

**THE EMERGENCE OF THE CONCEPT OF
LEGAL AID IN INDIA AND ITS APPLICATION IN
CONTEMPORARY GOA – A LEGAL STUDY**



**A Thesis
Submitted to Goa University
for the Award of the Degree of**

**DOCTOR OF PHILOSOPHY
IN
LAW**

By

**Kotagiri Srinivasa Rao
LL.M.,**

Research Guide

**Dr. Carmo D'Souza
LL.M., Ph.D.**

Associate Professor

V.M. Salgaocar College of Law, Panaji

**Goa University, Panaji, Goa
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*suggested corrections made
23.6.11
external examiner*

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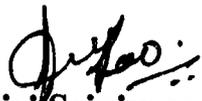
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DECLARATION

I hereby declare that this thesis titled, "THE EMERGENCE OF THE CONCEPT OF LEGAL AID IN INDIA AND ITS APPLICATION IN CONTEMPORARY GOA – A LEGAL STUDY" submitted for the award of the Degree of Doctor of Philosophy in Law, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.


Kotagiri Srinivasa Rao

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Date: 25/5/10

Dr. Carmo D'Souza

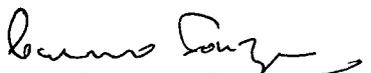
M.Sc., LL.M., Ph.D.,

Associate Professor of Law,
V.M. Salgaocar College of Law,
Miramar, Panaji, Goa.

CERTIFICATE

This is to certify that the thesis titled, "THE EMERGENCE OF THE CONCEPT OF LEGAL AID IN INDIA AND ITS APPLICATION IN CONTEMPORARY GOA – A LEGAL STUDY" submitted for the award of the Degree of Doctor of Philosophy in Law, is a record of the research work done by Mr. Kotagiri Srinivasa Rao under my guidance and supervision during 2005 - 2010.

I certify that this is a *bonafide* work of **Mr. Kotagiri Srinivasa Rao**


Prof. Carmo D'Souza,
Research Guide

Place: Panaji

Date: 25/5/10

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ABBREVIATIONS

ABR	American Bar Association
ABWOR	Assistance by way of Representation
ACLU	American Civil Liberties Union
AIHC	All India High Court Cases
AIR	All India Reporter
AJA	Access to Justice Act
Am. J. Int. L.	American Journal of International Law
ALJ	Australia Law Journal
Andh.L.T	Andhra Law Time
BLAST	Bangladesh Legal Aid and Services Trust
CALS	Centre for Applied Legal Studies
CJM	Chief Judicial Magistrate
Cr.L.J	Criminal Law Journal
CDS	Criminal Defense Services
CJA	Criminal Justice Act
ECHR	European Convention on Human Rights
GLR	Gujarat Law Reporter
ICLQ	International and Comparative Law Quarterly
ICCPR	International Covenant on Civil and Political Rights
ECHR	European Convention on Human Rights
GLR	Gujarat Law Reporter
ICJ	International Court of Justice

JMFC	Judicial Magistrate First Class
LAA	Legal Aid Act
LAB	Legal Aid Board
LAG	Legal Aid Guide
LHR	Lawyers for Human Rights
LASA	Legal Aid Services Act
LSC	Legal Service Scheme
NALSA	National Legal Services Authorities
NDPS	Narcotic Drugs Psychotropic Substances
NLADA	National Legal Aid and Defender Association
PLA	Permanent Lok Adalat
PUS	Public Utility Services
QC	Queens Counsel
SC	Supreme Court
SCC	Supreme Court Cases
U.B.C.L. Rev.	University of British Columbia Law Review
UDHR	Universal Declaration of Human Rights
U.N. Chronicle	United Nations Chronicle
US	United States

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CHAPTER I

Introduction

“A person is not in prison because he is guilty. He is not in prison because he has been punished. He is not in prison because there was apprehension that he would escape before release. The only reason why he is in prison is that he is poor.”
Lyndon B. Johnson¹

1. INTRODUCTION

The transformation of the concept of State from police state to welfare state has triggered off the growth of the concept of equal access to justice. Justice is a cardinal principle of the Constitution of India and Constitution, being the supreme law of the land, subordinate law cannot afford to ignore this principle. Therefore, one of the biggest challenges to the legal profession in India is to provide the constitutional mandate of access to justice to the poor. In the expensive adversarial legal system, access to justice is a luxury to the people living below poverty line. In a liberal economy where market forces decide everything, offering free legal aid to the poor is often given the least priority. Human society, governed by Rule of Law must provide in its legal system the facilities for a poor litigant to avail freely or at a token cost, the legal assistance in vindicating his rights. Law, like any other discipline of Technology, is an art as well as science to serve its master. Man cannot live by bread only. He/she prefers dignity, honour and justice to starvation, dishonour and even death. Justice is the substantive nourishment not for stomach but for human soul. Justice must not only be done, it must appear to have been done.²

No one can deny, much less the lawyers, that the very existence of democracy, rule of law, equality and other cherished values of our constitutional

¹ Dr. Janak Raj Jai *Death Penalty* (Regency Publications, New Delhi, 2005) 22

² Mukherjee D.V, “Legal Education for Service to the Poor”, *AIR*, Nagpur (1982) 65

government will be jeopardised if people are denied justice merely because of their social and economic status. To avoid denial of justice, justice should be handy, cheap, speedy and substantial. Unfortunately a large majority of the poor people are unable to approach the courts of justice but suffer injustice in silence, despite the fact that our Civil Procedure Code contains provisions for litigation in *forma pauperis* and the state is under obligation to provide legal aid.

Legal Aid to the needy is an instrument of social justice. Social justice implies that each citizen or section of the society must be treated equally and justly irrespective of his/her caste, creed, descent race, religion, sex, wealth or status. The eternal yearning for equality of justice was enshrined in the Magna Carta in 1215 A.D. thus: "To no man shall we deny, justice and to no man shall we delay it".

This basic philosophy of legal aid and advice was also adopted by the United Nations Conference on Human Rights held in Teheran in 1968. Mrs. Indira Gandhi inaugurated the seminar of the Indian Council of Legal Aid and Advice, New Delhi on 4-1-1975 by explaining the legal aid philosophy of India in these words:

Free Legal Aid movement has become talk of the day to make the legal system accessible to all citizens irrespective of their income. Internationally and nationally, the 1970's witnessed free legal aid movement assuming legislative dimension, which has intellectual roots in the Historical Revolutions and has bearing to the modern anti-poverty

theories of 1960's. Under this new concept, a state is viewed as a preserver of the natural rights and privileges of its citizenry. The rights belong, equally, to all governed under the rule of law.³

Justice Anand refers to the problem of equal justice in India. He writes that the poor and illiterate and weaker sections in the country suffer everyday in the struggle for survival. They look out to those who had promised them equality that is social political and economic. The Judiciary who is responsible for upholding the Rule of Law in the country may not be in a position to solve all the problems. However certainly the judiciary can contribute its mite to nourish and safeguard the constitutional goal of equal justice for all to the extent possible. Justice Anand was personally pained and he noticed that all over the country there were large numbers of under trail prisoners who suffer prolonging incarceration even in petty criminal matters. The reason for that was that they were unable to furnish the bond and be released on bail even inailable offences. As a result many of them during confinements develop criminal traits and came out fully trained criminals.⁴

The Supreme Court while waiving the court fees in *State of Haryana v. Darshan Devi*⁵ pulled up the State Government for preventing the poor from access to the portal of justice by insisting on her to pay the court fees.

³ Dr. Chaturvedhi A. N, *Rights of Accused Under Indian Constitution*, (Deep & Deep Publications, New Delhi, 1984) 249

⁴ Sharma S.S, *Legal Services, Public Interest Litigations & Para-Legal Services*, (Central Law Agency, Allahabad, 2003) 7

⁵ AIR 1979 SC 855. The facts of the case were that the respondent's sole bread earner was killed by a State Transport bus and she claimed compensation. The Court decreed the process of the payment of the court fees as a sale of civil justice in disguise. Further it observed that no State had framed rules

The Philosophy of legal- aid is an inalienable element of fair procedure in a democratic set-up of a country where every citizen of the country should not only believe in but also benefit from fair and impartial judiciary. "It is not a mere constitutional obligation. In our country, it is a social imperative. It should not be viewed as charity but it should be conceived as an integral part of our legal system. It should become part of our war on poverty."⁶

1.1 REASONS FOR THE SELECTING THE PROBLEM

The researcher in his involvement with the various activities carried under the banner of legal aid in Goa in particular and India in general noticed following problems which led him to investigate the issue in depth.

- a) The researcher noticed that many of the activities conducted under the Legal Services banner were stereo type, often replicated and not targeted to the audience .For instance in Goa topics which are favourite with certain lawyers find place in the programmes due to easy availability of the speaker. So the functions are held in order to show the number of programmes.
- b) The researcher was interested in knowing the nature and extent of obligations of State of Goa under evolving international and national regime on legal aid. This prompted the researcher to make a

to give effect to the benignant provision of legal aid to the poor in Order 33 of the Code of Civil Procedure.

⁶ The above philosophy was explained by Mrs. Indira Gandhi while inaugurating the seminar on Indian Counsel of Legal Aid and Advice held in New Delhi on 4-1-75 . The citation is found in Mukherjee D.V, "Legal Education for Service to the Poor", *AIR*, Nagpur (1982) 67

comprehensive analysis of the situation in Goa based on international conventions and national legal provisions.

- c) The researcher was concerned about the implementation of legal services provided by legal services authorities in state of Goa. This could be found out through an empirical study confined to the territory of Goa. Hence this was another reason for selecting the topic.
- d) As Goa is a small area it could turn out to be a model state for implementation of legal services if well planned and implemented with a vision. This research could later help the other states with vast territory and population. Hence researcher selected the topic with special reference to Goa.
- e) Law colleges in Goa are directly involved legal awareness programmes through their legal aid cells (students/professors), which resulted State and District legal services authorities in state of Goa, to design and conduct the legal awareness programmes, which is one of the important functions of legal services authorities, in co-ordination with legal aid cells of law colleges. The researcher is interested to find out the fruitfulness of the above co-ordination and whether State of Goa can be a role model for other states in India.
- f) People from low income group, uneducated don't know how to use the facility for free Legal Aid. The present set the Judiciary and staff are busy with their regular work hence they are unable to devote quality time on Legal Service activities. Awareness among public is lacking

.Public has no confidence in this system. Hence the researcher selected the topic hoping to find the solution for the above situation.

1.2 OBJECTIVES OF THE STUDY

The general objective of the research is to study the concept of legal aid in India and its application in contemporary Goa. In studying the said objective, the research attempts to examine the policy, law and practice on the issue of legal aid. The research further aims to study the prevailing policy and legal regime and analyze the gaps between the constitutional promise and institutional response to the cause of legal aid.

The institutional response is examined by carrying out empirical study of Legal Service Authority of the State of Goa. The purpose is also to examine whether prevailing regime is sensitive enough to respect the rights of the accused /indigent persons. The significance of the study lies in the fact that it is the first study of its kind in the state of Goa focussing on the policy, law and practice on legal aid. The study is intended to provide a better understanding of the rights and entitlements of the accused /indigent /public (legal literacy) under domestic and international regimes. It will also help to understand a few other issues relating to Lok Adalats, legal literacy camps and so on.

The study is also intended to help evolve a humane approach to development by enriching knowledge in this particular area of study. This in turn could bridge the gap between constitutional and legal aspirations and the prevailing practices in the State of Goa.

Briefly following are the objectives of research:

1. To trace out the development of legal aid movement in India and other countries.
2. To analyse the general laws and judicial interpretation of such laws and its relevance to Legal Aid in India.
3. To review the Legal Services Authority Act and other legislative provisions related to legal aid from the perspective of the accused in criminal cases and indigent party in civil cases.
4. To evaluate the functioning of legal aid mechanism in the State of Goa.
5. To evaluate the role of Law Colleges in Goa in promoting legal aid movement.
6. To evaluate and make suggestions on how legal aid cells under the baton of Law Colleges in Goa can promote legal aid.
7. To propose a working model to improve implementation of legal aid in the State of Goa and to suggest the proper course of action.

1.3 HYPOTHESIS

The thesis contains following five hypothesis:

- i. Even though Right to counsel is included as a fundamental right, majority of the people are unable to take advantage of this right due to their illiteracy, poverty and lack of awareness.

- ii. The indigent litigant has no confidence in the effectiveness and adequacy of the justice delivery system due to procedural technicalities, poor service from the free legal aid lawyers, and establishment apathy.
- iii. Low fees prescribed for the legal aid counsels attract very few talented lawyers and as a result Legal Service Authorities failed to execute the concept of “Poverty Jurisprudence.”
- iv. The apathy of Legal Service Authorities towards free legal aid is more perceptible when the claimants are schedule castes and schedule tribes.
- v. The sympathy of the Legal Service Authorities towards free legal aid is more perceptible when the claimants are women.

1.4 RESEARCH QUESTIONS

In order to facilitate research, the following questions are addressed by the researcher in order to come to some definite conclusions.

- a) What are the norms, policy and legal practices pertaining to the concern of Legal Aid both at the International and national level, and how far are the implementing authorities informed and responsive to this cause?
- b) What is the nature and extent of obligations of the state of Goa under the evolving National regime on legal aid?
- c) If the national policy and legal norms are sufficient enough to address the needs of the poor in terms of access to justice, what measures should the State authorities undertake to make legal aid meaningful?

1.5 METHODOLOGY

The present study attempts to examine the problem of legal aid from Indian perspective and in the State of Goa in particular. This perspective requires one to look into the legal norms developed at both the domestic and international legal regime so that by way of analogy, a comparative analysis of similar situations could be addressed.

The primary objective here is to analyze the issues from the point of view of the rights of indigent accused persons. As this study attempts to examine the issue of Legal Aid from different angles, a composite research design was developed and accordingly executed in two stages.

Stage 1

At this stage the researcher critically analysed the legal aid policy regime from a theoretical point of view. The theoretical premise for the analysis is the Constitution of India, National Legal Services Authorities Act and various international instruments and declarations having a bearing on the research problem. A comparative study of similar situations in other countries is made where the researcher specifically focuses on the legal and policy issues.

The policy formulations of Legal Service Authorities of different states in India are also studied. The researcher was able to reconceptualise the critical issues involved from a legal angle. This also enabled the researcher to develop indicators for study basing on research questions and to frame the questions for an interview.

Stage 2

With the help of the indicators or tools developed at stage one, the researcher, at this stage formulated different sets of questionnaire to be used at different stages of the field study. The primary objective of the empirical study was to examine the working of the law and policy in a real ground situation and to study the impact on accused and indigent persons.

For this purpose, The State of Goa was selected and the relevant data collected from various persons including Judicial Officers, Legal Services Authorities (concerned staff), Legal Aid Panel Advocates, Senior Advocates of the Bar, Indigent Accused Persons, Public, Legal Aid Cells(Students of law college), and Prison Authorities .

While authorities were mostly asked open-ended questions, the questionnaire for the accused persons and other interested persons were structured and close ended.

As the present study consist of both theoretical and empirical premise necessary data has been collected from primary and secondary sources.

Primary Data:

Primary data is collected from the records as well as statistics etc., available with the District Legal Services and Taluka Legal Services authorities, and other institutions in The State of Goa.

Data is also obtained from structure questionnaires, interviews and observations. Further, the data so obtained from questionnaires, interviews and observations, has been analysed and inferences drawn. Preliminary interviews

and focussed interviews to gather data have been conducted with legal aid panel advocates in two district and sessions courts, across Goa to identify the functioning of the Legal Aid authorities. Sampling techniques was used to identify beneficiaries.

Secondary Data

Secondary data was collected from published texts, newspapers, journals, periodicals, statutes, published articles, opinion of experts and internet.

1.6 IMPORTANCE OF STUDY

A Study of the emergence of the concept of Legal Aid in India and its Application in Contemporary Goa is important for the following reasons:

Legal aid has come to comprehend not only legal representation and assistance in litigation but also such other things as legal advice in arbitration and conciliation, creation of legal awareness and assertiveness in the masses, promotion of meaningful community participation in legal and national development and reform of law and legal process. Hence it has become imperative to carry out a scientific study of the effectiveness of legal aid in Goa.

Legal aid is a pedestal for the unequal's in a society. While facing litigation, it is necessary to make the weaker party look of 'Equal -size" to that of the high -statured opposing party. Therefore, as long as inequality prevails in a society, the need and importance of legal aid will continue to be there. Inequality will create imbalance in the scale of adversarial judicial process sometimes in

favour of the strong and against the weak. Hence there is the need for legal aid either fully or partly, to remove the said imbalance in the scale as an effective balancing factor to enable the judiciary to make its own contribution to the nation's overall effort to free and emancipate the people from deprivation.⁷

The 14th Report of Law Commission states that equality is the basis of all systems of jurisprudence and administration of justice. When a person is unable to redress or defend himself against a criminal charge justice becomes unequal. Laws which are meant for his protection has no meaning and to that extent can be said to fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer fees and incidental cost of litigation is denied equal opportunity to seek justice.⁸

So long as poor exist in the society, legal aid will be necessary if the human right to equality has any meaning. In any democratic set-up, it is essential that all sections of the society get economic and social justice along with the equality of status and opportunities.

The ambition of our constitutional fathers of delivering Social, Economic and Political justice at every doorstep of this vast country, their resolve to wipe every tear from every eye, is still a distant dream. Are not these the symptoms and syndromes of underdevelopment and a reserving democracy? The added importance of legal aid in such a socio-economic milieu cannot be over emphasised.

⁷ Bimal Kumar Chatterjee, *Law is not an Ass* (Eastern Law House, 1st Ed. 2006) 122

⁸ Indian Institute of Human Rights, *Provision of Legal Aid* (Green Gate, New Delhi) 42

The Socialist mission of democracy embedded in the Constitution, and the complexities and cumbersome procedures of our laws, regulating the relations of our society with high illiteracy rate and ignorance demands more strongly the provisions of legal aid and assistance.

Total freedom and emancipation of all citizens of India from all kinds of deprivation is the avowed object of the nation and its Constitution. Dispensation of justice 'equally' to all through the means of "reasonable, fair and just" judicial process established by law, which is also known as procedural justice, is one essential means to achieve the said objective. Dispensation of such justice needs and demands as its accessory, dispensation of reasonable, fair and just procedural justice.

To make available such procedural justice 'equally' to each and all and particularly to the weaker section of the society is a *sine qua non* of securing 'equality before law'. Making available free legal aid to the weaker section and needy is an equalizing mechanism and part and parcel of the establishment of reasonable, fair and just procedure and dispensation of such procedural justice. In an adversarial judicial process, any kind of disability of one against his adversary is likely to affect the doctrine of equality in the matter of dispensation of justice.

The widespread desire on free legal assistance, where individual liberty is in danger, is obvious from the Universal Declaration of Human Rights.⁹ Similarly, International Covenant on Civil and Political Rights recognizes legal

⁹ Art.8 of UDHR: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

aid in the form of right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it.¹⁰

Legal Aid as a part of administration of justice is of greater importance for the developing and developed societies alike, however for the former it is much more because it acts as a catalyst for achieving the standards of social and economic development.

India is a developing country, rather the most prominent and promising amongst the developing nations on the globe. Legal aid for the destitute and the deprived members of developing societies is essential. It is for this basic reason that the importance of legal aid in India cannot be ignored.

Further, legal aid is not only the obligation of State but also of the legal profession. The need for supporting and promoting legal aid schemes becomes an "unavoidable professional obligation" due to two reasons. The first reason is that the lawyer's function is grounded in morality: *i.e.* the idea that special obligations attached to his role in the present case *i.e.* to render justice. Aid in rendering of justice is essentially the function of the lawyer and the Lawyers claim autonomy to perform their functions because of specialized knowledge and skill.

¹⁰ Article 14(3), International Covenant on Civil and Political Rights

Secondly, the state grants him an autonomy, in exchange for his role as officers of the court, is discharging their duty. After all, the reason that the state conferred such a monopoly is that justice could best be served; a notion that surely means that even those unable to pay or those pursuing an unpopular cause can expect legal representation. A lawyer's duty to serve those who are unable to pay is thus not an act of charity or benevolence, but rather one of professional responsibility, reinforced by the terms under which the state has granted to the profession effective control of the legal system.

Therefore, legal aid is not a charity or a chance but a constitutional mandate to the State. Legal aid becomes a legal service only when it becomes accessible to the subjects of its objects and when they get benefit by taking advantage of the impartiality and integrity of system.¹¹

1.7 LIMITATIONS

1. Though there are several works published at national level dealing with legal aid there is no research conducted in the State of Goa to support or supplement the findings.
2. Random sampling method used to collect the primary information may not reflect the selected dimensions completely.
3. Not all Taluka Legal Service authorities could be included in the sample.

¹¹ Justice Bhatt J.N., "The Official Newsletter of NALSA", II *Nyaya Deep* (July-Sep 1999) 1

4. This study is limited only to the field of legal aid to the poor. The Lok Adalats system, though it is a part of Legal Service Authority Act 1987 does not figure in the study.

1.8 SCHEME OF THE STUDY

The study is divided into nine chapters. The first Chapter contains the importance of topic, objectives of study and, research issues, hypothesis, and limitations of study.

After identifying the importance of the study, setting out the objectives of the study , formulation of research questions and hypothesis, the second chapter deals with evaluation of concept of legal aid and its relevance. It brings out the concept of access to justice and the various approaches to it as spelt by modern authors. It covers the area of access to justice to the poor as well as the new approaches to access to justice, and further deals with barriers to access to justice.

The Third chapter deals with legal aid provisions of thirty different countries of the world in order to provide a comparative perspective. A comparative study of those provisions have been also carried out with special reference to India in order to comprehend their law and our law better on the area of legal aid.

Fourth chapter deals legal aid under International Law. It includes International Conventions, League of Nations, Universal Declaration of Human Rights, European Convention, United Nations Conference, International

Covenant on Civil and Political Rights, Tehran Conference, Convention on International Access to Justice, International Court of Justice Trust Fund etc. These conventions and instruments have been discussed from the point of legal aid.

Fifth Chapter analyses evaluation, growth, and development of Legal Aid in India. It also deals with legal aid in India during Vedic period, Muslim period, Vikramaditya period, and the British period. With regard to the post- British period, the researcher divided it into the categories of post- independence and post Constitution period. Further, several reports such as National Conference on Legal Aid, Gujarat Committee Report, Expert Committee Report, and Swaran Singh Committee are discussed. It also analyzed the 42nd Constitutional Amendment which inserted Art.39A, and the Legal Services Authorities Act, 1987 as well as the latest amendment for Code of Criminal Procedure in 2005 with regard to bail for an indigent person in bailable offences.

Sixth Chapter lays emphasis on legal aid under various statutes in India. Statutory provisions under Order 33 and 44 of Code of Civil Procedure, Under Sec.304 of Criminal Procedure Code and the latest amendment in 2005 with regard to Sec.436 of Code of Criminal Procedure are discussed in this chapter. In addition to above provisions judicial response with regard to Legal Aid in Civil Procedure Code and Criminal Procedure Code is discussed. The Case law development from the Supreme Court and various High Courts are also analysed in this chapter.

Seventh Chapter deals with efficacy of Legal Services Authorities Act. It traces the legislative history, Pre-1980 Schemes. This chapter further examines Legal Service Authorities Act-1987 and amendment to the Act in the year 2002. Thereafter, the chapter investigates into various authorities established under this Act. Further, Legal Service Authorities and its regulations in different states in India are also discussed in this chapter.

Eighth Chapter deals with working of Legal Aid System in the State of Goa. This chapter describes all the field- task the study has undertaken to justify and verify the hypothetical statements as mentioned in chapter 1. Interview data, together with statistical data and data compiled from the questionnaire has been graphically represented through pie charts and further analyzed to draw inferences and conclusions.

Chapter nine contains conclusions of the thesis with recommendations and suggestions.

CHAPTER II

Evolution of the concept of Legal Aid and its Relevance

2. INTRODUCTION

When people talk about “access to justice”, they may mean many different things. But these discussions are aimed Justice has to reach each and every person without much constraints. Some group, who are socially and economically backward,¹ finds the door to justice closed, or at least too stiff to move on its hinges. The ways in which justice is denied are various- justice costs too much, or is, for whatever reason, too difficult, too alien which they cannot understand , or too slow for the group or type shut out.²

In fact from time immemorial it was known that some people due to cultural, economic or other conditions were denied justice. At other times some specialized in manipulating justice in their favour and thus oppressing their victims. Karl Marx realized how the law was manipulated by the elite class, when he viewed law as an instrument of oppression. Many religious texts like the Bible referred to litigants who devoured the property of widows and children³.

2.1 CONCEPT OF ACCESS TO JUSTICE

Defining the concept of justice is not so simple, though it is easy to understand being it becomes manifest in so many ways. Most generally, access to justice

¹Women,child, SC and St, Labour, etc.

² M.Cappelletti and B.Garth, (eds.) *Access to Justice: Emerging issues and perspective*, (Vol.III, Sijthoffand Noordhoff, Milan 1979) p.5

³ Isaiah 1.17 “ Seek justice, rescue the oppressed, defend the orphan, plead for widow”

means there is an institution or system to provide the legal assistance to those people who cannot afford to approach the court by paying the court fees, and appointing their own counsel, to protect their legal rights and to solve their legal problems.

The words "access to justice" is admittedly not easily defined, but they serve to focus on two basic purposes of the legal system - the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state⁴.

Access to justice has meant access to the courts. Because it was largely conceived that justice came via the courts⁵. Problems were defined mainly in legalistic terms, and resolved in the solutions to them being mainly those services provided by lawyers.

Access to justice has, thus, two dimensions: procedural access (having a fair hearing before a tribunal) and also substantive justice (to receive a fair and just remedy for a violation of one's rights).

In recent times, for example, the expression has been understood by Lord Woolf, in his influential report entitled *Access to Justice*, as referring to the principles that must be adopted 'by the civil justice system in order to achieve objectives within that system⁶'. The 1994 report of the Access to Justice

⁴M.Cappelletti and B.Garth, (eds.) *Access to Justice: A world survey*, Vol.I Sijthoff and Noordhoff, Milan 1978 p.6

⁵ There were Eastern societies that adopted alternative systems. For instance the Chinese viewed law once upon a time as meant for Barbarians and not to civilized people like themselves.

⁶ Lord Woolf, *Final Report: Access to Justice* (HMSO, 1996) 2. These are said to require, among other things, that the civil justice system should be just in the results it delivers, fair in the way it treats litigants, deal with cases at reasonable speed and at reasonable cost, and be understandable to those who use it. Cited by Justice Ronald Sackville, Federal Court of Australia in his article "Key note address, Access to Justice: Assumptions and Reality Checks at

Advisory Committee in Australia, also entitled *Access to Justice*, took a very much wider view of the concept. It saw 'access to justice' as embracing three broad objectives: equality of access to legal services and effective dispute resolution mechanisms; national equity (that is, access to legal services regardless of place of residence); and equality before the law (that is, the removal of barriers creating or exacerbating dependency and disempowerment).⁷ It is evident that there are different views with regard to manner of assisting the poor in accessing the justice, yet each view support the concept and principle of 'access to justice'.

2.1.1 Idea of Cappelletti and Garth

It is important to discuss the different views on access to justice on the basis of reason. For this purpose, it is as well to start in a distant and largely forgotten land. One of the main reason can be traced out form reformers of late 1960s and the 1970s , the principle of 'access to justice' (or analogous expressions such as 'meeting the legal needs of the poor') implied that steps had to be taken to give practical content to the law's guarantee of formal equality before the law. The idea, as Cappelletti and Garth explained in 1978, was to transform the 'aggrieved individual's formalright to litigate or defend a claim' into a right of effective access to the legal system.⁸

<http://www.lawfoundation.net.au/ljf/app/&id=49571BB84EBCB469CA2572730018E0CC> visited on 9-5-11.

⁷ Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (1994), 79.

⁸ M Cappelletti and B Garth(eds), *Access to Justice: A world survey*(Vol1) Sijthoff and Noordhoff, 1978. 610.

2.1.2 Access to Justice –Nature of States

In theory, any class or group can be denied access to justice. In dictatorships or terror states ordinary people do not have the right to speak out and claim justice against those in power. In some countries, almost nobody has full access to what at least the liberal states would define as justice, even the courts can be toadies of the state. If some group lacks access to the legal system, reform can therefore come about in many ways. Sometimes the public lacks the *information* it needs to reach the palace of justice. In present days most of the legal services authorities/legal aid boards in the world concentrating in legal literacy campaigns. Though ignorance of law is not an excuse it is mandatory and obligatory to each and every form of government to make aware of the public about legal provisions of their state with respect to rights and obligations of the public. The structure of legal process can be changed to make access easier. Procedures can be simplified, costs driven down⁹.

If justice were cheap enough, the poor or disadvantaged could access the justice or open the doors of justice by themselves. To make this there are many plans and schemes of procedural reform can be followed by the States. Some are general, some specific to certain courts or institutions.

Governments can make provisions by which they can provide access to justice to needy people (poor and backward) without any major changes in existing procedure. The poor can be given privileges –excused from costs and expenses, for example. State can also provide intermediaries –lawyers for the most part—

⁹M Cappelletti and B Garth (eds), *Access to Justice : Emerging issues and perspectives* (Vol. III) Sijthoff and Noordhoff, 1979. P. 6.

who will bring lawsuits for the poor, or defend their rights, and programs to bring legal services to the citizens. This is the system now most of the countries are following.¹⁰ Hence each and every state or government can plan according to their possibility and purpose.

2.2 BRIEF HISTORY OF ACCESS TO JUSTICE

The origins of institutions for providing access to justice to the poor reach back for centuries in several European countries in which craft guilds and other organizations provided assistance to members with legal problems.¹¹ The modern point of reference for the access to justice movement is the rise of the welfare state, out of which the access to justice movement arose as a major element.

There is no denying that realization sometimes dawned that there was oppression of the judicial system or that access to justice to certain sections was denied. This was realized in the earlier centuries though it is only in modern times that we can speak of such movement. For instance some kings of Portugal in the seventeenth century on application by the oppressed section realized that their judicial system could turn to be harsh on locals who employed an alternative system justice. For instance in the eighteenth century, the realization dawned that western judicial system enforced could be harsh to the local Hindus. So they appointed a special Judge for the Hindus in

¹⁰ For details 3rd chapter in this work explains that various legal aid provisions in various countries.

¹¹ *ibid*

certain matters for brief periods¹². Similarly the Christian missionaries expressed in favour of a judicial mechanism that favoured amicable settlement rather than complicated western judicial system that left the poor folk into long drawn formal suits that impoverished them. So they manage to have for poor Christian folk special system under the Father of Christians and also through Judge Conservator of Christians who would settle disputes of certain amounts and of small crimes amicable and summarily¹³. Similarly the second regiment of the of 1548 for the High Court of 1548 of the State of India referred to rich people and judicial officials, who imprison the poor people for debts and contracts and allowed the people to languish in jail without bothering about further proceedings. Restrictions were imposed on such proceedings, and the people from poor strata were not to be imprisoned on account of debts and contracts except after final sentence of the court¹⁴. So it is clear that ideas did exist earlier.

We can observe that only in modern times- specifically in the last century or so –can we speak of a movement to improve access to justice at all. One can easily find that justice is that justice is unequally divided in the community. There is a single, uniform, universal body of norms, that every citizen –every man, woman and child –regardless of rank, social status or income must be able to enjoy the protection and privileges of that body of norms.

Most societies have taken it for granted that society is and should be divided into classes, groups or orders that rights and privileges depend on status. Until

¹² See D'Souza Carmo Legal System in Goa, Vol 1, 1994, pg. 36-37.

¹³ See id. 35.

¹⁴ See id. pg. 100.

modern times, general law had to give way to local and special law, the maxim that such law “breaks” the law of the land “was recognized almost universally”¹⁵.

Indeed, legal system often developed quite different court systems for different classes in society. In Russia, status law persisted until remarkably late; there were special courts for peasants.¹⁶ In India courts were based on religion during British rule. Another case in point was the law merchant in England. The common law – the law of the royal central courts – was not the law that applied to commercial affairs. Merchants had their own norms, and their own courts – fair courts and maritime courts, for example.¹⁷

In 19th century, being industrial countries almost all countries started to frame and draft uniform laws to reduce the inequality among the people at least in proceedings of the courts and legal provisions. The jurists who worked on law reform, who wrote the codes, who drafted and redrafted them, talked about *access to justice*. As the law become more “uniform” it became both more and less accessible. But in reality, when an uniform law prepared it becomes more advantage to the people who can offered to go to courts and get their remedies, whereas it is inaccessible to the poor people.

The law framed for the people must be accessible to all. It must not be restricted to a particular sect of people. Though law *prima facie* now showing

¹⁵Max Weber on Law in Economy and Society 141(Cambrige, Harvard University Press, Max Rheinstein, ed., 1954.

¹⁶Peter Czap, Jr. Peasant-Class Courts and Peasant Customary Justice in Russia 1861-1912 , 1 Journal of Social History 149(1967) cited in M Cappelletti and B Garth(eds), Access to Justice : Emerging issues and perspectives(VolIII) Sijthoff andNoordhoff, 1979. P. 9.

