Courts were the traditional forums for resolving disputes, and redressing grievances, between individuals and individuals. With the advent of welfarism bidding farewell to *laissez faire*, many affairs originally regarded as belonging entirely to the individual domain, and once thought of as inappropriate for state action, became matters of public concern and intervention. The transformation to the ever increasing functions and powers of State agencies and authorities in resolving disputes among individuals and between individuals and the State had its impact upon the legal system as well as on the concept of access to justice. As the custodian of public interest and individual liberties and dispenser of justice the higher judiciary has attained a greater role. In supervising the functions of the State and State agencies the frontiers of its jurisdiction have widened.

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1. Friedmann, *The State and the Rule of Law in a Mixed Economy* (1971), p. 3. The State has now become not only a provider of welfare services, a regulator and an entrepreneur but also an umpire in protecting the Rule of Law.

2. "In the Welfare State, the private citizen is forever encountering public officials of many kinds: regulators, dispensers of social service, managers of state operated enterprise. It is the task of the rule of law to see to it that these multiplied and diverse encounters are as fair, as just, and as free from arbitrariness as are the familiier encounters of the right asserting private citizen with the judicial officers of the traditional law." Harry Jones, "The Rule of Law and the Welfare State," *Essays in Jurisprudence from the Columbia Law Review* (1963), p. 400 at 413.
The plethora of laws enacted and changes made to these laws every year in modern times are so baffling that it is extremely difficult even for judges and lawyers to keep themselves abreast with the matters dealt with in these laws. Then, what about the poor, ignorant, uncared for 'little Indians'? In our country, a land of constitutional sovereignty, right to equality is guaranteed, justice, social, economic and political, declared as a basic directive, bonded labour abolished, illegal incarceration not allowed and equal pay for equal work and adequate means of livelihood recognised. Further, a significant provision, added by the Twentysecond amendment to the Constitution, reads,

"Equal justice and free legal aid— 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 secur-

4. "The law is a bewildering jungle of rule and precedent which confounds both lawyers and judges alike. How can one expect a poor person, perhaps uneducated and illiterate, to conduct his defence successfully, to cross-examine the witnesses produced on behalf of the State, to call witnesses on his own behalf and to argue on his own behalf technical pleas based on the sections of a statute unintelligible to him or on precedents or decisions of the court to which he could have no access." id., p. 66; Justice Shelat also shared this view. He went on record, "Himalayan heaps of legislation together with rules, notifications, circulars, bye-laws etc. are enough to frighten away the common man though the intention behind them is avowedly to protect and benefit him". Forward, V. R. Krishna Iyer, Some Half-hidden Aspects of Indian Social Justice, (1980), p. XI.
6. Id., Article 38(1).
7. Id., Article 23.
8. Id., Article 22(1).
10. Id., Article 39(d).
11. Id., Article 39A.
ing justice are not denied to any citizen by reason of economic or other disabilities.”

Do these constitutional ideals have any meaning to the poor, the oppressed and the ignorant who constitute the vast majority of the people?

As the eminent jurist Justice Krishna Iyer remarked, the words ‘social justice’ represent the urges of the masses whose fulfilment is the only sanction for the stability of a society in ferment and the solemn pledge to secure social justice may not be played down as paper rhetoric. In a number of recent decisions the Supreme Court of India made a bold attempt to give meaningful human rights interpretation to the Constitutional principles and tried to fill up the wide chasm between reality and ideal in the average citizen’s access to legal service and justice. Keeping in mind the peculiar socio-economic conditions prevailing in our country, and shedding away the shackles of procedural limitations, it liberalised the concept of *locus standi* enabling a member of the public to invoke the jurisdiction of the court by writing a letter.

