programme is not a benefit scheme for briefless lawyers, as some suspect, but a provision of assistance through counsel and of other facilities for effective defence. 69 Lawyer's service not of tyros, but competent men lest the scheme be discredited is required. Legal aid must not only be given but appear to be given and for that it is also essential that the legal aid litigant must have freedom of choice of lawyer for defence. For, the lawyer assigned being not a gift horse not to be looked in the mouth. The practice of patronising lawyers instead of choosing talent according to the case, needs to be condemned. 70

(c) Free Legal Aid — A Part of Just, Fair and Reasonable Procedure

In Maneka Gandhi v. Union of India, 71 the Supreme Court expanded the wings of personal liberty as enshrined in article 21 of the Constitution. The Supreme Court speaking through Justice Bhagwati (as he then was) observed that the procedure established by law should be 'just, fair and reasonable' and not arbitrary, fanciful or oppressive, otherwise it would be no procedure at all and the requirements of article 21 would not be satisfied. 72 The correct way of interpreting the provisions conferring fundamental rights is that the attempt of the Court should be to expand the reach and ambit of fundamental rights rather than to attenuate their meaning and content by a process of judicial construction.

Relying on this famous decision, Krishna Iyer, J., who delivered the majority judgement in M.H. Hoskot v. State of Maharashtra, 73 held that the right to legal aid is one of the ingredients of fair procedure. He pointed out that the benefit of article 39-A is available in those cases where public justice suffers. He further observed:

[T]he Court may judge the situation and consider from all angles whether it is necessary for the

68. Id. at 625-26.
70. Id. at 143.
72. Id. at 624,
ends of justice to make available legal aid in particular case.\textsuperscript{74}

In Hussainara Khatoon \textit{v. State of Bihar},\textsuperscript{75} Bhagwati, J.,(as he then was) while explaining the true scope of article 39-A of the Constitution observed:

This article also emphasises that free legal service is an unalienable element of 'reasonable, fair and just' procedure -for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just procedure' for a person accused of an offence and it must be held implicit in the guarantee of Article 21.\textsuperscript{76}

Therefore, the procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who, therefore, have to go through the trial without the legal assistance, cannot possibly be regarded as 'reasonable, fair and just.'\textsuperscript{77}

It is submitted that the Supreme Court rightly interpreted the directive principle of State policy enshrined in article 39-A as a part of 'reasonable, fair and just', procedure- under article 21.\textsuperscript{78} Otherwise the right to life and liberty would have become meaningless for millions of Indians for whom the question of food, shelter and clothing comes first and who do not have any means to defend their life and liberty in the Courts.

\textit{Khatri v. State of Bihar},\textsuperscript{79} once again endorsed the view that the right to free legal services is clearly an essential ingredient of 'reasonable, fair and just, procedure for a person accused of an offence and it is implicit in the guarantee of article 21 of the Constitution.\textsuperscript{79} The judgement of the Court in the case also becomes important from three other angles.

\textsuperscript{74. Id. at 1556-58.}
\textsuperscript{75. A.I.R.1979 S.C.1369.}
\textsuperscript{76. Id. at 1374(Emphasis added).}
\textsuperscript{77. Id. at 1373. While explaining the philosophy of free legal aid as an essential element of fair, just and reasonable procedure, Justice Bhagwati,(as the then was) drew support from the American decisions. See, for example, Gideon \textit{v. Wainwright}, 372 US 335(1963); Jon Richard Argersinger \textit{v. Raymond Hamlin}, 407 US 25(1972).}
\textsuperscript{78. A.I.R.1981 S.C.928.}
\textsuperscript{79. Id. at 930.}
First, the apex Court pointed out that the State Government cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. 80

Secondly, the Supreme Court pointed out that the Constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. That is the stage at which an accused person needs competent legal advice and no procedure can be said to be 'reasonable fair and just' which denies to him legal advice at this stage. 81

Lastly, the Court pointed out that it is the duty of the magistrate or the Session Judge before whom the accused is produced, to inform the accused person 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. Bhagwati, J.,(as he then was) observed:

It would make a mockery of legal aid if it were left to a poor, ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail in its purpose. 82

The learned judge pointed out that the right to legal aid would become illusory for an indigent accused unless the magistrate or the Session Judge before whom he was produced informed him of such right. Since more than 70 per cent of the people in the rural areas were illiterate and even more than that percentage of people were not aware of their rights conferred upon them by law, it was essential to promote legal literacy as part of the programme of legal aid. 83

It is submitted that legal literacy has, therefore, to be the first step in the legal aid programme. Legal aid starts from the stage of legal literacy and continues to the stage of after-care. And this is also one of the objectives of strategic or preventive legal aid. 84

80. Id. at 931.
81. Ibid.
82. Ibid.
83. Ibid.
84. See also Jagat Narain,"Legal Aid Litigational or Educational:An Indian Experiment", 28 J.I.L.I. 72(1986).
In Sheela Barse v. State of Maharashtra, the Supreme Court once again held that legal assistance to poor or indigent accused is a constitutional imperative mandate not only by article 39-A but also by articles 14 and 21 of the Constitution. One of the most important aspect of this case was that the Court reminded the lawyers of their duty to help the people in distress. Bhagwati J. (as he then was) speaking for the Court held that the lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in crisis, do not know what to do or where to go or to whom they should go. The learned judge pointed out that if lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, they will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and rule of law.

It is submitted that the court has rightly reminded the lawyers of their role which they are required to play in the society. Lawyers are the necessary link between the distributor of justice, the court, and the consumer of justice, the people. They play a very important role in the process of dispensation of justice. It is really impossible for any legal aid programme to succeed without the active co-operation of the bar, which is one of the most important supporting pillar of the rule of law.

In Dam° v. State, a full Bench of Rajasthan High Court held that the Court has judicial discretion in giving priority and to hear cases even out of the turn which would depend on the facts and circumstances of each individual case. And this discretion of the Court does not in any way infringe the right to equality as envisaged in article 14 of the Constitution.

86. Id. at 380.
87. Id. at 380-81. See also Bar Council, Maharashtra v. M.V.Dabholkar, A.I.R.1976 S.C.242. The bar is not a private guild, like that of "butchers, bakers and candle stick-makers" but, by bold contrast, a public institution committed to public justice and pro bono publico service.
88. A.I.R.1985 Raj.230 at 231-234. See also Ramesh Chandra v. Rameshwadayal, A.I.R.1987 M.P.110 at 112, where it was held that if an application of defendant for adjournment for examination of witness is dismissed without having given earlier last change, it was violative of "right of fair trial ensured under article 39-A and hence unconstitutional".
It is also in consonance with the spirit of articles 21 and 39-A of the Constitution.

The echo of Hussainara, Hoskot and Khatri sounded the court room once again in Suk Das v. Union Territory of Arunachal Pradesh. Bhagwati, C.J., speaking for the Court held that free legal assistance at state cost is a fundamental right of a person and is implicit in the requirements of 'reasonable, fair and just', procedure prescribed by article 21. The learned judge further pointed out that this right is not conditional upon the accused applying for legal assistance. On the other hand, the magistrate or the session judge before whom the accused is produced, is under an obligation to inform the accused that if he is unable to engage a lawyer because of poverty or indigence, he is entitled to obtain free legal services at the state cost. If the trial is conducted without informing the accused of his right, it will be unconstitutional as being violative of article 21 of the Constitution.

The learned Chief Justice also emphasised the role of lawyers in the society and legal literacy as one of the principal arm of legal aid movement in India. He observed:

Now it is a common knowledge that about 70 per cent of the people living in the rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land...This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if were to left to a poor, ignorant and illiterate accused to ask for free legal service. Legal aid would become merely a paper promise and it would fail for its purpose.

It is submitted that the learned Chief Justice took a very pragmatic approach of legal aid. His emphasis is not only on the litigative legal aid but also strategic or preventive legal aid. It is only through the

90. Id. at 993.
91. Id. at 993-994.
preventive legal aid, that we can help people to remove their ignorance and to make them equal participants in the various rights of 'Magna Carta' of India.  

Thus, from the analysis of above decisions, it is clear that the right to legal aid as provided in article 39-A as a directive principle has been read by the Supreme Court as a part of 'reasonable, fair and just' procedure under article 21. Indeed Parts III and IV viewed in the perspective of the preamble, underscore social justice as the warp and woof of the Constitutional order. These two parts were incorporated in our Constitution with the hope and expectation that one day the tree of true liberty would bloom in India. They connect India's future, present and past adding greatly to the significance of their inclusion in the Constitution, and giving strength to the pursuit of social revolution in India.

(d) Right to Legal Aid And Mandamus: Judicial Pessimism

By the various judicial decisions, it has already been established that 'right to legal aid' is a part of 'reasonable, fair and just' procedure under article 21 and hence it has become a fundamental right.

However, in Ranjan Dwivedi v. Union of India, the Supreme Court rejected the prosilient development in legal aid jurisprudence to a position of secondary importance. In this case the petitioner was a practising advocate in the Supreme Court and was arraigned in an offence punishable under section 302 read with section 120-B of the Indian Penal Code. He filed a writ petition under article 32 of the Constitution and sought issuance of writ of mandamus for ordaining the Union of India to give financial assistance to him to engage a 'Counsel of his choice' on a scale...

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92. Part III of the Constitution of India which deals with Fundamental Rights is also described as 'Magna Carta' of India. See V.G.Ramachandran, Fundamental Rights and Constitutional Remedies, Vol.1 at 1 (1964).
93. V.R.Krishna Iyer, Supra note 42 at 69.
94. See Granville Austin, Supra note 47 at 50-51.
95. Whatever is declared by the Supreme Court of India, it becomes the law of the land including the Constitution of India. See article 141 of the Constitution.
96. Supra note 58.
equivalent to or commensurate with the fee payable to the counsel appearing for the State. The prosecution was being conducted by a special public prosecutor assisted by a galaxy of lawyers and large amounts were being paid by the State as their fees and, therefore, as a matter of processual fair play it was incumbent on the state to provide him with a 'Counsel of his choice' for his defence on the bases of 'equal opportunity' as guaranteed under article 39-A of the Constitution. The State questioned the maintainability of the writ petition on the ground that the direction to provide defence counsel at state expense could be made only when an application under section 304(1) of the Criminal Procedure Code was made.