¹⁷See Theodore F.T. Plucknett, A Concise History of the Common Law 660-70 (London, Butterworth, 5thed, 1956)

favour to any particular group but in practice when it is not accessible to poor people, then those laws are not fulfill the right to equality which is one of the most important right for protection against discrimination. Provisions of law can be utilized by people in equal manner and access, it cannot be accessible to only rich and influential people. The clearest cases, perhaps, are the small claims courts in the United States, and the county courts in England. If court fees and procedure for filing the case by submission of number of copies of documents makes unable to reach an poor person then we can assume what type of access it is.¹⁸ Though in 19th Century, the major industrial countries had developed “modern” legal systems, committed to the idea of a single, uniform, rational body of law, in practice this meant very formal institutions, staffed by trained professional judges, and these courts were *not accessible to the average citizen*, except through trained, professional (and expensive) lawyers.

There was a gap between citizens and their law, of a kind that could not have existed in hierarchical or traditional society. When the appellate courts are beyond the reach of an ordinary litigant, it is denial of justice.

2.2.1 Evolution of Access to Justice

Cappelletti and Garth provide the classic statement of the evolution of the access to justice movement.¹⁹ These authors describe the evolution of access to justice in terms of three "waves" of change. The "first wave" was the

¹⁸M Cappelletti and B Garth(eds), *Access to Justice : Emerging issues and perspectives*(VolIII) Sijthoff and Noordhoff, 1979. P. 15

¹⁹ Supra note.5

emergence of legal aid²⁰. Under this wave poor can get legal assistance at the cost of the State. Subsequent waves of change deals with public interest litigation. In other sense any public spirited person can approach the courts and seek justice to poor. This is an relaxation of basic principle for jurisdiction of locus standi. In the "third wave" of the access to justice movement clearly shows that alternative dispute resolution system by means of arbitration, mediation and conciliation²¹. Cappelletti and Garth refer to the third wave as the emergence of a fully developed access to justice approach. Thus Cappelati and Garth have crystalised the access to justice into three waves of change i.e. (a) the first wave of emergence of legal aid , (b) the second wave of test case and public interest litigation and (c) third wave of fully developed access to justice system. India appears to have crossed the first two waves and probably heading to fully developed access to justice system.

The first wave, borrowing from the Cappelletti and Garth model, is legal aid. Federal funding encouraged the development of legal aid programs in every province and territory beginning in 1973. Legal aid is mainly a case advocacy, representation at trial style of service.. This focuses the priority for legal aid service on representation at trial for persons accused of serious crimes. Though it is mentioned at trial, but even in investigation stage i.e. from remand stage, and interrogation stage legal assistance required.

Duty counsel is available in most courts in most jurisdictions to provide advice and assistance at first appearance court. Legal advice and assistance at arrest

²⁰ Which was accepted almost all countries. Indian Constitution inserted Sec.39A, Sec.304 of Cr.P.C, Oreder .33 of C.P.C, and passing of legal services authorities act are coming under this heading.

²¹ LokAdalats and mediation centers under Legal services Authorities Act are relevant for this wave.

and detention is available, usually through some form of telephone consultation. This is known in Canada as Brydges duty counsel, after the court decision that made this form of representation necessary to protect the evidence that might be gathered by the police. In India each and every court one advocate nominated by state at the initiation of Bar will manage all remand cases of indigent person.

There is an increasing recognition of the importance of duty counsel²² in the overall service delivery system of legal aid. The development of the expanded duty counsel approach in the Province of Manitoba²³ has encouraged a number of innovations in duty counsel service throughout the country.²⁴

Generally legal aid is applicable only representation at trial in a criminal case where conviction chance is certain. This is the first level of need. In addition level of said chance of conviction, there are several other instances also legal aid has to be provided. They are trial for people charged with a first offence and at risk of receiving a criminal record; representation at trial for a poor person is rejected because of his financial constraint to appoint advocate. It is unfortunate to say that in some instances accused pleads guilty due to poverty, being unable to hire an advocate for defence, accused does not have the services of duty counsel at first appearance court, accused does not have legal advice at arrest and detention are resemblance of failure of access to justice .

²² Duty counsel is a word used for legal aid advocate which was used by some countries legal aid boards. For more details see. Chapter 3.

²³ A. Currie, The Legal Aid Manitoba Expanded Duty Counsel Project: An Evaluation, Department of Justice, Ottawa, 1995. www.docstoc.com/docs/67436375/Legal-Aid-Review visited on 8-6-11.

²⁴ A. Currie, The Legal Aid Delivery Models in Canada: Past Experience and Future Directions, Department of Justice, Ottawa, 1999.
www.law.utoronto.ca/documents/Sossin/povertylawcourseoutline.doc

These levels of needs of criminal legal aid clients reflect the manner in which the criminal justice for legal aid services. This reflects access to criminal justice at the first wave stage; access to justice as access to the system, and legal needs as legal representation in court. This phase of the criminal legal aid is the traditional form of access to criminal justice. However, we still do not have a very complete, empirically-based view of the nature and extent of the needs for criminal legal aid, from representation in court for very serious legal matters, to good advice and assistance when a person is arrested and detained and the process of evidence gathering begins.

The second wave of the access to justice movement is the representation of diffuse interests. There is a right to counsel only where it is necessary for a fair trial. In the particular case the court ruled that the length and complexity of the case required a lawyer. Even though the accused did not meet financial eligibility requirements of the legal aid plan, the judge ordered a new trial and directed that legal aid be provided at the pre-trial hearing. There are several instances where the superior courts in India set aside the sentences and vitiate the trials on the ground of accused was not represented by any counsel. Hence ordered fresh trials.²⁵

2.3 BRINGING JUSTICE TO POOR

With regard to access to justice several ideas, which has been developed, are summarized and named as bottom-up approaches. These ideas contain concepts

²⁵ Suk Das v Union Territory of Arunachal Pradesh(1986)2 SCC 401.

such as “access to justice”, “legal empowerment”, and recently some scholars even coined the term “micro justice”.²⁶

2.3.1 What are Bottom-up Approaches?

The bottom-up approaches have become known mainly under two names: “Access to Justice” and “Legal Empowerment” though there is a overlap in approach, the difference between the two is mainly that the former take access to justice itself as the main goal, and the latter see empowerment of the weak and poor as the main goal, seeing lack of power as the basic problem underlying poverty. There is no clear boundary between the two however, as legal empowerment may involve access to justice and access to justice may involve legal empowerment.²⁷

UNDP writes that access to justice is a basic human right as well as an indispensable means to combat poverty, prevent and resolve conflicts. A second category of bottom-up approaches uses the name “legal empowerment” or “legal empowerment of the poor”. Under this concept providing legal service to poor along with development activities. Anderson similarly holds that especially the poor have limited access to legal institutions and that a state of “lawlessness” adversely influences the poor²⁸.

²⁶MauritsBarendrecht and Patricia Van Nispen tot Sevenaer, "Microjustice," (2007), <http://www.microjustice.org/>.

²⁷UNDP, *Programming for Justice: Access for All* (Bangkok: United Nations Development Programme, 2005). 137-140, Asian Development Bank, *Law and Policy Reform at the Asian Development Bank, Legal Empowerment: Advancing Good Governance and Poverty Reduction* (Manila: Asian Development Bank,, 2000). 9-12

²⁸ Anderson, "Access to justice and legal process: making legal institutions responsive to poor people in LDCs ". 1-3

Other obstacles the poor have when encountering the law are problems related to the poor and weak justice seeker him/herself. Bottom-up approaches find that the poor's difficulties in using the legal system are caused by the poor's particular characteristics. Lack of financial capacity and lack of experience in dealing with formal justice institutions obstructs success in seeking legal redress. A related obstacle is the poor's limited legal awareness and knowledge of the law and their rights.²⁹

Bottom-up approaches call for sets of reforms and interventions that are seen to improve either access problems or empowerment of the poor. Most approaches incorporate efforts directed at enhancing legal awareness, especially through education and training of rights awareness, improving legal aid to the poor including legal clinics and public interests lawyers and paralegals, developing alternative dispute resolution mechanisms and supporting local existing dispute resolution institutions, and strengthening civil society in general and helping communities get stronger organization.³⁰ The present legislations on access justice like Legal Services Authorities Act in India following the principle and providing to the poor legal aid by means of legal assistance, and authorities are following methods of legal clinics, paralegals etc.

²⁹ UNDP, "Access to Justice, Practice Note.", Barendrecht and Van Nispen tot Sevenaer, "Microjustice." 6, Abregú, "Barricades or Obstacles, The Challenges of Access to Justice."

³⁰ UNDP, "Access to Justice, Practice Note.", Golub, "The Legal Empowerment Alternative.", Asian Development Bank, *Law and Policy Reform at the Asian Development Bank, Legal Empowerment: Advancing Good Governance and Poverty Reduction.*

2.4 ACCESS TO JUSTICE AND RULE OF LAW

The *UN Commission on the Legal Empowerment of the Poor*, as “the first global initiative to focus specifically on the link between exclusion, poverty and law. It believes that where state provides protection to all citizens especially for poor by providing legal aid, poverty could be reduced especially. Though legal aid/assistance plays importance in reducing the poverty but there are several problems in conducting or performing various programmes. Women, labour, child, arrested persons etc has to be taken into consideration while organizing programmes. Thus the Commission sets out to explore how nations can reduce poverty through reforms that expand access to legal protection and opportunities for all”.³¹

The term access to justice has been most commonly used to reform the lacunae in state legal systems “to ensure that every person is able to invoke the legal processes for legal redress irrespective of social or economic capacity” and “that every person should receive a just and fair treatment within the legal system”³². Capelliti and Garth [1978] for instance, point out that the right to access to justice as a basic human right emerges with the rise of the welfare state when it was held that rights could not be actualized without equal and just access to the legal system³³.

³¹ Dr. Pratiksha Baxi, Access to Justice and Rule of (good) Law: the Cunning of Judicial Reform in India. <http://www.scribd.com/doc/50175274/12-4-Access-to-Justice-visited-on-9-5-11>

³² S. Muralidhar, Law, Poverty and Legal Aid, Access to Criminal Justice, (2004) Butterworths, Lexis Nexis at p.1

³³ M. Cappelletti and B. Garth, ‘Access to Justice – The world wide movement to make rights effective: A general report, Access to Justice – A world survey (eds M Cappelletti and B Garth) Vol. I Sijthoff and Noordhoff 1978 pp5,8-9.

The role of the different institutions has to discuss in the point of *access* to justice reform. First, the lower courts has to play important role in access to justice reforms where it is necessary. Legal awareness camps have to arrange and judges has to explain the parties about legal assistance and reforms. Secondly, adjudication through regular courts has met demands for innovation through the formation of state instituted *lokadalats* [literally, peoples courts]. Through lokadalats pre-litigation settlements and win and win process can be achieved. Thirdly the constitution of the very category of public interest has been challenged by different classes of citizens such as displaced people, who do not always perceive state law as a route to just legal orders rather they often perceive state law as a mechanisms of divesting them of their property rights and right to life and livelihood. Institution of legal aid to those who cannot bear the costs of litigation has been the focus of “access” to justice frameworks. Fourth, the substantive aspects of legislation that dispossess the poor have been at the centre of legal reform. In Indian concept several legislations enacted to fulfill this goal. Fifth, the lack of implementation of state law in order to maintain public tranquility or order has been identified as a barrier to access to justice. This is the problem all over the world. Where implementation is proper, there we can avoid several issues including poverty. Sixth, the crafting of judicial activism through public interest litigation or social action litigation has been seen as an important chapter in the access to justice narrative³⁴. In India several public interest litigations admitted by judiciary with respect to payment dwellers, tribal people etc.

³⁴ Supra note .21.

The Supreme Court of India played a vital role in the concept of activism for protecting the poor and needy since 1977. Art.39(A) in Directive Principles of State Policy was inserted by which the State shall have responsibility in promoting justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities³⁵.

2.5 NEW APPROACHES TO ACCESS TO JUSTICE

Since the 1960s, reformers have called for changes in national legal systems to enhance "access to justice" for disadvantaged groups and citizens at large. The concept arose in an era of the welfare state. Access to justice remains identified with legal aid, representative actions, alternative dispute resolution, and other strategies of court reform.

2.5.1 Access to Justice Reform—

Advocates for the poor in the 1960s and 1970s sought to institute legal aid as an entitlement of the welfare state. Many countries, industrialized and developing alike, established a right to legal representation or legal assistance through constitutional amendment or statutory law. The U.S. Supreme Court held in 1963 that criminal defendants had a right to counsel in serious cases, and in 1974 the Congress established the Legal Services Corporation to provide legal assistance to indigent civil litigants. India enacted a constitutional

³⁵ R. Sudarshan, Avatars of Rule of Law and Access to Justice some Asian aspects. www.snap-undp.org/lepknowledgebank/Public%20Document%20Library/Avatars%20of%20Rule%20. Visited on 10-5-11.

amendment in 1976³⁶ requiring the government to provide free legal aid, and established an extensive network of legal aid schemes to reach Indian villages. Indian Supreme Court in several cases³⁷ held if an accused convicted without having a defence counsel, the trial has to be vitiated and conviction has to be set aside. While many countries today are cutting back on their swamped legal aid schemes, others are embarking on implementing assistance: in China, for instance, local and state legal aid initiatives have mushroomed since the early 1990s.³⁸

2.5.2 New Approaches--

In recent years, critics have argued that access-to-justice reform has largely conflated access to justice with access to the courts. Some seek to turn the debate from procedural access to substantive justice, shifting emphasis from guaranteeing the availability of lawyers or court procedures to producing social outcomes that are more fair and equitable. In addition, remedies outside the legal system can sometimes provide the same ends, but with greater efficiency. The economic analysis of law has inspired new approaches to legal aid, civil procedure, and other aspects of access to justice. For example, in the United Kingdom, which has a generous system of legal aid, drastic reforms are being introduced to cope with the spiraling costs and declining availability of legal

³⁶ Art.39A was inserted.

³⁷ Supra note.25

³⁸ <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20756347~isCURL:Y~menuPK:1990386~pagePK:210058~piPK:210062~theSitePK:1974062,00.html> visited on 8-5-11

aid. Researchers argued that the existing system, which subsidized lawyers who represented litigants below a certain income level, suffered from classic insurance problems (moral hazard and asymmetric information) which led to the oversupply of legal services (Bevan et. al. 1996). Reforms now require competition between legal providers for government legal aid contracts, provide new ways to finance litigation (such as contingency fees) to make the courts more affordable, and reorient legal aid from subsidizing private litigation to providing public advice. Access to Justice need not be restricted to legal assistance by advocate, it can do several ways such as mediation, lokadalats, and advocates can help the poor in drafting of conveyance and applications³⁹ to local authorities etc.

2.5.3 An Access to Justice Model of Criminal Legal Aid⁴⁰

a) Individual Case Advocacy

The traditional core of criminal legal aid is case advocacy, the representation of accused persons in court. This can range from duty counsel service to representation at trial. This service needs drastic changes. Some of the critics opined that conviction rate is more in legal aid cases being, legal aid advocates are not concentrating sincerely on these cases due to meager payments in the name of fee

³⁹ Senior citizens forms, National Rural employment forms, ration cards etc.

⁴⁰ Albert Currie, Riding the Third Wave :Rethinking Criminal Legal Aid within an Access to Justice Framework//www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_5/p1.htm

(honorarium).⁴¹ Even in selecting the panel advocates for legal aid cases, cannot entrust to (raw) junior advocates.

b) Systemic Advocacy

The second wave of access to justice with respect to access to criminal justice was the Charter. The implementation of the Canadian Charter of Rights and Freedoms had several impacts on access to criminal justice and criminal legal aid. Several Charter cases defined the nature and limits of the right to publicly funded legal aid, however, the exact impact in terms of increased volume of cases is not known.

c) Holistic Advocacy

While entrusting the cases to advocates state or judiciary as the case may be, has to see the nature of case and advocates field of experience. When a civil case is entrusting to an advocate, he must have experience in civil cases, similarly in criminal cases. The advocates have to approach the cases. The general term used in this paper, holistic advocacy, encompasses a range of alternatives, arranging from diversion for relatively minor offences or first time offenders to restorative and therapeutic approaches (such as drug courts) for habitual offenders and more serious offences.

d) Justice System Advocacy

Even if legal aid plans were to embrace holistic approaches to justice, legal aid is unlikely to provide these services directly. As a corporate

⁴¹ Researcher discussed difference between honorarium and fee in his empirical study—in opinion survey of judicial officers and legal experts.

activity, the commitment of legal aid to holistic justice may extend to working with other parts of the justice system and with community organizations to encourage the development of programming that would make the commitment to holistic justice a practical reality.

2.6 BARRIERS TO ACCESS

There are several factors responsible for inaccessibility of justice. Barriers within the Ministry of Justice like, inadequate capacity of staff, Insufficient Infrastructure, lack of legal awareness like lack of communications policies and procedures, reluctance to provide information, lack of outreach of legal awareness campaigns, lack of legal aid and counsel, economic barriers, insufficient outreach to disadvantages groups insufficient support for alternative mechanisms, fear/lack of trust of formal institutions

Among the most significant, however, are the economic, geographic, psychological barriers, lack of legal aid and counsel and insufficient support of alternative mechanisms, lack of legal awareness campaigns.

a) Economic Barriers⁴²

Most important factor in every where witnessed was financial constraint.

Litigants incur several economic costs if they are to participate in a judicial proceeding, either as a plaintiff or defendant. Ordinarily they must employ an attorney,⁴³ pay various fees, and meet certain other

⁴² M.Cappelletti and B.Garth, 'Access to Justice –The world wide movement to make rights effective: A general report, Access to Justice –A world survey(eds M Cappelletti and B Garth) Vol.II Sijthoff and Noordhoff 1978 pp5,8-9.

⁴³Lawyers fees place highest on the list of litigation expenses.

expenses⁴⁴ directly connected with the dispute resolution event itself. Beyond that there are some obvious opportunity costs, such as income lost while helping to prepare the case or attending proceedings which can be important especially in the context of a dispute involving rather modest stakes.

These economic considerations can make it impossible for a disputant to prosecute or defend a case in the courts in at least two situations. *First*, low-income persons are effectively barred from participation in any litigation no matter how much is at issue. They simply lack the money to hire expensive legal counsel and pay the other costs discussed above, assuming free counsel is unavailable on a contingent fee or government funded basis.⁴⁵

Second, litigation by persons of any income level will be effectively foreclosed when the stakes are rather modest. In many cases, a disputant would incur more expense in participating in the lawsuit than he stands to gain from winning⁴⁶. Most of the civil cases court fee depends upon cause of action i.e. value of claim. In immovable property matters poor people cannot afford to pay the court fee to claim the property.

⁴⁴ Costs of transcribing the record, witnesses fee etc.

⁴⁵ In recent years, government subsidized legal assistance has begun to provide relief for some low-income litigants, at least with respect to legal fees and the other direct costs of litigation. Still the majority remain without the means to prosecute or defend civil claims in the courts.

⁴⁶ In a recent study it was found that many middle-class debtors did not defend against relatively modest claims, even when they felt they had a defense, because they decided it would cost more to employ a lawyer and win the lawsuit than merely to capitulate and pay the alleged debt. A study of debtors in default 222 New York, The Free Press 1974 cited by M.Cappelletti and B.Garth, in their second volume Access to Justice – a world survey at p.9)

b) Geographic Barriers

A centralized system of courts probably saves money for the government. But it insures that those courts will be convenient at best for litigants living away from the city center. At the extreme, it can become physically or economically impossible for disputants to use the courts for most disputes. Thus one of the primary motivations for providing some alternative forums is the opportunity to disperse dispute-resolution resources among local communities and neighborhoods. Most of the places if a party requires to appeal the case he has to travel at least 10 to 15 hours, that to in every hearing he has to be there is practically impossible to an ordinary citizen.

c) Psychological Barriers—

Psychological inaccessibility is a more subtle phenomenon. It is compounded of several factors: the anxiety-provoking formality of the typical courtroom setting, the language barrier for some litigants, the mysterious legal machinations for nearly all and like considerations. Many disputants overcome these feelings and file their claims with the court, at least when their grievances are acute (and especially when they have been able to hire the comforting hand of a lawyer familiar with the process).. Especially for the poor, the uneducated and those unable to speak the language of the majority, court room may appear to be something to be avoided at all costs, even when entering that courtroom is the only way to right a grievous wrong or to protect oneself against a

spurious lawsuit. Especially in case of offences against women, most of the people reluctant to go to courts and give answers to the questions which were asked in the cross examinations.

d) Lack of Legal Aid and Counsel

Even after several conventions and state legislations are existing, several courts are without legal aid advocates. Being in most of the countries to be a legal aid panel member is mere voluntary, very few advocates that to inexperienced advocates are accepting. Even senior advocate entrusted with case, he will not properly appear the court due less economic attraction.

e) Insufficient support of alternative mechanisms

Though on record several alternative mechanisms are existing, in practical they all are not creating confidence on the litigant to get justice. When lokadalat, mediation, arbitration, plea bargaining were introduced in most of the countries yet, no proper implementation and lack of trust among the public are the barriers for access to justice.

f) Lack of awareness campaign—

One of the most important factor for access to justice is creation of legal awareness. Though in several countries legal aid camps are conducting, as long as improper plan camps will fail to fulfill the object. For example if cyber law explains to uneducated people or constitutional law to villagers not useful concept. Unless proper planed awareness

programmes conducted, one cannot accept that in their state justice is easily accessible.

2.7 ACCESS TO JUSTICE IN INDIAN PERSPECTIVE

"Illiteracy, destitution, economic and social bondages, cultural inhibitions and bureaucratic and political corruption seriously impaired the accessibility and assertiveness of the poorest of the poor resulting often in total denial of justice to them"⁴⁷.

In India several measures are taking to try to fulfill the right to equality as a fundamental right. Access to Justice is one of the important methods to fulfill the concept of equality. Public interest litigation, Legal aid activity in law schools, Legal Aid Clinics in Law Colleges and Universities, legal literacy camps, LokAdalats to settle the disputes pre litigation stage etc. are the among the other mechanisms to fulfillment of the concept of access to justice.

This Chapter dealt with Concept of Access to Justice, bringing justice to poor, new approach and Indian perspective. In fact, being Access to justice or, more accurately, access to the judicial system is one of the most critical issues facing the legal community worldwide. Today due to its importance it has been decided to devote the next chapter to the study of Legal Aid from a comparative perspective.

⁴⁷ Dr. N. R. MadhavaMenon, "Legal Aid and Justice to the Poor" in UpendraBaxi, ed., *Law and Poverty* (N. M. Tripathi, 1988)

CHAPTER III

Legal Aid from a comparative perspective

3. INTRODUCTION

Legal aid is a universal subject. Irrespective of legal regime in any country provisions were made to provide legal aid and the process continues and further evolves even today. However the degree of success in providing legal aid to the needy may be different in different countries. Therefore, looking at the concept of legal aid in various countries not only helps in understanding its concept but also enables one to identify various practices which could be adopted with suitable modifications in India. Further more such a study of legal provisions in different countries carried from a comparative perspective provides insights not only in the system of others but also in one's own system. Though there may be some diversity in various legal systems prevailing in the world, yet the general trend in legal aid has been more or less similar.

3.1 ENGLAND

“To no man will we deny, to no man will we sell, or delay, justice or right.”

—Magna Carta.

It is interesting to trace the journey of legal aid from the Magna Carta to its growth in civil and criminal law, both procedural and substantive laws in England. Under Henry III (1216-72) poor men were not required to pay for their writs.¹ Statute II of Henry VII, C-12 (1494) was the first statute dealing

¹ Pollock and Maitland, *History of English Law*, (Cambridge University Press, 1968)195

with “Forma Pauper’s” procedure. There was a provision of assigning a counsel for the poor. The said statute provided ample relief to the poor.²

Subsequently another statute by name 23 Henry VIII C-15 was enacted in the year 1531 It provided that if a person, was unsuccessful he was not liable for his opponent’s costs but for such other punishments, as thought reasonable. The Statute of Henry VII was repealed by the Law Revision Act, 1883 and rules of courts were framed for regulating the informa-pauperis procedure in the High Court. But the Rules of 1883 failed to ameliorate the condition of indigent suitors. As a result a new set of rules by name of ‘the Poor Person’s Procedure’ was brought into force.³

3.1.1 Poor Person’s Procedure, 1914

These rules have five outstanding features i.e.

- i. Royal Court of Justice became as a clearing house of poor man’s causes;
- ii. It had provision for assignment of lawyers for poor persons;
- iii. At the time of submission of application, investigation was made with regard to the applicants’ financial status and the practical merits of the claims;
- iv. After entertaining and approval of poor man’s application, administrative officers assigned solicitor or counsel willing to conduct the poor man’s case ; and

² Egerton, “Legal Aid, Historical Aspect”, *L.Q.R.* (1945) 87

³ *Supra* note. 9 at 62

- v. The solicitor had on his part to report annually on every case, which he accepted.

The poor had to deposit out of pocket expenditure together with the application. The poor persons could be considered for most liberal treatment. They had to only prove that they deserve it.⁴

The following were the defects in Poor Person's Procedure:

- i. The poverty line for poor person's procedure was very low.
- ii. The procedure applied only to High Courts matters and chiefly was used for divorce procedures.
- iii. It imposed too much responsibility upon solicitors and counsels who rendered their service to the poor.
- iv. The burden was on legal profession as well as on those individuals who endeavoured to move to help the poor people.⁵

3.1.2 Report of Rushcliffe Committee

In May 1944 the Lord Chancellor appointed a departmental committee chaired by Lord Rushcliffe to investigate the facilities which then existed for giving advice, and to make recommendations. The report was published in May 1945. Rushcliffe found that the cost of litigation could often go beyond the means of those involved in it. As a result many people of moderate means, who in the ordinary way would not contemplate seeking aid from the state, suddenly could find themselves in urgent need of help. The Committee's view was that people

⁴ Dr. Chaturvedi A. N, *Rights of Accused Under Indian Constitution*, (Deep & Deep Publications, New Delhi, 1984) 15

⁵ *Id.* at 16

in such a position were to be provided with help without being treated as poor persons.⁶

The report summarized the general principles underlying the concept of legal aid. The Committee made the following recommendations:⁷

- i. Legal aid should be available in all courts and in such manner as would enable persons in need to have access to the professional help they required.
- ii. Provision of legal aid should not be limited to those who were normally classified as poor but should include a wider income group.
- iii. Those who could not afford to pay anything for legal aid should receive legal aid at free of cost;
- iv. It recommended a scale of contributions for those who could pay something towards the costs.
- v. The cost of the legal aid scheme was to be borne by the state, but the scheme was to be administered either as a Department of State or by local authorities.
- vi. It recommended that civil legal aid should be administered by the Law Society and criminal legal aid by the Courts.
- vii. Barristers and solicitors were to receive adequate remuneration for their services.
- viii. The term poor person should be replaced with the term 'assisted person'.

⁶ Garg Slapper & David Kelly, *Source Book on English Legal System* (Cavendish Publishing Ltd., 1996) 474

⁷ *Id.* at 475

Recommendations in this report were accepted by the government and formed the basis of the Legal Aid and Advice Act 1949. All subsequent legislations were developed from this frame work.

3.1.3 Legal Aid and Advice Act, 1949

The Legal Aid and Advice Act 1949 was the outcome of the recommendations of Rushcliffe Committee in 1946 and was brought into operation on 2nd October 1950.

The English Legal Aid Scheme provides legal advice and assistance in following areas:

- i. Civil Legal Aid
- ii. Criminal Legal Aid

Legal Aid in Civil Cases

Civil legal aid is available for court proceedings at or above county court level. It is not available for tribunal proceedings, although advice regarding these proceedings may be given under the Green Form Scheme.⁸

Any individual may apply for civil legal aid irrespective of nationality or residence. The applicant must, however satisfy a test regarding the merits of the case. The applicant must be able to show reasonable grounds for bringing, defending, or being a party to a case before the civil courts in England and Wales. The Legal Aid Board Area Office decides whether the applicant satisfies the above conditions.

⁸ *Id.* at 476

i. Eligibility

There is also a financial eligibility test. The assessment officers of the Benefits Agency carry out the assessment whether an applicant qualifies financially for legal aid. The assessment officer will also determine whether a contribution must be paid. The applicants must show that their income and capital fall within the prescribed limits in order to be eligible for civil legal aid.

ii. Statutory charge

If the assisted person received an award or recovers or retains money or property in the proceedings covered by the certificate, the legal aid authorities are required, with certain exceptions, to recover their costs from that money or property. This is known as statutory charge. This means legally aided client like private clients are liable to meet their legal costs from any proceeds that clients get from the case.

Legal Aid in Criminal Cases

Legal aid in Criminal Charges began with the passing to the Poor Prisoners Defence Act, 1903. The current law on the grant of legal aid in criminal proceedings is provided by the Criminal Justice Act 1967. Analogous to the civil scheme, legal aid upon contributory basis was allowed in criminal cases. Under Criminal Justice Act 1972 full guarantee of legal aid in criminal cases has been given to the accused. Under section 37 of the said Act a Magistrate is bound to offer legal aid to the accused before awarding the punishment.⁹

⁹ Michal Zander, *Cases and Materials on English Legal System*, (Weiden Field & Nicholson, London 1973) 48

Widgery Criteria

In 1964 the departmental committee headed by Widgery J examined the system of providing legal aid in criminal proceedings and identified five criteria, known as the Widgery criteria for granting legal aid in criminal proceedings in the interests of justice. They are—

- i. That the offence is such that upon conviction, the courts are likely to impose a sentence which would deprive the accused of his liberty, or lead to a loss of livelihood or serious damage to his reputation;
- ii. That the case involves substantial question of law.
- iii. That the accused is unable to understand the language of the proceedings.
- iv. That the case involves tracing and examination of experts or cross-examination of prosecution witnesses.
- v. It would be in the interest of some other person that the accused is represented.¹⁰

3.1.4 Green Form Scheme¹¹

In 1973, the Green Form Scheme was introduced which enabled solicitors to offer free legal advice on all cases, including criminal matters after conducting a quick means to test themselves.

The year 1979 saw the introduction of the concept of Assistance by way of representation (ABWOR) which provided for in the context of criminal legal

¹⁰ *Supra* note.. 7 at 307

¹¹ *Id.* at 309

aid, representation in prison disciplinary hearings, parole hearings and bail petitions. Criminal legal aid comprises:

- a. Legal advice and assistance (Green Form Scheme) was subject to the applicant satisfying the means test.
- b. Duty Solicitor schemes covering police stations as well as magistrates courts (for the first appearance).
- c. Providing representation in court and covering the cost of a barrister particularly if the case was heard in the Crown Court.

The decision to grant such aid depended on two tests:

Interest of justice: The court would decide whether it was in the interests of justice to grant legal aid applying the Widgery criteria.

Financial means: The court would look into the applicant's financial position and also at the likely cost of the case. Applicants with the lowest means received free legal aid, whatever the costs of the case may be.

An efficacy scrutiny of the problems with the legal aid system resulted in the government in March 1987 tabling a white paper titled 'Legal Aid in England and Wales: A New Framework'. This in turn led to the Legal Aid Act 1988 (LAA) under which civil legal aid was to be administered by the Legal Aid Board (LAB).¹²

In June 1996 the Lord Chancellor tabled a White Paper on Legal Aid in Parliament entitled *Striking the Balance*. The proposals for changes include:

¹² O. Chinnappa Reddy, J, "Socialism, Constitutional & Legal Aid Movement in India", *AIR* 1986 Jour. 310

- a) Replacing the open-ended approach to resources with pre-determined budgets that could be allocated to meet local demand within national priorities.
- b) Introducing a system of block contracting of cases particularly the green form and duty solicitor schemes. This would replace the present franchising scheme where legal aid is provided by accredited large firms.
- c) These firms would accept a lump sum on block contract and undertake to process a fixed number of cases of an equitable distribution as regards the field of work.
- d) Firms would be discouraged from taking up only those cases that suited them economically.
- e) Entrusting the responsibility for administering criminal legal aid to the LAB.

The large legal aid firms voiced concern that the low means test threshold would exclude a number of defendants and that the emphasis on reducing costs would adversely affect quality of service provided. Then there was a huge controversy over lawyers charging excessive fees on the legal aid account. The controversy over payment of substantial sums of money to Queens Counsel (QC) came to a head in early June 1998 when the clerk to the Parliament, who usually signed the cheques for barristers appearing in appeals before the House of Lords, refused to pass the bills submitted by four QCs for legal aid cases in which they had appeared. On two consecutive days June 17 and 18, 1998 five

judges of the House of Lords, heard the matter concerning the payment of legal aid fees.