In the past courts decided individual disputes and vindicated individual rights. The host of new rights to the citizens such as unemployment insurance, retirement and sickness benefits, maternity reliefs, child care, workmen’s compensation and educational grants called for new tasks for the rule of law in the modern Welfare State. The phenomenal change from the policy of non-interference to the increasing direct State concern in individual affairs and welfare brought in its train new chal-

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The new wave of public interest litigation—initiated not for the benefit of one individual but for the benefit of a class or group of persons and for the interest of the public has set in. As Justice Bhagwati has said it is litigation 'undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, diffuse rights and interests or vindicating public interest'.

Which are these diffuse interests? They are those collective and fragmented interests wherein no particular person has the right to get remedy for the infringement of the interest and wherein his stake for remedy is too small to induce him for enforcement action. At the same time the injury to the public interest is so great that a redressal is not only desirable but often necessary. Problems relating to pavement dwelling, contract, bonded and prison labour and custodial violence are areas which involve public interest and necessitate social action litigation. Administrative lethargy stands in the way of solving these problems; public interest litigation ignites judicial wrath and attempts to remove the hurdles. Consumer protection and environmental preservation are highly potential areas which may get a new perspective in this type of litigation in future.

Locus standi was one of the greatest hurdles for public interest litigation in the past. In the long march from the

24. A disappointing extreme is found in J. M. Desai v. Roshan Kumar, A.I.R. 1976 S.C. 578, per Sarkaria, J. A no objection certificate was granted by the District Magistrate for a cinema house near (f. n. contd.)
ancient tradition to the modern trend, the judiciary had covered many a milestone—from the requirement of injury to a legal right, to the concept of individual interest then to the special interest, again to class interest and now, to sufficient interest. This concept of 'sufficient interest' is so vague and prone to an interpretation staging a return to the old position wherein a direct and substantial injury is necessary for standing to sue. It may also be possible for the courts to retain the liberal trend and recognise a general interest in any litigant on a matter as sufficient to have *locus standi*. Thus, an environmentalist, a student of law, a paralegal member of a legal aid clinic, a journalist, a ration card holder or anybody resorting to the process of litigation may have standing to challenge the illegality that does affect the interest of the general public but not him alone.

Absence of means to obtain data is a real constraint to social action litigation. Access to data will facilitate access to justice. There should be sufficient data providing solid evidence and foundation on which public interest cases are to be initiated. The importance of access to convincing data in consumer affairs, environment issues, health care and the like can never be ignored. The data to base the sort of Barandies brief:


Justice Bhagwati observes at p. 192.

"If public duties are to be enforced and social collective 'diffused' rights and interests are to be protected, we have to utilise the initiative and zeal of public minded persons and organisations by allowing them to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation.... and citizen who is acting *bona fide* and who has *sufficient interest* has to be accorded standing." (Emphasis is mine).

26. The novel technique adopted by Mr. Louis D Brandies, later elevated to the U.S. Supreme Court, in adducing sociological data (f. n. contd.)
in these areas stands the courts in good stead and helps deciding the issues in the most objective and pragmatic manner remedying the maladies of the unorganised diffuse interests. An individual may not have sufficient time, expertise and money required to collect necessary data in support of his contentions. Perhaps, at this level, the absence of a Freedom of Information Act seems to be a major weakness of our legal system. The judicial trend is that the Supreme Court and the High Courts, in exercise of their powers under Articles 32 and 226 of the Constitution and invoking their inherent powers, can appoint even investigatory commissions for collecting data. A number of research centres and organisations are to be established. They should have facilities for studies on public interest problems and rights and privileges of access to information. Establishment of such institutions will go a long way in helping to render a solid foundation, by way of facts and evidence, in public interest litigation.

Why is this enthusiasm for social action litigation when the problems of delay and backlog of pending cases stare us? One may not brush aside this objection as an outmoded *laissez faire* plea for private interest litigation. It is highly necessary to find immediate solution to this problem of pending cases lest our...

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27. The Freedom of Information Act 1966 in the United States is the most progressive legislation in this regard. It enjoins to make available for public inspection opinions or orders in adjudication, statements of policy and interpretations on staff manual or instruction. It also lays down to make identifiable records promptly available to any person. If this is not done, a district court of the United States can be moved to enforce the right. For the text of the Act, see Schwartz and Wade, *Legal Control of Government* (1972), Appendix II, pp. 339-341.