Although the Supreme Court in Ranjan Dwivedi admitted that, read with article 21, the directive principle in article 39-A has been taken cognizance of by the court in M.H.Hoskot and Hussainara Khatoon, to lead to certain guidelines in the administration of justice, yet it dismissed the petition suggesting that the remedy with the petitioner is to make an application before the Additional Session Judge making out his case for the grant of free legal aid and if he was satisfied that the requirements of section 304(1) of the Code are fulfilled then he shall make necessary directions in that behalf.

The Supreme Court also admitted that the existing rules were antiquated and did not take into account the realities of the situation. Keeping in view this fact the Supreme Court had issued an interim order during the pendency of the writ petition whereby the state was directed to pay rupees five hundred per day to the senior counsel and rupees two hundred and fifty per day to the junior for representing the petitioner. The Supreme Court further observed that the scales of remuneration for empanelled lawyers appearing in session trial were "grossly insufficient" and call for a revision and this is a matter which clearly vests with the High Court only.

It is submitted that in view of the above mentioned observations of the Supreme Court, it should have issued the writ of mandamus for the following reasons:

98. Supra note 58 at 625-26. The petitioner in this case had contended that he as a struggling lawyer had neither the capacity nor the means to engage a competent lawyer of his choice. The meagre sum of Rs 24/- per day was fixed by the Delhi High Court rules, to be paid to the amicus curiae, which was insufficient for a lawyer of good standing.

99. Supra note 58 at 627, 629.
First, the petitioner was asking for the enforcement of his fundamental right, that is, to have a 'counsel of his choice'. It has already been established by the various judicial decisions that right to have a 'counsel of his choice' is fundamental right of the person enshrined in articles 39-A read with articles 14, 21 and 22(1) of the Constitution. And mandamus cannot be refused for the enforcement of the fundamental right.

Secondly, the mandamus has become the writ of justice in India. And in all those cases where the citizen's need is proper adjudication of his matter, a mandamus is inevitable. In the present case the public prosecutor was assisted by a galaxy of lawyers but he was being deprived of a 'competent lawyer' at the 'State expense'.

Thirdly, after admitting that the scales of payment of fee to the amicus curiae were insufficient, leaving the discretion of framing the rules regarding the payment to amicus curiae in the hands of the High Court only is also 'unreasonable unfair and unjust' procedure. In doing so the principles of natural justice which have become integral part of article 21 after Maneka Gandhi, are violated, which can be rectified only through the writ of mandamus. Natural justice is fair play in action. And the concept of natural justice at all stages guide those who discharge judicial functions not merely as an acceptable but as an essential part of the philosophy of law.

Fourthly, one of the most important principle which is firmly embodied in the system of our jurisprudence is that 'justice must not only be done but appear to be done'. But vice-versa is true in Ranjan Dwivedi. The whole procedure in providing amicus curiae to the petitioner may result in the delay of justice. Moreover, the High Court has been given the discretion to frame rules for the payment to amicus curiae under section 304(2) of the Criminal Procedure Code and a Constitutional duty has been imposed on it under article 227(3) of the Constitution. If the High Court had failed to carry out the constitutional duty in accordance with

100. See A.T. Markose, Judicial Control of Administrative Action in India: A Study in Methods, 376(1956).
103. See section 304(2) of the Criminal Procedure Code
104. See Article 227(3) of the Constitution.
the spirit of the Constitution, then in that case the Supreme Court should have directed, through the writ of mandamus, the High Court that it should fulfill the constitutional mandate. Otherwise, the whole 'Magna Carta' of India will crumble down.

And lastly, in Ranjan Dwivedi, the Supreme Court was also wrong when it agreed with the chicanery of the Additional Solicitor General while dismissing the petition on the ground that the petition is virtually for enforcement of the directive principle of the state policy enshrined in article 39-A of the Constitution.105.

The Supreme Court in Ranjan Dwivedi, while making reference to Kesavananda Bharti v. State of Kerala,106 admitted:

[T]here is no disharmony between the Directives and the Fundamental Rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of welfare state, which is envisaged in the Preamble. The Courts, therefore, have a responsibility in so interpreting the Constitution as to ensure implementation of the Directives and to harmonise the social objective underlying the Directives with the individual rights. Primarily, the mandate in Article 39-A is addressed to the Legislature and the Executive but ...the Courts too are bound by this mandate.107

In spite of this observation, the Supreme Court in Ranjan Dwivedi failed to observe the Constitutional mandate of article 39-A. Let it not be forgotten that though directive principles of state policy are not enforceable, nevertheless they are "fundamental in the governance of the country". In Mumbai Kamgar Sabha v. Abdulbai,108 the Supreme Court observed: "Where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference."109 It was with this hope that Parliament had enacted article 39-A into Part IV of the Constitution.

However, Delhi High Court, in Jackson v. Union of India,110 gave a
clarion call to the significant development when it allowed the writ of
mandamus in order to enforce the directive enshrined in article 39-A
of the Constitution. In this case, the petition under article 226 of
the Constitution was filed by three workmen (chowkidars) working with the
Garrison Engineer (North), M.E.S. Air Force Palam, Delhi Cantt. raising
an issue of great public importance regarding the suspension of industrial
adjudication in the Central Government Labour Court for the last nine
months. The reason for suspension was that for about a year no Presiding
Officer was appointed to the said court by the Union of India and there
were about 1600 cases pending in this court. Justice S.B. Wad, speaking
for the Court, observed:

Legal aid is one of the directive principles of the Constitution. The object of this directive is that
nobody should be denied access to courts. In this circumstance of the present case the petitioners are
entitled to the mandamus sought for by them.

He also observed:

The Socialistic Republic of ours should not allow
to create an impression that the Directive
Principles are not seriously acted upon.

Thus, it is submitted that in this case the importance of the
directive principles, particularly of article 39-A, was emphasised and the
High Court rightly issued the writ of mandamus. It is further submitted that
interpretation of any provision of the constitution must be in consonance
with the ethos and spirit of the constitution. Hence the right to legal aid
needs to be looked in this perspective.

(e) Exemption of Court Fee : A Demand of Socio-economic Justice

It was the Magna Carta of 1215 which provided: "To no one will we
sell, to no one will we refuse, or delay the right of justice...." But this

111. See also Indian Express at 5, 21 March 1984 (Chandigarh Edition) where
it was reported that a division bench of Punjab and Haryana High Court
issued a writ of mandamus on 20 March 1984, directing the State of
Haryana to fill the vacancies of Presiding Officers of the Industrial
Tribunal, Faridabad as well as the Labour Courts at Faridabad and Rohtak
by April 6, while allowing the writ petition filed by Raghbir Singh,
General Secretary, Haryana Committee of the A.I.T.U.C. and Trade Union
Leader of Panipat.

112. Supra note 110.
113. Id. at 560.
114. Id. at 559.
115. Supra note 12.
remained a pious declaration, for, in England access to justice was always dependent on payment of fee. In earlier period, even judges and officials of the court were concerned with court fee as they drew a considerable part of their income from fee. There was close connection between fee and the administration of justice.  

It is an unfortunate thing that even in free India, we continue this legacy of British imperialism when we have constituted ourselves into a "socialistic, democratic, republic". The noble ideals of the preamble have been elaborated in Parts III and IV of the Constitution and more particularly in provisions of articles 14,38 and 39-A. These provisions put an obligation on the state that it would endeavour to eliminate inequalities in status and ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.  

Justice should be cheap, handy, speedy and substantial. A large majority of our people are unable even to approach the courts of justice and have to suffer in silence because they cannot pay the court fee. This is so despite the fact that our Civil Procedure Code contains provisions for litigation in forma pauperies and the State is under an obligation to provide legal aid. If the social justice is to be made a reality, access to courts, which is an instrument of social change, must be brought within the reach of our indigent population. And this can be done by abolishing the court fee.  

The Law Commission of India in its reports lamented that every state has step by step increased the court fee and the state government feels that the court fee is an ideal source of revenue.

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115a. The provisions of issuing process in civil and criminal cases subject to the deposit of process fees by the parties to the case may lead to unnecessary delay and corruption in the employees of judicial department. See M.M.Bhalla, "Case for Abolition of Process Fees in civil and criminal cases", A.I.R.1988(Journal) at 90-91.  
117. In Civil cases under order XXXIII of the Code of Civil Procedure, a person can be allowed by a court to sue as a pauper if the court found the person not possessed of sufficient means to enable him to pay the Court fee or where no such fee is prescribed, when he was not having property worth Rs 100/- other than his necessary wearing apparel and the subject matter of the suit. Order XLIV, similarly enables an indigent person to prefer appeals without paying the court-fees.  
It is submitted that it is a total fallacy to hold that by abolishing a court fee there will be a substantial cut in the tax budget, which our country cannot afford. To provide cheap access to courts, is the duty of the State which is a 'socialistic welfare' state and the primary goal of which is to establish an 'egalitarian society'. The abolition of the Court fee could be one of the symbolic acceptance of a poor man's right to have access to justice. It is the cost of litigation which in many cases is preventing the people from seeking relief in courts of law.

An argument which justifies the imposition of court fee on the ground that it would prevent the institution of frivolous litigation also seems to be misplaced. Had this been the true reason, then today courts could not have been loaded with mounting arrears of cases. The real way to prevent unjust suits is to take care that there shall be just decisions.