As a result in 1999 the Parliament enacted the Access to Justice Act 1999 (AJA) under which a Legal Services Commission (LSC) was instituted and it replaced the LAB. Under Sec.12 AJA the LSC was to establish, maintain and develop a Criminal Defence Service (CDS) for the purposes of securing that individuals involved in criminal investigations or criminal proceedings have access to such advice assistance and representation as the interest of justice require.¹³

3.1.5 Constitution of United Kingdom

Art. 12(2) of Bill of Rights states that Legal Aid Schemes help people with limited resources to meet the cost of work done by a lawyer. Solicitors give legal advice and assistance to suspects at police stations.

Further, Art.15 (2) provides that an arrested person has the right to consult a solicitor. Solicitors are available on a two hour basis to offer legal advice for people being questioned at police stations.¹⁴

Thus, in England concept of legal aid could be found both in its constitution as well as its legal system.

¹³ *Id.* at 313

¹⁴ M.V. Pyle, *Constitutions of the World* (Universal Book Traders, New Delhi, 2000) 1652

3.2 UNITED STATES OF AMERICA

“Discourage litigation, persuade, your neighbours to compromise whenever you can. Point out to them, the nominal winner is often a real loser, in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good person.”

– President Abraham Lincoln¹⁵

3.2.1 The Legal Aid Movement

The history of legal aid movement in U.S.A is not as old as in England. However, the American Laws regarding legal aid have developed more or less symmetrically out of the early seventeenth century English practice. The first organized efforts were made to provide legal aid to German immigrants in 1876.

The German Society was established to render legal aid and assistance, gratuitously to those who due to poverty unable to procure it. In 1890, Arthur Bryson led the conversion of that service into the Legal Aid Society opening its doors to all indigents.¹⁶ It is to be noted that a problem among German immigrants unlike England led up to legal aid assistance in USA.

In 1872 the main Federal Statute covering poor man’s suit was enacted. However, this statute was not applicable in appeals. This defect was removed

¹⁵ Justice. Narayana P.S, *Law Relating to Lok Adalats* (Asia Law House, Hyderabad, 3rd Ed. 2002) 3

¹⁶ Nathen Caytem, *Report of the Commission Legal Aid of the Bar Association of District of Colombia* (Washington D.C, 1958) 10

by amending the statute in 1910. In 1916 the congress passed an Act for the benefit of poor seamen.¹⁷

In 1897 Louis Brandeis a prominent lawyer in Boston started the fight as a public spirited person. Brandeis said that lawyers have a social obligation, as economic intellectual and managerial gentry with exclusive license to engage in their profession to act independent of their clients. They are also obliged to act as more than the subsidiaries of great corporations. This view of Brandies later became a major theme in Public Interest Law. It is to be noted that interestingly the legal aid came to America by the lawyers through public interest litigation. This concept is catching up fast in the present commonwealth countries.

Legal Aid was a diffused movement till 1919, when Reginald Heber Smith an advocate with the Boston Legal Aid Society published a work “Justice and the Poor” which gave way to some outstanding new idea. The important idea was that there was a collective social responsibility on the Bar to provide opportunities for the unrepresented masses to secure access to the justice system and it was indeed a curious development in Public Interest Law. Then came an organized form of Legal Aid in which there was an ‘independent private office – separate from any commercial law firm – with salaried lawyers working full- time on the problems of clients.’¹⁸ This is an interesting development which came through the publication of the book which threw new ideas on social responsibilities. Today social responsibility with respect to

¹⁷ .*Supra* note. 5 at 22

¹⁸ Mamata Rao, *Public Interest Litigation, Legal Aid & Lok Adalat* (Eastern Book Co, Lucknow, 2004)

legal aid is having multiple dimensions due to several new authors on social justice.

At the heart of Smith's message was the notion that legal representation of the poor was not a matter of charity and noblesse oblige, but a fundamental right. To Smith, legal aid work encompassed a variety of services because this is how he saw the indigent person; this message has been picked up by the Indian judiciary with several decisions emphasising on legal aid as fundamental right. By the turn of the Century, the set up of legal aid organization came to be made in some other cities like Chicago, and Boston. It is really, interesting to find that there was big jump in its growth between 1900-1920, in projection, proliferation and pioneering of legal aid in United States.

The University of Downward constituted a clinical legal aid programme in 1904, which was a first of its kind affiliated with Law School and which as such became the co-ordinating and unifying factor for the Downward Legal Aid Society.¹⁹ Presently legal aid figures as a part of curriculum in several countries including India.

In 1916 the American Civil Liberties Union (ACLU) began functioning with its incertitude over Government abuses. The ACLU was the first Public Interest Legal Organisation which took up many constitutional rights cases in the period up to the mid –sixties. This can be explained as civil liberties was an important movement in America specially due to their experience with the

¹⁹ Dr. Justice Jitendra Bhat, "Legal Aid in United States", Vol 3 *Nyaya Deep* (July 2005) 50

black population and earlier the slaves. Today civil liberties movements are growing across the world and are the basis of evolution of the legal aid.

In 1920's the American Bar Association (ABA) created a Special Committee on Legal Aid, chaired by Charles Evans Hughes. In 1950 there was a revitalization of legal aid and the movement was reorganized into the National Legal Aid and Defender Association (NLADA). In 1956 the NLDA became an affiliate of ABA and was given official representation. Today in India the role of Bar association in legal is growing in leaps and bounds. For instance the Bar association playing an important role in nominating or selecting the legal aid panel advocates.

The second important study was in 1963 conducted by a Committee chaired by Professor Francis Allen (Allen Committee) which undertook a comprehensive review of federal defender services.

The salient points emerging from the Allen Committee's Report were

- a. The legitimacy of the adversary system of truth seeking and justice would be imperilled by large number of accused persons unable to employ counsel.
- b. The right to counsel was to be made available to a defendant at every stage of the criminal justice process and this would include investigatory services, the assistance of experts, transcripts of the proceedings and the like.
- c. There was a need to evolve the practice of releasing defendants on their own recognizance, develop non-financial inducements to ensure

presence of the defendant at the trial since the right of effective adequate representation was linked to pre-trial release.

- d. The denial of legal aid at the appellate stage imposed serious hidden social costs on impoverished offenders.

The right of individuals facing criminal trial to receive legal assistance at state expense got crystallized with the enactment in 1964 of the Criminal Justice Act (CJA). The CJA provided that federal courts could compensate appointed private attorneys to represent indigent defendants. By an amendment to the CJA in 1970 courts could establish federal defender organizations to provide representation under the Act. From 1971 onwards the Congress authorized two types of full-time defender offices namely, the Federal Public Defender Organization (FPDO) and the Community Defender Organization (CDO). A public defender is a criminal defense lawyer appointed to represent people charged with a crime but who cannot afford to hire an attorney. These offices function as an agency of the federal, state or local government and as such, these attorneys are compensated as salaried government employees. In jurisdictions where indigent defense is handled on the basis of contracts or ad-hoc appointments, there has been increasing concern about the low pay and minimal resources given to public defenders.²⁰ This approach provides a substantial majority of the indigent criminal defense representation in the United States²¹.

²⁰ The same problem in Indian Legal Aid panel advocates opined in their reports.

²¹ http://en.wikipedia.org/wiki/Public_defender visited on 12-5-11

There are more than 650 *pro bono* programmes in operation in the United States. Over 125,000 lawyers participate in the voluntary legal aid movement. Approximately one third, of these engaged in private practice of law participate in providing *pro bono* services to the poor.²²

3.2.2 Legal Defence and Education Fund

The real budding of policy oriented public interest in the United States became evident in the early 1930s, where a model was given for a citizen's lobby and service organisation by adopting a strategic plan for using litigation to carry on specific social objectives. Originally they were an educational and lobbying group and not a legal action effort. It was supported entirely through small donations. In 1930 it received a sizable grant from American Fund for Public Service, to begin a sweeping campaign against the major legal political and economic disabilities from which Negroes suffer in America.²³

Voluntary or *Pro bono* services by the attorney also, came to be expanded during the 1980s. *Pro bono* is a Latin term, which means "For the Public Good". About fifty thousand attorneys take cases each year, without charges under the scheme of *pro bono*. Evidentially therefore in the end it was the private Bar and other associations that filled some of the gap in the realm of Legal Aid to the poor. Gradually in 1990s Legal Aid activities continued and in some states made good progress.

²² *Supra* note. 7 at 332

²³ *Id.* at 16

In 1991-92 the National Legal Aid and Defenders Association listed more than 240 branches offices in the United States and other areas. They provide civil legal assistance to the poor persons, who are unable to hire a private counsel.²⁴

3.2.3 American Constitution

U.S. Constitution provides that “In all criminal prosecution the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of the counsel for his defense.”²⁵ It is interesting to know that legal aid has come through the two constitutional amendments. Today following that pattern many constitutions of the world have introduced legal aid in the country via the constitution.

The Fourteenth Amendment to the U.S. Constitution which is the most important sentinel of the life and liberty of a person reads thus:

“No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

²⁴ *Supra* note. . 36 at 58

²⁵ Sixth Amendment to the Constitution of U.S.A.

Both these articles provide the basis for legal aid to the poor. Liberal interpretation by U.S. Supreme Court further expanded the scope of this right.

3.2.4 Judicial Interpretation

The Interpretation of the words of the Sixth Amendment to include a right to legal aid to the indigent accused in all criminal proceedings, including the pre-trial and appellate stages has resulted from the series of judicial opinions of the US Supreme Court.

- i) In *Powell v Alabama*²⁶ the Court, held that in a capital case where the defendant was unable to employ a counsel, it is the duty of the Court, whether requested or not, to assign a counsel for him as a necessary requisite of the due process clause.
- ii) *John Richard Argersinger v. Raymond Hamlin*, it was held by the U.S. Supreme Court that the 6th Amendment, by reason of the 14th Amendment provides specific standards for all criminal prosecutions. Right to counsel is not thus, limited to trials for offences punishable by certain amount of punishment or imprisonment.²⁷
- iii) In *William Burns v. State of Ohio*²⁸ it was held that there is no rational basis for assuming that an indigent's motion for leave to appeal are less meritorious than those of other defendants (accused) . The imposition by the state of financial barriers restricting the availability of appeal or

²⁶ 287 US 45 (1931)

²⁷ 407 US 25 (1972)

²⁸ 306 US 52 (1959)

review for indigent criminal defendants has no place in the American Heritage of Criminal Justice under the law.

- iv) Further in *Johnson v. Zerbst*²⁹ the US Supreme Court held that mere not asking for a counsel could not be presumed from a record that was silent on that aspect. The court viewed the constitutional mandate of the Sixth Amendment as a jurisdictional pre-requisite without which the trial would be vitiated.³⁰
- v) In *Gideon v Wainwright*³¹ US Supreme Court held that the indigent person accused of a serious crime was entitled to the defence counsel at state expense in state court as well.
- vi) *Miranda v. Arizona*³² further extended the concept of legal aid by recognizing the right to counsel during the course of police interrogation.
- vii) In *Lawrence Long v District Court, Iowa*³³, it was held that to interpose any financial consideration between an indigent prisoner of the State and his exercise of a State-right to sue for his liberty is to deny the prisoner, the equal protection of laws. In this case, U.S. Supreme Court reversed the opinion of Supreme Court of Iowa and unanimously decided in favour of the accused who was indigent prisoner. Equal Justice is interpreted ingeniously and it has been held that there can be no equal justice where the kind of trial a man depends on the amount of money he

²⁹ 304 US 458 (1938)

³⁰ *Supra* note. . 7 at 321

³¹ 372 US 335 (1963)

³² 384 U.S. 436 (1966)

³³ 385 US 192 (1966)

has³⁴. The 14th amendment of the U.S. Constitution requires that where as the state grants the right for habeas corpus, rich and poor prisoners are to be treated alike.

Thus right to legal aid in USA was well recognized under its Constitution. Liberal interpretation by the Supreme Court extended this right even at the stage of interrogation. The importance of legal aid in USA was well described by Justice Brennan in the following words

“Nothing rankles more in the human heart than a brooding sense of injustice... when only rich enjoy the law as a luxury and the poor who need it most cannot have it because its expenses put it beyond their reach, threat to the existence of democracy is not imaginary but real because democracy’s very life depends upon making the machinery of justice so effective that citizen shall believe in and benefit by its impartiality and fairness.³⁵

Despite the obvious similarities in their legal systems, the approach taken by the United States and Great Britain to the provision of legal services in civil cases has been markedly different. The most pronounced difference is that in Britain, legal assistance is provided largely through private attorneys, whether solicitors or barristers, while in the United States, it is provided through government funding of offices established exclusively for that purpose.

Because the legal profession initially opposed state payments to private practitioners, fearing that this would compromise their autonomy, the

³⁴*Supra* note. . 35 at 346

³⁵ *Id.* at 345

American legal aid program is the only one in the world in which virtually all services are provided by salaried lawyers³⁶.

In addition, the American system provides assistance only to the truly poor, those who are perhaps by today's standards not altogether different from the indigents entitled to *in forma pauperis* relief under the old statutes. The British system, on the other hand, operates on a sliding scale for income level and allows a contribution by the applicant who is not poor enough for total assistance but would otherwise be unable to handle the full costs of representation.

It is interesting to know that the scope of legal aid was widened by interpretation in America. Such a movement is today taking place in many countries of the world including India.³⁷

3.3 CANADA

The Canadian free legal service began in 1967 when the Ontario, Legal Aid programme obtained a substantial financial commitment from the Ontario Government and became the first provincial plan to pay lawyers to handle both civil and criminal cases.³⁸

In 1972, sub-committee of the law society of Upper Canada submitted a community legal service report. The Ontario scheme of Legal Aid, known as

³⁶ Richard L. Abel, *United States: The Contradictions of Professionalism, in Lawyers in Society, Volume One: The Common Law World* 186, 214 (1988).

³⁷ In India due to new developments in the concept of access to justice, legal aid provides advocates in different stages. Remand stage, there is a regular advocate who deals with only remand cases of indigent persons. After that depends on the case judge will appoint another legal aid advocate for the accused.

³⁸ Dr. Bhatt J.N, "Legal Landscape of Canada", *G.L.R* (June 2006) 17

Ontario Plan was regarded as superior work and acquired the status of Canadian national model. Throughout the province of Ontario, Country Committee Legal Aid Centres were established at appropriate places. If the applicant is able to pay some of the cost of legal services, he can choose the counsel of his own choice. In 1951 legal aid in Canada acquired the statutory sanction. On the recommendations of Joint Committee on Legal Aid, an Act was passed in 1967.

The right to have counsel by the accused has been considered fundamental in the Canadian Bill of Rights. Under Section 2 (a) (ii) of the Canadian Bill of Rights it is clearly provided that:

“No law amended shall be construed or be applied so as deprive assistance to a person who has been arrested or detained and instruct a counsel without delay.”³⁹

3.4 ARGENTINA

Argentina has a state legal aid programme. ‘*The Oficina De Asistencia Legal*’ is administered by Ministry of Labour and Social Welfare with the co-operation of the Ministry of Justice. The applicant for legal aid must obtain the certificate “state of poverty” from a welfare agency of a police Station. The applicant has to prove that his income is not sufficient to maintain himself and his family.

³⁹ *Supra* note. 35 at 347

In Criminal matter once legal aid is granted, the accused becomes free to pay all types of legal expenses. But in civil cases the expenditure may be recovered from the recipient at a later stage if he is able to pay. '*Abogados de Oficio*' Legal aid lawyers are paid a salary of their services. Besides state legal aid programmes, the provincial governments of state of Buenos Aries and Municipalities also run legal aid programmes. Free legal services including legal advice are also given by Argentina Bar Association, labour unions and Employees Organisations. Legal advice is also imparted through radio, Newspapers etc. Law Colleges and Universities are having legal aid clinics. The students also participate in legal aid programmes.⁴⁰

3.5 AUSTRALIA

Legal aid in Australia is advocated for statutory bodies to be set up in the various states, these bodies receiving funds from various sources, the main contributor being the Federal Government and other significant contributions being received from State governments and interest on solicitor's trust account. Legal aid assignments are made in the areas of matrimonial law (which takes the bulk of the available funds) criminal prosecutions, and civil disputes. Generally speaking, the legal aid agency is a substantial bureaucratic structure, having on staff some lawyers who do work for clients, but with the great bulk of the work being done by private legal practitioners on assignment.⁴¹

⁴⁰ *Ssupra* note. 5 at 28

⁴¹ Ian.D.Temby Q.C., "Who Should Bear the Costs of Litigation?: An Australian Viewpoint", 54 *ALJ* (1980) 541

Persons in receipt of legal aid receive the services of lawyer either free or subject to contributions, which are generally modest. Sometimes a legal aid agency will make funds available to finance a case, and receive entire reimbursement if a successful outcome is achieved. The contributions received are almost invariably very small when compared with the budget of any legal aid body. As far as legally aided litigants are concerned, the costs of resolution of their disputes in court are born by the community, either directly or indirectly.

Even as far as those clients are concerned, there is a disincentive to litigation provided by the fact that costs ordered can be made against them. The general rule is that the fact of the legal aid assignment is irrelevant to a court making costs ordered as between the parties. Under at least some of the legal aid statutes a successful defendant who cannot recover costs against legally aided plaintiff can have resort to the funds of the assigning body. That right is not widely availed or perhaps because it is not well known.

Legal Aid Schemes in Australia were initiated by State Governments, with public solicitor or public defender schemes in Queensland, Victoria and New South Wales. The private legal profession first became directly involved in the organization and provision of legal aid in 1933 when the Law Society in South Australia commenced a legal assistance scheme. Law Society schemes were then followed in other states. They primarily provided aid in civil matters with reference usually to a private practitioner for assistance.

In 1972 the first major voluntary and community scheme –the *Fitzroy Legal Service* commenced operation in Melbourne. In 1973 the commonwealth government established the Australian Legal Aid Office and opened a total of thirty five offices in all states and territories to provide aid in federal law for federal persons.

3.5.1 Development of a New Comprehensive Scheme for Legal Aid in Australia

In introducing Commonwealth Legal Aid Commission Bill in May 1977, the Attorney General stated that it was the government's policy to establish a comprehensive legal aid scheme in Australia involving a co-operative exercise between the commonwealth and the States in the provision of legal aid.

*Commonwealth Legal Aid Commission*⁴²

The first step in the development of this new scheme was the establishment of the Commonwealth Legal Aid Commission by the Commonwealth Legal Aid Commission Act, 1977.

The functions of that Commission are set out in Sec.6 of the Act, and some of the most relevant are as follows:

- a. to ascertain and keep under review the extent of the need for legal assistance in Australia and in particular the need for legal assistance in respect of commonwealth matters and to make recommendations from time to time to the Attorney General.

⁴² *Supra* note. 5 at 29

- b. to make recommendations to the Attorney General and to legal aid commission of states and Territories concerning the provisions of legal assistance.
- c. to collect and publish statistics concerning the operations of schemes for the provisions of legal assistance in Australia.
- d. to report to Attorney – General about functioning of Legal Aid Commissions of states and territories,
- e. to undertake research into all aspects of legal assistance including new methods of financing and providing legal assistance
- f. to advise the Attorney General as to the educational programmes that would be effective to promoting an understanding by the public or by sections of public that have special needs in this respect of their rights powers, privileges and duties under laws in force in Australia.

State and Territorial Commissions have been established in Western Australia, South Australia, the Australian Capital Territory, Queensland and Victoria. The Act requires the commission to fix guidelines to determining applications for assistance, with the following matters to be considered:

- (a) The person's income,
- (b) The cash readily available, and
- (c) The debts, liabilities and other financial obligations of the person.

Scheme of the requirements contained in the Act as to the manner in which the Commission is to discharge its functions are as follows:

- a. To establish legal aid offices and endeavour to make legal aid available through the state.
- b. To cooperate with other bodies and commissions that administers or concerned with legal aid.
- c. To publicise the services provided by the commission and the conditions upon which they are provided etc.

3.6 FRANCE⁴³

French Constitution, which came into force on 4th October, 1958, has a promising Preamble. The main motto of the Constitution is Liberty, Equality and Fraternity. French Law under the new Constitution, like other modern laws, is made of several layers and legal principles and systems, which have been in force in one form or the other in the country during the course of history.

The judicial authority is the guardian of individual member and ensures the application of principles of law in the manner provided by the law. In dispensation of justice in criminal proceedings, the accused is necessarily assisted by an Advocate. If he does not have one, the President of the Court makes an Advocate available for the accused. The system of Legal Aid has been evolved gradually in an organized form.

There are Legal Aid Counsels throughout France, who deal both, with information and advice, and also upon request in representation in defence in

⁴³ Justice Bhat J.N., "Legal Aid Panorama of France", *GLR* (2000) LXXXIII

the Court. . It also includes providing help for those who appear before public authorities outside the ordinary Court. Not only citizens of France, but the citizens of other European Union member states are also entitled to apply for Legal Aid in France, as certain refugees and asylum seekers. It is to be noted that France so far always gave very great importance to the rights of refugees and asylum seekers.

The system of providing Legal Aid known as '*aide a l'acces au droit*' is a new system evolved since September 1993, in force, but it is intended to cover following steps ;

- a. Information about Legal Aids and Duties,
- b. Advice of how to obtain one's rights,
- c. Help needed by an applicant who wishes to embark on,
 - i) Legal Aid transaction like that of entering into a contract, and
 - ii) For goods services or employment, getting married or divorced.

There is another novel and notable set-up of Legal Aid for Court proceedings. Legal Aid for court proceedings is known in France as '*aide juridictionnelle*'. It is administered by the office, (*Bureaud'aide juridictionnelle-B.A.J*) at each Principal Court except in Paris, where the title is different. Instead of '*aide juridictionnelle*', it is known as '*rue Ferris*'. Legal Aid is available for one year from the day the grant is notified. Thereafter it needs renewal. The applicants may choose their own lawyers, but if they feel they do not, the Leader of Local Bar in France known as, '*the batonnier*' makes the appointment.

In terms of merits, applicants are normally entitled to Legal Aid if they satisfy the Means Test, provided the case is not obviously without basis or subsistence.

However, even this test is not applied, if the applicant is –

1. A defendant in a civil case.
2. A person, whom the court may find severely responsible for another's loss,
3. A witness , who needs help in order to testify , like that of a non-French speaker,
4. Accused of an offence, and
5. A convicted person, who desires to appeal

Usually, in case of providing legal aid, Merits and Means Tests are required to be considered, and ordinarily same eligibility tests are observed in France, also. But it appears, Merit Test is liberally considered, whereas, in case of Means, the authority is not liberal as the monetary ceiling or means figure are prescribed of course, annually revisable.

If an aided party loses a civil case, he must pay his rival's costs. They are not paid out of Legal Aid unless for good reasons, fairness in all circumstances, or the aided person's poverty or indigence, the judges decides otherwise. If the aided party succeeds in a civil case, the cost which the loser pays would go to the public purse.

Legal Expenses Insurance is recognized in France. One obvious benefit and advantage that the policy can cover fees which under the State Scheme of Partial Legal Aid, the applicant would have to pay himself.

3.7 SOUTH AFRICA

The Legal Aid scheme prevailing in South Africa was launched in the year 1962 that has been administered by the Government Department. The legal profession has also taken responsibility to handle some cases free of cost. South Africa is still in a comprehensive scheme of legal aid.⁴⁴ Legal Aid Scheme of 1962 was to be administered by government department as it envisioned the appointment of civil servants as legal aid officers.

The failure of the state legal aid system was simultaneous with the emergence of several voluntary legal aid agencies with the participation of lawyers. The Legal Resource Centre (LRC) founded in 1979 not only provided legal aid by way of representation in individual cases but successfully fought test cases to challenge the arbitrary state regulations enforcing the laws. The lawyers for Human Rights (LHR), the centre for applied Legal Studies (CALS) at the Witwatersrand Law School, Black Sash, the University of Natal-Durban Street Law Project were some of the prominent initiatives in the legal aid movement backed by foreign funding from a wide range of donors including American foundations, North American and West European governments, churches, trade unions and private philanthropy.

3.7.1 Legal Aid Act, 1969

The Legal Aid Act 1969 (LAA 1969) created a Legal Aid Board (LAB) to administer legal services in civil and criminal cases but the LAB issued

⁴⁴ Justice Dalveer Bhandari, "Legal Aid- Comparative Evaluation", *I Nyaya Deep* (July 1998)13

stringent guidelines under which indigent persons with a past record of crime, or were unemployed for no good reason or were involved in cases where pro deo counsel was provided were excluded from the purview of legal aid. During this phase the LAB was poorly funded and staffed and handled only 6000-7000 criminal cases a year. The LAB in its Legal Aid Guide (LAG) of 1995 had prescribed a means test prescribed generally for criminal cases, and categories of cases which would stand excluded.

The following are some of the provisions relating to Legal Aid in Criminal matters, under the Legal Aid Act in South Africa. The LAA 1969 was amended by inserting Sec.3 (B) to provide for the right to the legal aid in criminal proceedings.

Section 3(B) deals with direction for legal aid by court in criminal matters:

Before a court in criminal proceedings directs that a person be provided with legal representation at state expense, the court shall take into account –

- i. the personal circumstances of the person concerned;
- ii. the nature and gravity of the charge on which the person is to be tried or of which he or she has been convicted, as the case may be ;
- iii. whether any other legal representation at state expense is available or has been provided and for any other factor which in the opinion of the court should be taken into account; and
- iv. Refer the matter for evaluation and report by the board.

If a court refers a matter under sub section (1) (b), the Board shall, subject to the provisions of Legal Aid Guide, evaluate and report on the matter. The

report in question shall be in writing and be submitted to the Registrar or the Clerk of the Court, as the case may be, shall make a copy thereof available to the court and the person concerned.

The report shall include:

- i. a recommendation whether the person concerned qualifies for legal representation;
- ii. particulars relating to the factors referred in sub section (1)(a)(i) and (iii) and
- iii. Any other factor which in the opinion of the board should be taken into account.

The amendment clarified that the LAB was the body through which the state would give effect to its constitutional obligation to provide legal representation in criminal cases where substantial injustice would otherwise result.

3.7.2 Constitution of South Africa

The Interim Constitution (IC) made in 1993 contained specific provisions for grant of legal aid. Section 25(3) (2) of the IC granted representation an accused person at state expense where substantial injustice will otherwise result. Sec. 25(3)(e) of the IC provides that:

“Every accused person shall have the right to a fair trial, which shall include the right...to be represented by a legal practitioner of his or her choice or where substantial injustice would otherwise result, to be

provided with legal representation at state expense, and to be informed of these rights.”

In the Final Constitution (FC) in 1996, Sec.25 was replaced with Sec.35 (3)(g) which declares that:

“Every accused person has a right to a fair trial ,which includes the right to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result and to be informed of this right promptly.”

3.8 BANGLADESH

3.8.1 Constitutional and Statutory Provision

The Constitution of Bangladesh was adopted by its Constituent Assembly on 4th November 1972. Part III of the constitution deals with the fundamental rights. Article 27 proclaims all citizens are equal before law and are entitled to equal protection of the law. Further Art.31 guarantees all persons the right to equal treatment under the law and Art. 32 guarantee the protection of the right to life and personal liberty. Article 33(1) provides that every person arrested or detained in custody has the right to be defended by a legal practitioner of her choice. The right to legal aid at state expense is not expressly mentioned in any of the provisions of the constitution⁴⁵

⁴⁵ *Supra* note. 7 at 355

3.8.2 Legal Aid Services Act

State intervention in the area of legal aid is of fairly recent origin. The Ministry of Law in March 1977 adopted a resolution on legal aid which created a National Legal Aid Committee at the top followed by District Committees. There were to be separate panels of advocates for proceedings before the Supreme Court and the District Courts.

This was followed by the government coming up with a Legal Aid Bill in 1998 which proposed that a National Legal Aid Institution be set up, the overall responsibility of discharging the functions of the organizations set up there under be vested with a Directing Board consisting of representatives of the government, the police, the jail administration, the Bar Council, representatives of the press, a nominee of national women's organizations and one representative of a human rights NGO nominated by the government. A panel of advocates for the Supreme Court are chosen from lawyers having experience of seven years and at the level of district from amongst lawyers with experience of at least five years. The Bill was replaced by Legal Aid Bill of 1999. At the end the Legal Aid Services Act 2000 (LASA) was enacted in February 2000 and brought in to effect on 24th May 2001.

The principal features of the LASA 2000 are:

- i. Establishment of a National Legal Aid Board headed by the Minister for Law and Justice and several District Legal Aid Committees each headed by the District and Sessions Judge.

- ii. Legal aid includes providing representation in cases in courts as well as legal assistance and counselling.
- iii. Although a means test exists for determining eligibility of person for legal aid, certain others like women and children victims of acid burns, landless persons, under trial prisoners and persons declared insolvent by a court are automatically entitled to legal aid irrespective of their annual income.
- iv. The application for legal aid is screened by the District Committee and a lawyer appointed from a panel to handle the case. Lawyers are paid nominal fees for legal aid work. An appeal can be made to the National Legal Board against the decision of a District Committee declining to grant legal aid.

3.8.3 Legal Aid by NGOs

There is a great deal of dependence on NGOs in the matter of provisions of legal services. The experience of one of the large NGOs providing legal aid, the Bangladesh Legal Aid and Services Trust (BLAST) is taken up for study as an illustration. BLAST was founded in 1993 by group of senior lawyers and has expanded its activities since 1995. One of the objectives of BLAST is to ensure that the operation of the legal system promotes access to justice, to provide in particular free legal aid by suitable schemes, to ensure that opportunities for securing justice are not denied to any citizen or person by reason of economic or other disabilities.

3.9 COMPARATIVE ANALYSIS

This paragraph proceeds to make a comparative analysis of the Indian Legal Aid system with the systems of the various countries discussed earlier. Prominent features are taken up for broad comparisons before drawing conclusions regarding the possible relevance these might have for India.

3.9.1 Nature of the Right

The development of the right to indigent defence as a non-derogable constitutional right has been along comparable lines in the USA, South Africa and India. The Sixth Amendment to the federal Constitution of the USA bears comparison with Art 22(1) of the Indian Constitution, both recognising the right of accused to be represented by a counsel of her choice, but not expressly providing for the right of an indigent accused to be represented by a lawyer at state expense.⁴⁶ Article 39A of the Constitution of India envisages legal aid, similarly Criminal Procedure Code⁴⁷ and Civil Procedure Code⁴⁸ provides legal aid.

The interpretation placed on the Sixth Amendment right, with the Aid of Fourteenth Amendment due process right in USA to imply a non-derogable constitutional right of an indigent accused to fair trial at state expense had its influence on the development of the right in both in India and in South Africa⁴⁹.

⁴⁶ Article 33(1) of the Constitution of Bangladesh is on similar lines. However the right to indigent defence at state expense is yet to be recognized as a constitutional right.

⁴⁷ Sec.304 of Criminal Procedure Code 1973

⁴⁸ Order 33 of Civil Procedure Code 1908

⁴⁹ S.Muralidhar, Law, Poverty and Legal Aid, Access to Criminal Justice, Lexis Nexis' edi.1 (2004) at 365

3.9.2 Consequences of Recognition as a Constitutional Right

- a) Protection and enforcement of the right is essentially a state responsibility and cannot be avoided as being in the realm of polity or as a welfare measure.⁵⁰
- b) The fact that the Sixth Amendment to the US Constitution did not provide for indigent defence at state expense made little difference after *Gideon*⁵¹. State intervention to give effect to the right was a natural consequence leading to the creation of the institution of the public defender. Likewise, in India the fact that free legal aid was recognised as a directive principle under Art.39 A of the Constitution made no difference to its enforceability as a fundamental right forming part of the right to life and liberty under Art.21 as explained by *Hussainara*⁵² and *Hoskot*.⁵³
- c) The right to Criminal Legal Aid provided under the Criminal Justice Act 1964 in the USA, the Legal Aid Act 1969 and Criminal Procedure Act 1964 in South Africa and Criminal Procedure Code 1973 and Legal Services Authorities Act 1987 cannot limit the constitutional right in terms of its content and stages of its availability.⁵⁴

⁵⁰ The theoretical constructs for this proposition finds consensus in the reports in the USA of the Allen Committee, and of the Expert Committee in India (1973 Report) and the Juridicare Committee (1977 report).

⁵¹ *Gideon v Wainright* 372 US 335.

⁵² *Hussainarar Khatoon v State of Bihar* (1980) 1 SCC 81.

⁵³ *MH Hoskot v State of Maharashtra* (1978) 3 SCC 544. In the UK, in the absence of a written constitution the right to legal aid has since the beginning been treated as a statutory right. However, it is nevertheless an enforceable human right as articulated in Article 6 (3) (c) of the European Convention on Human Rights applicable to the UK, which declares that everyone charged with criminal offence has the right to defend himself in person or through legal assistance of his own choosing or he has not sufficient means to pay for legal assistance, to be given it free when the interest of justice so require.