29. In the United States there is a Legal Service Corporation which has a research institute devoted to the study of a broad range of legal problems encountered by the poor. See n. 33 infra.
judicial system should get crushed under its weight.\textsuperscript{30} But this is no rational argument for underrating the importance of public interest litigation. The social impact of delay in disposing public interest cases is wider and more far reaching than the impact of delay in cases on individual disputes. The plurality of interests, and the nature of the rights, affected by the delay demand precedence of public interest cases over others. No doubt the wheels of justice will have to move faster in public interest litigation.

The person inclined to move a public interest case may not himself be a lawyer. He has to engage a good lawyer, pay a reasonable lawyer-fee and has to incur other incidental expenses. Gathering data to base the sort of Brandies brief in public interest litigation involves heavy expenditure. It quite often happens that in comparison with their mighty adversary with all the facilities for data collection the diffuse interests for whom the litigation is pursued are in a totally disadvantageous position with little means of access to data. This eventually leads to the poor quality of evidence on which the decision has to be based and thus affects adversely the ultimate justice in a dispute. The unequal position in a public interest case between the consumer interest and a transnational corporation is an obvious instance.

What is the solution? How to meet the expenses of public interest litigation? The idea of a mandatory \textit{pro bono publico} work by each lawyer has been mooted by American Bar Association in solving this tangle in the United States. But this idea has been much criticized.\textsuperscript{31} What is needed is that the lawyers who take up the cause of the diffuse interests should act seri-

\textsuperscript{30} Khanna, \textit{op. cit.}, p. 44.

\textsuperscript{31} John A. Humbach considers such a measure as misconceived, unfair and counter productive. He views it as pure public relations gimmicks, a tax on the profession and involuntary servitude. It may not also be possible by practising them a few weeks to achieve mastery over specialities such as consumer protection, landlord-tenant and social service in which the poor and the diffuse interests have problems. "Serving the Public Interest: An Over Stated Objective", \textit{American Bar Association Journal}, April 1975, Vol. 65.
ously and efficiently. It is pointed out that in India the legal profession is so organised as to discourage, rather than foster, any institutionalisation of legal services programme for the poor. Even otherwise it is not proper that the burden of financing public interest litigation should fall solely on the shoulders of the lawyer community. Can the State sponsored lawyers be entrusted with public interest cases on remuneration paid by Government? Such a system also may not work well. More often than not public interest cases involve government as an opposite party. It is only fair and just that a person other than the government sponsored counsel argues a case against the government. The same reasoning points to another essential aspect. The major support for public interest litigation should come from non-governmental sources. An agency independent of the Executive but capable of pooling resources for funding public interest cases is necessary. In the United States the establishment of a Legal Services Corporation is a step forward in solving many procedural difficulties of social action litigation. It is a private, non-profit organisation established by Congress in 1974 to provide financial support for legal assistance to the poor in civil matters. Its programmes are free from the executive branch and designed to insulate legal assistance for the poor from partisan pressures. It is desirable that a similar corporation is created in every State in India with a view to financing social action litigation. The resources for this organisation can come not only from lawyers but also from individuals, associations, charitable institutions and from government. Contribution to the fund should be exempted from tax.

Creation of dedicated public interest law groups and legal aid societies is an imperative need. These groups should be organised at rural and urban level having sufficient co-ordina-

33. With funds provided through Congressional appropriations, the Corporation, through its office of Field Services and its nine Regional Offices, distributes grants to some 335 legal service programmes operating in about 900 neighbourhood offices, throughout the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands and Micronesia. *Legal Services Corporation, Annual Report 1978*, p. 1.
tion with the State funding and supervising institutions. Such groups can play a constructive role in protecting the interest of the general public both in the pre-litigative stage and in the litigative stage. They can influence the policy formulation itself by an effective method of lobbying. Research wings and organisations sponsored by public interest law groups will help filling up the gap in data collection to a substantial extent.