Bhagwati Committee on "National Judicare: Equal Justice - Social Justice" in 1977 also suggested that there should be considerable reduction in court fee. The matter was again considered by the Parliamentary Consultative Committee. A Committee under the Chairmanship of Sh.J.N.Kaushal (who later on became the Law Minister of India) was set up in 1980. This Committee also recommended for the abolition of the Court fee. But the dream of free and equal justice is yet to become a reality in India.

Justice should be the main focus of any civilised society. Law and justice have to live in close harmony and where law prevents cheap justice, there is in fact no justice. There must be a broad correlationship with the fees collected and the cost of administration of civil justice.

In State of Haryana v. Darshna Devi, the Court felt deeply hurt when 'State of Haryana dragged upto the Supreme Court, a widow and daughter, the dependents of a victim of an automobile accident, deprived of their sole bread-winner, demanding the court fee for their claim for compensation'. The State government, instead of acting on social justice and generously settling the claim, fought like a "Cantankerous litigant" and avoided

119. See supra note 31.
120. Punjab Governor, Mr.S.S.Ray also pleaded for abolition of Court fee. See "Ray for abolition of Court fee", Indian Express 21 October 1986 (Chandigarh edition) Chief Justice R.S.Pathak has also supported the plea for abolition of court fee. See "Justice Pathak for abolition of court fee", Indian Express 23 March 1987(Chandigarh edition).
adjudication through the device of asking for court fee from the pathetic plaintiffs." The court held that it was distressing that the State, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in article 14 and stressed in article 39-A of the Constitution, had sought leave to appeal against the order of the High Court which had rightly extended the 'pauper' provisions to auto-accident claims. Krishna Iyer J., who delivered the judgement, while showing his concern for 'social justice' and 'access to justice', observed:

We should expand the jurisprudence of Access to justice as an integral part of Social Justice and examine the constitutionalism of court-fee levy as a fact of human rights highlighted in our Nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved, a second look at its policy is overdue.

It is submitted that Krishna Iyer J., rightly pleaded that the judges should now try to review the validity of sale of justice by the State at rates too exorbitant for the poor, who happen to be easy targets of the escalating lawlessness in law enforcement.

In Central Coal Fields v. Jaiswal Coal Co., it was held that court fee should not result in denial of effective access to justice and equality before the law. Krishna Iyer, J., speaking for the Court observed:

While it is deplorable that some speculators gamble in litigation using the strategem of pauperism, it is more deplorable that the culture of the Magna Carta notwithstanding the Anglo Indian forensic system and currently free India's court process should insist on payment of court fee on such a profiteering scale without correlative expenditure on the administration of civil justice that the levies often smack of sale of justice in the Indian Republic where equality before the law is a guaranteed constitutional fundamental and the legal system has been directed by Art.39-A to ensure that opportunities for securing justice are not denied to any citizen by reason of economic...disabilities.

123. Id. at 856.
124. Ibid. (Emphasis added).
Thus, effective access to justice is one of the most basic requirements of a system which purports to guarantee legal rights.

In *Kaiser Bahadur Thapa v. State*, Sikkim Court Fees (Exemption and Miscellaneous Provisions) Act, 1983, which exempted from liability to pay court fee in favour of persons whose annual income does not exceed Rs 25000/- was held to be not discriminatory and it was in consonance with the spirit of articles 14 and 39-A. The High Court observed:

> Access to Courts is a very important aspect of socio-economic justice and if the State enacts a legislation to ensure that the poor or the poorer should not be prized out of the court of justice by insistence on court-fees, it can hardly be accused of violating the equality clause by discrimination among the equals by unequal treatment.

It is submitted that the High Court rightly interpreted the underlined scope of articles 14 and 39-A in upholding the legislation. Now the "time has come when the Courts must become the Courts for the poor and the struggling masses of this country". Justice Brennan of the American Supreme Court has rightly observed:

> Nothing rankles more in the human hearts than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but real.

These observations are of great relevance to the Indian socio-economic milieu and it is suggested that the court fee should be abolished at the earliest so as to ensure socio-economic justice to all.

In *Laxmi Narayan v. Madan Mohan*, the Court pointed out that by granting exemption from Court-fees, persons suffering from socio-economic oppression as a member of a class of citizens, are encouraged individually to take recourse to law to enforce their legal rights and fight exploitation. Let it not be forgotten that to adopt measures for establishment of a just social order is State's constitutional responsibility.
(f) Public Participation in Legal Aid Programmes

It is now acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching socio-economic justice to the people cannot afford to remain confined to the traditional or litigation oriented legal aid programme. It must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic posture and take within its sweep what we may call strategic legal aid programme. For this, the public participation is of utmost importance. The Supreme Court of India has also recognised this. In Centre of Legal Research v. State of Kerala, Bhagwati, C.J., speaking for the court observed:

It is absolutely essential that people should be involved in the legal aid programme because the legal aid programme is not charity or bounty but it is social entitlement of the people and those in need of legal assistance cannot be looked upon as mere beneficiaries of the legal aid programme but they should be regarded as participants in it. If we want to secure people's participation and involvement in the legal aid programme, we think the best way of securing it is to operate through voluntary organisation and social action group.

The learned judge further observed:

We are, therefore, definitely of the view that voluntary organisations and social action groups must be encouraged and supported by the State in operating the legal aid programme.

Thus, the Supreme Court has rightly appreciated the role of the voluntary organisations and other social groups and duty of the state in supporting them in the legal aid programme. However, the court made it clear that such voluntary organisations or social groups shall not be under the control of the State governments.

Once again in Centre of Legal Research v. State of Kerala, the Supreme Court pointed out that the State cannot be asked to encourage and support any and every voluntary organisation or social groups. The Supreme Court laid down the norms which should guide the State in lending

132. A.I.R.1986 S.C.1322. This case was decided on 2.5.86.
133. Id. at 1323.
134. Ibid. (Emphasis added).
135. A.I.R.1986 S.C.2195. This case was also decided on 2.5.86.
136. Id. at 2197.
its encouragement and support to voluntary organisations and social
action groups in operating legal aid programmes, legal aid camps and
Lok adalats or niti melas. Only following categories of the organisa-
tions and social action groups would get the State co-operation.

(1) Voluntary organisations and social action groups which are recognised
by the Committee for Implementing Legal Aid Scheme or whose programmes
are supported by way of grant or otherwise by the Centre or State govern-
ment or the Committee for Implementing Legal Aid Schemes or the State
Legal Aid and Advice Board.

(2) Those voluntary organisations and social groups which organise legal
aid camps or lok adalats in conjunction with or with the support
of the Committee for Implementing Legal Aid Schemes or State Legal Aid
and Advice Board.

(3) Voluntary organisations and social action groups which are recognised
by the State Government or State Legal Aid and Advice Board on an
application being made in that behalf.\textsuperscript{137}

Thus, any possibility of State encouragement or its support has been
ruled out. The essence of the Supreme Court observations is not to bring
voluntary organisations and social action groups in the control or under
the supervision of the State government or the State Legal Aid Board but
to ensure that the processes of justice are not tainted by partisan and
extraneous influences.

(C) Justice Through Nyaya Panchayats And Lok Adalats

Justice through Panchayat is not a novel idea of the modern age.
Panchayati justice is an ancient institution with its roots deep in the
ethos of the country. It was democracy on the plane of justice administration.
Nyaya Panchayats were functioning fairly satisfactorily in villages during
the pre-British days. They were in fact the base on which the entire super-
structure of indigenous system of administration of justice was founded. But
on the coming of the British Rule, an alien system of administration of
justice was implanted in our country and Nyaya Panchayats, which were till

\textsuperscript{137} Ibid.
then administering justice in rural areas gradually lost their authority and influence and fell into disuse. There is an ideological justification for Nyaya Panchayats since that makes for decentralism and people's participation in one great branch of the government, namely, dispensation of justice.

After the commencement of the Constitution of India, a specific provision, that is, article 40 of the Constitution enjoins the State to organise village Panchayats. At the same time article 50 of the Constitution directs the State to separate the judiciary from the executive. At the time of commencement of the Constitution of India, some states had the system of village courts whereas a few other states adopted it in pursuance of the directive principle enshrined in article 50 of the Constitution.

The raison d'être for nyaya panchayats is overwhelming. They throw open the doors of the temple of justice to those who were till now 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. A daily-wage earner whether he lives in an urban centre or in a rural area can hardly afford to forego his wages for the day for attending the court. Nyaya panchayat secures social justice at the grassroot level. Following are the important aspects of justice through nyaya panchayats:

First, it promotes accessibility for the poor people to the institution of justice. They take care of those people who are priced out of the judicial market.

138. See V.R.Krishna Iyer, supra note 16 at 119-120.
139. See Article 40 of the Constitution of India.
140. See Article 50 of the Constitution of India.
141. The Constitution of India came into force w.e.f. 26 January, 1950.
142. See for example, Madras, Mysore and Kerala States.
143. Madhya Pradesh and Uttar Pradesh implemented it after the commencement of the Constitution. However, after the Balwant Mehta Committee Report, 1959, and the reorganisation of the village institutions both as local government and developmental agencies, many more states established nyaya panchayats as separate judicial bodies.
144. See B.Sivaramayya, supra note 16 at 147.
Secondly, there is informality of the procedure in the nyaya panchayats. Most of the disputes are amicably settled. Thirdly, nyaya panchayats provide a forum where cheap and speedy justice is made available. Fourthly, they are the carrier of secular, equalitarian, modernistic legal ideology, and thus, assist the desired social transformation. And lastly, they help in reducing the arrears of the court litigation.

Law Commission of India, also recognised the nyaya panchayats as very useful device to prevent the court-congestion at the higher level. While showing concern for the quality of justice given by the nyaya panchayats, it suggested short-term training programmes for nyaya panchas. Krishna Iyer Committee also recommended that the functions and powers of the nyaya panchayats should be increased and it should encourage low cost justice.