⁵⁴ In the US, the right is available at the pre-trial and post-trial stages –See *Douglas v California* 372US 353(1963) . It is in India as well: This also forms the basis for the right to legal aid to prisoners within jails –*Bounds v Smith* (1977) 52 L Ed 2d 72 in the US and *Sunil Batra (I &II) v Delhi Administration* (1978) 4 SCC 494, (1980) 3 SCC 488.

d) In *Ntuli*⁵⁵, the South African Constitutional Court found the provision of the criminal procedural law inconsistent with the right to legal aid at the criminal appellate stage; in *Hoskot*, the Indian Supreme Court read the constitutional obligation to provide a similar right into the provisions of the Criminal Procedure Code 1973⁵⁶.

e) The right is enforceable as a constitutional fundamental right in the higher courts of the country and its violation can have the consequence of voiding convictions as being opposed to fair trial standards.⁵⁷ The denial of right to legal assistance in criminal proceedings is not merely of a procedural or a statutory right but a constitutional right. Thus, for example, there is no question of an accused being presumed to have waived his right to be defended by a lawyer.⁵⁸ Similarly even in Civil Cases indigent person can apply to the court of original jurisdiction⁵⁹ as well as appellate Jurisdiction.⁶⁰

3.9.3 State Intervention

What is common to the other countries and India is the institutional model of legal services delivery.

The United Kingdom, after 1999, saw the Legal Aid Board (LAB) being replaced by the Legal Services Commission (LSC), with a view to limiting the

⁵⁵ 1996(1) SACR 94 (CC)

⁵⁶ (1978) 3 SCC 544 at 552-53: 'If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal.... There is implicit in the Court under Article 142 read with Articles 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual "for doing complete justice".'

⁵⁷ *Gideon v Wainwright* 372 US 335 (1963)

⁵⁸ *Suk Das v Union Territory of Arunchal Pradesh* (1986) 2 SCC 248.

⁵⁹ Order.33

⁶⁰ Order 44

role of the State to providing a budget with a cap and leaving the details of providing legal aid in individual cases to the service provider with whom the LAB/LSC enters into a block contract. It is also the concern for costs that has brought in the concept of the salaried defender service (SDS)⁶¹.

In the USA, on the other hand, the attempt is to remove the overall management, control and supervision of the institution of the public defender from the judiciary and place it in a centralised body, which it is hoped will meet two objectives- ensure greater independence and ensure greater flow of funds.

South Africa has found the Legal Aid Board (LeAB) not consistent with the need to provide legal services to a geographically widespread population. It has also been unable to meet the demands of quality and accountability.

In India, the LSAA has brought in a multi-tiered institutionalised model of legal services delivery, with committees at the taluk, district and state levels. There is no evaluation of the performance of these institutions. For instance, there is very little information on whether they are serving the purpose outlined under the LSAA, whether they are enabling people to access legal services and institutions, and whether they are cost effective. Therefore, it is the lack of information on their performance that precludes comparison of the Indian legal aid institutions with their counterparts elsewhere. This, by itself, would constitute a starting point for evaluating the performance of these institutions.⁶²

⁶¹ Supra note 11 at 367.

⁶² For evaluation of legal aid systems elsewhere, see(2000) 33 University of British Columbia Law Review and in particular Albert Currie, 'Legal Aid Delivery Models in Canada: Past Experiences and Future Developments, p.285.

However, the concern expressed elsewhere over the need for the independence of the institution, whether it is legal aid board or the public defender, are equally applicable to the institutions at home which are currently managed by a collaboration of the judiciary and the executive. Also unique to the Indian model is the use of the legal aid institutions by the judiciary, to hold lok adalats with a view to disposing of pending cases on masses.

This exposes it to the criticism that legal aid is perhaps a device to help the judiciary tackle the problems of backlog of cases. This is in contrast with the salish or mediation conducted by the NGOs providing legal aid in Bangladesh, where the effort involves the informed participation of the people and is by and large acceptable to them. In India recently Hon'ble the Chief Justice of India has set up a National Committee for Para Legal Training and Legal Aid Activities. ⁶³Para legal volunteers are intended to bridge the gap between the people who suffer the problems of 'access to justice' and the legal services institutions which are often located in towns and cities, far away from villages and geographically inaccessible areas.

3.9.4 Types of Legal Services

The growth of volunteerism in legal aid in the early stages of the development in the USA, and more recently in the experiences of Bangladesh and South Africa, has been possible largely on account of the active participation of lawyers driven as they were by a sense of duty as well as moral obligation.

⁶³ The formal launching of the activities of the committee was done on 25th April 2010 .

In the USA lawyers continue to be the backbone of the legal services programmes- they are involved in the public defender programme, and they also offer their services pro bono.⁶⁴

Although in India there are in urban centres private lawyers networks that offer legal aid,⁶⁵ this is too little when compared with the demand for such services. The legal profession in India, however views legal aid as a welfare activity which is essentially to be provided for by the state. This perhaps explains why there has been hardly any push for the adoption of the public defender concept into the legal services programme. With the acceptability of the model in both U.K and South Africa, this position requires a re-examination as far as India is concerned.

The other types of representation that are common to the four countries and India are the Judicare model⁶⁶, *pro bono* system⁶⁷ and the *amicus Curiae* system⁶⁸. The South African model which accommodates a wide range of service providers including paralegals, law academics and law students is capable of being adapted to Indian conditions. Recently National Legal Services Authorities in India started the system of paralegal volunteers schemes where in NGO's, School teachers, NSS programme officers are the volunteers.

⁶⁴ See Roser Billings, Legal Services.

⁶⁵ Prominent among these are the Majlis in Mumbai, Prayas in Mumbai, Lawyer's collective, the Human Right Law Network in Mumbai and Delhi, Common cause in Delhi, Legal Aid Society West Bengal in Kolkata, Centre for Social Justice, Ahmedabad, Legal Research for Social Action, Chingleput near Chennai and Free Legal Aid Committee, Jamshedpur. The people's Union for Civil Liberties (PUCL) and the Peoples Union for Democratic Rights (PUDR) have also been taking up human rights causes in courts and other fora. The activities of these organizations need to be studied to understand the extent of their reach and types of services offered. For an order of the Supreme Court encouraging support to NGOs offering legal services, see Centre for Legal Research v State of Kerala (1986) 2 SCC 712

⁶⁶ A private counsel undertakes legal aid work at rates fixed by the legal aid board.

⁶⁷ Lawyers undertake to conduct cases free of cost.

⁶⁸ The court assigns a case to a counsel either from a list or at random.

In India free legal services includes Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings, providing Advocate in legal proceedings, obtaining and supply of certified copies of orders and other documents in legal proceedings and preparation of appeal, printing and translation of documents in legal proceedings.

3.9.5 'Access to Justice' Third Wave Approach⁶⁹

The 1971 Gujarat Report, inspired by the American experience of public interest law, suggested that the problems faced by the poor can best be addressed not individually through the traditional legal services programme that is litigation oriented but by a remedial legal services programme that seeks to tackle the very process that impoverish people. The context in which PIL is seen as being part of the legal aid programme in the USA and in Bangladesh have a lot in common with India:

- a) Decriminalisation of activities of the poor that have unjustly been labelled as offences and are sought to be dealt with in the criminal justice system.
- b) Demanding setting of judicial guidelines on arbitrary use of police powers of preventive arrests.

⁶⁹ M Cappelletti and B Garth, 'Access to Justice; the Worldwide Movement to make rights effective: A general report' in *Access to Justice – A World Survey*, Vol. 1, Sithoff & Noordhoff- Alphen Aan Den Rijn(1978) , in their survey and comparative analysis in 1975 of the systems of access to justice in several countries, Cappelletti and Garth had pointed out that the approaches to the access to justice problem, in a chronological sequence, were in three Waves, the first of which was providing legal aid by way of representation for diffuse interests which included class actions and public interest petitions. The third wave was identified as encompassing an access to justice approach which would include reforming of litigation procedures, and changing the methods for delivery of legal services while also seeking to simplify the law itself.

- c) Discriminatory laws and practices that adversely impact the poor
- d) Increase in the laws with stiffer penalties and prioritisation of law enforcement over defendant's procedural rights including the right to counsel.
- e) The need to challenge institutional practices that operate harshly against the poor, e.g. the monetary bail system.⁷⁰
- f) The Fundamental rights conferred under Constitution for equality and equal protection of laws ⁷¹ , become meaningless if the citizens face barriers, such as illiteracy, social backwardness, physical, geographical, social and psychological , to access to justice.

3.10 CONCLUSION

A brief overview of various countries illustrate that irrespective of legal systems being followed in these countries legal aid is universally accepted as a matter of right to the accused as well as an indigent person. This is further confirmed by the information given in the International Directory of Legal Aid, published by the International Bar Association Education Trust 1985. According to the Directory, legal aid is available in the following countries.

Australia, Anguilla, Argentina, Austria, Bahrain, Barbados, Belgium, Brazil, British Virgin Island, Brussel, Bulgaria, Canada, Cayman Island, Chile, Columbia, Cyprus, Czechoslovakia, Denmark, Eire, England & Wales, Falkland Island, Finland, France, Gibraltar, Grenada, Guatemala, Hongkong,

⁷⁰ S. Muralidhar , Law, Poverty and Legal Aid , Access to Justice , lexis nexis ed.1(2004), at 372

⁷¹ Art.14 of Indian Constitution

Hungary, Iceland, India, Indonesia, Israel, Japan, Jordan, Kenya, Kribati, Lesotho, Luxembourg, Malta, Mauritius, Mozambique, Nepal, Netherlands, New Zealand, Nigeria, Niul, Norfolk Island, Norway, Omen, Panama, Papua New Guinea, Paraguay, Piteairn Island, Portugal, Phillippines, St. Helena, Scotland, St. Vincent San Marino, Singapore, South Africa, Spain, Srilanka, Sudan, Sweden, Switzerland, Tanzania, Trinidad, and Tobago, Turkey, Turks and Caicos Island, Tuvalu, United States of America, U.S.S.R, Vanuatu, Vatican City, Western Samoa, West Germany, Zaire, Zambia & Zimbabwe.⁷²

After identifying the concept of legal aid in various countries in the world and analysing it from a comparative perspective, the fourth chapter is devoted to international conventions on legal aid.

⁷² International Bar Association Educational Trust, *International Directory of Legal Aid* (Seet and Maxwell Ltd., London, 1985) C.3

CHAPTER IV

Legal Aid under International Law

“No Society can develop without peace and Security
No State can be Secure, if its people are condemned to poverty without hope,
and
No nation can be secure or prosperous for long,
If the basic rights of its citizens are not protected.”¹

4. INTRODUCTION

Access to justice is one of the most critical issues facing the legal community worldwide. Poor people the world over do not have access to the tools they need to protect and promote their rights and interests.

In short, no legal system has escaped the difficulties to providing the justice system to poor people. If equality before the law is more than an empty promise, States must accept the task of guaranteeing all citizens an equal opportunity to protect their rights and promote their interests.

Legal aid is undergoing profound changes around the globe. It is of course no accident that these changes are occurring simultaneously. Members of the legal profession are alarmed at the decline of state legal aid and are attempting to fill, at least partially, the resulting vacuum.²

Equal justice became more attainable when many governments established state legal aid schemes in the post- Second World War era. These schemes represented one of a variety of welfare state programs in health, housing, income support and increased funding to pay lawyers to undertake legal aid cases at a rate approaching the market price;

¹ Kofi Annan, “The Eyes of the World are Upon You”, XLIII 3 *UN Chronicle* (Sep. 2006) 4

² Francis Regan, “Legal Aid Without the State, Assessing the Rise of Pro bono Schemes”, 33 *U.B.C.L Rev.* (2000) 1

In order to understand and appreciate the Indian Legal System, it is desirable to make a brief survey of legal aid under International law. Hence, this chapter discusses the evolution of legal aid in International Conventions and its influence on national legislations especially in Indian perspective.

4.1 LEAGUE OF NATIONS AND LEGAL AID (1924)

In the first half of the Twentieth century, at the end of the First World War, international concern for human rights found expression in certain provisions of the Covenant of the League of Nations. It was also realised that universal peace could be established only by imparting social justice to all.³

There was a necessity of legal aid, because without legal aid social justice to all was not possible. Therefore, after due advance preparation under the auspices of the League of Nations, International Committee of Legal Aid experts met at Geneva from 30th July to 3rd August 1924. France, England, Norway, Italy, Poland, Spain, U.S.A, and Japan sent their representatives to participate in the conference. Justice for the poor was the primary issue in those meetings. The League of Nations submitted a report in 1927 on the survey regarding legal aid in various countries.⁴

4.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10th December 1948. Its

³ United Nations Publication, *The United Nations and Human Rights* (New York, 1984) 1

⁴ Dr. Sharma S.S, *Legal Services, Public Interest Litigations and Para Legal Services* (Central Law Agency, 1st Ed. 2003) 42

purposes were to provide a common standard of achievement for all peoples and all nations and to promote respect for these rights and freedoms by progressive measures; national and international .The Declaration consists of a Preamble and 30 articles set forth the basic human rights and fundamental freedoms which all human beings are entitled.⁵

The provisions of the Declaration, directly or indirectly providing social justice to the poor. Preamble to the Declaration recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It is the main component of the Declaration expressing its main objectives and ideals. From the language of the preamble it is clear that equality and justice are basic objectives of the Declaration. Equality and Justice are reciprocal. Without equality there can be no justice. A person due to paucity of money will not be able to enforce his human rights and hence frustrate the whole purpose of the Declaration of Human Rights. At this juncture legal aid becomes *sine-qua-non* for achievement of ideals enshrined in the preamble of the Declaration of Human Rights.

Article 1 lays down the philosophy upon which the Declaration is based. It emphasises equality in dignity and rights. With the help of equality, the tree of social justice may be planted out and the legal aid may nourish it and create environment for its development. Hence from 1948 access to justice in the form of legal aid recognised.

⁵ Supra note. 4 at 4

Article 2 sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms. It provides guarantee against discrimination on the basis of "Property". The rich and poor are given equal rights and equal protection. With the help of legal- aid to the poor the concept of equality can be maintained for imparting social justice to them. Article 15(1)⁶ of the Indian Constitution resembles this provision.

Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. A person should not be debarred from equal protection only because he cannot pay the cost required in the legal process. It is incumbent upon the state to provide equal protection to all even at the cost of state expenditure. Art.14, 15, 16 and 39A of the Indian Constitution, Protection of Civil Rights Act, 1955 have a close similarity with this provision.

Article 8 provides that everyone has a right to approach the national tribunal for an effective remedy for acts violating the fundamental rights.⁷

Article 10 provides that everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal in determination of his rights. Hearing means hearing through a counsel. If a person cannot afford legal counsel, it will be the duty of the state to provide counsel to him even at state's expenditure. Article 50 of the Indian Constitution, Part V, Sec.55,303,304, 310,327,461,479 of Code of Criminal Procedure 1973 are having similar concepts of this Article.

⁶ The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

⁷ Muralidhar S, *Law Poverty and Legal Aid* (Lexis Nexis, Butterworth, New Delhi, 2004) vi

Although, the Declaration is not legally binding instrument as such, yet it was more in the nature of a binding moral commitment, a yardstick of international standards and path finding instrument. It has made deep impact upon the massive global legal- aid movement.

4.3 EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS (1950⁸)

The European Convention of Human Rights was signed in Rome on November 4, 1950 and came into force on 3rd September 1953. Article 6(3) (C) of the Convention directly deals with legal aid in criminal cases. Article 6(3) provides that “Every one charged with a criminal offence has the following rights: to defend himself in person or through legal assistance of his own choosing or if he has no sufficient means to pay for legal assistance to be given it free when the interests of justice so require.”

Through this Article, the Convention guaranteed the right to free legal aid to a person charged with a criminal offence, to enable him to defend himself. If a person wants to take the advantage of the Article 6(3) (C) of the Convention, he has to prove that he fulfils all the requirements set forth in aforesaid article.

Article 6 of the convention only applies to persons charged with a criminal offence. This provision does not guarantee the right to free judicial procedure but only the free assistance of counsel when the interest of justice so requires.

⁸ Bimal N Patel, A Comprehensive guide of laws of Human Rights in Commonwealth Countries, 1st edi.,2007, Wadhwa , Nagpur, at 88.

4.4 UNITED NATIONS CONFERENCE, 1965⁹

In 1965 there was a third United Nations Conference on the Prevention of Crime and Treatment of Offender at Stockholm. The Conference has realized need for legal aid. The availability of legal aid for accused and convicted persons was discussed in this conference. There was unanimity on the need to provide legal assistance to arrested and accused persons and to convicted persons. Providing legal aid is not only a human right but also a pointer to the failure to provide adequate legal aid which may amount to injustice. Therefore, the lack of an adequate legal aid system tends to increase recidivism.

4.5 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966¹⁰

The Universal Declaration of Human Rights was also followed by two significant instruments, which transformed the principles enunciated in the Declaration into the treaty provision and established legal obligation on the part of each ratifying country. Those instruments were a) International Covenant on Civil and Political Rights and its Optional Protocol b) International Covenant on Economic, Social and Cultural Rights.

The General Assembly adopted these two Covenants and Protocols on 16th December 1966. They were duly ratified and came into force on 23rd March 1976 and 3rd January 1976 respectively. India also ratified these Covenants with Protocol, but with certain reservations. Indian Judiciary has given due

⁹ Sujan Singh, *Legal Aid Human Right to Equality* (Deep & Deep Publications, New Delhi, 1996) 15

¹⁰ Andrew S. Butler, "Legal Aid Before Human Rights Treaty Monitoring Bodies", 49 *ICLQ* (2000) 369

importance to these civil and political rights and has even endeavoured to enforce these rights, while interpreting and giving effect to Part III of the Constitution of India.

Art.14 (1) of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Art 14(3) provides that in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:¹¹

- a. To be informed promptly the nature and cause of the charge against him;
- b. To have an adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- c. To be tried without undue delay;
- d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

¹¹ Supra note .9 at 17.

It is gratifying to note that in this Covenant there is a clear mention of right to legal aid. A person who cannot afford lawyer's fee may be provided counsel at state's expenses in the interest of justice.¹² One of the important rule in principles of Natural Justice, No one shall be punished unheard, shows the object of Art.14 (3).

4.6 TEHRAN CONFERENCE

The International Conference on Human Rights at Tehran was the first conference ever organized on worldwide basis to consider the question of human rights in all its aspects. It was attended to by representatives of 84 States, three United Nation bodies, four specialized agencies of the United Nations, four intergovernmental organizations and forty –eight non-governmental organizations¹³.

The Conference in its final proclamation declares that it is impossible without enjoyment of economic, social and cultural rights no state can realise the Civil and Political Rights.

The Conference adopted the resolution on legal aid which declares that

- a) The governments should encourage the development of comprehensive legal aid system for the protection of human rights and fundamental freedoms.

¹² Few countries like Gambia, Guyana, Bangladesh, Belize are expressed their inability to implement this covenant due to their financial incapacity.

¹³ Dhyani S.N, *Law Morality and Justice*, (Metropolitan Book Co.(p)ltd. New Delhi, 1st Ed.1984) 119

- b) Standards to be devised for granting financial, professional and other legal assistance in appropriate cases to those whose fundamental rights appeared to have been violated.
- c) The Governments should consider ways and means of defraying the expenses involved in providing such comprehensive legal aid system.
- d) The Governments should take all possible steps to simplify laws and procedures so as to reduce the burdens on the financial and other resources of individuals who seek legal redress.
- e) The Governments should co-operate in extending the availability of competent legal assistance to aggrieved individuals who need it.

4.7 AMERICAN CONVENTION ON HUMAN RIGHTS, 1969¹⁴

The American Convention on Human Rights adopted in 1969 has general resemblance with the European Convention for protection of Human Rights. For example, Article 24, of the Convention provides that all persons are equal before the law; consequently, they are entitled without any discrimination to equal protection of law.

Under Article 8(2)(e) during the trial proceedings (i.e. remand stage on words till the pronouncement of judgment) every indigent person is entitled with full equality, the inalienable right to be assisted by counsel provided by the state. Indigent person is who does not defend himself or engage his own counsel.

¹⁴ Available at http://www.hrcr.org/docs/American_convention/oashr5.html (Last visited on 3 /1/2010)

4.8 STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS¹⁵

Under Rule 93 an untried prisoner can apply for free legal aid and to receive visits from his legal advisor with a view to his defence and to prepare and hand to him confidential instructions.¹⁶ In India under legal services authorities act , prison clinics established. Legal Aid advocates, professors and students from law colleges will visit the jail and inform to inmates of jail about their legal aid provisions.¹⁷ District Judge had a duty to sudden inspections to jail.

4.9 CONVENTION ON INTERNATIONAL ACCESS TO JUSTICE, 1980

According to Article 1, it is important to note that irrespective of nationality of the persons who habitually resident of contracting state is entitled to legal aid for the court proceedings in civil and commercial matters as if they were nationals of that state.

This Article apply to cases not only which are pending before courts but also tribunals as well.

Article 11 declares that parties no need to pay for transmission, reception or determination of application for legal aid.¹⁸

¹⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 may 1977.

¹⁶ P.C.Sinha, Global Source Book on Human Rights, part II(2000)Kanishka publishers, New Delhi at p.89

¹⁷ This is the practice in state of Goa where in legal aid advocate, professor and students of law college visiting the jail every Saturday.—Prison Clinic.

¹⁸ The Hague Conventions, available at <http://www.legallanguage.com/hague/haguex29e.html> (Last visited on 11/10/2007)

4.10 BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT¹⁹

Under principle 17(2) if a detained person unable to appoint a legal counsel of his own, he is entitled to have a legal counsel assigned to him by a judicial or other authority and without payment by him.²⁰

4.11 INTERNATIONAL COURT OF JUSTICE TRUST FUND²¹

Legal Aid not only individual cases but also extends to individual states when the matters are pending before international court of justice. In connection with the agenda item titled 'Report of the International Court of Justice', Former UN Secretary General, Javier Perez de Cuellar announced in the General Assembly on November 1,1989, the establishment of the Secretary-General's Trust Fund to assist States in the settlement of disputes through the International Court of Justice.²² The trust fund was introduced as a device to overcome financial impediments to the judicial settlement of disputes between states by offering them financial assistance in bringing their disputes before the ICJ.

¹⁹ Adopted by General Assembly Resolution 42/173 of 9 December 1988

²⁰ P.C.Sinha, *Supra* note.17 at 94.

²¹ Peter H.F.Bekker, "International Legal Aid In Practice ; The ICJ Trust Fund", 87 *Am. J. Intl. L.* (1993) 659 - 668

²² *Id.* at 659

4.11. 1 Establishment and Operation of the Fund

The reasons for establishing the trust fund, its object and its purpose, as well as the procedures and requirements for applications are set forth in the terms of Reference, Guidelines and rules of the Secretary-General's Trust Fund to assist States in the settlement of disputes through the International Court of Justice. The Secretary-General, who, as chief administrative officer of the United Nations is entrusted with special responsibility to promote judicial settlement through the Organization's principal judicial organ, establishes the Trust fund.

The Secretary-General is the manager of the trust fund and is assisted in its implementation by the UN Secretariat through the Office of Legal Affairs, which provides the necessary services. The trust fund is subject to internal UN auditing. The creation of trust fund derives from Article 1(1) of the UN Charter on the Purposes of the Organization, and Article 33 of Chapter VI that sets forth the various means of peaceful settlement, such as negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement.

The trust fund is financed by voluntary contributions from states, intergovernmental organizations, as well as individuals and corporations. In the annual report for 1992, the Secretary-General announced that, since the creation of the trust fund in 1989, thirty-four states had contributed \$583,705 to it.²³

²³*Id.* at 661

The statutory purpose of the trust fund is to advance the peaceful settlement of disputes by offering limited financial assistance to states as an inducement to submit their disputes to the ICJ. The assistance is to enable developing states to meet the expenses incurred in connection with the submission of a dispute to the ICJ by special agreement, or the execution of a judgment by the court resulting from such an agreement.

Litigation before the court can be quite expensive. "The expenses of the court" borne by the United Nations, but this concerns only the courts internal administrative costs. The cost of printing the pleadings, including translations of documents that are not in English or French, is borne by the parties.

Not all applicants are eligible to be considered for financial assistance from the fund. First of all, an applicant must be a state eligible to litigate before the ICJ. Members of the United Nations are *ipso facto* parties to the ICJ statute. States that are not members of the United Nations may become a party to the statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

To acquire access to the ICJ state must become a party to the Statute, by depositing with the Registrar of the court a general or particular statement accepting the Courts jurisdiction and undertaking to comply with its decision and to accept the obligations of a UN member under Article 94 of the Charter. Besides having the requisite standing, an applicant state must be in such a

financial position that it cannot proceed before the ICJ or execute an ICJ judgment for lack of funds.

Thus in the initial stages legal aid was recognised in several international instruments as a part of concept of equality. This is evident in UDHR. Legal aid as a separate concept came into forefront in 1966 by International Covenant on Economic, Social and Cultural Rights. These documents led the way to many countries to formally recognise legal aid as a matter of right. In contrast legal aid in India was recognised as a legal right much before these international agencies. This trend may be attributed to British rule in India. Post colonial era in India witnessed a concerted effort in developing legal aid.

4.12 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD-1990²⁴

This is otherwise known as The African Children's Charter (ACC) was adopted by the Organisation for African Unity in 1990 and entry into force on Nov.29, 1999. Art.17 (2)(c)(iii) states that State has to provide to every child accused legal assistance for his defence, when he is unable to appoint advocate at his cost. It is mandatory obligation and not a charity.

²⁴ Supra note 9 at 283.

4.13 INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES²⁵-1999 (ENTERED INTO FORCE 2003)

Art.18 (3)(d) states that migrant workers against whom criminal charges were made, are entitled to legal assistance, where the interest of justice so require, at state expense.

4.14 PRINCIPLES FOR THE PROTECTION OF PERSONS WITH MENTAL ILLNESS AND THE IMPROVEMENT OF MENTAL HEALTH CARE-1991²⁶

Under principle 18 the patient is entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel has to be provided without payment by the patient to the extent that the patient lacks sufficient means to pay.²⁷

This principle influenced on Indian legislation, sec.12 of The Legal Services Authorities Act 1987. A person with disability as defined in Cl (i) of Sec.2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act 1995, is entitled legal services under Legal Services Authorities Act.

²⁵ Bimal N Patel, A Comprehensive guide of laws of Human Rights in Commonwealth Countries, 1st edi.,2007, Wadhwa , Nagpur, at 481

²⁶ Adopted by General Assembly Resolution 46/119 of 17 December 1991

²⁷ Supra note 17 at p.45.

4.15 EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS-1996²⁸

Where internal law provides for legal aid or advice for the representation of children in proceedings before a judicial authority affecting them, such provisions has to apply in relation to the matters relating to²⁹

- a) Right to apply for the appointment of a special representative where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict with the latter.³⁰
- b) Appointment of a representative in proceedings affecting a child where internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict with the child³¹.

4.16 COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS-2005³²

Each party to the convention has to provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law in regard to compensation and legal redress.

4.17 CONCLUSION

Before concluding it is necessary to make a remark on the need for international conventions and the role they play in influencing national

²⁸ Supra note 11 at.302.

²⁹ Art.14 of the European Convention on the Exercise of Children's Rights.

³⁰ Art.4

³¹ Art.9

³² Supra note 11 at 778

legislations. Often municipal legislations are a result of some international conventions, which sometimes require the countries to reinforce the country's regime on certain aspects by national legislations. There is no denying that sometimes municipal laws do go beyond the vision of International Conventions. Other times it is far sighted national legislation or judicial interpretation by municipal courts that inspire International conventions. On the other hand International conventions have an impact on judicial creativity within municipal courts. Sometimes courts adopt the attitude of favouring judicial interpretation in keeping with an international convention which might not have been enforceable by itself, especially if there is a gap or ambiguity in interpretation. Such is the case in India where Supreme Courts and High courts have used international instruments to enlarge the scope of a law in light of a vision provided by international convention.

In the globalising world the need is felt for uniformity of legal concepts in certain areas amidst the cultural diversity. Such is the case for instance in Human Right regime. Due to political and cultural diversities some concepts on right to life, human dignity, recognition of rights of females, child etc have to evolve and develop. Hence some good international legislation which is fair and just does help in this process. This is noticed in India, England, and USA etc which are fast progressing on the path of human rights.

After identifying the international conventions and its influence on national legislation, the fifth chapter is devoted to evolution, Growth and Development of Legal Aid in India.

CHAPTER V

Evolution, Growth and Development of the Legal Aid System in India

“Injustice any where is a threat to justice everywhere”

– Martin Luther King¹

5. INTRODUCTION

Legal service in its literal sense means help, assistance, or free service in the field of law. Previously the word legal- aid was used in place of legal- service but the Apex Court of India has time and again asserted that legal aid is not a charity but a paramount duty of a welfare State. Now legal assistance from State can be claimed as a matter of right, therefore, the word legal- service is being used in place of legal-aid.

Legal Services are of two types:

- A) Pre-litigation Legal Services and
- B) Post-litigation Legal Services

Pre-litigation Legal Services

It is rightly said that, prevention is better than cure. In these days, the number of litigation is increasing day by day, which is very dangerous for smooth administration of justice. So far, emphasis was given only on post-litigation assistance or help but now it is being realised that pre-litigation legal services are more useful than post-litigation legal services. Pre-litigation legal services include:

- i) Legal education
- ii) Legal advice
- iii) Legal Awareness

¹ Oxford Dictionary of Quotations and Proverbs, Oxford University Press (2001)153.

iv) Pre-litigation settlement etc.

In order to provide pre-litigation services, the voluntary organisations have been encouraged and boosted by financial support from the State. In law colleges and law faculties in the Universities, Legal aid clinics have to be established. These clinics would be of immense help in promoting legal awareness as most of the litigation is often due to ignorance of the people about their legal rights and duties.

Post-Litigation Legal Services

Traditionally legal aid has been provided at post-litigation stage. Post litigation legal services include – appointment of lawyer for indigent, reimbursement of process fee, witnesses' expenditure, court fee etc. by the State.

5.1 LEGAL AID—INDIAN SCENARIO

The movement for free legal aid to the poor in India is not a sudden fanciful idea of few utopian philosophers. We can trace the legal aid Philosophy even in ancient Indian Society, which is known to have systematically commenced with Vedic age. Therefore, this Chapter discusses legal aid movement in India from Vedic period to Modern period. It includes the following subdivisions:

- a) Vedic Period
- b) Muslim Period
- c) Vikramaditya Period
- d) British Period
- e) Post- independence period

- f) Post -Constitution period
- g) Reports of several committees on legal aid
- h) 42nd Amendment to the Constitution, 1976 and
- i) Criminal Procedure Amendment Act, 2005

5.1.1 Vedic Period

Vedas are the ultimate source of all knowledge for Indians. These are revelations of God Himself. There is no agreement as to the chronology of this period. Some sources accept its existence some 6000 years ago whereas others agree as on 18th century B.C. We can find legal aid traces in the social practice and the elements of dharma itself.

Rig Veda the earliest of the four Vedas does contain such elements of legal aid or social aid as we may name it. The 36th and 42nd slokas under Chapter I² refer to the need for saving people from 'rakshas' and violent people, procuring strength for such protection alongside praying the Almighty to bless those who donate. Therefore we do find the existence of violence in the society, may be then existing or foreseeing its existence in the future societies. Rig Veda provides for mustering strength, including monetary assistance, i.e. 'Daan' for extending aid and assistance to those fearing or facing the attacks. Sloka 103 of Chapter III clarifies that a king, who gives money to one in such need, is the winner of the wealth of opponents and that *Devatas* always protect him. We therefore, can infer from such references in the Rig Veda that, providing social

² Singh Govind, *Hindi Translation of Important Parts of Rig Veda* (Sadna Pocket Books, New Delhi, 1992) 31-36

aid and also King's (i.e. state) assistance to the one being or fearing to be attacked upon is one's dharma.³

5.1.2 Muslim Period

During the reign of Shahjahan and Aurangzeb, the state vakils were directed to give advice free of charge to the poor. Such state lawyer known as vakil – e - sarkar⁴ or vakil –e-sharai were whole time and appointed by Chief Qazi of the province or sometimes by the Chief Justice, the Qazi-ul-Quzat.

5.1.3 Vikramaditya Period

During the time of Vikramaditya period a judge of the highest court was paid five thousand silver coins and was provided with a free furnished home. There was an evolved law of pleadings very similar to the present one. Jurists of the Stature of Manu, Yagnyavalk, Jaimini, Brahaspati and Narad did adorn the legal panorama of this country in its golden age of history but the common man was not required to spend even a pittance for seeking justice. Through the village and community panchayats' justice reached the doors of the poorest sufferers.⁵

³ Vivekananda Swami, *Caste Culture and Socialism* (Advaita Ashram, Calcutta, 1988) 88, underscoring the quality of our rich culture writes: "It is culture that withstands shocks, not a simple mass of knowledge We all know, in modern times, of nations which have masses of knowledge, but what of them? They are like tigers; they are like savages, because culture is not there."

⁴ Report of Expert Committee on Legal Aid, *Processual Justice To The People May* (1973) 43

⁵ Johari S.N, "Programme and Movement of Legal Aid to Poor", *AIR* 1981 Jour.28

5.1.4 British period

In India, in the olden days Justice was rendered very cheaply without charging any court fee or stamp duty. Pre- British India had practiced “Constitutional monarchy” and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor, inexpensively and immediately. In short, justice to the citizens, high and low has been an Indian creed of long ago. British brought with them an expensive system of Administration of justice, which has made Legal Aid to poor an obvious necessity.

