CHAPTER-III

THE PHILOSOPHY BEHIND LOK ADALATS
After independence India has embarked upon an era of planned development. Phenomenal changes have been taking place in the society, polity and economy. We have adopted a democratic constitution that guarantees not only a body of fundamental rights to the citizens, but also a scheme for their socio-economic development in the form of directive principles. It has envisaged a secular political system with the underpinnings of a socialistic order which heralds a new world of hopes and expectations for the teeming millions. The depressed and the down-trodden, the illiterate and the ill-treated sections of the society emboldened and ennobled by the innumerable socialistic legislations, have been desperately trying to establish for themselves a niche in the socio-political system. Such a critical socio-economic and political juncture makes it imperative for the Indian state to play a positive role in the administration of justice specially in the context of the weaker sections of the society.

But the question arises has the Indian judiciary been successful in fulfilling its obligation to the people?
The history of Indian judicial administration after independence clearly shows that there has been a sustained effort on the part of judiciary to provide access to justice for the deprived and vulnerable sections of the common people. With a legal machinery designed for a colonial situation and a jurisprudence structured around a free market economy the Indian judiciary had been hard-pressed to fulfil the constitutional aspiration of the poor and the under-privileged. Attempts have been made to streamline the procedure to bring down the burden on the courts. Reforms have been initiated to bring speedy justice to the people agrieved. But unfortunately, the whole purpose of providing relief to the agrieved has been defeated. Over the years, the efficacy and credibility of the judiciary has sharply declined. The courts no longer enjoy public confidence and most of the times, justice remains beyond the reach of the common man. People have started losing their faith in the system and the cause of it lies in the functioning of a viable judicial administration itself.

Today, unfortunately, the judicial administration has operated to close the doors of justice to the poor and in the process is denying justice to the millions of people. The present judicial administration suffers from grave defects. The obvious inadequacies of the system have aroused popular consternation and indeed, judicial fatalism. The ultimate loser in this situation is the common man, and for this
the government, the courts and the legal fraternity must share the blame.

For years now, Indians seeking redressal of their grievances through courts have had to bear long delays and postponements. Sometimes cases linger on for decades. The delay in the disposal of the cases is one of the obvious shortcomings of our judicial administration. It not only increases the arrears of the courts, but also disheartens the common men, who are in need of a quick redressal of their grievances. Any accused person has to wait for a long time before his case is finally disposed of. The very purpose of administration of justice is frustrated by long delays caused in the disposal of cases. In the opinion of the law commission: "India is the only country under a modern system of government which deters a person, who has been deprived of his property or whose legal rights have been infringed, from seeking redress by imposing a tax on the remedy he seeks." (1)

Inordinate delay in the disposal of cases actually prevents access to justice as it scares away a common man from the court and compels him to abandon it. First, delay introduces frustration which soon results in disgust for the legal proceedings. Secondly, in the process it is the

justice seeker who has to bear the burden of the sky-rocketed price of the lawyers. Sometimes it so happens that at the end of this long and arduous process, he becomes bankrupt. All these have a negative impact, since it leaves a brooding sense of injustice in the minds of the people.

Delayed justice has almost become a routine. It is a chronic disease in the body of administration of justice. There have been some startling instances of simple cases kept pending in courts for very long periods. For example, "A city court of New Delhi gave its verdict in a forgery case after 26 years. One of the accused had already died, while the second was fined Rs.2,000/- and was sentenced to rigorous imprisonment for one year. The case was filled in 1966 and the verdict came in 1992". (2)

In another case "A person arrested on January 29, 1962, on charges of having murdered his brother is still languishing in jail for the last 33 years. The court is yet to decide his case." (3)

Similarly, "in New Delhi, six years after a young bride was found strangulated in her marital home in New Friends Colony, the prosecution begun arguing its preliminary cases." (4)

2. Times of India, 24th December, 1994, P.5.
These examples are only some of the instances of the delaying process in our judiciary. There have been lakhs of cases still pending in courts. The complaint of delay, in fact, has more predominantly figured in the case of delivery of judgement of "The Indian Express" Newspaper case. The Judgement was delivered by the supreme court after a lapse of two years (A.I.R. 1986, S.C 515). The supreme court in the above of the judicial process of our country: "In the name of justice, we paid due homage to the causes of the high and mighty by devoting precious time to them, reduced as were at times, to the position of helpless spectators. Such is the nature of the judicial process that we do this with the knowledge that more worthy causes of lesser men, who have been long-waiting in the queue have been blocked thereby and the queue is constantly lengthened." (6)

If indeed, justice delayed is justice denied, then crores of Indians have for years been deprived of the most basic of their fundamental rights. If officials figures are any indication, justice has eluded 2-3 crore of people whose cases have been waiting to be disposed of in various courts of the country.