Bhagwati Committee, also after noticing the recommendations of the Law Commission, and previous Committees strongly favoured the establishment of nyaya panchayats.

But in spite of these laudable objectives of nyaya panchayats, it is only fair to add that till now the attempts of some states to establish the nyaya panchayats did not prove success and some states have gone

146. In the U.P., for example, the judicial panchayat showed, for the period 15 August, 1949 to 31 March 1956, 19,14,098 cases, of which 18,94,440 cases were disposed of. See id. at 307. This is despite the fact that nyaya panchayats have limited civil and criminal jurisdiction and a large area of disputed matters continue to be outside its jurisdiction.
148. Supra note 19 at 40.
149. Supra note 31 at 32. Its principal recommendation is that the nyaya panchayats should consist of three members including the Chairman and the latter should be a person "having the knowledge of law". The Committee also suggested that a cadre of panchayat judges is essential "to eliminate the possibility of arbitrary or irrational decisions and to ensure that justice is done objectively and dispassionately without any predilection or prejudices."
even to the extent of abolishing them. Now their place has been taken over by lok adalats.

The concept of lok adalat is based on dispensing quick, inexpensive and impartial justice in an atmosphere of mutual amity and goodwill. The lok adalat movement has a hoary precedent in our age-old nyaya panchayat system. The objective of the lok adalat, in the words of our former Chief Justice P.N.Bhagwati, who is also the originator of this novel paralegal concept, is "very pious - to settle claims promptly, without bitterness or acrimony, and to the satisfaction of all concerned."

Traditional judicial Courts as forums for resolving conflicts, civil, criminal and revenue, have floundered on a single major piece of rock, inordinate delay and the monumental wastage of time in deciding cases. The other two major drawbacks of the present legal system are, complexity of procedure and high cost of litigation. These reasons have given rise to the new institution of lok adalats. However, it may be clarified that lok adalats are not the substitute for "Law -Courts", but they are additional arm of the existing judicial institutions.

In Shri Sachidanand Pandey v. State of WB, the Supreme Court has pointed out that the traditional litigation has to be tackled by

150. The States of Maharashtra and Rajasthan have abolished Nyaya Panchayats. Their failure was due to many reasons. They have only a limited civil and criminal jurisdiction. They could decide only petty offences. They did not have the power to enforce their awards. They did not have any power to issue directions. In some States the big landlords became the nyaya panchas and thus deprived the lower rungs from impartial justice. The nyaya panchayats have a relatively insecure and subordinate status both as judicial institutions and as institutions operating within the context of panchayati raj system, without being an integral part of it. See Upendra Baxi, supra note 145 at 323-327.

151. Lok Adalats are also known by the name of "Lok Nyayalaya" and "People's Court".


other effective methods, like decentralising the judicial system and entrusting majority of traditional litigation to "village courts" and lok adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

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 them 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.

The genesis of lok adalat can be traced to the Constitution of India. Preamble, articles 14, 38 and 39-A provide for the operation of the legal system which promotes justice, social, economic and political on a basis of equal opportunity and it is further ensured that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

lok adalat is not a 'Court' as understood by some people, though common man may find attributes of a court in it and may even call it by that name. It is just a forum provided by the people themselves or by interested parties including social activities, legal aiders and public-spirited people belonging to every walk of life. The forum of lok adalat is provided for enabling the common people to ventilate their grievances against the state agencies or 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 adalat can come into picture only when both sides agree to the jurisdiction of it and this may be done by transferring a pending dispute in a court or by diverting future cases to this stream.

155. Paras Diwan, "Justice at Doorstep", The Tribune, at 4, 25 December, 1985. According to him, looked at closely, the "Lok nayayalaya" experiment seeks to give practical shape to the twin concept of "swaraj" and "sarvodaya" propounded by Mahatma Gandhi. 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 the have and have-nots.
It is thus meant to supplement rather than to supplant regular courts and to reduce the backlog as well as to give quick and cheap justice to the people. Justice delayed is justice denied. Lok adalats are especially useful in solving small disputes and cases involving poor litigants who cannot bear the costs of regular trial. They have proved very useful in the settlement of accidental claims of the aggrieved parties.

In order to ensure that the settlement is fair and according to the law, the lok adalat forum may consist of legally trained people who are respected in the community where the lok adalat is constituted. Lok adalats are generally presided by the retired judges of the High Courts and sometimes of the Supreme Court. Their function is only to enable the parties, who voluntarily seek the adalat's intervention, to make them understand their respective rights and obligations. Apart from this, their role is also to clarify the law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement.

Social action groups, women's organisations, law teachers and students, lawyers and judges are extending their support to the organisation of various lok adalats. They mobilise people to agree for fair settlement, educate them of their respective rights and obligations. Now the Supreme Court in Centre for Legal Research v. State of Kerala,156 has also held that it is the duty of the State to support those social groups and voluntary organisations which are organising lok adalats.

However, if we look at the other side of the lok adalats, there is a criticism that they are not fulfilling their purpose, for, illiterate and poor people are being virtually forced to accept decisions which are generally contrary to their interests.

So far as this criticism is concerned, there is need to provide safeguard against arm-twisting methods and not to abolish the institution which has many positive aspects to its credit.

It is also submitted that if we want to make the institution of lok adalat a success, then it should not result in a "tamasha" or in an "exhibition", where people come, enjoy and go back to their respective houses.

156. See supra note 132 and 135.
After all the judicial function of dispensation of justice is a serious matter. The reasons for the failure of nyaya panchayats as local and cheap forum for determining the disputes will have to be borne in mind.

The success of lok adalats also depends upon the spade work done by the volunteers prior to the sitting of lok adalat. This includes, the choice of location, selection of adalat judges, para legal workers, cases pending in the courts, motivation of the parties to the dispute and reasonable, fair and just adjustment of their claims. Incentives in the form of rewards can also be given to para-legal workers and others who take active part in making a lok adalat a success in its true perspective.

In order to give statutory support to the lok adalats, the Parliament passed "Legal Services Authorities Act, 1987". The Act aims at providing free and competent legal services to the weaker sections ensuring that opportunities for securing justice are not denied to any citizen by the reason of economic disability. According to the statement of objects and reasons of the Act, the lok adalats were functioning without any statutory backing as voluntary and conciliatory agencies. In view of their popularity there was a demand to provide them with statutory backing. It was felt that statutory backing would not only reduce the burden of work in the regular courts but also take justice to the door-steps of the poor and the needy as well as it would make justice quicker and less expensive.

Despite these ideals fulfilling the directive principle of state policy enshrined in article 39-A of the Constitution, the Legal Services Authorities Act, 1987 has been criticised on a number of grounds.

The Act provides for the setting up of statutory legal services authorities at the national, state and district level which will, inter-alia, nominate presiding officers of lok adalats. The Act provides that Chief Justices and district judges will head their respective centres, state and district level authorities, which will organise lok adalats. A serving or retired judge of the Supreme Court will be the executive Chairman of the National Legal Services Authority. It shall also have the members

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158. See article 39-A in this regard supra note 41. See also the Statement of Objects and Reasons of the Act.
157a. This Act received the assent of the President on 11.10.87.
possessing such experience and qualifications as prescribed by the Central government.

Section 3(3) grants the real powers to the member secretary who will be "an officer of the department of legal affairs of the Ministry of Law and Justice".

All orders and decisions of legal services authority shall be "authenticated" by this bureaucrat or some one authorised by him.

Section 4 of the Act provides that the authority shall be subject to the "general direction" of the Central government. And section 5 further provides that authority is to act in "co-ordination with governmental agencies".

Mr. Justice Krishna Iyer, who headed the expert Committee report on legal aid in 1973 and was member of the other expert Committee report on legal aid in 1977, regretted that all research and detailed recommendations made by the Committees had been in vain as hardly any of those proposals had been incorporated in the Act that finally came. 160 Mr. Justice Krishna Iyer points out that the Act at first sight seems unconstitutional and ill-thought out. 161 According to him, the Act created unconstitutional courts of unbounded jurisdiction. The judges to these courts will be appointed by the executive authorities rather than by the Governor in consultation with the High Court. This violates articles 233 and 234 of the Constitution. They will work under these new executive authorities which will unconstitutionally take them away from the supervision of the High Court under article 235 of the Constitution. Thus, the Act created quasi-judicial organs of unbounded jurisdiction covering all civil, criminal, revenue and other matters.

What is the function of the Chief Justice in this new authority? The Act is totally silent on this. The Chief Justice does not have much time to spare anyway, with lakhs of cases pending and when there is shortage of judges and he is also busy with his routine administrative work.

Similarly, the Act does not define the role of the executive Chairman. Only the member secretary has been given specific functions and he is the incharge under the Act.\textsuperscript{162}

Justice Rajinder Sachar feels that the power to issue "general directions" to judicial officers is a "dangerous phenomenon which will totally destroy the concept of separating the judiciary from the executive."\textsuperscript{163}

Justice Desai is not happy about giving lok adalats statutory powers. According to him "Once that happens, the informality of lok adalats will disappear and every technicality(of the kind that bogs down regular courts) will creep in through back door." He has expressed the suspicion that it might not create "parallel court system" under the different nomenclature.\textsuperscript{164}

The most damaging provision of the Act is section 3(8) according to which no act or proceeding of the authority shall be invalid on the ground of any defect in the constitution of the authority. In other words, what the new legal aid authorities do will be valid even if they are illegally constituted.

Similarly section 19(3) confers on the lok adalats unbounded jurisdiction over every matter in any court. In other words, a mere district authority constituted under the Act could remove a case even from the Supreme Court and entrust it to the lok adalat. And the decision of the lok adalat will not be appealable.