5.1.4.1 The Civil Procedure Code, 1908

Order 33 of the Civil Procedure Code provides for filing of suits by indigent persons. It enables persons who are too poor to pay court fees to institute suits without payment of requisite court fees.

5.1.4.2 Bombay Legal Aid Society, 1924

For providing Legal Aid in the pre-independence phase the Bombay Legal Aid Society (BLAS) was formed in 1924. The main object of the society is making justice accessible to the poor and reducing the cost of litigation, providing lawyers to the poor on the basis of need, rendering Legal Aid gratuitously and to make provision for payment of court fees. To qualify for legal aid, an applicant had to satisfy the means test and had to have a bonafide case.⁶

⁶ 14th Report of the Law Commission of India, *Reforms in the Administration of Justice* (1958, Appendix iv) 621

On 27th Dec. 1945 Bombay Legal Aid Society wrote to the Law member of the Government of India inviting the attention to the report to the Rushcliffe Committee in England, published in month of May of that year. The Rushcliffe Committee had made a number of recommendations for improving the system of Legal Aid in England. The letter suggested that a similar committee be appointed in India.

5.1.5 Post-Independence

Justice Bhagwati Committee

On 23rd March 1949, Government of Bombay appointed a committee under chairmanship of Justice N.H. Bhagwati. In its report submitted on 31st October 1949, the Committee made the following recommendations:

- a. Administrative machinery of legal aid should be constituted at four levels namely,
 - 1) State level 2) High Court level 3) District level and 4) Taluka level
- b. The Committee suggested two tests for determining eligibility for legal aid, namely i) Means test and ii) Prima facie test
- c. It was further proposed that no aid should be provided in trivial and trifling cases
- d. There should be a declaration on oath about “Disposable Income” and “Disposable Capital”
- e. There should be a certificate from a respectable citizen or responsible officers regarding his means

- f. A bond should be executed by the party that there is no champerty and he will not make compromise without consent of Legal Aid Committee
- g. There may be cancellation of Legal Aid certificate in certain cases.

Finally, the Committee recommended for:

- a) Assignment of lawyers, i.e., every member of Bar should handle at least six cases per year.
- b) The lawyer is entitled to get remuneration only after six cases.
- c) When assisted party is successful then cost should be credited in Legal Aid Fund and in case of his failure, cost should be paid out of Legal Aid Fund.

The Committee recommended for "Partial Legal Aid as suggested in the Report of Rushcliffe Committee in England. It had also mentioned the scope and extent of Legal Aid. Legal Aid may be given to plaintiff and defendant, complainants, petitioners etc. Legal Aid may be provided in all courts.

Legal Aid includes

- a) Court fees b) Process fees c) Diets of witnesses, d) cost of certified copies e) Pleaders fee etc.⁷

Trevor Harries Committee

Trevor Harries Committee in West Bengal recommended a three - tier institutional structure for delivery of Legal Aid Services.⁸ Legal representation at state expense however was available only where an indigent accused was

⁷ Roma Mukherjee, *Women, Law and Free Legal Aid in India* (Deep & Deep Publications Pvt. Ltd, 2000) 31

⁸ *Supra* note.5, at 26

being tried for an offence punishable with a capital sentence. This was not a statutory right but made available at the discretion of the court.⁹

5.1.6 Post-Constitution Period

Indian Constitution which came into force in 1950 sets out social justice, liberty and equality of status as its main aim. The Fundamental Rights along with the Directive Principles of State Policy aims to create an egalitarian social order where justice dwells in all walks of life be it, social, political or economic.

5.1.6.1 Fundamental Rights

Securing equality is a fundamental entitlement, set out in Article 14 of the Constitution. Art.14 directs the State not to deny equality before the law and equal protection of the laws to any person within the territory of India. Mr. M. C. Setalvad who was the first Chairman of the Law Commission of India observed:

“Art.14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Equality in the administration of justice can thus be said to form the basis of our Constitution---the essential need for legal aid can be based on yet another imperative consideration. No true democracy can endure without the system of administration of

⁹.Mukherjee D.V, “Legal Education For Service To The Poor”, *AIR* 1982 Jour.27

justice of which the poorest are able to take advantage. It would not be an exaggeration to ask that the very existence of free Government depends upon making the machinery of justice available to the humblest of its citizens.”¹⁰

Equality in administration of justice thus forms the basis of all modern systems of Jurisprudence. Equality before law necessarily, if sought, must have an equal opportunity of access to the court, and opportunity of presenting their cases to the court. However, the access to the courts depends upon the payment of court fees, and the fee of skilled lawyer. As far as a person is unable to obtain access to a court of law due to poverty for defending himself against a criminal charge, justice becomes unequal and laws, which are meant for his protection, have no meaning and to that extent fail in their purpose.

Unless some provision is made for assisting the poor man for the payment of lawyer's fees and other incidental costs of litigation, he is denied equality in the 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.¹¹

The Court should interpret Article 14 in such a way as to invoke its aid to the poor and direct the State not to deny equality to those who have no ample means of representing themselves in the courts of law. Equal justice demands access to law and justice to both the poor and the rich and unless concession is

¹⁰ *Encyclopedia of Social Work in India* (1968) 470

¹¹ XIV Report of Law Commission of India, Vol.1 (1958) 587

provided to poor persons, Article 14 regarding equality will be futile and a mere mockery.¹²

The assurance of equal justice under law is an essential requisite of true democracy. Such principle requires that competent legal assistance should be provided to all persons in need and who are unable to secure it through their own financial resources. If equality before law is not functional, not readily available and not viable with respect to remedies for a poor man's complaint or assertion of his right, then it is a fiction even for those who have the privilege to be represented before the law.

Right to personal liberty is one of the cardinal principle of the Constitution is guaranteed under Article 21. This right cannot be taken away except by the procedure established by law. The procedure is fair and just only when it fulfils the demands of natural justice. Right to hearing is an integral part of natural justice. If the right to counsel is essential to fair trial, it is equally important to see that the accused has the necessary means for his defence.¹³

Now the Supreme Court of India has laid down that right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Art.21. The state government cannot avoid its constitutional obligation to provide free legal services to a underprivileged accused by pleading financial or administrative liabilities. The state is under a constitutional mandate to provide free legal aid

¹² Mukherji, Devash Chandra, "Legal Education and Services to the poor", *AIR* 1982 Jour. 650

¹³ Hussainara Khatoon v State of Bihar *AIR* 1979 SC 1369

to an accused who is unable to secure legal services because of indigence and whatever is necessary for this purpose has to be done by the state.¹⁴

Article 21 has been reinforced by Article 39-A, therefore the State must give to the accused the facility to be defended by a counsel.¹⁵ It is well established that State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and needs of justice so requires, provided of course, that the accused person does not object to the provision of such a lawyer.

Further, Art.22 states that no person shall be denied the right to consult, and to be defended by a legal practitioner of his choice. When a person is arrested, he has a right to consult a legal adviser of his own choice and to have effective interview with the lawyer out of the earshot of the police.¹⁶ The right extends to any person who is arrested, whether under the general law or under a special statute.¹⁷

5.1.6.2 Directive Principles of State Policy

Article 39A provides for Equal Justice and free legal aid and states that “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

¹⁴ Khatri and Ors v. State of Bihar AIR 1981 SC 928

¹⁵ Shivarao.V, *The Framing of India's Constitution* (N.M.Tripathi Pvt.Ltd., Bombay, 1968) 236

¹⁶ Motilal v. State AIR 1954 Raj 241

¹⁷ State of M.P v. Shobharan AIR 1966 SC 1910

for securing justice are not denied to any citizen by reason of economic or other disabilities.”

Article 39A is added by the Constitution (42nd Amendment) Act, 1976 to ensure equal justice which has been promised to all citizens by the Preamble and to further guarantee equality before law (Article 14) , which would have no meaning to the poor so long as they are unable to pay for their legal admission.¹⁸ The impact of Article 39A read with Article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid. The provision has been thus used to interpret (and even expand) the right conferred by section 304 of the Code of Criminal Procedure 1973¹⁹.

Article 39A of the Constitution gives constitutional status to free legal services to the poor. The objective of Article 39A has been explained by Supreme Court as “...it is clear from the terms of Article 39A, the objective of Constitution is to ensure social and equal justice so that legal aid has to be implemented by comprehensive schemes. Directive principles and fundamental rights have no disharmony as both are aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble. Primarily Article 39A is addressed to the Legislature and Executive, but as far as the court of justice can indulge in judicial law making, within ambit of the Constitution, the courts too are bound by this mandate.”²⁰

¹⁸ Basu,D.D, *Constitution of India* (Prentice of India Pvt.Ltd.,New Delhi, 1981) 231

¹⁹.Bakshi P.M, *The Constitution of India* (Universal Law Publishing Co, Delhi, 9th Ed., 2009) 87

²⁰ Rajan Dwivedi v. Union of India AIR 1983 SC 624

In a suitable case, Supreme Court may direct District Judge to arrange legal aid²¹. The plea of paucity of funds pleaded by the State would not be tenable, as paucity of funds cannot be a reason for discrimination. Right to free legal aid and speedy trial is a mandate under Article 21 and 39A. The court casts duty on State to give grant-in-aid to recognized private law colleges, similar to other faculties, which qualify for receipt of grant. It cannot be denied either by pleading paucity of funds or otherwise.²²

*There*²³ was a question as to whether voluntary organisations or social action groups engaged in the legal aid programme should be supported by the State Government and if so to what extent and under what conditions. The Court held that there can be no doubt that if the legal aid programme is to succeed it must involve public participation.

The State Government undoubtedly has an obligation under Article 39A of the Constitution, which embodies a directive principle of State policy, to set up a comprehensive and effective legal aid programme, to ensure that the operation of the legal system promotes justice on the basis of equality. But there can be doubt that despite the sense of social commitment which animates many of our officers in the Administration, no legal aid programme can succeed in reaching the people if its operation remains confined in the hands of the administration.

Art.39A furnishes beacon light that justice be done based on equal opportunity and no one be denied justice because of economic or other disabilities. Courts are sentinels in the enforcement of the rights of the people, in particular the

²¹ *Bajiban Chauhan v. UPSRTC* (1990) Supp SCC 769

²² *State of Maharashtra v. Manubhai Pragaji Vashi and others* AIR 1996 SC1

²³ *Center of Legal Research and another v. State of Kerala* AIR 1986 SC 2195

poor. The judicial function of a Court, therefore in interpreting the Constitution and provisions of the Act, requires building up continuity of socio-economic empowerment to the poor, to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order.

Therefore, the concepts engrafted in the statute require interpretation without doing injustice to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the previously mentioned rights to the workers a reality lest establishment of an egalitarian social order would be frustrated and constitutional goal defeated²⁴.

Though Article 39A of the Constitution provides rights to equal justice and free legal aid and though the state provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence, if the young inexperienced members from the Bar are assigned to defend him. It is high time that senior counsel practising in the court concerned, volunteer to defend such indigent accused as a part of their professional duty. If these remedial steps are taken and an honest and objective investigation carried out, it will enhance a sense of confidence of the public in the investigating agency.²⁵

5.1.6.3 Justice Bhagwati's Role in Developing Legal Aid Schemes

During the emergency in 1975 Prime Minister Mrs. Indira Gandhi made legal aid a part of the 20 point programme she had launched. Justice Bhagwati

²⁴ Air India Statutory Corporation v. United Labour Union and others AIR 1997 SC 645

²⁵ Kishor Chand v. State of H.P AIR 1990 SC 2140

readily embraced the concept. When Mrs. Gandhi's government came back to power in 1980 it set up a committee under the Chairmanship of Justice Bhagwati for implementing Legal Aid Schemes. Apart from the traditional court-oriented legal aid programme, the programmes that Justice Bhagwati had set up had many facets.

The first strategy was promotion of legal literacy and creation of legal awareness among the people. This was based on the fact that we have a lot of social welfare legislations in this country but the beneficiaries of it, are not aware of the rights and benefits conferred upon them. Unless the people are aware, they will never be able to know that a legal wrong is capable of legal redress. To give the programme necessary thrust small booklets were produced, radio and television were used and documentary films were made. A second strategy was adopted to carry legal services to the doorstep of the people by organizing legal aid camp in selected rural areas. Thousands of people attended those camps. The legal problems of the people were used to be answered by a lawyer and the financial problems were answered by various revenue authorities who also attended such camps. People's courts were set up where retired judges, socially committed lawyers and social activists involved in pending cases were mediated.

This system has struck roots in national soil and has become very popular. The third strategy was organization of legal aid clinics in selected Universities and Law Colleges. A course on 'Law and Poverty' was introduced in the final year of law course. Legal Aid Clinics were opened in Universities where the

students see clients and give them advice under the guidance of a teacher. Also, under this scheme students were sent to the rural areas for the purpose of carrying out social-legal surveys.

The fourth strategy that was adopted was a little bit conventional. This runs in the words of Justice Bhagwati thus:

“We felt that if we really wanted to reach the people then we had to work through social action groups. We have a large number of young men and women, full of idealism and enthusiasm, who have given up a life of comfort and luxury in order to go to the rural areas to work among the poor at the grass root level. We found they were scattered, isolated and one group did not know what the other was doing. We started forming centres where social action groups operating within a geographical area would come together. My organization, the Committee for Implementing Legal Aid Schemes, would find them and provide them with a lawyer. They carry out social-legal surveys and we started holding camps for training social workers as paralegals.” The strategy as adopted became highly fruitful.²⁶

5.1.6.4 Judicial Interpretation

There are several judicial decisions where the importance of Art.39A read with Art.21 of the Constitution were interpreted and explained.

²⁶ Ram Kishore Choudary and Tapash Gan Choudary, *Judicial Reflections of Justice Bhagwati* (Eastern Law House, 2008) 18

“Procedure established by law” as envisaged in Article 21 guarantees fair procedure which necessarily includes observing of the principles of natural justice which includes right to appeal on fact, in cases of criminal conviction.

A three judge bench of Supreme Court consisting of V. R. Krishna Iyer, D. A. Desai and O. Chinnappa Reddy, JJ .lays down the following principles in the field of legal aid.²⁷

- a) The Court shall forthwith furnish free transcript of the judgement when sentencing a person to prison.
- b) A copy of the judgement shall be delivered to prisoner by the jail authorities with quickness and shall contain written acknowledgement from him.
- c) If the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail administration.
- d) If a prisoner is unable to engage a lawyer on the ground of his indigence or incommunicable situation, then the court in the interest of justice and based on the gravity of sentence shall assign a competent lawyer for prisoner’s defence subject to his approval.
- e) The State shall pay to the assigned counsel a sum as the court may equitably fix.

A procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would therefore, have to go through the trial without legal assistance, cannot possibly be regarded as

²⁷ M.H.Hoskot v. State of Maharashtra AIR 1978 SC 1548

reasonable fair and just. It is an essential ingredient of reasonable, fair and just procedure to a prisoner that the legal services should have been made available to him who is to seek his liberation through the courts process.²⁸

Legal aid is a Constitutional right of every accused person who is unable to engage a lawyer and secure legal services because of reasons such as poverty, indigence. State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require.²⁹

Further, the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services because of indigence and whatever is necessary for this purpose has to be done by the State.³⁰

Commenting on the competency of the free legal aid lawyers, the Court held that under trial prisoner should be represented by “Fairly Competent Lawyer at State Expense”.³¹

Commenting on a complaint filed by Sheela Barse, a journalist, about custodial violence to women prisoners whilst confined in the police lock-up in the city of Bombay, through a letter addressed to it, the Court treated the letter as a writ petition and held that legal aid should be provided to a poor or indigent accused

²⁸ Hussainara Khatoon (IV) v. Home Secretary State of Bihar (1980)1 SCC 98

²⁹ Hussainara Khatoon(V) v. Home Secretary State of Bihar (1980)1 SCC 108

³⁰ Khatri (I) v. State of Bihar (1981) 1 SCC 627

³¹ Kandra Pahadiya(I) v. State of Bihar AIR 1981 SC 939

whose life and personal liberty is in peril. It is the duty of the State to provide legal assistance to the poor and indigent accused (male and female) whether they are under trial or convicted persons.

Bhagawati J. observed:

“Legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39-A but also by Article 14 and 21 of the Constitution. It is a necessary *sine qua non* of justice and where it is not provided, injustice is likely to result and undeniably, every act of injustice corrodes the foundations of democracy and rule of law.

The rule of law is merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests...It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether, they be under – trial or convicted prisoners.”³²

The right to legal aid is not merely dependent on making an application by the accused seeking a lawyer at State’s expense. Rather, the Magistrate/Judge is obliged to inform the accused of his right to obtain free legal aid. In *Suk Das*³³ the Court held that free legal aid at State cost is a fundamental right of a person accused of an offence, which may involve jeopardy to his life or personal

³² Sheela Barse v. State of Maharashtra AIR 1983 SC 378

³³ Suk Das v. Union Territory of Arunachal Pradesh AIR 1986 SC 991

liberty, and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.

The right to counsel is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before the court of law wherein competent and experienced prosecutor conducts the prosecution.³⁴

A person arrested on accusation of a crime becomes entitled to be defended by a counsel at the trial and this right is not lost even if he is released on bail or is tried by a court, which has no power to impose sentence of imprisonment.³⁵

The court has considered fair hearing as constitutional requirement under Articles 21 and 22 of the Constitution. Accordingly, where any accused is unable to afford expenses for trial of the case, then High Court is empowered to appoint amicus curiae for criminal cases.³⁶

Extending the concept of legal aid, Supreme Court held that the accused has a right to legal counsel at the time of “*custodial interrogation*” as a part of the right to counsel and as a right against self-incrimination in Art 22(1) and 20(3).³⁷

The Supreme Court observed that the legal aid to the accused may be treated as a part of ‘right to life and personal liberty’ under Art.21. This fundamental right in Art.21 arises in every case, whether before a magistrate or a session’s judge, where jeopardy to the life or personal liberty of the accused person is

³⁴ Janardhan Reddy v. State of Hyderabad AIR 1951 SC 217

³⁵ State of Madhya Pradesh v. Shobaram AIR 1978 SC 597

³⁶ Nawab Khan v. State of Gujarat AIR 1974 SC 1143

³⁷ Nandini Satpathy v. P.L Dani AIR 1978 SC 1025

involved.³⁸ Therefore, when legal aid was not provided to the accused, the conviction was held unsustainable and the case was remanded for retrial.³⁹ Further, the Supreme Court held that an accused who is too poor even to offer a bail of Rs. 2000/- shall be given the benefit of legal counsel at the expense of the state.⁴⁰

Where the counsel for accused is absent on the date of hearing, another counsel to defend the accused has to be appointed or the case has to be adjourned. Where neither of the two courses is adopted, and prosecution witnesses are examined there is contravention of the provisions of Sec.304 of Criminal Procedure Code.⁴¹

Where Amicus Curiae do not discharge his duty and does not defend the accused properly, the appellate court can remand the case for retrial.⁴²

Under Article 21 of the Constitution, free legal assistance at state cost has become a fundamental right of a person accused of an offence when he cannot engage an advocate being poor or an indigent.⁴³

Supreme Court gave a word of caution for the courts that while dealing with accused persons during trial when counsel does not represent them, to keep in view the mandate of Sec.304.⁴⁴

Free Legal Aid movement has become the talk of the day to make the legal system accessible to all citizens irrespective of their income. In a socialistic

³⁸ Kishore Chand v. State of Himachal Pradesh 1991(1) SCC 286

³⁹ Tyron Nazareth v. State of Goa 1994 Cr.LJ 1716

⁴⁰ Mool Chand v. State 1990 Cr.LJ 682 Delhi

⁴¹ State v. Hiralal 1997 Cr.LJ 4233 (Raj DB)

⁴² Ram Awadh v. State of U.P 1999 Cr.LJ 424

⁴³ Hiranman v. State of Maharashtra 2001(2) Crimes 179

⁴⁴ Dilwar Singh v. State of Delhi ,Lawyers Update, Vol.XIII Part II Nov.2007 at 36

democracy, the role of judiciary is vital; it interposes between the state and an individual in relation to socialistic and unsocialistic approach of the state's legislative measures and their implementative devised mechanism for securing justice.⁴⁵

5.1.6.5 Scope for legislative intervention: Schedule VII of the Constitution

There are numerous entries in the Union List, State List and Concurrent List of Schedule VII, which enables the competent legislature to provide for legal aid to the needy, and the poor ones. These enabling provisions focus on areas like Constitution, Organisation, Jurisdiction and powers of the Supreme Court (including contempt of such court) and the fees taken therein; and persons entitled to practice before the Supreme Court⁴⁶; Constitution and Organisation, except provisions as to the officers and servants of the High Court, persons entitled to practice before the High Courts⁴⁷; Officers and servants of the High Court, procedure in rent and revenue courts, fees taken in all courts except the Supreme Court⁴⁸; Criminal Procedure including all matters included in the Code of Criminal Procedure⁴⁹; Administration of justice, Constitution and Organisation of all courts except the Supreme Court and the High Court⁵⁰ and

⁴⁵ Dr. Chaturvedhi A. N., *Rights of Accused under Indian Constitution* (Deep & Deep Publications, New

Delhi, 1st Ed. 2004) 249

⁴⁶ List I, Entry 77

⁴⁷ List I, Entry 78

⁴⁸ List II, Entry 3

⁴⁹ List III, Entry 2

⁵⁰ List III, Entry 11 A

Civil Procedure Code including all matters in the Code at the commencement of the Constitution⁵¹

5.1.7 Reports of various Committees on Legal Aid

5.1.7.1 First Report of Law Commission of India

The First Law Commission of India under the Chairmanship of Mr. M. C. Setalvad addressed itself more seriously to the question of equal access to justice in the context of constitutional background. The Committee devoted a chapter on Legal Aid stressing that rendering of legal aid to the poor litigants is not a minor problem of procedural law but a question of fundamental character. The governments of the states have not been enthusiastic about proposals calculated to enlarge the scope of legal aid.⁵²

Mr. M. C. Setalvad made the following recommendations on legal aid:

Free legal aid to the poor persons of limited means is a service which modern state and in particular a welfare state owes to its citizens. The state must, therefore accept this obligation and make available funds for providing such legal aid to poor persons of limited means.

The legal profession must in the main, if not entirely, accept the responsibility for the administration and working of schemes of legal aid. This responsibility should be discharged by the profession by organising and by assisting the

⁵¹ List III, Entry 13

⁵² Dr. Dhyani S. N., *Law Morality and Justice Indian Developments* (Metropolitan Book Co. Ltd, New Delhi, 1st Ed.,1984) 125

bodies which will render legal aid, and representing in courts poor persons or persons of limited means on the payment of only a proportion of the fees.

The legal profession owes a moral and social obligation to poor members of society, which must be discharged, by every member of the profession doing a certain amount of legal work free for poor persons.

The scheme for legal aid to poor persons and persons of limited means outlined by the Committee on Legal Aid and Advice appointed by the Government of Bombay in 1949 and the scheme outlined by the West Bengal Committee should with suitable modifications made in the light of local needs and conditions, be adopted by all states as soon as financial conditions permit.

Measures in furtherance of legal aid should be adopted immediately. Bar associations should take immediate measures to render legal aid on a voluntary basis⁵³.

The Law Commission therefore envisaged the need for legal aid when it stated that "...equality is the basis of all modern system of jurisprudence and administration of justice.... In so far as, a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws, which are meant for his protection, have no meaning and to that extent fail in their purpose."

Unless some provision is made for assisting the poor man for payment of court fees and lawyer's fees and other incidental expenses of litigation, he is denied equality in the opportunity to seek justice.

⁵³ Sujan Singh, *Legal Aid Human Right to Equality* (Deep & Deep Publications, New Delhi, 1st Ed., 1996) 91

Thus Bhagwati Committee 1949 from Bombay, the Trevor Harris Committee 1950 from Calcutta coupled with recommendations of the First Law Commission in 1958 prepared the necessary background for introducing legal aid scheme in India. In 1950 the Bengal Committee and subsequently the Government of India in 1952 and in 1956 asked the State governments to make provision for token legal aid to the poor but found no positive response from the State governments.

5.1.7.2 Third All India Lawyers Conference

The provision of legal aid was considered jointly by lawyers in Third All India Lawyers Conference (1962) and they recommended as follows:

- a) An indigent accused should be represented by counsel at government expenses in all cases including proceedings under Section 488 of the Criminal Procedure Code and Jail appeals
- b) No court fee, authentication of copying fee or any other fee be levied upon an accused
- c) The expression "Pauper" used in Order XXXIII of the C.P.C should be replaced by the expression "poor person" or "assisted person"
- d) The explanation to Rule 1, Order XXXIII of the Code of Civil Procedure should be amended to entitle a person who has no property worth Rs.100 to sue as pauper

- e) Order XXXIII of the Code of Civil Procedure should be amended so as to enable a person not only to sue as pauper but also to defend suit or proceeding as pauper
- f) Order XXXIII of the Code of Civil Procedure should be further amended so that an assisted person is exempted not only from the payment of court fee but also from the payments of process fee, witnesses diet money and travelling allowance fee for obtaining copies of judgments, Order or documents
- g) Rules of Supreme Court and High Courts should be amended so as to provide counsel to the poor persons in these courts and other subordinate courts at Government expense
- h) Various Bar Associations in the country should organize legal aid committee forthwith at the Tehsil, Taluka, District, High Court and Supreme Courts levels to provide free legal aid to poor persons
- i) Bar Association of India should formulate the manner in which various Bar Associations may provide both free and partial legal aid
- j) A comprehensive scheme, taking into account the Scheme already formulated by the Government of India and the State Governments recommend the same to the Central and State Governments, for being put into force.⁵⁴

⁵⁴ Dr. Sharma.S. S, *Legal Services, Public Interest Litigations & Para-Legal Services* (Central Law Agency, Allahabad, 2nd Ed., 2007) at 323

5.1.7.3 Gujarat Committee Report

A resolution was passed by the government of Gujarat on 22nd June, 1970 to appoint a 4-member committee under the chairmanship of Hon'ble Chief Justice, P.N. Bhagwati the terms of reference of the Gujarat Committee, asked to consider the question of grant of legal aid in civil, criminal, revenue, labour and other proceedings to poor persons, to persons of limited means and to persons belonging to backward classes and to make such recommendations as may be desirable so as to render legal advice more easily accessible to such persons, including recommendations on the question of encouragement and financial assistance to institutions engaged in the work of such legal aid.⁵⁵

Gujarat Report, running into 271 pages and presented in 14 parts, dealt with the subject of legal aid in all its possible length and breadth. The following are important recommendations

5.1.7.3.1 Legal Aid in all Courts including Tribunals

The report recommended legal aid in all types of civil and criminal courts as well as in different categories of Administrative Tribunals, viz. tribunals adjudicating industrial and allied matters, Commissioners for Workmen's Compensation, Authorities under the Payment of Wages Act and the Minimum Wages Act, Labour Courts and Industrial Tribunals constituted under the Industrial Disputes Act 1947, Employees State Insurance Court, and the Tenancy Tribunals. It has given a detailed report as to what should be the

⁵⁵ Paragraph 3 of Resolution dated 22-6-1970

organisation and structure of the legal aid programme. It recommended for constitution of Taluka Legal Aid Committees, District Legal Aid Committees, and the High Court Legal Aid Committee, City Court Legal Aid Committee for the city of Ahmadabad, apart from the establishment of a State Legal Aid Committee. In such committees, the report suggested for the association of Government, Judiciary, the Bar, Law Schools and the community representatives.⁵⁶

5.1.7.3.2 Legal Aid Fund

The Gujarat Report suggested for a legal aid fund to meet the expenditure of legal aid scheme. It recommended that the legal aid fund, created by a statute, would consist of moneys received from different sources for the legal service programme. The sources suggested by the report were:

- a) Donations from individuals, associations of merchants etc.
- b) Money collected by organising entertainment programmes
- c) Revenue from the legal aid stamps
- d) Collection by legal aid cess
- e) Membership collection of the State Legal Aid Committee
- f) The costs in litigation awarded to the assisted person
- g) Contributions from the local self-government bodies

⁵⁶Emperor v. Sukdev AIR 1929 Lah. 99

5. 1.7.4 National Conference on Legal Aid⁵⁷

In March 1970 a galaxy of luminaries including the President of India, the then Law Minister, a number of Supreme Court Judges, the Attorney-General , leading members of the Bar, law teachers and representatives of state governments gathered together for the inauguration of the National Legal Aid Conference and establishment of a new body, the National Legal Aid Association of India. They put themselves squarely on record in favour of widespread programs of free legal services in India as a means of assisting the poor masses to redeem through lawful means, the rights and pledges enshrined in the Constitution, and to redress the balance of the adversarial system on which the administration of justice is based. The participants of the conference felt that the gap between constitutional promise and daily reality was large.

The matters discussed at the Conference are as follows:

- i. The point was repeatedly made that although Article 22(1) of the Constitution says that no person shall be denied the right to be defended by a legal practitioner of his choice, almost no one in a criminal case could get a lawyer at government expense unless the crime carried death penalty, and even the aid did not always conform to acceptable standards. Furthermore Indian Supreme court had held in a 1951 case⁵⁸ that a conviction of an unrepresented defendant in a capital case could be upheld if he failed to affirmatively request for an appointment of counsel at the trial stage. In an unfortunate dictum, the right to counsel

⁵⁷ *Supra* note. 52 at 97

⁵⁸ Janardhan Reddy v. State of Hyderabad AIR 1951 SC 217

embodied in the statutory codification of Article 22(1) of the Constitution was in deed a privilege.

- ii. It was also noted that although Article 14 guaranteed every person equality before the law and equal protection of the law, it was a known fact that every day in India tenants were evicted, sharecroppers deprived of their tenuous hold on land, and debtor's successfully sued by money lenders –all done legally in court with scrupulous regard for form but at the expense of illiterate defendants and had no lawyer and no idea in the world of how to defend themselves. Was the system of justice in its operation, a legal and legitimizing instrument to perpetuate inequalities? In the light of the mounting evidence, the question had to be asked pointedly and answered in meaningful terms.
- iii. Then there was the matter of court fees. In a practice dating from the days of imperial rule, many civil plaintiffs had to pay a graduated court fee to get their day in court – graduated by the size of the claim, not by the litigant's income. Averaging 7 to 10 percent of the actual claim, these court fees effectively denied access to the courts to a vast augment of the citizenry with one ironic exception; Defendants paid no court fees, and it is in this guise that the abject poor participated in the administration of justice. There was provision for suing in forma pauperis and escaping all fees, but the prescribed income threshold was abysmally low and even the poorest were usually better off than that.⁵⁹

⁵⁹ Singhvi L.M., *Law and Poverty* (N.M. Tripathi Pvt.Ltd,1973) 228

iv. The conferees reviewed the legal assistance efforts made till date in India, drawing on earlier studies – the Bhagwati and Trevor-Harries Committees and the 1958 Law Commission Report and the papers submitted at the Conference. They discussed the voluntary programs in Delhi, Bombay and Calcutta; the inadequately financed administered and largely dormant programs many states had enacted for selected groups, particularly the scheduled castes and tribes, the more ambitious programs in state of Kerala which had languished either due to indifference or lack of funds; and the programs in Maharashtra that had fared better. They recalled the efforts by the Law Ministry in the 1960s to induce the individual states to undertake programmes, only to be told that the funds were not available. The conference concluded that, if anything was to be done it was for the central government to take the initiative to enact appropriate legislation, and to produce the bulk of the funds. It seemed clear that there was no constitutional obstacle to such enactment since there were several entries on the Union and Concurrent Lists of the Constitution to justify a Central Legislation.

The National Legal Aid Association which was inaugurated at the Conference, promised to play a part in legal aid to obviate direct government intervention except for provision of finances and statutory authorization.

Those who were already involved in legal aid and advice programs cautioned about the difficulty of dedicated lawyers in sufficient numbers, setting firm

standards for client eligibility, for finding full-time administrators, and being able to provide legal advice more readily than legal aid in litigation.

However many speakers seemed to feel that a hierarchy of Legal Aid Committees at the state, district , and courthouse levels might be formed with panels of cooperating lawyers receiving a reduced-scale fee for each case they took.

The Conference had a word for the law schools. If law schools could involve their teachers, students in legal aid work, and related studies, the Conference suggested, it might create a cadre of dedicated graduates who would opt for social service in lieu of courthouse practice. In the process, the law school themselves would have to adapt their curricula and objectives –a salutary change but a very tall order. However, in order to create traditions of legal service in practicing lawyers, they had to be inculcated while still in the law schools⁶⁰.

Thus two most significant accomplishments of the Conference were

- a. To stress the need for statutory and financial assistance for legal aid from the Central Government in partnership with the Bar, the Law Schools and other institutions.
- b. To put forward the outlines of a full-time, All- India Legal Aid and Advice Organization intended to mobilize the relevant groups.