6. Ibid.
The number of cases pending, infact, presents a frightening picture. In the Supreme Court alone, over two lakh cases are pending. Majority of the pending cases "2.1 crore are pending in the sub-ordinate courts" and an astounding 70 per cent involve the rural folk. The government, far from reducing the backlog, has been contributing to it by initiating over 40 per cent of all litigation."(7)

Recently, a report prepared by the Indian Institute of Management (IIM), Ahmedabad, tabulated "about 33,160 cases waiting a simple decision for admission into the Supreme Court as on June 1, 1994. It also revealed that 21,948 cases were pending in the regular hearing category. Significantly of the 33,160 cases pending the report stated that 90 cases were registered before 1980 and another 15,362 between 1980 and 1990."(8)

The administration of justice has further been aggravated by the man power shortage. The filling of vacancies in courts and the stagnation in the number of judges has almost become a feature of the Indian judicial system and one of the factors obstructing the speedy disposal of cases. And the net cost to the Indian policy, as a result is mind-boggling, which only heightens the pressure on the judiciary. It is also alleged that nepotism and search for

8. Ibid.
persons suitable to the authorities to be the main reason for it. Besides, there is also a growing tendency of the members of the legal profession to stop work at the slightest pretext. Frequent suspension of court work is contributing a lot to the delay in the disposal of cases and is creating a furnished image of the courts.

The law commission in its 14th report in September 1958 dealt with the question of adequacy of Judicial strength as a matter of special importance. It pointed out that "Governments could not have been unaware, at any rate from 1950, onwards, that the files of the High Courts were being loaded with a large number of writ applications and applications questioning the constitutionality of enactments and rules framed there under must have come directly to the notice of the governments, responsible persons cannot also have failed to notice that the disposal of these complicated and in a sense novel matters consumed a great deal of the time of the High Courts which had the natural consequence of clogging the normal and usual work."(9) Inspite of highlighting of the position by the law commission and the warning administered by it, the process of providing adequate judge strength commensurate with the volume of litigation has been usually slow.

Another important impediment in the path of Judicial administration is the high cost of litigation. Over the

years, the cost of litigation has increased a lot. The incidence of court fee and the lawyer's fee have increased. Added to this are the travel expenses of the litigant and other incidentals. There is no norm or yardstick for regulating the quantum of large fees charged by the members of the legal profession which have soared in the recent times. Distinction between a service-oriented professional and a profit-oriented businessman has blurred. Members of the legal profession, in their pursuit of material gains have over-looked their special obligation to serve the society, particularly the poor and the under-priviledged section of the society. The court fees are very high, so also are the fees for the lawyers. This makes the justice seeker harassed and he becomes a bankrupt at the end of the litigation process. The high cost of litigation affects the poor man's right to justice. The fundamental right to equality becomes a mere illusion. The often quoted dictum of Roscoe pound that "a profession is a group... pursuing a learned art as a common calling in the spirit of public service"(10) has long been forgotten and the members of the profession have, of late, used the host of opportunities provided to them by the society for self-interest rather than in the service of the society.

Industry, intelligence and independence once considered to be the essential traits of an advocate are being slowly

replaced by intrigue, cunningness and corruption. Lawyers seldom feel obliged to advise their prospective clients correctly. At every stage, a number of interlocutory applications are filed and adjournment given on flimsy grounds detract the judiciary from the speedy dispensation of justice."(11)

The decline in the prestige and the image of the legal profession has ultimately resulted in the decline of the prestige of the judicial administration. The members of the profession have failed to remain steadfast to ethical principles attached to the profession and have allowed themselves to be influenced by immediate materialistic consideration. This profession has been getting more and more commercialised day by day and the members of the legal profession in fact, multiply litigations rather than help reduce the same. There is also a general feeling that the cases get delayed because of the frequent postponement of cases to accommodate a counsel. "So acute is the problem that the parliament intervened to provide that once the trial has commenced, it shall not ordinarily be adjourned, certainly not on the ground that the counsel is engaged in another court."(12) But the statutory provision also did not yield the desired result because judges continued to grant postponement to avoid ugly scenes in and outside the courts

and to safeguard the fair name of the judiciary. The strong notion that the lawyers prolonged the life of a litigation and make simple issues complex, has undermined the image of the legal profession in particular and the image of the judicial administration in general.