And lastly, the list of persons who are entitled to legal services is staggering and covers almost two third population of the country. The Act says that those whose income is less than Rs 9000/- would be entitled to legal services. Is it the monthly income or annual income? The Act does not clarify this point.

From the above mentioned criticism, it is evident that though the intentions behind the framing of the Act are good but it suffers from number of drafting infirmities. In order to make this Act free from the

\textsuperscript{162} For critical appraisal of the Act, see M.J.Antony, "Dominating the judiciary", \textit{Indian Express}, at 4, 3 November, 1987.


\textsuperscript{164} Ibid.
above mentioned infirmities, there are two ways open to the government. First, section 27 authorises the government to make rules for implementing the provisions of the Act. The government can take into consideration the above mentioned lacunae while framing these rules. Secondly, the Parliament can move an Amendment Bill and have a full debate on all the provisions of the Act.

(D) Public Interest Litigation: A Means of Delivery of Socio-economic Justice

(i) Its Concept and Scope

Liberation of the poor and oppressed through judicial initiatives figures prominently in the contemporary Indian discourse on law and social change. With active assistance of the social activists and public interest litigators, the judiciary is promising innovative remedial attention for vindication of the governmental commitment to the welfare and relief of the oppressed. 165 Public interest litigation 166 provides one strategy for the courts to correct administrative injustice and promote socio-economic justice.

In India, until the public interest litigation was developed by the Supreme Court, justice was only a remote even theoretical proposition for the mass of illiterate, under-privileged and exploited persons in the country. They were unaware of the law or even of their legal rights, unacquainted with the niceties of procedure involved, and too impoverished to engage lawyers, file papers and bear heavy expenditure on dialatory litigation. 167 Public interest litigation is concerned not with the rights of one individual but with the interests of a class or group of persons who are either victims of exploitation or oppression or are denied their constitutional or legal rights and who are not in a position to approach the courts for redressal of their grievances. 168 It seeks to help the victims of governmental lawlessness or repression. Through public interest litigation,

relief has been granted to women, children, undertrials, prisoners, workers, bonded labourers and many others, who due to their ignorance and poverty could not get justice according to law. However, other issues, like environment protection, are also creeping in the public interest litigation.

It is interesting to note that the concept of public interest litigation had its origin in the United States and over the years, it has passed through various vicissitudes. In India, the credit for introducing


public interest litigation and making the court accessible to the unrecognised, illiterate, poor have-nots goes to a few activist judges of the Supreme Court. They not only broadened the concept of *locus standi* from "traditional individualism" to "community orientation of public interest litigation" but also relaxed the formalities of judicial process.


179. Under the traditional view only an "aggrieved person" by administrative action could come to the Court for relief. However, even in the traditional view of *locus standi*, there were a few exceptions. Firstly, in *Quo warranto* and *habeas corpus*, any member of the public could go to the Court. Secondly, a rate payer of local authority had a standing to challenge its illegal action. See, for example, *K.R.Shenoy v. Udipi Municipality*, A.I.R.1974 S.C.2177. Lastly, the statute may explicitly recognise standing, though no special right of an individual may have suffered. See for example *J.M.Desai v. Roshan Kumar*, A.I.R.1976 S.C.578. In this case the court noticed that the statute concerned and the rules made there under had recognised a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc., located within a distance of two hundred yards of the site on which cinema house was proposed to be constructed, and as the petitioner, a rival cinema owner, did not fall within such distance, he had no *locus standi*. In *Milap Ram v. State of J & K*, A.I.R.1976 J&K 78, the High Court upheld the right of a resident of the state to object to the granting of certificate of residence to a person, as in the view of the court, if a non-resident is admitted as a resident, it would constitute an invasion of the rights of the residents who have certain privileges. At times the statute may give a right of judicial review to any "aggrieved person". The meaning of the phrase will differ from circumstances to circumstances and have to be constituted with reference to the purpose and provisions of the statute. See *Bar Council of Maharashtra v. M.V.Dabholkar*, A.I.R.1976 S.C.242.
They even decreed the present legal and judicial system as a "colonial legacy" unsuited to our conditions. 180

In S.P.Gupta v. Union of India, 181 which is a monumental judgement on public interest litigation, Bhagwati J.,(as he then was), pointed out that "the traditional rule in regard to locus standi" that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right "is a rule of ancient vintage" and it arose during an era when private law dominated the legal system and public law had not yet born. 182 Explaining the scope of public interest litigation, Bhagwati J.,(as he then was), observed:

[W]here 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 constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate 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 of persons. 183

He further observed:

The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied of their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the court for relief. 184

180. Upendra Baxi also believes that the present Indian Legal System is a colonial legacy that is alien and does not suit to our conditions. See Upendra Baxi, The Crisis of Indian Legal System,48-63(1982).
182. Id. at 185.
183. Id. at 188-89.
184. Id. at 189.
It is submitted that it is in this spirit that the court has been entertaining letters for judicial redress and treating them as writ petitions by relaxing all procedural technicalities. The court also cautioned, and rightly so, that in such cases, the individual must act bonafide with the view to vindicating the cause of justice and if the individual acts for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activised at the instance of such individual and must reject his application at the threshold.\footnote{Ibid.}

If no one can maintain an action for redress of public wrongs or public injury, it will be disastrous for the rule of law, for, it would be open to the State or public authority to act with impunity beyond the scope of its power or in breach of public duty owed by it. The Court cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. Therefore, the strict rule of standing which insist that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and broad rule is evolved which gives standing to any member of the public who is not mere busy-body or a meddlesome interloper but who has "sufficient interest" in the proceedings.\footnote{Id. at 190. See also infra note 192 at 1477.} It is only by liberalising the rule of \textit{locus standi} that it is possible to effectively police the corridors of powers and prevent the violation of law.\footnote{Id. at 191.}

There is also another reason why the rule of \textit{locus standi} needs to be liberalised. The new socio-economic rights which are sought to be created in pursuance of the directive principles of state policy essentially require active intervention of the State and other public authorities. Among these socio-economic rights are, freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial and governmental oppression. These socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generate situations in which single human action can be beneficial or prejudicial to a large number of people,
thus making traditional scheme of litigation entirely inadequate. For example, the discharge of affluent in a lake or river may harm all who want to enjoy its clean water; emission or noxious gas may cause injury to large number of people who inhale it along with the air, defective or unhealthy packaging may cause damage to all consumers of goods. In cases of this kind, it would not be possible to say that any specific injury is caused to an individual or to a determinate class of persons or groups of individuals. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. Now if breach of such public duty were allowed to go unchecked or unredressed because there is no one who has received a specific legal injury, then the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on the exercise of public power. It would also make the socio-economic rights created for the benefit of the deprived sections of the community meaningless and ineffectual. Schwarz and Wade also spoke in the same voice when they observed:

Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest....It is absolutely essential that the rule of law must keep the people away from the lawless street and win them for the court of law.

It is for this reason that in public interest litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused rights" and interests or vindicating public interest, any citizen who is acting bonafide and who has "sufficient interest" has to be accorded standing. The Judge who has the correct social perspective and who is on the same wave length as the Constitution, will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a

188. Ibid.
189. Id. at 192.
particular case has "sufficient interest" to initiate the action. In People's Union for Democratic Rights v. Union of India, Bhagwati J.,(as he then was) further explained the nature and scope of public interest litigation. Explaining its importance in the legal aid movement and in ensuring basic human rights to poor and weaker sections of community, he observed:

"Public interest litigation which is strategic arm of the legal aid movement and which is intended to bring justice within reach of the poor masses, who constitute, the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character...."

Thus, public interest litigation is a potent remedy which secures socio-economic justice to the poor, illiterate and the weaker segments of the society. Of course, the task of restructuring the socio-economic order so that the socio-economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of socio-economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these socio-economic rescue programmes can be made effective. Public interest litigation is essentially a co-operative or collaborative effort on the part of the petitioner, the state or public authority and the Court to secure observance of the constitutional rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach socio-economic justice to them.

191. Supra note 181 at 192. Dr. S.N. Jain has suggested that in cases where a specific injury has been caused to a party which itself is fighting the case, the rule of "an aggrieved person or party" be retained and in case of class actions, the rule of "proper party" be adopted. See S.N. Jain, "Standing and Public Interest Litigation", in P. Leela Krishnan (ed.) Consumer Protection and Legal Control, 87-109(1984). Justice Deshpande has also compared the traditional approach with the modern approach relating to locus standi and has brought out a distinction between "standing" and "justiciability". He observed:"Standing is needed to get an entry for hearing by a Court. Justiciability is required if the petition is not to be thrown out as not suitable for adjudication." See V.S. Deshpande, "Standing and Justiciability", 13 J.I.L.I. 153 at 156 (1971). See also P.N. Thampa Thera v. Union of India, A.I.R. 1984 S.C. 74.

192. A.I.R.1982 S.C.1473. In this case the bench was constituted by P.N. Bhagwati and Baharul Islam, JJ.

193. Id. at 1476. 194. Id. at 1477.

195. Id. at 1478.
Justice Bhagwati, (as he then was), rightly pointed out the role which the courts in the Indian scenario are required to play. He stressed that the courts do not exist only for the rich and well to do but also for the poor, the down-trodden and the have-nots. It was only the moneied who had, so far, the "golden key" to unlock the doors of justice. Now for the first time the doors of the courts were being thrown open to the poor and the down-trodden. The legal aid movement and public interest litigation seek to bring justice to these forgotten segments of humanity who constitute the bulk of citizens of India and who are really and truly "people of India", who gave to themselves this magnificent Constitution. The time has now come when the courts must become the courts for the poor and struggling masses of this country. The realisation must come to the courts that socio-economic justice is the signature tune of our Constitution, and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goal.