⁶⁰ *Id.* at 226

5.1.7.5 Expert Committee on Legal Aid ⁶¹

Appointment

The Gujarat Report proved to be a milestone in the legal aid movement of the country. After perusal of the report, the State of Gujarat initiated a programme for legal aid to the poor and a pilot project was initiated in the state from 5th November 1972. Since then legal aid and advice scheme have been extended to the whole of the State of Gujarat. The recommendations of this report not only stimulated the Government of India to appoint an expert committee on legal aid in October 1972 but also the Gujarat Report proved to be a stepping stone for the Expert Committee which submitted its Report in 1973.

The Government of India, vide notification dated 27th October 1972, appointed an eleven member Expert Committee with Shri Justice V. R. Krishna Iyer as the Chairman.

The Expert Committee – Terms of Reference ⁶²

The terms of reference required the Expert Committee -

- i. To consider the question of making available to the weaker sections of the community and persons of limited means in general and citizens belonging to the socially and educationally backward classes in particular facilities for: a) Legal advice so as to bring among them an awareness of their constitutional and legal rights and just obligations and for the avoidance of vexatious and unnecessary litigation and b) legal

⁶¹ The members were Dr. L.M.Singhvi, Shri. Jaisudh Lal Hathi, Shri. M. K. Ramamurthi, Shri. D. P. Singh, Shri. Harish Chandra, Mrs. Lakshmi Raghramaiya, Shri. Gopi Nath Dixit, Dr. N. R. Madhava Menon, Shri. Kanwar Lal Sharma and Shri. P.B. Venkatasubramanian

⁶² Notification of Government of India, Ministry of Law and Justice, No. F6(10) 72-j dated 27th October 1972, para 3

aid in proceedings before civil, criminal and revenue courts so as to make justice more easily available to all sections of the community

- ii. To formulate having regard to the resources available a scheme for legal advice and aid for the purpose aforesaid and
- iii. To recommend the time and manner in which the scheme may be implemented.

Recommendations of the Expert Committee

In the report submitted to the Government of India on 27th May, 1973, it is important to note that, it set to rest the controversy of liability of the government, which hindered the implementation of legal aid services in India⁶³. The Committee agreed with the Gujarat Report on the involvement of Nyaya Panchayats, need for qualifying the means test and the prima-facie case test before getting the benefit of legal aid during trials as well as appellate stages of both civil and criminal cases and seeking legal advice.

The Report laid special emphasis on the requirements of legal aid for women, workers and the dwellers of tribal areas.⁶⁴ The Report suggested establishment of the legal aid centres, employing lawyers for legal advice, to extend legal guidance to villages. In the opinion of the Expert Committee, such advice may prevent litigation, local fights, family discords and worse evils.

Justice Krishna Iyer Committee had shown special concern for legal aid movement for remedying the agonies of the unorganised and agricultural

⁶³ Government of India: Report of the Expert Committee on Legal Aid , *Processual Justice to the People*, (May, 1993) 8

⁶⁴ *Id.* at 28

workers, who are exploitable in the absence of morale-boosting legal aid and advice.

For the members of Scheduled Castes the report stressed that a sensitive assistance by legal aid lawyers to the complainant or accused, civil suitor or defendant or petitioner before administration is a necessity and that socio- legal research into the flaws of the relevant laws and wrongs needing redress were the therapeutic measures to heal the traumatic social lesions' of centuries. It desired that legal activism must relieve the burden on the social conscience.

Recommending the enlargement of the ambit of legal aid the report suggested amendment of Order XXXIII and Order XLIV of C.P.C so as to enable a court to assign a pleader at the expense of the state to an indigent suing or even defending a suit.

In criminal cases, the report recommended for denial of legal aid to habitual offenders and those involved in election, defamation and adultery cases. Legal aid was suggested to be made available in maintenance and genuine private criminal complaint cases.⁶⁵

Providing for a well-devised organisation structure of the legal aid agencies at the national, state and local levels, the Expert Committee recommended for active involvement of lawyers, voluntary agencies and the law schools. Recommendations for the institutions or Legal Clinics in Law Colleges, the Committee desired them to produce legal literature for mass circulation,

⁶⁵ *Id.* at 34

permitting students and law teachers to appear in courts on behalf of indigent person.

The Report suggested an amendment in the Advocates Act by inserting section 33-A to read as under:

Section 33 Advocates Act 1961: Legal Aid by Law Teachers and Students⁶⁶

“Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any court or tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect;

Teachers of a Law School which provides full time instruction for the professional LL.B degree and which maintains a Legal Aid Clinic as part of its teaching programme where poor persons receive legal aid, advice and related services;⁶⁷

Students of third year LL.B class of Law School who are participating in the Clinic’s activities and who have been certified by the Dean/Principal of Law School under rules made there for by it. But it is only in recommendation stage. Provided such representation in the case of students shall be under the supervision of lawyers associated with the said legal aid clinic and with the approval, of the judge in whose court the student appears.

Justice Krishna Iyer Committee inter-alia recommended for enactment of a comprehensive Legal Aid and Advice Act by Parliament and permitted making

⁶⁶ *Id.at.*164

⁶⁷ V.M.Salgaocar College of Law, Goa, started Legal Aid Cells in various parts of Goa, overall 38 Legal Aid cells, in which students of the college will sit in the cells during Saturday and Sundays three to four hours. They help the village people in legal advice, legal awareness, legal help like filling the forms for social welfare facilities etc. Each cell will be overall supervised by one lecturer of the college. Researcher was the Chairman of Legal Aid society during 2006-2007

the scheme of legal aid flexible to suit to the needs of each state. The Committee also recommended for implementation of the suggestion in a phased manner.

5.1.7.6 The National Forum for Lawyers and its Recommendations

This Forum was established in 1975. It was a national organisation, with its branches at the level of each State and the Union Territory of India under the auspices of All India Congress Committee, Indian National Trade Union Congress and Indian National Rural Labour Federation, an affiliate of INTUC. The basic objective of this forum was to provide infrastructural support for the implementation of 20 Point Economic Programme of Mrs. Indira Gandhi to ameliorate the lot of the poorest of the poor in the country. Legal aid was a part of this programme.

The forum, headed by a legal luminary, Mr. Rajni Patel, set up its branches at state, district and tehsils levels. The forum organised state level conferences of lawyers to involve them in legal aid programme. Such conferences were held in Maharashtra, Assam, Karnataka, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Orissa, Bihar, West Bengal, Gujarat and Punjab. Through these conferences, the Forum recommended for providing a constitutional status to legal aid. This recommendation was further discussed and deliberated upon by the Swaran Singh Committee.⁶⁸

⁶⁸ *Supra* note. 52 at 115

5.1.7.7 Swaran Singh Committee and its Recommendations

The Government of India appointed a Committee in 1975 involving some members from the National Forum for Lawyers, under the chairmanship of Mr. Swaran Singh, a former Union Minister. This Committee made exhaustive recommendations for amending the Constitution, which were incorporated by way of the 42nd Amendment to the Constitution. The Amendment with its wider amplitude, also inserted legal aid in the Indian Constitution.⁶⁹

5.1.7.8 Maharashtra Lawyer's Conference

The problem of implementation of Legal Aid Scheme was again considered by the members of Legal Profession in Maharashtra Lawyer's Conference(1975) which was attended by a galaxy of people not only from the State of Maharashtra but from all over India. In the Conference Late Prime Minister Mrs. Indira Gandhi also sent a message, which emphasized the need for legal aid to the poor.

5.1.7.9 State Committees⁷⁰

The States of Tamil Nadu, Madhya Pradesh and Rajasthan approved Legal Aid Committees for their respective states.

Tamil Nadu Government appointed one-member Committee, headed by former Justice of the Madras High Court, Mr. Justice P. Ramakrishnan, to make recommendations on legal aid.

⁶⁹ *Ibid*

⁷⁰ *Id.* at 113

The Madhya Pradesh Government appointed a Committee headed by Shri Rajinder Kumar Nayak, General Secretary National Forum of Lawyers for Legal Aid, which submitted its report in March 1975. Based on its recommendations, the Legislative Assembly of Madhya Pradesh enacted the Madhya Pradesh Legal Aid and Advice Act, 1976. It proved to be the first state in India to provide for a statutory base of legal aid aimed at the constitution of State Legal Aid and Advice Board, District, Tehsil and even Village Legal Aid and Advice Committees.

The Rajasthan Committee chaired by Dr. L. M. Singhvi, submitted a comprehensive report in May 1975.⁷¹ The Committee inter-alia made two important recommendations viz. the constitution of a special committee to identify issues of Public Interest Litigation, and for setting up '*Nagrik Salah Kendra*' to redress personal grievances of the aggrieved, who approach for it. Putting the recommendations of the Committee into effect, the Rajasthan government constituted the State Legal Aid and Advice Board in November 1975 and constituted Legal Aid Committees at the levels of the State High Court, the Districts and the Tehsils.

5.1.7.10 The Fourteenth Report of the Law Commission of India

The Fourteenth Report of the Law Commission of India submitted two-volume report on Reforms in the Administration of Justice. Following are some of the observations:

⁷¹ Government of Rajasthan: Report of Rajasthan Law Reforms and Legal Services Committee (1975)

- i. Law Commission observed, "Unless some provision is made for assisting the poor man for the payment of court fees and lawyer's fee and other incidental costs for litigation, he is denied equality in the 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 fundamental character.⁷²
- ii. The Law Commission accepted partly the reports of both the Bombay Committee and Trevor Harris Committee.
- iii. It recommended that the legal aid be first extended to person accused of crimes of serious nature, preference be given to persons belonging to S.C, S.T and legal aid should be given to really poor persons first and then those of moderate means.

The other recommendations made by the Law Commission were that there should be representation by the lawyer at state expense to all accused persons without means in cases coming before session's courts, to applicants for maintenance under Section 488 of the Code of Criminal Procedure, 1898 and to convicts who had sent jail appeals. The word pauper was recommended to be replaced by the words poor person or assisted person.⁷³

In early 1960, the Central Government drew up an outline of a scheme for legal aid to the poor and forwarded it to various existing legal aid organisations and the states for comments. The scheme providing for the constitution of the State Legal Aid Committee, the State Capital Legal Aid Committee, District Legal

⁷² Mukherjee D.V., "Legal Education For Service To The Poor", *AIR* 1982 Jour.27

⁷³ *Supra* n. 55

Aid Committees and the Taluka or Tehsil Legal Aid Committee, proposed for making benefit of legal aid available in civil cases, to the plaintiffs and defendants, the appellants and respondents and the petitioners and the opponents. For criminal cases the scheme provided that every applicant accused of an offence punishable with imprisonment, was to be granted legal aid. In addition it provided that a complainant could be given aid only if the complaint was in respect of an offence punishable with imprisonment. The applicant however was required to qualify the means test, *prima facie* case test and the test of reasonableness. The package of legal aid proposed by the scheme provided:

- a) The professional assistance
- b) Remission of court fees
- c) Remission of process fees
- d) Remission of subsistence and travelling allowance to witnesses

Free certified copies of judgment and orders and free preparation of appeal paper books, including the printing and translation of documents, whenever necessary should be made available to such persons.

It was also proposed in the scheme that remission of court fee should be absolute and should not be recoverable even if the assisted person succeeded in the case. The provision for partial legal aid was also made in the scheme.

Under miscellaneous provisions of the scheme, it was mentioned:

- i) The legal aid scheme should be given statutory force

- ii) Every Legal Aid Committee should have an office opened during the entire office hours
- iii) The Legal Aid Committee should grant a formal certificate to an applicant admitted to legal aid but such certificate should be liable to cancellation if the Committee at any stage, is of the opinion, that the legal aid is being misused
- iv) The period for which an application for legal aid is pending with the Legal Aid Committee shall be excluded from computation of the period of limitation.

In 1962, the Third All India Law Conference further considered the question of legal aid. In 1970 a National Conference on Legal Aid was convened to consider the problem of legal aid to the poor. With this view India established National Legal Aid Association in March 1970 to promote on voluntary basis, legal aid with assistance of Central and State Governments to provide legal services to the indigent. It is in 1970 that the Free Legal Aid Bill was introduced in Lok Sabha by Mr. Madhu Limaye to highlight the need of legal aid to the poor.⁷⁴ In 1970s, the State Governments⁷⁵ were moved to initiate concrete action on this subject.

⁷⁴ *Supra* note. 51 at 126

⁷⁵ Tamil Nadu, Madhya Pradesh, Rajasthan, Uttar Pradesh, Karnataka, Orissa, Punjab, West Bengal, J&K, Bihar, Kerala have made rules in this regard.

5.1.8 Role of Bar Council in Legal Aid Movement

The Bar Council of India has taken the initiative of setting up a Committee for organizing legal aid in pursuance of Section 9A of the Advocates Act, 1961 which provides as under:

A Bar Council may constitute one or more Legal Aid Committees, each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed. The qualifications, the method of selection and the term of office of the members of a Legal Aid Committee shall be such as may be prescribed.

The Bar Council of India Rules on professional conduct, also provides, that all the advocates will discharge their social responsibilities. Rule 46 provides that every advocate shall in the practice of the profession of law, bear in mind that any one genuinely in need of a lawyer, is entitled to legal assistance even though he cannot pay for it fully or adequately and, that within the limits of an advocate's economic condition, free legal assistance to the indigent may be provided. Indeed, it is the highest obligation an advocate owes to the society.

Advocates (Amendment) Bill

Advocates (Amendment) Bill introduced in the Rajya Sabha on August 18, 1970 placed full responsibility for legal aid on the Bar Council and made no provision for government funds. While acknowledging the inspirations of National Conference on Legal aid for the provisions regarding legal aid, the Bill did not provide for state funds, which had been the Conference's strongest area of consensus. Instead, it sought to create a fund by raising the enrolment

fee Rs.100/- paid by lawyers entering the legal profession and crediting that sum to legal aid programs.

A Select Committee of Parliament obtained testimony on the Bill through mid-1972. Broadly speaking, representatives of the National Legal Aid Association and other witnesses urged more extensive funding, wider membership on the governing panels, and inclusion of law schools. There was widespread feeling that the Bar Councils were not the most appropriate institutional instruments for legal aid and that more comprehensive machinery should be designed.

Then two years after the Bill had been introduced, the Law Minister announced the government's intention to go more deeply into the matter of legal services to the poor. He stated that he would like to bring before the House a comprehensive scheme of legal aid, not particularly the High Courts or the Supreme Court alone. Because the real stage where legal aid was necessary was the stage where the litigation started and that was at the Taluka level, the bottom level where the people were helpless and were at the mercy of some unscrupulous lawyers or some other people who were interested in fostering litigation. Therefore, there could be no two opinions assertively that it was the duty of the government to go into the question very carefully.

5.1.8.1 Bar Council of India Legal Aid Rules

The biggest contribution of Bar in Legal Aid Movement is that Bar Council of India has framed rules, known as Bar Council of India Legal Aid Rules, 1983 to give effective support to legal aid scheme sponsored by Central

Government,. Under these rules a Committee, known as Legal Aid Committee has been constituted consisting of 9 members. The Chairman of the Bar Council is ex-officio Chairman and the Secretary of the Bar Council of India is the Secretary of the said Committee. The term of the office members is of two years.

The functions of the Legal Aid Committee are: ⁷⁶

- i. To formulate policies for implementing the legal aid and advice scheme and to see that formulated policies are properly followed by the State Bar Council Legal Aid Committee, District and Tehsil Legal Aid Bodies and also to exercise effective supervision and control over those bodies
- ii. To arrange Legal Aid Workshops for lawyers and to arrange training programme for lawyers, Para-legal workers and law students, periodically
- iii. To prepare Legal Aid Literature
- iv. To arrange for protection of indigents in all cases of aggression
- v. To accelerate Public Interest Litigation
- vi. To take appropriate effective measures to locate and assist bonded labourers
- vii. To arrange for prosecution or defence to safeguard the interest of women
- viii. To take all steps to make the legal aid to poor masses meaningful

⁷⁶ Rule 4 of the Bar Council of India Legal Aid Rules, 1983

viii. And to fund, known as “Bar Council of India Legal Aid Fund” has also been created. It may receive amounts from Bar Council of India Trust. Grants from Central Government, State Governments, donations, gifts, costs recovered on behalf of aided person, etc.⁷⁷

Legal Aid may be given to a person applying for legal aid in the form and manner prescribed by the Committee under rules. In the application, the applicant has to disclose all information relevant to his case. Legal Aid may be refused to the applicant when his annual income exceeds Rs.6000 per annum or when it appears to the appropriate Legal Aid Committee that he can afford the expenditure or litigation or the case is otherwise fit and proper for legal aid.

An applicant may also be refused legal aid if he/she has no prima facie case. The applicant has to give undertaking that victory in the litigation is his; he will reimburse the Legal Aid Committee concerned all the expenses incurred in his favour. There is a different means test for obtaining legal advice. Persons having annual income between Rs.6000 and 12000 per annum may be entitled to have legal advice in respect of their cases from an advocate on panel.⁷⁸

It shall be the duty of every advocate of at least five years standing to conduct at least six cases free of his professional charges. No such advocate shall be entitled to refuse to conduct such cases if so asked for by the Legal Aid Committees. Under these rules the students of the final year of law may be given opportunity to appear in a court of law in legal aid case at the discretion of State Legal Board or District Legal Aid Committee. The Bar Council of

⁷⁷ Rule 7 of Bar Council of India Legal Aid Rules, 1983

⁷⁸ Rule 9(a) of Bar Council of India Legal Aid Rules, 1983

India Legal Aid Committee is empowered to frame out necessary rules and regulations.

5.1.9 Committee for Implementing Legal Aid Schemes (CILAS)

In 1981, the Government of India appointed a Committee in the name and style of Committee for Implementing Legal Aid Schemes (CILAS). This Committee was headed by Justice P.N. Bhagwati, the then Chief Justice of Supreme Court of India. Justice Bhagwati stated that in view of “the socio-economic conditions” Prevailing in the country, a court-oriented or litigation oriented program is wholly inadequate. He then enumerated the following tasks of legal aid program.

- i) Promotion of legal literacy and creation of legal awareness among the weaker sections of the community
- ii) Organization of legal aid camps by the State Legal Aid Boards for carrying legal services to the doorsteps of the people
- iii) Training of para-legal persons for the purpose of providing support to the legal aid program
- iv) Setting up legal aid clinics in Universities and Law Colleges with a view to utilizing the untapped resources of the student community in constructive channels for providing legal aid to the poor;
- v) Introduction of the subject, ‘Law and Poverty’ in LL.B. curricula with the active support and co-operation of the Bar Council of India

vi) Exposure of students 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” and

vii) Use of law for public interest litigation through class actions

Thus the report concentrated more on promotion of legal literacy, organization of legal aid camps to carry legal services to the doorsteps of people, training of para-legal persons to support legal aid programs, establishing legal aid clinics in Law Colleges and Universities, and bringing class actions by way of public interest litigation. Further, the Chairman of CILAS accepted the significance of the educational process in its task by observing: “Educational efforts must become a significant factor contributing to the social development of the poor.”

5.2 FREE LEGAL AID: THE VARIOUS DIMENSIONS

5.2.1 A Paramount Duty of the Welfare State

The most important function of the welfare State is the creation of conditions that assure social justice by removing social inequalities created by capitalism. There is a great responsibility on the shoulders of socialistic State to assure social justice to the poor masses of the society. Being a welfare state, India is also taking its long strides towards social justice. In order to mitigate economic inequalities and social disabilities, incorporation of social justice becomes necessary in the administration of justice.

5.2.2 An Essential Factor for the Survival of Healthy Democracy

In order to transform political democracy into social democracy, provision of legal aid is urgently required. Denial of justice because of poverty amounts to negation of social justice and violation of the principle of our democracy. The life of democracy depends upon making the machinery of justice, effective by incorporating legal aid, so that every citizen can get benefit of its impartiality in administration of justice.

5.2.3 Necessary Requirement for the Implementation of Rule of Law

Equal access to justice for the rich and the poor alike, must be seen as an essential part of maintenance of the rule of law. Gujarat Committee⁷⁹ rightly observed that there could be no rule of law unless the machinery of law is readily accessible to all.

5.2.4 A true spirit of equality

The concept of legal aid is the very spirit of equality and its movement is dedicated to the principle of equal justice to the poor. Equal justice or fair treatment within the purview of judicial process implies an easy access to courts and other governmental agencies based on equality. Equal justice requires a systematic approach in removing the prevailing inequalities and injustices in our society. Legal aid is a vital limb of our Constitution and becomes for this reason, an interpretative doctrine reflecting the desired

⁷⁹ Report of Gujarat Legal Aid Committee (1971)107

fulfilment of the basic objectives of equality. Denial of justice to needy person is nothing but a negation of equality.

5.2.5 An Integral Part of Natural Justice

One of the principles of natural justice namely, *Audi Alteram Partem* may become a mere formality in the absence of legal aid. The truth of the dicta that no one shall be condemned unheard is dependent upon adequate and proper legal representation to ensure proper hearing. The right of being heard without a provision of vocal cord of legal aid is a sheer formality and an illusion devoid of reality⁸⁰.

5.2.6 A Social Movement

Legal Aid movement has become a social movement and its ultimate aim is to establish social righteousness by mitigating and ameliorating legal incapacity and hardships of weaker sections of the society. It is to be treated as a part of a programme to secure social justice to the poor. It is also an indispensable part of equipment for streamlining and removing the defect of the working of present legal system.⁸¹

The movement of legal services is gaining momentum day by day. It needs co-operation of all persons and bodies, governmental or non-governmental, in the implementation of National Legal Services Scheme and to provide justice at the doorsteps of the poor.

⁸⁰ *Powel v. Alabama* 287 US 45 (1932)

⁸¹ *Supra* note. 58 at 287

5.3 CONCLUSION

This Chapter dealt with evolution and growth of legal aid movement in India from Vedic period to the present times. In fact, Provisions of Criminal Procedure Code and Civil Procedure Code play a vital role in the practical applicability of legal aid in India till Legal Services Authorities came into force in 1995. Because of its importance the next chapter deals with Legal Aid under various statutes in India and their judicial interpretation with regard to legal aid. In most of the instances courts have interpreted and stated that trial is vitiated and conviction has to be set aside when there is no advocate for the accused i.e. implying that appointment of legal aid advocate is mandatory.

CHAPTER VI

Legal Aid under various statutes in India

“Justice must not only be done, it must be seen to be believed”.

J. B. Morton¹

6. INTRODUCTION

“A just society is the one where justice prevails throughout alike .To have equal right to approach the court is rendered useless if the right can't be exercised. It is then, nothing more than a paper promise .The rich and influential can approach the courts because they have means, but the poor have to face injustice simply because they have no money to hire a lawyer. It is therefore in the interest of justice to establish a social order when the poor not only have the right but also the means to seek justice. The idea of legal aid to the poor is, thus a step in this direction”.²

6.1 DISTINCTION BETWEEN LEGAL AID IN CIVIL AND CRIMINAL PROCEEDINGS

- a) A person is invariably defending himself against the state in criminal proceedings, whereas in civil proceedings the person may very often be invoking the legal process for relief. The former is non-voluntary.
- b) The problems of the civil legal system have inspired innovative methods of dealing with the problem of access to the system. It has inspired the growth of alternative dispute resolution mechanism. Disputes arising in criminal jurisdiction are bound by rigid rules of procedure.

¹ Oxford Dictionary of Quotations and Proverbs, Oxford University Press (2001)153.

² Monish Arora , *Short Essays & Paragraphs on Law* (University Law Publishing Co., Delhi, 2nd Ed., 2006) 75

Notwithstanding the existence of alternative and non- formal legal systems, like Nyaya Panchayat, criminal disputes of a serious nature may not lend themselves to satisfactory resolution.³

- c) With regard to participation of lawyers in the system, civil legal aid lends itself to co-option of paralegals that can be trained to provide help in this area. However, in criminal cases, a skilled lawyer becomes a necessity for providing procedural fairness. Much of a criminal trial is taken up with issues of procedure and proof which are beyond the grasp and understanding of the accused.
- d) The accessibility of lawyers to the clients differs significantly since they rarely move outside of the court premises or their chambers or their places of work. Unlike civil litigation, criminal cases involving clients held in custody would require lawyers to visit their clients to seek instructions. In practice, however, this does not easily happen. Prisoners are less likely to be able to consult their counsel on a regular basis since visits by lawyers to jails are infrequent and still made difficult by the rules in prison manuals. Prisoners have to wait for dates their production in court and depend on relatives and friends to be able to meet and consult with their lawyers.
- e) While the three criteria namely, the economic status (means) test, the prima facie test and the interests of justice test, determine eligibility for

³ Mark Galanter & Upendra Baxi, *Law and Society in Modern India* (Oxford University Press, Delhi, 1989) 279

legal aid in civil proceedings, such criteria are generally either not applied or are modified in their application to criminal proceedings.⁴

6.2 IMPORTANCE OF LEGAL AID IN CRIMINAL JURISPRUDENCE

Judicial appointment of attorneys to represent impecunious litigants without compensation is not a new development. Colonial and early American statutes authorised courts to provide counsel at the request of indigent charged with capital crimes. By the late nineteenth century most state courts had ceased to depend on statutory authority, exercising the power to appoint counsel as part of their inherent or constitutional authority to regulate the practice of law within the state. In recent years, the need for legal representation for the poor has increased. Growing recognition of the importance of legal representation to obtaining a fair outcome in criminal cases, culminating in the Supreme Court's announcement of a constitutional right to counsel in criminal prosecutions has resulted in greater demands upon lawyer's time. An increasing rate of criminal activity and the requirement of representation at a greater number of stages of the criminal justice process have also contributed to this burden. In civil cases, as well there has been a growing acceptance of the notion that legal representation of poor litigants results in fairer judicial determinations.⁵

⁴ Under Sec. 12 of the Legal Services Authorities Act 1987, a person in custody is entitled to legal aid as a matter of right irrespective of his income. The prima facie test seems to nevertheless apply even to criminal cases.

⁵ Bruce Andrew Green, "Court Appointment of Attorneys in Civil Cases: The Constitutionality of Uncompensated Legal Assistance" *Columbia Law Review* (1981) 366.

Inherent powers of Court

Several methods have been used to satisfy this increasing need for legal services for the poor. Legislatures have established organizations that employ lawyers to represent the poor or have provided compensation for court appointed attorneys. In the absence of such legislative action, some courts have exercised their inherent power to compel legislative expenditures for necessary judicial operations, requiring localities to compensate court-appointed attorneys. Others have attempted to force legislative action by relieving attorneys of their obligation to accept uncompensated court appointments. Some courts however have continued to appoint attorneys without compensation in both criminal and civil cases. In addition several proposals been advanced to compel members of the bar to devote a minimum number of hours to public service such as the representation of impecunious clients. If adopted, these proposals would have the same force as court appointments, and would impose still more compulsory service requirements upon attorneys.

6.3 STATUTORY PROVISIONS UNDER CIVIL LAW

Legal Aid is essential irrespective of cases whether it is criminal case or civil case, when the party to the case/suit is indigent as *audi alterm partem* is one of the principles of natural justice, which cannot be departed from.

6.3.1 Civil Procedure Code, 1908

The Code of Civil Procedure, 1908 lays down the procedure for the courts of civil judicature. The civil litigation, dealing primarily with the property of the persons, is not paid that much concern by the state and society as is done to protect the life of the individual. The latter falling in the category of criminal law, as we have earlier appreciated has attracted much larger and broader protection, as a right of persons in India, under the provisions of the Constitution and the Code of Criminal Procedure. The equality before law and the principle of equal standing is an essential principle of civil jurisprudence also. The Code of Civil Procedure also makes a provision for extending the benefit of legal aid to those who are poor and thereby incapable to engage the services of a counsel in such litigation and unable to pay the heavy amounts of court fees, which makes the procuring of civil rights more difficult for the poorest of the poor in a society.

6.3.1.A Suits by Indigent Persons

Order XXXIII of Code of Civil Procedure deals with suits by Indigent persons. It has three explanations. The First one deals with explanation of Indigent persons which is very relevant to understand who are entitled to the benefits of the Order. The second explanation clarifies the point of property entitlement of the person to whom explanation I applies. The last explanation clarifies the point when a person sues in representative capacity.

The object of Order XXXIII is to enable persons who are too poor to pay court fee to institute a suit without payment of it.⁶

The purpose of the provision is that neither party should evade the payment of court fee nor no genuine cause of litigant should fail for want of funds.⁷ This Order has been enacted to save triple purposes

- a) To protect the bonafide claims of indigent persons,
- b) To safeguard the interest of revenue and
- c) To protect the defendants right not to be harassed⁸.

The Order opens with Rule 1 making a provision that an indigent person may institute any suit. In addition, it goes on to define an indigent person under explanations attached with the Rule. The provision reads thus:

As per explanation I of Order XXXIII a person is an indigent⁹, if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of suit) to enable him to pay the fee prescribed by law for the plaint in such suit or where no such fee is prescribed, if he is not entitled to property worth one thousand rupees¹⁰ other than the property exempt from attachment in execution of a decree and the subject matter of the suit.

⁶ *Jatindra v. Dwarka* ILR 1983, 115 ; See also 54th Report of Law Commission at 237

⁷ *Kamamma v. Karhiyaynani* AIR 1973 Ker. 19

⁸ *Venkatasubbaiah v. Thirupathaiah* AIR 1955 Andh 168

⁹ The Law Commission in its 54th Report recommended that the expression 'Indigent Person' should be used in place of the expression 'Pauper'. Ultimately by the Civil Procedure Code (Amendment Act) 1976, the word pauper was substituted by Act no.104 of 1976, Sec.81(w.e.f.1-2-1977)

¹⁰ The Law Commission in its 14th and 27th reports recommended that financial limit should be raised from Rs.100 to Rs.1000. The Law Commission in its 54th Report supported the views expressed in previous reports. By the Civil Procedure Code (Amendment Act) 1976 Rule 1 Order xxxiii was amended and eligibility limit for indigence has been raised to Rs.1000.

Explanation II of Order XXXIII clarifies the point of property entitlement of the person under Explanation I and states thus:

“Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application shall be taken into account in considering the question whether or not the applicant is an indigent person.”

To determine whether the applicant is an indigent, the property which he acquired during the pendency of the application is also taken into consideration, though he is an indigent at the date of application.

Making the point of a person suing in a representative capacity, it has been provided under Explanation III to the Rule I that to determine his indigence the means possessed by him in representative capacity is taken into consideration.

“Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.”

Assigning a pleader

Rule 9A (1) provides for the Court to assign a Pleader to an unrepresented indigent person. Where a person who is permitted to sue as an indigent person, is not represented by a pleader the court may, if the circumstances of the case so require, assign a pleader to him.

Rules for Selecting the Pleader

Rule 9A (2)¹¹ provides for making of rules for selecting the pleader. The High Court may with the previous approval of the State Government, is empowered to make rules providing for the mode of selecting pleaders which will be assigned to an indigent person. The rules can also deal with other matters such as the facilities to be provided to such pleader by the court and any other matter which is required to be or may be provided for giving effect to the provisions of sub-rule (1)

Indigent person as a defendant

As per rule 17¹² an indigent person can also figure as a defendant and he can also plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person.

Power of Government to make supplementary rules for free legal aid services

Rule 18 of Order XXXIII further empowers the State to make supplementary provisions for extending legal aid benefit to the indigent persons. "Subject to the provisions of this order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons." The High Court also is empowered with the previous approval of the State Government to make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to the indigent persons. Thus it is noted that High Court can make rules for carrying out supplementary

¹¹ Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Sec.81(w.e.f.1-2-1977)

¹² Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Sec.81(w.e.f.1-2-1977)

provision. Such rules may include the nature and extent of legal services and also the conditions under which they may be made available and the agencies through which such services may be rendered among others.

6.3.1.B Appeals by Indigent Persons

Order XLIV deals with appeals by Indigent persons. It is divided into three parts. The first deals with who may appeal as indigent persons. As per the provision any person who is entitled to appeal but who is unable to pay the fee required under the memorandum of appeal may present an application accompanied with memorandum of appeal. Such person may be allowed to appeal as an indigent person in all matters including the presentation of such application.

The second part deals with granting of time by the court for payment of court fees. In case the application is rejected the court while rejecting the application may allow the applicant to pay the requisite court fee within such time as fixed by the court or extended by the court from time to time. On payment of the above mentioned court fee the memorandum of appeal has the same force and effect as if the fee has been paid at the first instance. It is to be noted rejection of an application for permission to appeal as an indigent person means that the court is not satisfied about the applicant's indigent status. it does not mean the appeal is not fit for admission.¹³

¹³ Mulla, The Code of Civil Procedure 13th edi.by P.M Bakshi, Butterworths, New Delhi,2001 at p.1489.