Legal aid programme should form part of legal education in a more purposive manner than the perfunctory way it is now being executed in many Indian law schools and colleges. Legal aid as part of the academic programme, with credit given to the students, has many advantages. It helps the student to approach legal aid activities in a serious manner. It inculcates in him a sympathy towards the poor and an awareness of their legal problems. Student legal aid programmes are not to be confined to organising a legal aid committee and opening a legal counselling office in the campus but should be enlarged to include extension work taking the teachers and students to the villages and to the ignorant and needy people. The programmes should aim at studying the problems of the rural poor and at making them conscious of their legal rights and remedies. This will help the legal aid clinics to have an effective feedback enabling them to solve the problems in the best manner possible. The student legal aid clinics should have a proper liaison with public interest law groups, and with the law school alumni, who can take up the cases if the problems could not be solved at the pre-litigative stage.

Legal aid camps can be organised on a much larger scale, in which not only students, teachers, lawyers and social workers but also administrators, police authorities and even judges shall be actively involved in dispensing quicker and more effective justice. Gandhiji had suggested as early as in 1946 that panchayats, the rural self-governing units, be entrusted with the task of dispensing justice and subordinate judges asked to go to the villages and assist panchayats in deciding cases.34 Recent

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reports show that in some parts of China judges move their desks from court rooms to residential neighbourhood where they strive to settle their cases on the spot. In India legal aid camps have to be organised throughout the country—in cities, villages, towns, slum areas, mountainous regions and valleys—and shall become a regular feature till an indigenous access jurisprudence is evolved enabling the 'little Indians' to solve their problems without being entangled in fraud or legal juggleries and without spending their valuable time and hard-earned money.

Judicial remedy is never the panacea for all the ills. Much to the chagrin of Diceyan dichards, right from the beginning of the Twentieth century, even common law countries were going ahead with incorporating into their legal system alternative strategies of providing specialised tribunals and agencies with vast powers of deciding disputes. The intenton was none other than solving the people's problems in speedier, cheaper and more efficient manner without recourse to the highly legalistic, cumbersome and costly court room scenario. While in other countries the Legislature has laid down norms of procedure for this new brand of decision-making agencies and authorities, in India in the face of legislative inertia the courts have a tremendous responsibility in disciplining these authorities.

There is a cry in India for creation of ombudsman to hear and redress the grievances of the people and solve their maladies. In countries where ombudsman is a powerful instrument of redressal of grievances there are certain essentials that add to its potency—its institutional and functional independence,

35. The Judges of a district court in Shanghai have started making house calls to help settle disputes. The experiment is meeting with considerable success. The new practice not only saves people from the trouble of going to court but also has simplified the legal procedure. "China Takes Courts to People" HIPA Newsletter, June 1983 Vol. XXVII, No. 6, p. 8.
36. For example, Administrative Procedure Act 1946 in U.S.A. and Tribunals and Inquiries Act 1958 in the Great Britain.
simplicity and informality of its procedure ensuring easy access, confidence of the people on the institution, the high respect and esteem attached to its advice and comment, the readiness and enthusiasm of the administration to implement its 'recommendations' and the prompt and timely deliberation in the legislature on the annual or periodical reports in connection with its actual functioning. The Indian attempts in the past seemed to have not taken into account these standards but to have committed the radical mistake of linking ombudsman institution with the machinery of fighting corruption and treating grievance complaints of maladministration in the same way as allegations of misconduct and corruption. An ombudsman should be free from all the above mentioned constraints and defects. It is time that every State in India passes legislation establishing ombudsman institution without these lacunae. This will help the courts in reducing their work to a substantial extent in their newly acquired ombudsman jurisdiction of looking to the people's grievances. It is interesting to note that the Law Commission of India in its 100th report strongly recommends institution of ombudsmen at Centre and in States for redressal of grievances against maladministration in all its aspects.


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