Bandhua Mukti Morcha v. Union of India, is yet another landmark judgement involving the question of public interest litigation and its scope. In this case the petitioner was a social organisation dedicated to the cause of release of bonded labourers in the country. According to Bhagwati, J., (as he then was), the public interest litigation by such an organisation must be welcomed by the government because it provides them "an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlement or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community." Explaining the role of the court he observed:

When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The court is thus merely assisting in the realisation of the constitutional objective.199

196. Ibid.
197. A.I.R.1984 S.C.802. In this case the bench was constituted by P.N. Bhagwati, R.S.Pathak and Amarendra Nath Sen, JJ.
198. Id. at 811. See also Labourers Working on Salat Hydro Project v. State of J&K, A.I.R.1984 S.C.177; Neeraja Chaudhary v. State of M.P., A.I.R. 1984 S.C.1099. For the detail of these cases see supra Chapter VI.
199. Supra note 197 at 811.
From the above observation of the learned judge it is amply clear that when all the three organs of the State, that is, legislature, judicature and the executive, move together in a cooperative mood, the preambular promise of providing socio-economic justice to all, will become a reality for millions of Indians. The learned judge has rightly pointed out that where socio-economic justice is denied to the poor and downtrodden people, we could no longer blindly follow the adversarial procedure and that the courts must "abandon the laissez faire approach in the judicial process, particularly in its poverty jurisprudence, and must "forge new tools, devise new methods and adopt new strategies" for the purpose of making constitutional promises meaningful for the large masses of people.

Pathak, J.,(as he then was) at the outset of his concurring but separate judgement observed that "public interest litigation in its present form constitutes a new chapter in our judicial system". A.N.Sen J., also delivered a separate but concurring judgement. However, there were certain observations made in the judgements of these two judges who wrote separate judgements, which show some disagreement amongst the judges with regard to the procedure to be adopted in dealing with cases involving public interest litigation.

Pathak J.,(as he then was) expressed the view that the practice of entertaining mere letters as writ petitions was dangerous because a mere letter is entertained from a person whose antecedents and status were not known or was uncertain and that no sense of responsibility could, without anything more be attributed to the communication. He was further of the view that there is good reason for the insistence on a document being set out in a proper form or accompanied by evidence indicating that the allegations made in it are made with a sense of responsibility by a person who

200. Id. at 815.
201. Id. at 838.
202. Id. at 840. It may be stated here that the practice of entertaining letters as writ petition started since Sunil Batra v. Delhi Administration, A.I.R.1980 S.C.1579. The court had stressed the importance of such a device for facilitating access to the court for the small Indians in P.U.D.R v. Union of India, supra note 192. The court also dealt with the same issue in Veena Sethi v. State of Bihar, A.I.R.1983 S.C.339. Replying to the criticism against entertaining letter petitions, the court observed:"there are some people who are critical of the practice adopted by this court of taking judicial action on letters...This criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an outmoded Anglo-Saxon Jurisprudence, Ibid."
has taken due care and caution to verify as to their accuracy. There may be exceptional circumstances which may justify the waiver of the rule. For example, in habeas corpus petitions or where the authority of the communication was unquestionable and that the authority of its contents might reasonably be accepted prima facie, until rebutted, a letter might be entertained. But such exception should not become the rule. He was further of the view that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire court and not to a particular judge of the court.

A.N. Sen J., has also observed: "A private communication by a party to any learned judge over any matter is not proper and may create embarrassment for the court and the judge concerned." This is now the majority view and therefore, binding.

However, it is submitted that why should there be any embarrassment to the judge or the court, The judge could pass on the letter to the register for being dealt with according to the normal practice of the court. The difficulty arises only when the judge concerned and the rest of the court start putting in different directions, to the embarrassment of both.

Justice Tulzapurkar also in a public lecture, criticised the practice of writing letters directly to the individual judges of the Supreme Court. According to him, if the letter written to a judge is retained by him and is converted by him into public interest litigation, then indirectly it deprives the Chief Justice of his important administrative power of management and allocation of work to his companion judges. He also expressed that the practice of retaining the public interest litigation by the addressee judge confers a privilege on the complainant to choose a judge or a forum of his own choice which is clearly subversive of judicial process which enjoins that no litigant can choose his forum. Tulzapurkar's reaction
over the writing of letters directly to the judges, confirms the remark of Professor Baxi that such jurisdiction affects, inter se, relationship among the judges and also encourages factionalism within the Supreme Court.211

It is submitted that Professor Agrawala has rightly pointed out that there has been no obligation in law or court practice that such letters must be disposed of by the judge himself to whom they are addressed. The concerned judge could in all propriety have passed them on to the registrar of the court for being posted according to normal procedure, before appropriate benches. The keenness of the judge to post them before himself, detracts from the public image of absolutely impartial unbiased character of the proceedings, no matter that these are public interest litigations.212

It is further submitted that there may be some dangers if the discretion to entertain letters as writ petition is not exercised properly. But to reject such a practice which has doubtless facilitated access to the court and increased the social legitimacy of judicial process would be a step backward for the court and we hope it will not take place.

The concept of public interest litigation and the liberal rule of locus standi have been criticised on many grounds.

It is feared that the liberalized rule of locus standi which has given birth to public interest litigation will encourage vexatious litigants to file unmeritorious charges in a large number, thus allowing them to abuse the process of the court, and also cause further delay in the administration of justice. This would open a floodgate of litigation.213

It is further submitted that this fear is misplaced. Justice Krishna Iyer in his concurring opinion in Bar Council of Maharashtra v. M.V. Dabholker,214 observed:

The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system.215

211. Supra note 166 at 105.
212. Supra note 207 at 17.
In Fertilizer Corpn. v. Kamar Union v. Union of India, Krishna Iyer J., pointed out that law "is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction". He further pointed out that "We cannot be scared by the fear that all and sundry will be litigation happy and waste their time and money and the time of the Court through false and frivolous cases."

The argument of 'flood of litigation' has also been assailed by the Australian law Reform Commission:

The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room.

People are also not keen to rush to the courts in public interest litigation. The time, money and other inconveniences involved in the litigation are sufficient deterrents for most of them to take recourse to legal system. Schwartz and Wade also expressed the same view when they observed that "Litigants are unlikely to expend their time and money unless they have real interest at stake. In the rare cases where they wish to sue merely out of public spirit why should they be discouraged?"

Thus, it is a misconception in the minds of some people that public interest litigation is unnecessarily cluttering up the files of the Court and adding to the already staggering arrears of cases which are pending for long years and it should not, therefore, be encouraged by the court. Those who are decrying the public interest litigation do not seem to realise that courts are not meant only for the rich and well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor, downtrodden, have-nots, handicapped and the half-hungry millions of our Indians. The trend of liberalising standing in public interest litigation opens up a new era of unique judicial role, perception and performance in India. The dynamics of judicial process has a new 'enforcement dimension' which includes 'rights mobilisation' without which the rights and interests of the poor or socio-economically weaker

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217. Id. at 354.
218. Ibid.
219. Quoted in Id. at 355 referring to K.E. Scott, Standing in the Supreme Court: A Functional Analysis, 86(1973). According to Professor Scott "the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a (contd.)
S.P. Sathe has suggested, and rightly so, that effective methods of dispute settlement and redressal of citizens' grievances against the administration must be provided so that occasions for going to courts are reduced. The government itself can do a lot by cutting down its own litigation. It is well known, government litigation constitute the bulk of litigation before the courts. The Supreme Court of India, in Shri Sachidanand Pandey v. State of W.B., has also suggested that decentralising the judicial system and entrusting majority of the traditional litigation to village courts and lok adalats without the usual populist stance and by a complete restructuring of the procedural law, which is the villain in delaying the disposal of cases, is another effective method of dispensing justice quickly.

Another fear has been created that public interest litigation in this country can lead to a confrontation between the judiciary, on one hand and executive and the legislature, on the other. The effect of such confrontation may undermine the prestige of judiciary and will impair its ability to discharge its traditional function. It is submitted that the socio-economic policies enshrined in the various directive principles impose a duty on all the three organs, that is, legislature, executive and judiciary, to apply them in making laws. Where one of the organ fails to discharge its assigned role, it becomes the duty of the other organ to fulfill the Constitutional mandate. Otherwise, all Constitutional promises will become "dead letters". In public interest litigation, the judiciary acts only where the administration has failed to discharge its assigned function.
Bandhua Mukti Morcha v. Union of India, the role of the court in public interest litigation has rightly been explained where it was observed: "When the court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic programmes for the poor and have-nots." Thus, entertaining of public interest litigation will not undermine the prestige of the court but it will raise the image of the judiciary, for, it will protect the rights of those people who for want of one or the other reason could not come to the court of law for justice.

A fear has also been expressed that in public interest litigation the court lacks the expertise to deal with some specific questions of complex nature or for ascertaining certain facts, or making legal investigations. It is submitted that the court in such cases has developed a technique of appointing Commissions or Committees consisting of a district judge, a Professor of Law, a journalist, an Officer of the court, and sometimes a social scientist for the purpose of carrying out an enquiry or investigation and making report to the court. This has already been approved by the court in its various decisions.

(ii) Judicial Role And Some Guidelines for Public Interest Litigation

Public interest litigation has many challenges to face, many questions to answer and many strategies to develop before it can get institutionalized in the judicial process. Judiciary is always cautious of this fact and while entertaining public interest litigation it has evolved some principles and has laid down certain guidelines which will definitely prevent the abuse or misuse of this new potent weapon in the judicial armoury for the protection of socio-economic rights of the masses of India.

In Bihar Legal Support Society, New Delhi v. C.J. of India, the

224. Supra note 197.
226. In Shri Sachidanand Pandey v. State of W.B., supra note 223, the Supreme Court itself emphasised the necessity of laying down clear guidelines and to outline the correct parameters for the entertainment of public interest litigation. See para 58.
Supreme Court of India while explaining the object of public interest litigation observed: "The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community." The reason is that the weaker sections of Indian humanity have been deprived of access to justice for a long time because of their poverty, ignorance and illiteracy.