The judiciary, that is much expected to be independent, impartial and non-corruptible has failed in this respect also. There is a general discontent that the wheels of justice are clogged by corruption. The level of corruption is more in the lower strata of the judicial hierarchy. The majority of court functionaries are not ashamed of demanding bribes. No file moves without palms being greased. The erring parties, which intend to gain from the dilatory tactics are openly offering inducement to the lower staff. Such practices have further undermined people's faith in the judicial system.

Unsatisfactorily, "appointment of judges in certain cases are made on the basis of political, regional, and communal or other considerations and not on the consideration of merit. The improper distribution and assignment of work to different judges are some of the main defects for the declining standard of the Judiciary."(13) An independent non-political judiciary is crucial to the sustenance of our chosen political system. The vitality of the democratic process, the ideals of social

and economic egalitarianism, the imperatives of a socio-economic transformation envisioned by the constitution as well as the rule of law and great values of liberty, equality are all dependent on the tone of the judiciary. The quality of the judiciary cannot remain unaffected, in turn by the process of selection of judges.

In the process, the ultimate loser is the common man who innocently looks up to the judiciary to protect his rights as a citizen. The agony of the common man is that access to justice has assumed a Himalayan form that is beyond his reach. Litigation, at present, has become an "extremely costly proposition and a luxury only the rich can indulge."(14)

But it would be a gross misinterpretation to say that no measures have been taken to secure the individual rights and social justice. Right from the beginning, our national leaders have given much stress on protecting social justice of the country. Even the basic objective of the framers of our constitution as well as political leaders was to bring about a social revolution by providing social, economic and political justice to every citizen. The content of social justice is well-expressed by Justice P.N.Bhagawati when he says that: "confronted with extreme poverty and wide-spread disparities in incomes and levels of living, the judiciary in developing countries finds itself unable

to cope with the challenges to human rights protection. India presents a typical example of this continuing dilemma of guaranteed human rights on the one hand and non-availability of access to justice on the other. The Supreme Court, therefore, had to adopt new approaches and evolve new strategies for providing justice to the large masses of Indian humanity, who have been exploited for centuries altogether."(15)

It is quite appropriately quoted by Granville Austin about Indian masses: "The one problem you have is to give the masses their rights. The mass of the people in the country is like the sleeping leviathan."(16)

Epoch making changes have taken place in the Indian social scene since its independence in 1947. The administration as a whole has undergone many changes to suit the needs of our people and the judicial administration is no exception as well. Several steps have been taken by the government to help the poor litigants and to make justice more easily accessible and less expensive. Today in most states exist the schemes which provide legal aid and advice under the supervision of "STATE LEGAL AID AND ADVICE BOARDS". The central government set up a "COMMITTEE FOR IMPLEMENTATION


OF LEGAL AID SCHEMES (CILAS)" pursuing the legal aid programmes in all states and union territories. The aim of the scheme has been to promote legal literacy and create legal awareness among the weaker and under-previledged sections of the society, to organise legal aid camps, to provide strategic legal services through public interest litigation and law reform measures and also to provide alternative dispute resolution methods. It also finances voluntary organisations to carry on legal aid and advice programmes and public interest litigation as well.

Such a strong movement for the upliftment of the socially and economic backward section and committment for legal aid and its realisation in fact was aroused by the global recognition of the legal aid for the poor and the under-previledged at the international level.

After the World War-II, the function of the states shifted towards improving the quality of life of the people. The phenomena largely affected the administration of justice and more particularly the administration of criminal justice. By the middle of this century it was realised all over the world that free legal aid to the poor was an essential element of fair tribal procedure for securing justice to all on the basis of equal opportunities for defence.

In England, it was started by the LEGAL AID ACT, 1949 in civil cases and later was extended to criminal cases.
"The concept of legal aid in Britain is that, if the party has cause of action, but has no money to pay for the fee of the lawyer, he is entitled to get legal assistance from the government exchequer. In practice, it was made available almost automatically when the accused asks for it and shows that he has no money to pay"{(17)}

In U.S.A. the initiative was taken by the judiciary in evolving the fundamental right to legal aid. In the opinion of Justice Black of the U.S. Supreme Court: "Any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided for him. The right to be heard was interpreted as right to get legal aid which was inherent in the due process clause."{(18)} The U.S. Supreme Court also made it clear that the power of the court to appoint counsels could not be questioned on the ground of the absence of a statute. Later the legal aid and advice act came to be enacted to provide for free legal aid to indigent defendants.