The third part deals with an inquiry whether an applicant is indigent person. As per sub clause (1) of part 3 where an applicant is allowed to sue as an indigent person in the court from whose decree the appeal is preferred no further inquiry is required in respect to whether he is or not an indigent person. In case the applicant has made an affidavit that he is not ceased to be an indigent person since the date of the decree. But if the government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the above question shall be held by the appellate court or under the orders of the appellate court by an officer of that court. It is to be noted that if the affidavit is not disputed the applicant is entitled to carry the proceedings as indigent person. As per sub clause (2) of the third part that the applicant has become indigent person since the date of the decree appeal ,the inquiry into question whether or not shall be made by the appellate court or by an officer of the court under the orders of appellate court. However if the appellate court considers it necessary as per the circumstances of the case the inquiry could be held by the court from whose decision the appeal is preferred. Thus it is noted that the appellate court has controlled of such inquiry which it may in certain circumstance permit the court from which the decree is appealed.

Recommendation of Law Commission

The Law Commission in its 54th Report recommended that the present expression “Indigent Person “should be used throughout the code in the place of the expression Pauper which is not in harmony with modern attitudes¹⁴.

¹⁴ Law Commission 54th Report at 237

Ultimately by the Civil Procedure (Amendment Act) 1976, the word Pauper was substituted by the term Indigent.

- a) The object of Order XXXIII is to enable persons who are poor to pay court fee to institute a suit without payment of it.¹⁵

The Code of Civil Procedure merely exempts an utterly poor person from payment of Court fees. Again, although a waiver of court fee is allowed there is no mandatory provision for assigning counsel to the pauper and therefore, it is unlikely that he will be able to successfully prosecute his suit.¹⁶

6.3.1.C Section 89 of Civil Procedure Code

The 2002 Amendment of the *Code of Civil Procedure* has a compulsory provision to the court to direct the parties to opt for any one of the modes of alternative dispute resolution.

6.3.2 Judicial response in Civil Cases

In India Supreme Court and various High Courts gave judgments on the importance of Legal Aid. Some of the decisions interpret the provisions of procedural laws with regard to Legal Aid and its applicability to various types of cases.

¹⁵ *Jatindra v. Dwarka* (1983) ILR 20 col.115

¹⁶ *Singhvi L.M., Law and Poverty*, (N.M. Tripathi Publication, Bombay, 1973) 284

A) Assessing means of Plaintiff

- (i) Property which is subject matter of another suit can also be taken into account for assessing means of plaintiff. Only property which is subject matter of the same suit cannot be taken into account.¹⁷
- (ii) In a matrimonial case Rs.75,000/- was shown to be lying in fixed deposit in a bank in the name of wife, however FDRs were not in her possession, but in the possession of her-in-law, trial court allowed her to sue as indigent person. In view of evidence on record, the trial court was not in error in accepting the plea of the wife that she is not possessed of the means to pay court fee. Thus, the order of trial court permitting wife to sue as an indigent person is proper.¹⁸
- (iii) The expression “sufficient means to enable a person to pay the court fee exclude from its scope or clutches the properties that are exempt from attachment in execution of a decree.¹⁹
- (iv) Weavers possessing weaving materials which are exempt from attachment under proviso to Sec.60 (1) and earning daily wages can sue as indigent persons.²⁰
- (v) In the case of a married woman permission to sue as an indigent person cannot be refused merely because her husband is a businessperson having sufficient income to pay the court fees.²¹

¹⁷ Johnson v. Joseph AIR 2007 Ker 175

¹⁸ Rajeev Garg v. Priti Rani AIR 2002 P.&H 337

¹⁹ Devamma v. Chief Secretary Government of Karnataka 2000 AIHC 3380

²⁰ Mangalu Chhalar v. Maheswar Bhoi AIR 1981 Orissa 153

²¹ S.Resleth v. Indian Bank AIR 1992 Ker. 359

- (vi) Maintenance awarded by criminal court is not relevant to decide the capacity to pay court fee.²²
- (vii) The court cannot take into account the properties standing in the name of next friend to decide whether plaintiff (minor) is indigent or not.²³
- (viii) The expression “sufficient means” does not imply sufficient property. It excludes sole means of livelihood. Therefore, while considering the application of indigent, the court should conduct an inquiry as to whether the person is capable to raise money to pay requisite court fee because sufficient means denotes not having the capacity to pay court fee²⁴.
- (ix) Indigent person means a person who is not in possession of sufficient means. The term ‘sufficient means’ does not mean one in possession of sufficient property. It does not include such means on which bare living of the party and his family depends. It is the capacity to raise funds by normal available lawful means²⁵.
- (x) The maintenance amount from the criminal court is awarded for the sustenance and those meagre amounts cannot be taken into consideration for determining the capacity to pay the court –fee. It is with this intention that even in the Code of Civil Procedure there is a

²² P. Vijayalakshmi v. P. Gopalkrishnan Bhat AIR 1997 Kant. 243

²³ Kapil v. Dr. Shivamangal AIR 2001 M.P. 108

²⁴ Kalka Prasad Ramlal v. Rammomal AIR 1978 All. 298

²⁵ O.P. Neelam Hosiery Works v. State Bank of India AIR 1994 HP 1

provision under s.60 wherein maintenance has been exempted from attachment.²⁶

- (xi) The real test for determining whether the plaintiff is possessed of sufficient means to pay the court fees is whether he is in a position in the ordinary course to convert his possession, if any, into liquid cash without undue hardship and delay.²⁷
- (xii) Where the plaintiff claiming to sue as indigent person, admitted that he was partner in a firm which has an annual income of Rs 15 lacs, his plea that if he used this income to pay court fee , the business will stop cannot be accepted.²⁸
- (xiii) In determining whether a person claiming to sue as a pauper is worth Rs 100, neither the value of his necessary wearing apparel nor the value of the property claimed by him in the suit should be taken into consideration. The ground of excluding the subject matter of the suit under this rule is that such property is presumably out of the pauper's reach and cannot be made use of by him to carry on his litigation.²⁹
- (xiv) The expression fee prescribed by law includes not only fixed court fee but also ad valorem court –fee payable under the law.³⁰
- (xv) The arrears of maintenance amount received by the wife are not to be taken into account. Under S. 60, proviso (i) the right to maintenance is

²⁶ P Vijayalakshmi v. P Gopalakrishna Bhat AIR 1997 Kant. 243

²⁷ Sumathykutty v. Narayani AIR 1973 Ker. 19

²⁸ Lokesh Patwari v. State of Uttar Pradesh AIR 2004 All. 276

²⁹ Amritrao Atamaram v. Narisngraio Ajabrao AIR 1942 Nag. 47

³⁰ Fakruddin v. Iqbal Ahmad AIR 1957 All. 680

exempted. The mere fact that it has run into arrears, does not deprive it of the character of maintenance.³¹

(xvi) Appellants owning agricultural land more than one and half hector in their family besides domestic house and other movable property, cannot be permitted to sue as indigent persons.³²

(xvii) Plaintiffs claim that he is an indigent can be contested by the defendant. Immunity from litigation unless a requisite court fees is paid by the plaintiff is a valuable right for the defendant. Therefore the proceedings to establish that the applicant –plaintiff is a pauper, which will take away that immunity is a proceeding in which the defendant is vitally interested. It cannot be said that claim of the party (plaintiff) to sue as a pauper is a matter to be sorted out between him and the State³³.

(B) Applicability of O.33 to the Tribunals³⁴

The poor shall not be priced out of the justice, marked by insistence on court-fee and refusal to apply the exemptive provisions of order 33 C.P.C. The provisions of Order 33 will apply to tribunals which have the trappings of the civil court.

(C) Indigent Person

- i) The word Person not only refers to natural person, it is applicable to juristic person.³⁵

³¹ Parvati v. Ram Chand AIR 1986 P&H 217

³² Madhorao & Ors v. Govindrao & Ors. AIR 2008 (NOC) M.P 2498

³³ V.Krishna Bhatt v. Ravishay Kar. AIR 1978 Kant. 117

³⁴ State of Haryana v. Darshan Davi AIR 1979 SC 855

- ii) On death of applicant his legal representative would be entitled to be brought on record in his place and to continue proceedings as a suit on payment of court fees.³⁶
- iii) Once the applicant is allowed to sue in forma pauperis and his application has been converted into plaint and the suit has been numbered and registered, and is proceeding, then on the death of the said party, the legal representatives are to be brought on record and if they are so substituted, it is not necessary for them to show that the legal representatives, whether they are heirs or executors or administrators, are also paupers.³⁷
- iv) If a plaintiff sues in a representative capacity as trustee or shebait and has not in his possession sufficient property of the trust, he may be allowed to sue as a pauper although he has sufficient personal property of his own.³⁸
- v) The word person in R 1 of O 33 includes a company. An official liquidator, therefore, of a company is competent to apply for a leave to sue in forma pauperis on behalf of the company if the company is a pauper within in the meaning of this rule. The fact that the liquidator in his personal capacity is not a pauper does not affect the suit.³⁹

³⁵ Moorti Shree Behari v. Premdas AIR 1972 All.287

³⁶ Santok Singh v. Radheyshaym AIR 1975 Bom,5

³⁷ Sunder Singh v. Om Prakash AIR 1977 Del. 142

³⁸ Mabia v. Sheikh Satkari AIR 1927 Cal. 309

³⁹ Perumal v. Thirumalarayapuram Nidhi Ltd (1917) ILR 41 Mad 624

(D) Commencement of the Suit

A suit by an indigent person must be regarded as a suit instituted on the date of presentation of application to sue as indigent person.⁴⁰

(E) At what stage of suit can the plaintiff claim as indigent

At any stage during the pendency of a suit the plaintiff can raise the claim under Order 33. Mere pendency of suit, at the time when the claim is made is not a ground to return the application file under Order 33. Once such application is filed before the court, the Court has to conduct an independent inquiry on the question of indigency.⁴¹

(F) Position of Minor

- i) A minor is entitled to sue as an indigent person if no property, movable or immovable, is found in his name. The court cannot take into consideration the properties standing in the name of minor's father or any near relation.⁴²
- ii) The mother of the plaintiffs (minor) is only working as their next friend. It is the property and other income of the plaintiffs, which is to be taken into consideration. The mother of the plaintiff has nothing to do with this case except as next friend. It is therefore; clear that the minors cannot be directed to pay the Court-fee under such circumstances. They may be treated as indigent persons.⁴³

⁴⁰ *Jugle Kishore v. Dhanodevi* AIR 1973 SC 2508

⁴¹ *Sivarajan K v. State of Kerala* AIR 1998 Ker. 98

⁴² *Kapil v. Shivmangal Awasthy* AIR 2001 MP 108

⁴³ *Ms. Disha Sethi & Anr v. Chander Mohan Sethi* AIR 2008 Del.81

(G) Court fee not altogether wiped off

Payment of court fees liability is merely deferred not altogether wiped off. “Order directing the plaintiff to pay the court fee can be made in four different situations.”

- a) When the plaintiff failed in the suit,
- b) When the plaintiff is dispaupered,
- c) When the suit is withdrawn,
- d) Where the suit is dismissed under the circumstance specified in clause (a) or (b).⁴⁴

(H) Effect of false statement

Plaintiff seeking exemption from payment of court fees on ground that she has no source of income by suppressing true facts would be liable to be punished.⁴⁵

6.4 STATUTORY PROVISIONS UNDER CRIMINAL LAW

a) Ancient Times

Right of an accused to have the Services of Counsel in India has been recognized from ancient times. During Hindu and Muslim rules, the cases of an accused have been defended by Pundits and Maulvis.

The right to counsel was available since 1839 in the jurisdiction of the Supreme Courts in the presidency towns. In other courts, particularly the *nizamat adalat*, a circular issued in 1836 stating that parties before a session’s court could take the advice of vakils. However, it was stipulated that the vakils could not plead

⁴⁴ R.V. Dev v. Chief Secretary .Government of Kerala & others AIR 2007 SC 2698

⁴⁵ Sarswati v. Executive Member, Karnataka Industrial Area Development Board AIR 2002 Kant.447

before the judge or intervene in the proceedings. Act 31 of 1841 gave parties in a criminal trial the right of appeal to a superior court. Act 38 of 1850 provided for the right to counsel.⁴⁶

b) Modern Times

The right of an accused to have the services of counsel, at international level, has its origin to Article 10 of the Universal Declaration of Human Rights 1948 by which every state has been charged with a duty to ensure to an accused 'A fair and Public Hearing'.

Article 14(3) (d) of International Covenant on Civil and Political Rights, 1966, and Article 22 (1) of the Constitution of India declare that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. It is worth mentioning that prior to the constitutional guarantee, this right of an accused was protected by Section 340(1) of the Code of Criminal Procedure, 1898 (now Section 303 of Criminal Procedure Code, 1973) which provided that any person accused of an offence before a Criminal Court or against whom criminal proceedings were instituted under this Code could as of right be defended by a pleader. Further Article 39A of the Constitution that was inserted later on by the 42nd Constitutional Amendment Act 1976 provides for the right to free legal aid to indigent person. Section 304 of Criminal Procedure Code 1973 also provides that "where in a trial if the accused is not represented by a pleader due to insufficient means the Court shall assign a pleader for his defence at the State expenses. Due to the

⁴⁶Muralidhar S., *Law, Poverty and Legal Aid* (Lexis Nexis, New Delhi, 2004) 83

importance of these rights, the apex court of India has declared that at any stage if an accused remains undefended by a lawyer the entire criminal proceedings would be vitiated.

c) Golden Principle

One of the golden principles of administration of justice is that 'Justice should not only be done but it should also appear to have been done.' To make justice appear to having been delivered, a fair procedure is essential. Fair procedure, even apart from the dynamic interpretation made in *Maneka Gandhi* under the Constitution of India, demands equal standing before the courts. It is an accepted reality that our laws and court procedures are very complex and intricate. Therefore, ordinarily an accused person does not have the knowledge of law (though ignorance of law is known to be no excuse) and the professional skill to defend himself before a court of law wherein the prosecution is conducted by a competent and an experienced prosecutor. To meet the requirement and to match the parties, the Code, in line with Article 22(1) of the Constitution, has specifically recognised the right of a person against whom criminal proceedings are instituted to be defended by a counsel.⁴⁷

Right to be heard, in its proper sense, includes the right to be heard by the counsel. For even an educated and intelligent man has a little knowledge about the science of law. He does not know about the science of law. He does not know how to rebut the allegation made against him; he may be completely unfamiliar with the rules of evidence procedure and so on. Therefore, if he is

⁴⁷ Sujan Singh, *Legal Aid Human Right to Equality* (Deep & Deep Publications, New Delhi) 169

put on a trial without counsel he may be convicted of offences even where the allegations are not true and legal.

The First Law Commission of India in 1958 examined as part of its 14th report, the question of making available legal aid to indigent accused in criminal proceedings. ⁴⁸It recommended that lawyers at state expense should be provided to the accused in session's courts, in jail appeals and in criminal proceedings. The Law Commission in its 41st report in 1969 examined the Criminal Procedure Code 1898 and was of the view that the government should make available the right to counsel at least in trials before the courts of session. The Law commission recommended that sec.340 A be added to Criminal Procedure Code 1898.

6.4.1 Code of Criminal Procedure, 1973

In 1972, the Law Commission of India gave its 48th report where it recommended that all accused persons must be furnished with counsel for their defence at state expense. The Law Commission explained its recommendation thus:

Defence of the indigent accused by a pleader assigned to the state should be made available to every person accused of an offence, i.e. in all criminal trials, so that mere poverty may not stand in the way of adequate defence in a proceeding which may result in the deprivation of liberty or property or loss of reputation. The assistance of counsel is required at every step in the

⁴⁸ 14th Report of the Law Commission of India on Reforms in the Administration of Justice 1958

proceedings and irrespective of the nature of the offence under trial.⁴⁹ The Law Commission recommended that Legal Aid be made available for all criminal cases including maintenance cases.

6.5.1. A *Legal aid to the accused:*

Section 304 of code of criminal procedure deals with legal to the accused at the state expenses. This section appears under chapter XXIV title as general provisions as to inquiries and trials. Under sub section 1 in a trial before the Court of Session where the accused is not represented by pleader and it appears to the court that the accused has no sufficient means to engage a pleader, the court has to assign the pleader for his defence at the expense of the state. Sub Section 2 empowers the High Court to make the rules with the previous approval of state government for providing matters such as mode of selecting the pleaders for defence, facilities to be allowed to the pleaders by the courts and the fee which is payable by the government to such pleaders among others. Under Sub Section 3 the state government is empowered through a notification direct that the provisions of sub section 1 and 2 to apply in relation to class of trials before the courts in the state as they apply in relation to trials before the court of Sessions. Thus we see that the first sub section refers to trials before Court of Session where as the third sub section applies to a class of trials before other notified courts in the State.

⁴⁹ 48th Report of the Law Commission of India on some questions under the Cr .P .C Bill 1970, 1972 at 23-25

Analysis of Rules framed under Sec.304 (2):

An analysis of the rules framed by the various High Courts under Sec.304 (2) of Cr. P.C reveals:

1. Legal Aid is made available only to persons facing trial in session's courts.
2. The criterion for entitlement to Legal Aid is usually poverty and indigence about which a certificate, after inquiry has to be issued by the committing magistrate.⁵⁰
3. There is no requirement in the rules that the court should inform the accused about the availability of Legal Aid.
4. The rules do not give the accused a choice of a lawyer. They do not provide for a change of the lawyer if the accused is dissatisfied with the performance of the lawyer. There is no mechanism in the rules for receiving complaints against the lawyer assigned to the accused.
5. The panel from which a Lawyer is assigned to the accused is usually prepared by the district judge. The only criterion for empanelment of a lawyer is the number of years of experience at the bar. A lawyer is expected to have a standing of not less than five years for being empanelled, rules made under sec.304 CrPC by the High Courts of Calcutta, Assam, Gujarat and Madhya Pradesh. The High Courts of Bihar, Punjab and Haryana and Orissa require a standing of not less than seven years⁵¹.

⁵⁰ *Supra* note. 45 at 87

⁵¹ *Id.*

6. The Cr. P. C 1973 provides for legal assistance at the state expense only to the accused facing trial in a session's court. The stages prior to the trial and after its conclusion are not accounted for by s.304 (1). For examining the availability of legal assistance at other stages in the criminal justice process, for those facing criminal proceedings in courts other than the sessions courts and for complainants and victims of crime, the schemes made by the government at the centre and the states have to be looked into. These have been supplemented or replaced by the LSAA and the Regulations and Rules made there under since 1995.

6.5.1. B Bail to an Indigent accused:

Chapter XXIII of Code of Criminal Procedure 1973 deals with provisions as to bail and bonds. In this regard it is interesting to analyse section 436 as it partly refers to bail for an indigent person.

As per section 436(1) a person who is arrested or detained by an officer in charge of police station in a bailable offence without warrant shall be released when he is prepared to give bail.

The proviso refers to indigent person who is unable to furnish the surety. In such a case the officer or court discharges him when he is unable to provide surety on executing a bond. The explanation sets up a period of week. If the arrested person is unable to give bail within a week of arrest the officer or court can presume that he is an indigent person for the purpose of the proviso⁵².

⁵² Inserted by Act 25 of 2005, Sec.35 (w.e.f. 23-6-2006)

6.4.2 Judicial response in criminal cases

There are three stages of the development, through judicial pronouncements, of the right to legal representation in criminal cases.⁵³

The first was from 1898 until the making of the Constitution in 1950. During this phase the emphasis was on ensuring that, no accused was denied access to legal representation and that no accused person was undefended in criminal proceedings. At a time when statute law had not acknowledged the requirement, courts had to devise rules of practice by which legal representation at state expense could be provided to an indigent accused facing serious charges that entitled capital punishment. However, there were passing references to the plight of the indigent accused, the obligation of the state to provide for his defence. There was no right in an accused, to the services of a lawyer at state expense in all criminal trials, and the judiciary could not enforce such right.

The second phase between 1950 and 1974 when the Code of Criminal Procedure 1973 was enacted, of which sec.304 specifically provided for legal aid at state expense.

The third phase from 1974 till date, has been developments to the growing need for providing access to justice to the under privileged and disadvantaged sections of the masses.

In India, Supreme Court and various High Courts gave judgments on the importance of Legal Aid. Some of the decisions interpret the provisions of

⁵³ *Supra* note. 45 at 139.

procedural laws with regard to Legal Aid and its applicability to various stages and types of cases.

A) Constitutional Mandate—

- i) In *Khatri v State of Bihar*⁵⁴ the Apex Court regretting about the lethargy of the government in the matter of providing free legal aid as per the directions of the Supreme Court in earlier cases observed—“ It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this regard of the decision of the highest court of the land by many of the states. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused, by pleading financial or administrative inability. The State is under constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent not only at the stage of trial court but also at the stage, when he is first produced before the Magistrate, as also when he is remanded from time to time”.

⁵⁴ AIR 1981 SC 928

While commenting on the scope of this free legal aid, Justice Bhagwati added

“We would also direct the State of Bihar and require every other State in our country to make provision for grant of free legal services to an accused who is urbane to engage a lawyer on account of reason such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that on conviction it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.”

In this case, the need to inform the accused of his right to legal aid was highlighted in these words:

“The Magistrate or the Sessions Judge before whom the accused appeared must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence he is entitled to obtain free legal services at the cost of the State.”

B) Not an absolute right

- i) The right of the accused to be represented by counsel under sec.304 is not an absolute right, and is not available in economic offences.⁵⁵
- ii) An accused having sufficient means cannot claim for legal assistance of lawyer at the expenses of the State particularly when he has already engaged a lawyer.⁵⁶
- iii) Right to free legal assistance is available in cases where offences are punishable with substantive sentence of imprisonment only and when punishable with fine only. The right is not available in respect of offence under sec.228 I.P.C.⁵⁷

C) Duty of Court

- i) The right to free legal aid is not dependent on the question whether the accused applies for it or not.⁵⁸
- ii) Where the counsel for the accused is absent on the date of hearing, another counsel to defend the accused has to be appointed or the case has to be adjourned. Where neither of the two courses is adopted and prosecution witnesses are examined there is contravention of the provisions of sec.304Cr.P.C.⁵⁹
- iii) The obligation on the part of the Presiding Officer to inform the accused of his fundamental right of free legal assistance at State

⁵⁵ Sugreev Singh v. State of M.P 1993 Cr LJ 2399 (MP-DB)

⁵⁶ Ashok Kumar v. State of Rajasthan 1995 Cr.LJ 1231 (Raj.)

⁵⁷ Shrichand v. State of M.P 1993 Cr.LJ 495,497 (MP)

⁵⁸ AIR 1936 SC 991

⁵⁹ State v. Heera Lal 1997 Cr.LJ 4233 (Raj. DB)

cost in case he is unable to engage the service of a lawyer because of poverty or indigence is absolute and is not conditioned upon the accused himself applying for such legal assistance.⁶⁰

- iv) Where the *Amicus curia* does not discharge his duty and does not defend the accused properly, the appellate Court can remand the case for retrial.⁶¹
- v) The rejection of the request of the accused for assigning a counsel on the ground that the accused had managed to engage a counsel earlier is illegal.⁶²
- vi) Since appeal is treated to be the continuation of original trial, the benefit of this provision can be held at the appellate stage also.⁶³
- vii) The court is under obligation to inform the accused that if he is unable to engage the service of a lawyer on account of poverty or indigence he is entitled to obtain free legal services at the cost of the State and conviction of the unrepresented accused reached without so informing him has to be quashed, the trial being vitiated due to violation of his fundamental right.⁶⁴
- viii) Where the accused who was in prison engaged his counsel, during trial, the counsel withdrew his vakalatnama and accused remained unrepresented. On engaging, another counsel the accused sought permission to cross-examine prosecution witness.

⁶⁰ Hiralal Gopilal Rathore v. M.P. State 1988 Cr.LJ 457 (MP)

⁶¹ Ram Awadh v. State of Orissa 1999 Cr. LJ 4083 (All. DB)

⁶² Imam Baksh v. State of U.P 1984 (2) Crimes 549 (All.)

⁶³ Sagri v. State of MP 1991 (1) Crimes 580,582 (MP)

⁶⁴ Banwar v. State of M.P 1987 (3) Crimes 192(MP)

The trial court imposed a costs of Rs.500/- and directed that the counsel for the accused petitioner will be entitled to cross-examine Pw-10 only on payment of cost. The H.C of Rajasthan held that the above condition was not proper, “in fact it was a duty of the trial court to provide legal aid to the accused at state expenses as provided under Sec.304”.⁶⁵

- ix) One of the ingredients of fair procedure is to provide free legal aid to a prisoner who is indigent or otherwise disabled to secure legal aid. If it is constitutional right of the poor to be provided with legal assistance, the assistance must be genuine, real and the best lawyers should be engaged. Otherwise it may be said in future that the judiciary trampled their constitutional rights.⁶⁶
- x) Even if the accused has pleaded guilty, the Magistrate is duty bound to inform the accused that free legal service is available to him.

D) Equal Justice

The defence of the indigent accused by an advocate assigned by the State should be made available to every person accused of an offence so that mere poverty may not stand in the way of his adequate defence. Indigence should never be a ground for denying trial and equal justice.⁶⁷

⁶⁵ Mushtaq v. State of Rajasthan 2008 Cr.LJ 2351(Raj)

⁶⁶ Arjun Karmakar v. State of Assam 1987 (1) Crimes 133

⁶⁷ Ranchod Mathur Wasava v. State of Gujarat 1974 Cr.L.J 779(SC)

E) Right to Liberty and Life

The right to defence includes right to effective and meaningful defence at the trial. The poor accused cannot defend effectively and adequately. Assigning an experienced defence counsel to an indigent accused is a facet for fair procedure and an inbuilt right to liberty and life envisaged under Article 21 of the Constitution of India.⁶⁸

F) Duty of State

- i) It is the duty of the government to see that proper fee be paid to the *Amicus curiae* appointed in the case.⁶⁹
- ii) A three judges Bench of the Supreme Court reading Articles 21 and 39A along with Article 142 and Section 304 Cr. P. C together, declared that the government was under a duty to provide legal services to the accused persons. Justice Krishna Iyer observed that the Indian socio-legal milieu makes free legal service at trial and higher levels an imperative processual piece of criminal justice.⁷⁰
- iii) Steps should be taken by State to provide counsel to the person accused of offence entailing capital punishment because the want of legal aid may amount to negation of fair trial.⁷¹

⁶⁸ Kishor Chand v. State of H.P 1990 Cr.LJ 2289 (SC)

⁶⁹ R.B.Bhil v. State of Gujarat 1997 Cr.LJ 891(Guj. DB)

⁷⁰ M.H.Hoskot v. State of Maharashtra AIR 1978 SC 1548

⁷¹ Janardhan Reddy v. State of Hyderabad AIR 1951 SC 217

G) Deprived of a fair trial

Certain important issues with respect to the fairness in providing appropriate legal aid are –

1. Whether appointing a fresh lawyer on the date of the trial, when the accused faced with a grave offence of culpable homicide amounting to murder, amount to providing free legal aid?
2. Was it just expedient proper and rational to handover the charge of an important case to a new lawyer, call upon him to prepare the case, cross-examines the witness and argues it on the very same day?

It is humanly impossible even for an experienced lawyer to prepare such a case without instructions, without having at least a fortnight's time to prepare the case. Legal Aid given should be meaningful and not self – denial of its content. Under such a circumstance, the accused was found to be deprived of a fair trial and the trial was held vitiated.⁷²

H) Applicability of Provisions of Legal Aid Under Criminal Law

- i) The right under Sec.304 cannot be restricted to a person under arrest as a person who has been released on bail can avail of it.⁷³
- ii) Legal Aid must be given to persons in proceedings under sec.110 of Cr.P.C⁷⁴, as they are likely to remain in jail.⁷⁵

⁷² Arjun Karmakar v. State of Assam 1987 (1) Crimes 133 (Gau-DB)

⁷³ Jagmalaram v. State of Rajasthan 1982 Cr.LJ 2314(Raj)

⁷⁴ S.110 of Cr.P.C deals with security for good behaviour from habitual offenders, wherein the Magistrate may require the person to execute a bond, with sureties for good behaviour.

- iii) The obligation to provide free legal services to a person not only arises when the trial commences but also when the accused for the first time is produced before the Magistrate.⁷⁶

I) Trial without defence lawyer

- i) A conviction is not at all vitiated due to failure to appoint a counsel at State expense when the plea of guilty in a serious offence is voluntary, genuine and true.⁷⁷
- ii) Where the High Court had decided an appeal in the absence of the appellants counsel, Court directed disposal of criminal appeal afresh.⁷⁸

- iii) In *SukDas* the Supreme Court reaffirmed the right of Legal Aid as a fundamental right and observed:

It may, therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed as under Article 21. Of course, it must be recognized that there may be cases involving offences such as economic offences or offences against

⁷⁵ Subbayyan Achari v. State of Kerala 1981 Cr.LJ 1359 (Ker.)

⁷⁶ Elanth Sahu v. State, 1991(1) Crimes 545 (Ori)

⁷⁷ Tyron Nazarath v. State 1989 Cr.LJ 123 (Bomb-DB)

⁷⁸ Joginder Kumar v. State of Maharashtra 1990 Cr.LJ 1326 (SC)

law prohibiting prostitution may require that free legal service may not be provided by the State.⁷⁹

Supreme Court further observed, "About 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them 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. The result is that poverty becomes with them a condition of total helplessness. 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 recognized as one of principle items of the programme of the legal aid movement in the country to promote legal literacy."

In this case, Additional Deputy Commissioner had not informed the appellants that they were not entitled to free legal assistance, nor he inquired from the accused whether they wanted a lawyer to be provided to them at State cost. Therefore, the appellants remained unrepresented by a lawyer and the trial had resulted in their conviction. The court held that it was violation of the

⁷⁹ Sukdas v. Union territory of Arunachal Pradesh AIR 1986 SC 991

fundamental right of the appellants under Article 21 and so the trial was vitiated consequently, the conviction and sentence recorded against the appellant was set aside.

This case is significant in the matter of promoting legal literacy. The Supreme Court added one more feather in the cap of Legal Aid concept, emphasizing the need to include Legal Education and Legal Literacy under it. The Court also recommended the Union Government and State Governments to frame free legal schemes.

- iv) The conviction needs to be set aside and the appeal deserves to be allowed ... it would be appropriate to note that courts while dealing with accused persons during trial when they are not represented by counsel to keep in view the mandate of sec.304 Cr. P. C⁸⁰.

J) Writ of Mandamus

- i) The accused cannot obtain a writ of *mandamus* for enforcing this obligation (appoint advocate for indigent). He must apply for it under section 304.⁸¹

K) Prisoners

- i) Justice Krishna Iyer observed that the programmes for free legal services to the prisoner should be promoted by professional organizations recognized by the Court. His Lordship further

⁸⁰ Dilwara Singh v. State of Delhi 2007 Cr.L.J 4709 (SC)

⁸¹ Rajan Dwivedi v. Union of India 1983 Cr.LJ 1052 (SC)

added that the District Bar Association should keep a cell for prisoner relief.⁸²

- ii) There are several prisoners continuing to be in prison even after completion of 14 years, where State Governments issued notifications to release them under commutation procedure. The main reason is that most of the prisoners do not have the knowledge of their rights. The Maharashtra High Court issued directions –

The need for assistance, to such convicts is essential. Lawyers, if not at least students undergoing law courses, can visit jails to ascertain the genuine grievances of such persons who are in prison and to address representations of their grievances to the concerned administrative authorities and also to the courts in those cases where relief can only be granted by the courts. In these circumstances, it would be appropriate that various Law Colleges either for convicts or under trials within whose jurisdiction there may be jails, should be allowed an active role in providing legal assistance to such convict, languishing in jails by way of addressing petitions directly to the court or to the Legal Service Authority. The Supreme Court and this Court directed setting up of Visitors Committee which have been constituted of which District /Sessions Judge in charge of the area

⁸² AIR 1980 SC 1579

when there are jails for convicts and or under trials to call the Principals of Law Colleges within their session area, so as to initiate the legal aid process, whereby students as a part of curriculum or otherwise can give legal aid to such convicts where no legal aid is otherwise available.⁸³

- iii) The Legal Aid shall be available to the prisoner in two situations: Firstly, to seek justice from prison authorities and Secondly, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only the judicial proceedings but also the proceedings before the prison authorities.⁸⁴

L) Duty of Senior Advocates

In fact while giving free legal aid, generally junior and inexperienced lawyers are assigned to represent the poor accused. Deprecating this practice, the Supreme Court in *Kishor Chand v State of Himachal Pradesh*⁸⁵ observed:

Though Article 39A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curie to defend the indigent accused, he would be meted out with unequal defences if as to common knowledge, the youngster from the Bar, who has either a little experience or no experience, is assigned to

⁸³ Prakash Vithal Kharat v. State of Maharashtra, Criminal Appeal No.697 of 2006 (F.I.Rebello & K.U.Chandiwal .JJ), letter from NALSA to State Legal Services Authorities, Goa.

⁸⁴ Sunil Batra v. Delhi Administration AIR 1978 SC 1675

⁸⁵ 1990 Cr.LJ 2289 (SC)

defend him. It is high time that senior counsel practicing in the court concerned, volunteer to defend such indigent accused as a part of their professional duty.