There are some vital questions which are to be answered to test the maintainability of any petition which purports to be in "public interest" and for a public cause. These questions included: (a) Whose cause is the petitioner promoting, (b) Whose fundamental right or other right, if any, has been infringed, (c) Who has to be relieved against any wrong and injury caused to him for which he cannot come to the Court owing to social, economic or any other handicap. In other words the petitioner must have a locus standi to file a public interest litigation.

As a matter of practice and procedure there should be minimum delay in dispensing of an urgent public interest litigation. Otherwise it will make mockery of the judicial process.

Before public interest litigation is entertained, the court should satisfy itself that it will be in a position to give effective relief. If no effective relief can be granted the court should not entertain the public interest litigation.

The public interest litigation should be with a view to vindicating the cause of justice and if it is for personal gains, or private profit or out of political motivation or other oblique consideration, the court

228. Id. at 39. See also Veena Sethi v. State of Bihar, A.I.R.1983 S.C.339 where the court pointed out that but for such public interest litigation enforcement of basic human rights of the weaker sections of society would have remained unattended.


231. See Nilima Priadarshini v. State of Bihar, A.I.R.1987 S.C. 2021 at 2022. In this case an application of a woman who had complained of having been kept in illegal confinement against her wishes, was placed before the Supreme Court two and half months after it was received in the registry. The Supreme Court deprecated such practice and asked for taking suitable action against the officials who were responsible for delay and to consider the necessity of devising any machinery to ensure that such aberrations are not repeated.

should not allow itself to be activised in such cases. If the courts started entering into political sphere then they will cause serious damages to the institution of judiciary.

Public interest litigation is not meant to satisfy the curiosity of the court or the people but to provide relief to the poor and the victimised groups.

In public interest litigation, the court will not appoint commissions to investigate into the commission of offences. However, the court can appoint commissions/committees to investigate into the existence of facts in issue and to gather data, for example, existence of bonded labour, working of lime-stone quarries causing imbalance to ecology and hazard to healthy environment, or to see the safety measures in the industry manufacturing hazardous products. In other words, commission/committee can be appointed by the court where there is denial of fundamental right to the weaker sections of the society and where there is need to gather facts and data in regard to the allegation of breach of fundamental rights.

In public interest litigation, due care should be taken that the name of the petitioner is disclosed. It would be contrary to all canons of fair play and violative of all principles of judicial propriety and administration to entertain a writ petition without disclosing the identity of the petitioner, though the court knows who the petitioner is.

The underlying purpose of the public interest litigation is not for democratic Rights v. Ministry of Home Affairs, A.I.R.1985 Del.268 This case is popularly known as Delhi Riots case. For the analysis of these two cases, see Parmanand Singh, "Public Interest Litigation", XXI A.S.I.L.160 at 166-69 (1985).

235. Id. at 290.
236. Id. at 276, 282.
237. Bandhua Mukti Morcha v. Union of India, supra note 197 at 817.
to mock at the legislature or the executive. It is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing public grievances it does not encroach upon the sphere reserved by the constitution to the executive and the legislature.241

However, when there is a flagrant violation of the constitutional provisions by the legislature or the executive, the petitioner has a locus standi to file a public interest litigation and the court should maintain such petition.242 But in public interest litigation, the court cannot compel the government to pass or enact an amelioration legislation.243

The principles of res judicata244 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest not by way of a private grievance. It has to be a bonafide litigation in respect of a right which is common and is agitated in common with others. The onus of proving the want of banafides in respect of the previous litigation is on the party seeking to avoid the decision.245

In Chaitanya Kumar v. State of Karnataka,246 the Supreme Court pointed out that in public interest litigation, those professing to be public interest citizens cannot be encouraged to indulge in wild and reckless allegation besmirching the character of others, but at the same time,
the court cannot close its eyes and persuade itself to uphold publicly mischievous executive action.\textsuperscript{247}

Sometimes, the private litigation may assume the character of public interest litigation and it cannot be avoided if it is necessary and essential for the administration of justice.\textsuperscript{248}

Cognizance of public interest litigation can be taken on the basis of news item published in a newspaper.\textsuperscript{249}

\textit{Sheela Barse v. Union of India,}\textsuperscript{250} is a landmark judgment where the Supreme Court laid down certain guidelines regarding public interest litigation and explained the nature of proceedings and relief under it. The Supreme Court pointed out that in public interest litigation, the petitioner has no vested right to demand expeditious final disposal. The lowering of \textit{locus standi} threshold does not involve the recognition or creation of any vested rights on the part of those who initiate the proceedings, analogous to \textit{dominus litis}.\textsuperscript{251} The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a socio-economic transformation to usher in an egalitarian social order and a welfare state. Therefore, the "rights" of those who bring the action on behalf of the others must necessarily by subordinate to the "interests" of those for whose benefit the action is brought.\textsuperscript{252}

The Court also laid down the following guidelines: First, that in public interest litigation there is no justification to the resort to freedom and privilege of criticising the proceedings of the court during their pendency by persons who are parties and participants therein.\textsuperscript{253}

\textsuperscript{247} Id. at 831.
\textsuperscript{249} Ram Pyari v. Union of India, A.I.R.1988 Raj.124. M.P.Thakkar, J., when he was a judge of Gujarat High Court converted a letter to the editor in a newspaper by a widow mentioning her plight because of the non-payment of the provident fund family pension after her husband\'s death and ordered a show cause notice to be issued without any further formalities to the Regional Provident Fund Commissioner and another. The arrears were paid after the first hearing. See Special Civil Application No.2785/79 High Court of Gujarat, mentioned in N.R.Madhava Menon\"'Public Interest Litigation:A Major Breakthrough in the Delivery of Social Justice",9(1) J.B.C.I.,150 at 158-60(1982).
\textsuperscript{251} Id. at 234.
\textsuperscript{252} Id. at 233.
\textsuperscript{253} Id. at 243.
Secondly, in public interest litigation, the petitioner has a right to maintain his/her dignity before the court, but the court can point out the functional impropriety committed by the petitioner and that would not impair the dignity of the petitioner.\textsuperscript{254}

Thirdly, in public interest litigation, once the proceedings are initiated, parties cannot be allowed to address the letters directly to judges.\textsuperscript{255}

Fourthly, in public interest litigation, the petitioner appearing in person is not entitled as of right to withdraw the petition. The petitioner can be allowed to withdraw himself/herself from the proceedings but that would not result in the withdrawal of the petition itself. Only a private litigant can abandon his claims. The status of \textit{dominus litis} cannot be conferred on a person who brings a public interest litigation, as that would render the proceedings in public Interest litigation vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons for personal ends resulting in prejudice to the public weal.\textsuperscript{256}

Lastly, no litigant can be permitted to stipulate conditions with the court for the continuance of his or her participation in any public interest litigation.

From the perusal of above mentioned guidelines laid down by the courts in public interest litigation, it is amply clear that one need not be an unconditional enthusiastic of public interest litigation. It requires adequate public checks and controls to prevent its possible abuse.\textsuperscript{258} Since in India, public interest litigation is both judge led and judge induced, such control will have to be exercised by the judges themselves to prevent abuse of public interest remedy.

(E) An Appraisal

Equal justice for all is the cardinal principles on which entire system of our administration of justice is based. It is deeply rooted in the body and spirit of our jurisprudence. Law derives its legitimacy from

\textsuperscript{254} Id. at 243-44.
\textsuperscript{255} Id. at 244-45.
\textsuperscript{256} Id. at 243 at 246.
\textsuperscript{257} Id. at 246.
\textsuperscript{258} Supra note 168 at 173.
justice and the end point of law, therefore, must be justice and it must take within its compass not only the fortunate few but also the large number of under privileged segments of the society. Preambular promise to secure socio-economic justice to all will become a reality for all when justice is cheap, handy, substantial and available to all. Constitutional provisions envisage that there will be an easy access to justice for all. Rule of law is yet another important facet of any good administration. For infusing the rule of law into the constitutional order massive dynamic programme of legal aid is vital and important. Although our state is a "socialistic welfare" state, but there are large islands of poverty in our country which make the people unaware of law, their rights and remedies. The dynamic concepts of legal aid, lok adalats and public interest litigation can play an important role in this direction.

The basic aim of legal aid, lok adalats, and public interest litigation is to bring justice within the reach of every man and at the doorstep of every needy person. Equal justice is an age old problem but it is definitely a formidable challenge in a country of India's size and heterogeneity where half of the population lives in far flung areas steeped by poverty, destitution and illiteracy. Legal aid gives protective umbrella to these persons. Law Commission in its Fourteenth Report had rightly pointed out that equality before the law ensures access to justice to all and further emphasised that a provision be made for the payment of lawyer's fee, court fee and other incidental costs of litigation which deny equal opportunity of justice to all.

In our country, the concept of legal aid saw its evolution in three ways. First, through the various committees set up from time to time by the states and the centre. Secondly, it has evolved through various statutory developments. And thirdly, the judiciary has also played an important role in the evolution of the concept of legal aid.

Legal aid is no longer a charity or benevolence of the government. It is a constitutional right and an essential requirement of administration of justice. Preamble read with articles 14,21 and 22(1) in Part III and articles 37, 38 and 39-A in Part IV constitute the basis for socio-economic justice and legal aid is its operational arm. In 1973, when new Code of Criminal Procedure came, a new section 304 was added for providing amicus curiae
in session trials. Section 303 replaced section 340 of the old code. It is suggested that legal aid should not only confine to the sessions trial but should be available in all stages of trial. Rather it should be provided from the very first stage when the accused is first produced before the magistrate. It is only then that legal aid would become meaningful for all at all stages. Therefore, it is suggested that an amendment to this effect be made in section 304 of the Code of Criminal Procedure.