Global recognition of legal aid for the poor and the under-previledged is also found in the covenants of the United Nations Organisation. An international legal aid association is also doing commendable work in this direction.

17. "Justice Bhagwati and Legal Aid", Journal of Cochin University of Law, p.388.
Many European countries have also established mobile legal aid clinics in collaboration with the legal authorities, the Bar Associations and other voluntary social organisations. Progressive countries such as Argentina, Brazil, Italy and Sweden particularly insist on conciliation rather than on litigation.

The growing awareness for such legal aid movements stirred a strong movement in India in this direction. The matter came to be discussed at various fora. The central and state governments set up committees to frame schemes for legal aid and the constitution of India was amended in 1977 to insert article 39-A in part-IV containing the directive principles of state policy, a measure to provide assistance and aid to the poor in prosecuting their claims. This will strengthen respect for law which is a great asset for a democratic society.

Article 39-A reads: "The state shall secure that the operation of the legal system promotes justice, on a basis of 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".  

the state to provide legal aid to the indigent litigants so that no one would be deprived of the opportunity of securing justice.

In the opinion of law commission "Free legal aid to the poor persons is a service which the modern welfare state owes to its citizens. The state must accept this obligation and provide funds for legal aid to the poor poor" (20).

Infact, the central theme of our constitution has been to secure social justice. This is evident from the Preamble itself which speaks about social, economic and political justice. Besides, the sources of the right to legal aid are contained in the constitution in the form of Article 14, 21 and 32. Article 14 mandates the state not to deny any person equality before law and equal protection of laws. Under this article not only every action of the state is mandated to be fair, just and reasonable rendering any comparison between similarly placed persons unnecessary, but also the concept of equality itself has been interpreted to mean dynamic equality. Thus in the "state of Kerala Vs. Thomas (A.I.R., 1976, S.C. 490), Justice Mathew pointed out that "the principle of equality required differential treatment between unequals so as to reduce inequalities."

Article 21 prohibits the state from depriving any person of his life and personal liberty. In various cases the supreme court has interpreted this article to confer a right to legal aid because it was held by Justice Bhagwati that "a procedure which did not make available legal services to an accused person, who is poor to afford a lawyer could not be regarded as reasonable, fair and just".  

Similarly, article 32 has been included in the fundamental rights that give the right to constitutional remedies in case of violation of fundamental rights of the people.

And above all, there is article 39-A, which was inserted in the constitution in 1977 by the recommendation of Justice Bhawati and Justice Krishna Iyer report: "Report on national Judiciaries: equal justice - social justice".

In response to the above mentioned report the Central Government set up a Committee for Implementation of Legal Aid Schemes (CILAS), in September 1980, under the chairmanship of Hon'ble Justice P.N. Bhagwati, with a view to pursuing legal aid programmes in all states and Union Territories on a uniform level. The administrative work of CILAS is entrusted to one of the supreme court judges designated as the Executive Chairman of CILAS. The said committee remains in contact with the progress of legal aid work all over India.

and assists the state level boards monetarily or otherwise and gives a good deal of encouragement and guidance. It is also the duty of the CILAS to evolve better strategies and schemes for diffusing legal knowledge and increase the panorama of legal aid work.

The legal aid programme formulated by this committee and adopted by the state governments now provide free legal aid and advice to socially backward classes, women and children and the other citizens who fall within the means test prescribed for admissibility of free legal aid and advice. Today legal aid is available to the poor and weaker sections of the society in all law courts in the country right from the courts of the magistrate and the munsif to the highest court of the land i.e. Supreme Court of India. So far over one million people have taken advantage of this facility in various courts of India. Legal aid is not simply a welfare work to do. It is a systematic need and necessity, absence of which is likely to cause a serious rupture in the fibre of the very justice system itself.

The organisation of legal aid in the country is still in an experimental stage, though necessary steps are underway and substantial help is now reaching the poor through activities of state legal boards. And the scheme has developed some strategies which imparts dynamics and communicability to this project.

The first strategy evolved by the scheme is to infuse awareness into the ignorant masses through legal literacy.
programme. Legal literacy is a relatively new concept, which implies basic awareness regarding laws and legal process for the common man and women as an aid to equipping a person for a meaningful participation in the process of development. Efforts in imparting legal literacy have been supported by the CILAS and the state legal aid and advice Boards. The department of women and child development in the ministry of Human Resources Development Department has also been supporting legal literacy activities under its scheme on education for prevention of atrocities against women. Legal literacy activities placed in a broader human rights perspective, could help in building a change orientation in the legal literacy materials. The preparation process for such materials would presuppose identification of areas of work, work condition and the measures of freedom available to change their own conditions.

In order to make legal literacy programmes more effective, the state legal aid and advice Boards have undertaken the task of organising legal aid camps, para-legal workshops, and legal aid clinics in different parts of their respective states. The main aim of these programmes has been to make the people aware of their legal rights guaranteed under our constitution and by different legislations and to sow seeds of assertiveness among the poor and the down-trodden.

In this process, public interest litigation (PIL) or "Social Action Litigation" as Justice P.N.Bhagwati prefers to call it, has made an effective contribution. "According to P.I.L.
any member of the public or any bonafide social organisation
espouses the cause of the poor and the down-trodden, he should
be able to move the court by just writing a letter. Such a letter
can legitimally be regarded as an appropriate proceeding within
the meaning of article 32 of the constitution.

It is a major break-through achieved by the supreme court in bringing social
justice close to the masses. The supreme court has started
appointing social activists, teachers, researchers. Journalists,
government officers, and judicial officers to visit particular
locations for fact-finding. A large number of SAL writs have
been filed by social activists. The steady growth of SAL appears
to be a master strategy which helped in undoing injustice and
unmaking tyrannies.

Most lawyers and judges would agree that the recent growth
of private actions instituted by private parties for the
protection of public interest are one of the most significant
developments in the contemporary civil procedure. The P.I.L.
has however aroused much criticism and the critics describe this
as "Justice by by-lanes and not justice by High Way" or
as an 'unruly horse'. If however, ridden with caution and
circumspection, this unruly horse can reach new heights of public
well-being and usher in a society governed by rule of law.

22. Bhagwati Justice P.N., "Social Action Litigation, the
Indian Experience", Tiruchelavum and Coomarswany, Role
of Judiciary in plural societies, Francis Pinter

23. Mukherji, Justice Sabyasachi, "Role of Judiciary and
Public Interest litigation", legal aid Newsletter, Vol.X

24. Ibid.
The P.I.L is leading to far-reaching changes in style and nature of civil litigation. The future of India is partly but vitally linked to the future of social action litigation, which at present seems to be heading for a bright future as an effective employed by the legal aid movement.

The legal aid scheme is also employing other strategies like conciliation and para-conciliation that seeks to eliminate the distance between the bench and the ignorant millions of the country and to ameliorate their comfort and well-being.

The CILAS has also introduced certain schemes which are in nature of preventive measures or meant to bring about settlement between the parties by diverting litigation to non-formal and non-legal acts for involving minimum interference in the existing adjudicatory machinery.

In its aspiration to make the access to justice easy and less expensive, the most innovative scheme introduced by the legal aid movement is the scheme of organising 'LOK ADALATS' which literally means 'People's Courts'. It is the most important and successful non-formal and non-legal forum initiated by CILAS and adopted by state legal aid and advice boards for resolving civil disputes.

The main idea behind launching the Lok Adalat scheme has been to provide an alternative forum to the disputing parties to negotiate a settlement. The Chapter-VI of legal services
Authority Act of 1987, empowers the state and district authorities to organise Lok Adalats at such interval and places and for exercising jurisdiction and for such areas as they think fit, with a view to providing an easily accessible and inexpensive system for delivery of proper legal advice and fair settlement of disputes outside the court premises.

The Lok Adalats which have caught the imagination of the people have the objective of lightening the burden of the courts and of providing speedy and inexpensive justice to the poor and the same is an important part of the legal aid programme.

At present, the Lok Adalat scheme seems to provide a suitable forum to negotiate a settlement, though it is being asserted that these Adalats are supplementing and not supplanting the conventional existing judicial process. Started on a voluntary basis, this Lok Adalat movement, seems to have gained much popularity among the masses. According to official reports the state of Orissa holds the record of organising the highest number of Lok Adalats, only next to Uttar Pradesh. Since 24th November, 1985, when the first Lok Adalat of the state of Orissa, was held at Cuttack, there has been a steady forward movement of the Lok Adalat scheme in the state and nearly 2368 Lok Adalats have already been held in the past decade with a record number of 6 lakh 37 thousand 749 cases being settled through them.
As the study of the Lok Adalats in the state of Orissa is the main purpose of our project, we will discuss the organisation of Lok Adalats in general and in Orissa in particular, in the following chapter.