Judiciary has played a very significant role in the development of legal aid and it has given teeth to the various recommendations of the Krishna Iyer and Bhagwati Committees. To begin with, the court in Janardhan Reddy and Tara Singh interpreted the concept of having a "counsel of his choice" in a narrow sense. However, M.H. Hoskot and Hussainara Khatun opened a new chapter in the legal aid movement. These decisions established that legal aid was nothing but equal justice in action and if no legal aid is given to the accused then the trial would be vitiated as being violative of article 21 of the Constitution. Maneka Gandhi, which expanded the wings of personal liberty by providing that any procedure which deprives a person of life or liberty should be "reasonable, fair and just", acted as a catalyst in the further development of the legal aid concept. It was due to this decision that the court in Hoskot, Hussainara, Khatri and Sheela Barse pointed out that if in a trial no lawyer is provided to the accused, it becomes, 'unreasonable, unfair and unjust' trial and hence violative of article 21 of the Constitution.

Thus, the directive principle enshrined in article 39-A dealing with equal justice and free legal aid was interpreted by the Supreme Court as a part of fundamental right to life and liberty enshrined in article 21 of the Constitution. It is submitted that the court has shewn a very healthy attitude in consonance with the constitutional spirit.

However, in providing a lawyer at state expense, equal professional competence of amicus curiae is of utmost importance. Because the legal aid programme should not become a programme for briefless lawyers. The Judiciary has also given its support to this aspect in R.M. Wasawa and Ranjan Dwivedi. It is important because legal aid not only be given but it should appear to be given.
The decision of the Supreme Court in *Khatri* is important from many angles. First, the court ruled and rightly so, that no financial or administrative inability can be pleaded by the government in providing a lawyer to the accused in a trial. Secondly, legal aid should be given not only during the trial but also when the accused is first produced before the magistrate. And lastly, it gave impetus to the strategic legal aid movement by ruling that it is the duty of the court to inform the accused that he is entitled to free legal aid. This is important particularly when majority of our population is illiterate and they are not aware of their constitutional rights. *Sheela Barse* gave further impetus to the development of strategic legal aid and endorsing the views of *Khatri*. The echo of all these decisions of the court sounded the court room once again in *Suk Das*.

However, in *Ranjan Dwivedi*, by refusing to issue a *mandamus* to the Union government for providing a "lawyer of his choice" at the State expense, the court has moved in the backward direction. Because from the various above mentioned decisions of the Supreme Court, it is now established that right to free legal aid is implicit as fundamental right in article 21 of the constitution. *Ranjan Dwivedi* had asked for only the enforcement of his fundamental right in article 21 read with articles 22(1) and 39-A. *Mandamus* is a writ of justice. Even though article 39-A is addressed to the legislature and the executive, but the judiciary too is bound by it and must enforce it through the writ of *mandamus* whenever is asked for by the accused. Delhi High Court gave a ray of hope in *Jackson* by issuing a mandamus for the enforcement of article 39-A.

Court fee is yet another dilemma of our administration of justice. This is really unfortunate that we are still continuing this British legacy even after independence. It is a total fallacy to hold that court fee adds to the State budget or it prevents frivolous litigation. In a socialistic welfare state which establishes an egalitarian society with socio-economic justice to all as its primary goal, the abolition of court fee could be one of the symbolic acceptance of poor man's rights to justice. Law and justice have to remain in close harmony, and when law prevents cheap justice, there is in fact no justice. The observations of the Court in *Darshna Devi, Central Coal Fields* and *Kaisar Bahadur Thapa* are the right
pointers in this direction. It is suggested that there should be complete 
abolition of court fee.

Public participation in the legal aid programmes is absolutely 
essential. Legal aid is in fact the programme of the people, for the 
people and by the people. A clarion call was given by the Supreme Court in Centre of Legal Research that the State must encourage and support those social action groups and voluntary organisations which are recognised by the Committee for Implementing Legal Aid and State Legal Aid Board or which are engaged in organising legal aid camps or lok adalats. This decision of the Supreme Court will further activate the genuine social action groups and other voluntary organisations to involve themselves in legal aid programmes.

Justice through nyaya panchayat has its roots deep in the ethos of the country. They not only fulfilled the spirit of articles 40 and 50 of the constitution but threw open the doors of temple of justice to those who were untouchable for the court of law due to socio-economic disabilities. They help in promoting speedy and cheap justice. However, due to the lack of their proper organisation and support from people, some states have gone even to the extent to abolishing them. Now their place has been taken over by lok adalats.

The genesis of lok adalats can be traced to preamble, articles 14,38 
and 39-A of the constitution, the basic aim of which is to promote justice on the basis of equal opportunity. Main reasons for the development of lok adalats were, first, inordinate delay in the traditional court system; secondly, complex procedure and thirdly, high cost of litigation. They are meant to supplement rather to supplant the regular courts. These lok adalats have already proved a great success in different parts of the country in settling thousands of disputes outside the courts. It is suggested that more and more lok adalats should be arranged particularly in the rural areas where the majority of the people are unaware of the development of such an institution. Lok adalats, in addition to settling the disputes amicably, should also spread legal literacy among the people and in doing so the social action groups and voluntary organisations have a great role to play. Great care has to be taken that in order to gain a false popularity of the success of the lok adalats, people are not forced to sign the agreement of settlement of dispute against their wishes and without their proper knowledge. Those
factors which were responsible for the failure of *nayaya panchayat* have also to be taken into consideration in organising the *lok adalats*.

The government also responded well to support the *lok adalats* when it gave a statutory support to it by passing *Legal Services Authorities Act*, 1987. But there are many flaws in this Act, and unless those are removed, it will not serve its purpose. Under the Act, appointment of members of the National Services Authority is to be made by the executive. Member Secretary has been made overall incharge. Under the Act, *lok adalats* of a district level could take away any case from the Supreme Court and it is still not appealable. Power to issue "general directions to the judicial officers" by the government is dangerous to the separation of power of executive and judiciary. These lacunae in the Act can be plugged in two ways. First, the government has the power to make rules for giving effect to the provisions of the Act. It is suggested that the government should make rules carefully and remove all the existing lacunae. Secondly, the government can introduce an amendment bill in the Parliament and various defective provisions of the Act can be amended after a full debate on the various provisions of the Act.

Public interest litigation is a strategic arm of legal aid movement and to correct the administration of justice and promote socio-economic justice. It is not concerned with the interest of the individual but with the interests of class of persons or group of persons who are denied justice due to their socio-economic disabilities. Through public interest litigation, relief has been granted to women, children, prisoners, under-trials, bonded labourers, workers and many others. Now this concept is also creeping in the ecology jurisprudence.

Public interest litigation though had its origin in U.S.A. but it has now been transplanted into our constitutional jurisprudence through various judicial decisions from *S.P.Gupta* to *Bandhua Mukti Morcha* to Ram Piyari. The concept of *locus standi* has rightly been relaxed from "aggrieved person" to a person having "sufficient interest". The main aim of public interest litigation is to compel the State and other authorities to perform their duties and execute the various socio-economic programmes which are created in pursuance of the directive principles of state policy and
which require the intervention of the State or other authorities. Failure to perform public duty leads to disrespect for rule of law, promotes corruption and inefficiency in the administration of justice because there would be no check on the exercise of power by the State or other authorities. Thus, public interest litigation serve as a potent weapon in the judicial armoury to ensure not only the observance of rule of law but also to secure socio-economic justice to the weaker sections.

Public interest litigation has rightly relaxed the procedural technicalities of the petition. The practice of admitting a letter as a petition is a positive contribution by the court and it makes easy to have access to the court. However, it is suggested that the letter should not be written directly to a judge. And if a letter has been received by an individual judge, he should not place that before his own bench by converting into a writ petition. The proper way is that it should be forwarded to the registrar of the court who should place it before the appropriate bench according to the normal procedure. In those cases where the petitioner is not represented by a lawyer, it should be referred to the Committee for Implementing legal Aid Scheme and a suitable lawyer depending upon the nature of the petition can be deputed by it.

The main criticism of public interest litigation that it will open flood gates of litigation is totally misplaced. The involvement of time, money, inconvenience and the past experience of the other countries are sufficient reasons to repel the attack of adding of arrears in the courts. One of the methods of reducing the existing arrears in the courts is that there should be restructuring of the entire administration of justice. Traditional and small litigations can be referred to lok adalats. Government can also contribute a lot in reducing the arrears by cutting short its own litigations. At present, the bulk of litigation is by the government itself.

Another fear of public interest litigation that the judiciary lacks the expertise to deal with complex questions of facts has also been proved wrong in M.C.Mehta. The court has rightly developed the technique of appointing committees and commisions to gather the relevant facts and data concerning the issue at hand. However, the court cannot appoint a commision to investigate a crime, which is beyond its domain.
The judiciary has played a great role in laying down the guidelines for entertaining the public interest litigation and they also put restraint on it from making abuse of this new potent weapon.

The basic aim of the public interest litigation should always be the amelioration of right of the weaker sections of the society by seeing the observance of socio-economic programmes envisaged by the directive principles and it should not be used for private gains, personal profit or for some political gains. Because then it will cause serious damage to the institution of judiciary. All wild and reckless public interest litigations have to be discouraged and the public interest litigation should be entertained only if effective remedy can be given in the case. In order to see that the genuine people involve themselves in the social action groups and other voluntary organisations for vindicating the cause of the weaker sections through public interest litigation or in lok adalats, it is suggested that such persons should be suitably awarded for their commendable job.

Since the public interest litigation in India is judge made and judge-led, it has to be further developed in its proper perspective by the judges. And only then the Supreme Court of India will become the Supreme Court of the Indians.