M) Extension of Right of accused

Since an accused is entitled to free legal aid, he is also entitled to copies of deposition of witnesses on which the prosecution wants to rely, free of costs.⁸⁶

6.5 CONCLUSION

Of course, legal aid as a vehicle for equal justice would be ineffective without a system of procedure wherein those who need and deserve are endowed and supported with this basic right. The fundamental procedural law applicable in the Indian justice delivery system viz., the Code of Civil Procedure, 1908 and the Code of Civil Procedure, 1973 clearly brings out the intention of the law makers that legal aid has to be an essential component of procedure for delivery of justice. The intricacies and detailed procedures and its efficacy in providing legal aid is critically analysed in this chapter. If anyone anywhere speaks of the Indian Justice delivery system the first thought that comes to one's mind is that of our judiciary and more so of the Supreme Court, which has effectively stood the test of time and proved not only to the nation but to the whole world that India is a democratic nation ruled by law and therefore justice is held paramount in this great nation. It is of course no doubt that it is

⁸⁶ G.S.Reddy v. State of A.P 2002 Andh LT 477

the judiciary that has asserted itself in ensuring that effective legal aid becomes the order of the day and no government and any other authority can give a go by to it on one pretext or the other. Thanks to stalwarts like Justice Bhagwati and Justice Krishna Iyer that legal aid has become a respectable right to the poor and needy in India. Their judgments as cited in this chapter bring out not only the fact that giving legal aid is an essential ingredient of judicial system but may also highlights the role of the judge in ensuring that this right will be available to the needy and deserving who so- ever it may be. One can conclude that, if not for the stern and uncompromising insistence of these judges of High Court and Supreme Court, legal aid in the present form might have been delayed at least by half a century.

After discussing the Judicial Interpretation on the provisions of various statutes in India, the Seventh chapter deals with Efficacy of Legal Services Authorities Act 1987. After several verdicts of the Supreme Court and various High Courts in respect of Legal Aid, Government of India enacted Legal Services Authorities Act in 1987, by which several Authorities were constituted viz. National Legal Services Authorities, State Legal Services Authorities, District Legal Services Authorities and Taluka Legal Services Committees. The chapter that follows will discuss all the above provisions and institutions.

CHAPTER VII

Efficacy of the Legal Services Authorities Act, 1987

“One has to remember that Legal Aid can be used most oppressively against innocent people”¹

- Lord Denning, House of Lords, 14th January 1985

7. INTRODUCTION

Justice - social, economic and political - is our constitutional pledge enshrined in the Preamble of our Constitution. The incorporation of Article 39-A in the Directive Principles of State Policy in the year 1976, enjoined upon the State to ensure justice on the basis of equal opportunity by providing free legal aid. It was this constitutional mandate, which was responsible to set the tone of development of Legal Aid Programme including organisation of Lok Adalats in the country through the State Legal Aid Boards with the Central Committee for Implementing Legal Aid Schemes, popularly known as CILAS (Committee for Implementing Legal Aid Schemes) headed by a senior Judge of the Supreme Court of India². The Central Government, in 1980 constituted a Committee for implementation of Legal Aid Schemes (CILAS) by way of a resolution of the Department of Legal Affairs dated 26 September 1980.³

In India, concern for legal aid to the poor and to the needy is continuously on the rise. Legal assistance and free legal advice is the only way to guarantee equal protection of law to the poor. In a developing country like India where a majority of the population is unable to protect its interests, it is the duty of the State to enable the poor to secure their legal rights. The courts are used by the

¹ Simon James & Chantal Stebbings, *A Dictionary of Legal Quotations* (Universal Law Publishing, New Delhi 5th Indian reprint 2004)109

² Sarkar S.K., *Law Relating to Lok Adalats and Legal Aid* (Orient Publishing Company Allahabad, 2nd Ed.2008) 38.

³.Muralidhar S, *Law, Poverty and Legal Aid*, (LexisNexis, New Delhi, 2004) 107

richer sections to assert their legal rights while the poor remain deprived of access to the justice system. Added to this is the fact that our judiciary is over-worked. This aspect is increasingly being a point of concern. Delay in disposal of cases by the judiciary further increases the cost of litigation. Alternate Dispute Redressal mechanisms are therefore being emphasized upon. The fact of the matter is that mere existence of laws does not guarantee the enjoyment of those rights by the citizens. Free legal aid system is a step towards enforcement of those rights. The Legal Services Authorities Act, 1987 provided the statutory support in this direction. It also sought to provide a uniform pattern to these legal services all over India. It came into effect from 9th November 1995.

7.1 RATIONALE BEHIND FREE LEGAL SERVICES IN INDIA

a) Constitutional Commitment

Our Constitution which is wedded to democracy, socialism, secularism, equality of status and equal protection of laws, legal aid for weaker sections is a social obligation and constitutional mandate. Equal access to the law for the rich and the poor alike is essential to the maintenance of the rule of law. The Constitution of Indian Republic protects life and personal liberty as the Fundamental Right bestowed upon all persons in India. Article 21 reads in its pregnant words, “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. It is, therefore, essential

to provide legal advice and representation to all those, threatened as to their life, liberty, property or reputation, who are not able to pay for it. ⁴

b) Lack of legal awareness

In India, a large number of people are illiterate. They do not understand laws. Ignorance about laws drags them towards legal troubles for many a time as they are unable to anticipate and prevent the occurrence of legal problems. Added to this is the fact that legal language is so complex that even the educated people cannot understand it easily. No steps have been taken by judicial experts to remove this impediment by simplifying legal language. Laws should be such that anyone reading it should be able to decipher the same. So long as this is not done, it remains the duty of the government to render free legal service to the people.

c) Legal consultation is expensive

Since common people do not understand laws and legal proceedings, they need to consult legal experts. Ignorance of the poor people enables the lawyers to charge fees as they wish. Under such circumstances the poor, who cannot pay such exorbitant fees, become helpless and for them, law ceases to be the protector. Due to economic disability, they cannot avail themselves of the legal services. We must look at how to make justice more affordable, whether in terms of court fee or lawyer's fee. At the same time, we need to make our legal

⁴ Dr. Manas Chakrabarty, "Legal Aid to the Poor", *AIR*, Nagpur (2000), Jour 190

system robust, effective and competent. Low level of legal awareness also impedes access to justice.⁵

d) Delay in disposal of cases

Increasing backlog and delay in disposal of cases has become a genuine problem. The more time it takes, more is the cost of litigation. Moreover, due to delay, under trials languish in jails for years. Delayed justice leads to denial of justice. Yet for the judiciary the challenge is not only to dispose cases speedily but also to dispose them effectively. The problem can be addressed by reducing the burden on courts by promoting alternative dispute redressal mechanisms⁶. Ms. Sonia Gandhi hoped that 'Grama Nyalayas', being set up around the country would usher in a revolution in the handling and disposing of cases and bring meaningful justice to the common man.⁷

e) Legislative Attempt

The powerless, the poor and the ignorant need assistance for being empowered to uphold their own rights. Legal Literacy Campaigns, Para-legal training programmes, Mobilization of public opinion against injustice, out of court settlement of disputes and free legal aid are the some of the ways through which the poor and underprivileged can be made to realize their rights⁸. It was against this backdrop that the Legal Service Authorities Act, 1987 was adopted.

⁵ President Pratibha Patil, Inaugural address in National Conference on Access to Justice and Socio Economic Development of North Eastern States see <http://www.Telegraph.inida.com>, visited on 18/4/10.

⁶ Dr.Moitree Bhattacharya, *Access to courts and Enforcement of Rights, Free Legal Services to the Poor*, Indian Social Institute, New Delhi (2003) 31. Also see for Justice delayed Justice denied-Bhasker de, Haldi Law College, www.legal.service.india.com.

⁷ Addressing a National Conference on Law, Justice and Common man, at New Delhi, <http://netinida.in/new> visited on 17-4-10. And see M.P.Tiwari, Delay in Disposal of cases and under trials, *Cr.L.J* 1980 Jour.12

⁸ Dr.Manmohan Singh, Addressing a National Conference on Law, Justice and Common man, at New Delhi, <http://netinida.in/new> visited on 17-4-10

Significant thrust in this direction came in seventies and eighties when civil rights and civil liberties became a matter of major concern in India. Earlier the demands for justice were not mass based, and could not evoke response. The miseries of people entangled in legal process, deprivation of personal liberties and injustices meted out to the people in jails and lockups made the demand for civil liberties so powerful that it could not be ignored any longer. Once again it may be referred to what Martin Luther King has said: “Injustice anywhere is a threat to justice everywhere⁹”.

f) Judicial Contribution

Our Constitution is committed to equality and personal freedom. Free legal aid and Lok Adalats seek to fulfil these commitments. In 1979, the Supreme Court¹⁰ held that free legal aid is implicit in the guarantee of Article 21 and Article 14. In this case, Justice P.N. Bhagwati and Justice D. A. Desai found that some of the under-trials have been in jail for a period more than the maximum term they would have been sentenced, if convicted. It violates the personal liberties of the individuals as well as right to equality of citizens. Since they are poor, they cannot avail legal consultation like others and therefore languish in jails for years. In Para 9 of the judgment it was recommended that comprehensive free legal service is necessary. For there is a mandate for equal justice under Article 14 and personal liberty under Article 21 as well as a compulsion of constitutional directive under Article 39A. The argument is that a person accused has the right to prove his innocence. State must provide that if he is

⁹ Oxford Dictionary of Quotations and Proverbs, Oxford University Press (2001)153.

¹⁰ Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360

unable to secure it on grounds of indigence. Two years later¹¹, Justice Bhagwati while referring to apex court's mandate in the Hussainara Khatoon case reiterated that the State cannot deprive its citizens their constitutional rights on grounds of lack of funds or poverty.

7.2 RECOMMENDATION OF LAW COMMISSION

The right to assignment of counsel at government expenses was emphasised in the 14th Law Commission Report.¹² Thereafter, in 1969 the Law Commission again strongly recommended that the right of the accused to representation at the cost of government should be placed on statutory footing in relation to trials for serious offences and as a first step in this direction, the Commission proposed that such a right should be available in all trials before the Court of Session.¹³

In order to achieve the objective enshrined in Article 39-A of the Constitution, government had, with the object of providing free legal aid, by a Resolution appointed a Committee for implementing Legal Aid Scheme to monitor and implement Legal Aid Programmes on a uniform basis in all the States and Union Territories. The said committee evolved a model scheme, which was accordingly implemented by the government. However, on review, certain deficiencies were found and it was considered desirable to constitute statutory legal authorities at the National, State and District levels to provide effective monitoring of Legal Aid Programmes.

¹¹ Khatri v. State of Bihar AIR 1981 SC 928

¹² 14th, *Law Commission Report* on the Reform of Judicial Administration.

¹³ Dr..Singh R.K, "Legal Aid In India- Still in its infancy", *AIR*, Nagpur (1994) Jour.49

For the expeditious disposal of large number of cases and without much cost, Lok Adalats have been constituted and they have been functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. In order to provide for the composition of statutory legal authorities and to provide statutory backing to Lok Adalats and its awards, the Legal Services Authorities Bill, 1987 was introduced in the Lok Sabha on 24th August 1987.¹⁴

In 1987, Legal Services Authorities Act was enacted, but this Act was finally enforced on 9th November 1995 after certain amendments were introduced therein by the Amendment Act of 1994 and it has been placed on the statute book of India. The constitution of Legal Service Authorities to provide free and competent legal services to the weaker section of the society ensures that opportunity for securing justice is not denied to any citizen for reason of economic or other disabilities.

7.3 BHATT'S TEN COMMANDMENTS

In order to achieve the objectives enshrined in the National Legal Services Scheme Justice J.N. Bhatt has suggested Ten Commandments, which are as follows¹⁵:

- i. To provide and create for effective and efficient well-structured, comprehensive and cohesive, legal service programmes and projects, which will help prompt distributive justice. Legal aid in its scope and

¹⁴ *Supra* note.2 at 36

¹⁵ Justice. Bhatt J.N," Ten Commandments of effective legal services ,*Nyaya Deep*" ,Vol.II ,Issue 3 (1999) 19

ambit must contain both preventive and protective measures. Legal Aid should be adopted as such, as people's movement for speedy and inexpensive justice, at all levels.

- ii. Legal Service Authorities and Committees under the Act must be sufficiently funded by the State. They must also receive adequate support and ample assistance from the civil services. It should also, be liberally assisted by the Bench and Bar. It should also be helped generously by Non-Governmental Organizations (NGOs).
- iii. Legal service personnel should strictly comply with and employ the means –cum - merit criteria for avoiding likely misuse of legal service system. Rights and duties are interdependable and inseparable. Rights flow from duties and duties confer rights. If all simply insist on rights and not duties there shall be no effective legal service and social order and justice.
- iv. Appointment of Legal Aid Advocates must be on the criteria of competence, character, commitment and credentials.
- v. Appointment of “Legal Aid Counsel” in all Courts of Magistrates so as to ensure that no person in custody feels handicapped in his defence. Dedicated approach to legal aid by the judiciary and legal fraternity is not only equally important but is imperative.
- vi. Aspect of “Permanent Lok Adalat” must be well planned. It should be functioning in all districts in the country, phase- wise and subsequently should be subject to review and assessment periodically.

- vii. Well structured and effective planning for efficient publicity campaign for creating awareness of objects of provisions of Legal Services Authorities Act to the subjects and to educate persons concerned for which multifaceted and dimensional legal literacy campaign on large scale must be evolved and executed.
- viii. Item of legal services should be a planned item in the budget so as to ensure national legality in the plan of national development. It is not only expedient but obligatory in our country which is wedded to the welfare state policy and more so when more than majority are handicapped by poverty and illiteracy and also social inequalities.
- ix. Legal Service is not a charity nor a grace but a constitutional mandate and state members of Bar and Bench as well as other concerned legal aid functionaries, service-oriented clubs and organizations should strive and ensure that this solemn pledge is observed with letter and spirit.
- x. Legal fraternity must respond with juristic sensitivity to the voice of weak, meek, poor, suppressed and exploited women, destitute children. Bar is really, backbone of legal service to complete the constitutional obligations and obtain statutory rights of millions of handicapped needy and deserving people. The scheme of family counsellor in each District to begin with if not in each court will help to solve and settle many disputes of family, dispute between spouses etc.

7.4 THE PRE-1980 SCHEMES

The Criminal Procedure Code, 1973 provides for legal assistance at state expense only to the accused facing trial in a session's court.¹⁶ The stages prior to the trial and after its conclusion are not accounted for by Sec. 304(1). For examining the availability of legal assistance at other stages in the criminal justice process, for those facing criminal proceedings in courts other than the sessions courts and for complaints and victims of crime, the schemes made by the government at the centre and the states have to be looked into. These have been supplemented or replaced by the Legal Services Authorities Act and the Regulations and Rules made there under since 1995¹⁷.

7.5 LEGAL SERVICES AUTHORITIES ACT, 1987

On 11 October 1987, the President's assent was accorded to the Legal Services Authorities Act 1987 (Act 39 of 1987) (LSAA). The explanation offered by the Government was that a review of the working of CILAS had revealed deficiencies and that there was a need to have statutory legal services authorities established at various levels to further the government's commitment under Art.39-A of the Constitution.

The bringing into force to the LSAA was delayed because of its disapproval by the judiciary and the legal fraternity. The LSAA was discussed at the Chief Justices' Conference and at the meeting of the chairpersons of the State Legal Aid and Advice Boards. As a result, 56 amendments were proposed. These

¹⁶ Ratanlal and Dhirajlal, *The Code of Criminal Procedure*, (Wadhwa & Company, Nagpur, 2006) 578

¹⁷ *Supra* note.3 at 101

were incorporated in the Legal Services Authorities (Amendment) Bill, which was introduced in the Rajya Sabha on 14 May 1990. The amendments were essentially about the distribution of powers under the Act between the executive and the judiciary; they did not affect the content of legal services.

The government of the day was in no great hurry to push for the changes to be incorporated into the law. It took four more years for the amending legislation to be approved by Parliament and receive the assent of the President. One year after the amendments were incorporated, on 9 November 1995, the Government notified the LSAA, excepting Chapter III, which dealt with the constitution of the Committees at the state, district and taluk levels, which meant further delays. It took a PIL and three further years of persuasion for the entire LSAA to become operational.¹⁸

Hon'ble Mr. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act. National Legal Services Authority constituted on 5th December 1995. His Lordship Hon'ble Dr. Justice A. S. Anand, Judge, Supreme Court of India took over as the Executive Chairman of National Legal Services Authority. The first member secretary of the authority joined in December 1997 and by January 1988 the other officers and staffs were appointed. By February 1988, the National Legal Services Authority properly became functional for the first time.

In October, 1998, his Lordship Hon'ble Dr. Justice A.S. Anand, assumed the office of the Chief Justice of India and thus became the chief of the National

¹⁸ *Id.* at 112.

Legal Service Authority. His Lordship Hon'ble Justice S. P. Bharucha, the senior most Judge of the Supreme Court of India assumed the office as the Executive Chairman, of National Legal Services Authority.

Justice is threatened by the vice of inequality and unequal justice becomes injustice if a person does not have the means of obtaining access to justice. In spite of ours being a welfare State, this inequality has increased. It is a tremendous task, in a vast and thickly populated country like ours, to provide a well-structured and comprehensive legal aid programme within the reach of everyone who is needy. For a large section of society, courts and justice are meaningless. There are women and children, mentally retarded, disabled, industrial workers, people in remote villages, victims of mass disasters, victims of trafficking in human beings, sufferers of man-made calamities like caste atrocities and ethnic violence or victims of natural calamities such as earthquake, drought, and flood and to add—the latest in the list—Tsunami.

NALSA has acquired the nickname of being the social face of Judiciary. It is useful to recall Justice Venkatachalaiah's warning that: "legal aid to the poor should not degenerate to poor legal aid¹⁹". NALSA's is a long journey from ignorance to awareness, from poverty to legal empowerment, from injustice to justice.

¹⁹ Quoted in Justice.Lahoti R.C, "NALSA-Patron-in-chief speaks", *Nyaya Deep*, Vol.VI, Issue 3, (July 2005) 10

7.5.1 Object of the Legal Services Authorities Act

Article 39A of the Constitution provides that 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.

With the object of providing free legal aid, Government had, by a resolution, dated 26th September, 1980, appointed the 'Committee for Implementing Legal Aid Schemes' under the Chairmanship of Mr. Justice P.N. Bhagwati to monitor, and implement legal aid programme on a uniform basis in all the States and Union territories. It evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and advice boards have been set up in the States and Union territories²⁰.

7.5.1. A Statements of objects and reasons of the Amending Act No.37 of 2002

The Legal Service Authorities Act, 1987 was enacted to constitute legal services authorities for providing free and legal services to the weaker sections of the society, to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity.

²⁰ *Supra* note 2 at 36

The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the Courts.

However, the major drawback in the then existing scheme of organisation of the Lok Adalats under Chapter VI of the said Act was that the system of Lok Adalats was mainly based on compromise or settlement between the parties. If the parties did not arrive at any compromise or settlement, the case was returned to the court of law or the parties were advised to seek remedy in a court of law. This caused unnecessary delay in the dispensation of justice. Therefore Lok Adalats were given power to decide, the cases on; merits in case parties failed to arrive at any compromise or settlement, this problem could be tackled largely.

Further the cases which arise in relation to public utility services such as Mahanagar Telephone Nigam Limited, Delhi Vidyut Board, etc. need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent. Therefore the Legal Services Authorities Act, 1987 was amended to set up Permanent Lok Adalat for providing compulsory pre-litigative mechanism for conciliation and Settlement of cases relating to public utility services.²¹

²¹ *Supra* note.2 at 41 The Chapter VI A was inserted containing sections 22A to 22 E by Act 37 of 2002
Sec.4 w.e.f.11.6.2002

7.5.1. B Permanent Lok Adalat

- a) Provide for Permanent Lok Adalats (PLA) in place of temporary ones constituted by State Boards as and when the necessity arose;
- b) The PLAs is to consist of a Chairman, who is or has been a district judge or additional district judge or has held judicial office higher in rank than that of a district judge and two other persons having adequate experience in PSUs. The two members are hence being non-judicial members²².
- c) The PLAs exercise jurisdiction in respect of one or more Public Utility Services²³ such as transport services of passengers or goods by air, road and water, postal, telegraph or telephone services, supply of water, light or power to public by any establishment, public conservancy or sanitation, services in hospitals or dispensaries, and insurance services.
- d) The pecuniary jurisdiction of PLAs shall be up to Rupees Ten Lakh²⁴. However, the central government can increase this from time to time.
- e) PLAs do not have jurisdiction over any matter relating to an offence not compoundable under any law.
- f) Where parties can mutually arrive at a settlement, the PLA shall pass an award in terms thereof. However, where the parties fail to reach an amicable settlement, the PLA shall decide the dispute on merits.
- g) The award of the PLA shall be by a majority of the members of the PLA²⁵.

²² Sec.22B(2)

²³ Sec 22A(b)

²⁴ Proviso to Sec.22C(1)

h) Every award of the PLA is final and shall not be called in question in any original suit, application or execution proceeding.

As regards disputes between the consumers and the statutory bodies or public corporations providing public utility dispute at the pre-litigation stage may be referred to a permanent Lok Adalat comprising of a judicial officers and experts in the field. The permanent Lok Adalat would try to arrive at a conciliatory settlement but if does not succeed; they may adopt an adjudicatory role.

7.6 AUTHORITIES UNDER THE ACT

There are three Authorities as contemplated by the Legal Service Authorities Act, 1987. They are National Legal Services Authority, State Legal Services Authority, and District Legal Services Authority.

7.6.1. National Legal Services Authority

Ever since the day when the activities of the erstwhile Committee for Implementation of Legal Aid (CILAS) were taken over by National Legal Services Authority (NALSA) in December 1995, NALSA has been endeavouring to implement the objectives of Legal Services Authorities Act, 1987. In addition to the court based legal aid to the categories of persons eligible for free legal services under Section 12 of the Act, NALSA has paid incremental attention to conduct Lok Adalats all over the country as a part of

²⁵ Sec.22E(3)

its drive for ADR and also the preventive and strategic legal aid through legal awareness camps. Some states have started target specific legal literacy classes for the benefit of school and college students and also for empowerment of women in neighbourhood groups.

The National Legal Services Authority is a statutory body which has been set up for implementing and monitoring legal aid programs in the country. The legal aid program adopted by 'NALSA' include promoting of legal literacy, setting up of legal aid clinics in universities and law colleges, training of paralegals, and holding of legal aid camps and Lok Adalats. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programs.

National Legal Services Authority was constituted on 5th December, 1995. His Lordship Hon. Dr. Justice A.S. Anand, Judge, Supreme Court of India took over as the Executive Chairman of National Legal Services Authority on 17th July, 1997. Soon after assuming the office, His Lordship initiated steps for making the National Legal Services Authority functional. The first Member Secretary of the authority joined in December, 1997 and by January, 1998 the other officers and staff were also appointed. By February, 1998 the office of National Legal Services Authority became properly functional for the first

time. A nationwide network has been envisaged under the Act for providing legal aid and assistance.

National Legal Services Authority was constituted on 5th December, 1995. According to Section 3 (1) under the Chapter II of the Act[8], the Central Government is instructed to constitute a body at the National level known as the National Legal Services Authority, to exercise powers and perform functions conferred on it or assigned to it under the Act. His Lordship Hon. Dr. Justice A.S. Anand, Judge, of The Supreme Court of India took over as the Executive Chairman of National Legal Services Authority on 17th July, 1997. Soon after assuming the office, His Lordship initiated steps for making the National Legal Services Authority functional. The first Member Secretary of the authority joined in December, 1997 and by January, 1998 the other officers and staff were also appointed. By February, 1998 the office of National Legal Services Authority became properly functional for the first time.

*Constitution of the National Legal Services Authority*²⁶

The Central Government to constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred or assigned to, the Central Authority under the Act.

The central Authority to consist of

- i. The Chief Justice of India who shall be the Patron-in-Chief. The idea of having the Chief Justice as patron enhances the prestige of central authority.

²⁶ Sec.3 of The Legal Service Authorities Act, 1987.

- ii. A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman . It is commendable to have a retired Supreme Court judge as the executive chairman who can devote all his time for this prestigious job.
- iii. Such other members, in possession of such experience and qualifications as may be prescribed and nominated by the Central Government.
- iv. Member Secretary, who is appointed by the Central Government with the consultation of Chief Justice, exercises such powers and performs duties under the Executive Chairman of the Central Authority. The Central Government prescribes the terms and other conditions relating to members and member secretary of the Central Authority..

The Administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member- Secretary Officer and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India.

All orders and decisions of the Central Authority shall be authenticated by the Member – Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

Act or proceeding of the Central Authority not to be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the Central Authority.²⁷

Supreme Court Legal Service Committee

The Supreme Court Legal Services Authority was constituted to administer and implement the legal services programme in so far as it relates to the Supreme Court of India.²⁸

The Central Authority shall constitute a Committee to be called the Supreme Court Legal Services Committee, the Chairman of which is a sitting judge of the Supreme Court. This Committee exercises powers and functions as may be determined by central authority.

The Supreme Court Legal Services Committee has been enacted under the Legal Services Authorities Act, 1987 for the effective rendering of justice in the apex court. If a person belongs to Scheduled Caste or Scheduled Tribe, a victim of natural calamity, is a woman or a child or a mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home, he/she is entitled to get free legal aid from the Supreme Court Legal Aid Committee. The aid so granted by the Committee includes cost of preparation of the matter and all applications connected therewith, in addition to providing an Advocate for preparing and arguing the case. Any person desirous of availing legal service through the Committee has to make an application to the Secretary and hand over all necessary documents concerning

²⁷ Sec.3 (9)

²⁸ Sec. 3-(A)

his case to it. The Committee after ascertaining the eligibility of the person provides necessary legal aid to him/her.

*Functions of the Central Authority*²⁹

NALSA being the Central Authority is ordained *to* lay down the policies and principles to be implemented for whole of the country. Nevertheless, taking into consideration the multi-ethnic and multi socio-economic and geo-political situations prevailing in India, the State level plans and strategies for legal aid also assume importance. Therefore, NALSA has to coordinate the activities of the State Legal Services Authorities for leading to the ultimate objective envisioned in Articles 14, 21, & 39-A of the Constitution of India. In order to implement the 'Constitutional Vision' in its letter and spirit, it is a statutory obligation of NALSA to lay down broad policies and principles for making legal services all inclusive, particularly having regard to the entitlement (as indicated in section 12) of marginalized or weaker sections of society like members of scheduled castes, scheduled tribes, victims of trafficking, women, children, elderly persons, people with disabilities, etc. Towards this end, it is incumbent on NALSA to identify and give concrete shape to schemes with pan-India application, prioritize their implementation in a fixed time-frame and at the same time equip the State Legal Services Authorities so as to strengthen their machinery to make it battle ready.

The Central Authority Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this

²⁹ Sec.4 The Legal Services Authorities Act 1987.

Act³⁰:Utilise the funds at its disposal, take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society³¹,Organise legal camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections as to their rights as well as encouraging the settlement of disputes through Lok Adalats, or by way of negotiations, arbitration and conciliation.

Develop, in consultation with the Bar Council of India programmes for clinical legal education and promote guidance and supervise the establishment and working of Legal Services Clinics in Universities, Law Colleges and other Institutions³². Make special efforts to enlist the support of voluntary social welfare institutions working at the gross-root level, particularly among the Schedule Castes and the Scheduled Tribes, women and rural and urban labour.

It is noteworthy that the functions of central authority include organisation of legal aid camps especially in the rural areas for slums etc. It also emphasises social justice litigation with regard to consumer protection. It also envisages undertaking and promotion of research in the field of legal services.

NALSA would like to reach out to the people at large and towards this end adopt appropriate publicity measures to add to the awareness. Production of documentaries in Hindi, English and regional languages, inserting advertisements in the print and electronic media through the DAVP can also be thought of for publicity measures. Similar strategies for publicity, education

³⁰ Sec.4(b)

³¹ It is evident that for several years the NALSA does not appear to have filed any PIL.

³² Sec.4(k)

and training may be adopted by the State Legal Services Authorities also. It shall periodically convene regional meets of the state authorities to exchange ideas, share their experiences and 'best practices'.

There is a large number of NGOs working in every nook and corner of the country addressing different needs of the society, targeting different sections of the society. To derive optimum gain and maximize results out of their disparate efforts, it is desirable that NALSA provides the necessary platform so that there is a proper co-ordination amongst them, of course without compromising their identity or independence of initiatives.

In the last eleven years, the Information and communication technology has undergone a sea change. Today it is being used as vehicle of growth in every walk of life and governance. The NALSA is way behind in using this technology to either expand its reach or to render services effectively and efficiently to everyone.

Community Radio is another medium to reach out to even remote and inaccessible communities, where even ICT may have no impact. This is a tool with great potential which is yet untapped. These community radio stations can be managed locally with assistance from NALSA.

7.6.2 State Legal Services Authority³³

Chapter III of Legal Services Authorities Act 1987 deals with State Legal Services Authority. Sec.6 refers to the constitution of Legal Services Authority

³³ Sec.6, Legal Services Authority Act

in the state. Sec.7 deals with functions of State Authority and Sec.8 deals with co-ordination by the state authority with other agencies in order to discharge its functions.

Constitution of State Legal Services Authority

As per section 6 the State Legal Services Authority called the legal service authority is to be constituted by the State Government. The State authorities are headed by a sitting High Court Judge and the Chief Justice of the High Court is the Patron-in-Chief. A serving or retired Judge of the High Court, be nominated by the Governor, as an Executive Chairman and other members those who possess prescribed experience and qualifications nominated by the Government.

The State Government in consultation with the Chief Justice of the High Court, appoint Member Secretary of the State Authority, who is in judicial service as a District judge to exercise such powers and perform such duties under the Executive Chairman to him by the Executive Chairman of that Authority³⁴.

It is to be noted that member secretary has to be given full fledged work without giving any judicial work. They only legal services authorities can function effectively.³⁵ In fact recently in Member Secretary of District Legal Services Authorities are following the concept by entrusting exclusively legal services matters.³⁶

For the efficient discharge of authority functions state government with the consent of Chief Justice of High Court appoint number of officers.

³⁴ Sec.6 (3).

³⁵ Several judicial officers expressed their opinion to the researcher during interviews.

³⁶ In State of Goa , March 2011 , first appointment of full fledged Member secretary appointed.

The salaries, allowances and pensions payable to the Member Secretary, officers and other employees of the State Authority payable out of the Consolidated Fund of the State.³⁷

No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the State Authority.

*Functions of State Authority*³⁸

Sec.7 deals with functions of the State Authority. It is the duty of the State Authority to give effect to the policy and directions of the Central Authority. Providing legal service to persons mentioned under Sec.12, to settle the disputes pre litigation stage conduct Lok Adalats, to plan and organise legal aid programmes are the functions among others.

Apart from implementing the National Strategies and Plans of Action, the State Authorities have a pivotal role to play. The State Authorities are to function in such a way as to serve as the State level apex body for the legal services activities taking place in the State concerned. They should work in such a manner as a benevolent institution to which all categories of persons mentioned in Section 12 of the Act can pin their hopes on³⁹. It is important that the State Legal Services Authorities work in tandem with each other, always keeping NALSA informed, so that all energies are channelized in a concerted manner to achieve the shared broader objectives and common goals.

³⁷ Sec.6(7)

³⁸ Sec.7

³⁹ hslsa.nic.in/schemes/Qinquennial.doc

*High Court Legal Services Committee*⁴⁰

Sec.8A contemplates High Court Legal Aid services Committee. The State Authority is to constitute a Committee to be called the High Court Legal Services Committee for every High Court, for exercising such powers and performing such functions as may be determined by regulations made by the State Authority⁴¹.

Chairman of the committee should be a sitting judge of High Court. Chief Justice of High Court nominates Secretary to the committee and other members to assist the chairman.

7.6.3 District Legal Services Authority⁴²

Sec.9 deals with District Legal Services Authority and Sec.10 outlines its functions. Sec.11 provides that District Authority is to act in co ordination with other agencies and be subject to other directions given by the Central authority. As per sec.9 the State Government in consultation with the Chief Justice of the High Court is to constitute a body to be called the District Legal Services Authority for every District in the state to exercise the powers and perform the functions conferred on, or assigned to the district authority under the Act.

District Judge is the Chairman. Secretary⁴³ of District Authority and other members who possess prescribed qualification assist the chairman in the functions of the authority⁴⁴.

⁴⁰ Sec.8A, Subs. By Act 59 of 1994, Sec.7. In state of Goa these provisions inserted in Chapter IV in Goa State Legal Services Authority Regulations , came into force in 1998

⁴¹ Sec.8A(1)

⁴² Sec.9. In state of Goa these provisions inserted in Chapter V in Goa State Legal Services Authority Regulations , came into force in 1998

The officers and other employees of the District Authority are entitled to such salary and allowances and are subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court⁴⁵.

The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority are to be defrayed out of the Consolidated Fund of the State.

*Functions of District Authority*⁴⁶

Sec.10 outlines the functions of the District Authority. Sec.10(1) lays down in general that it is the duty of every district authority to perform such functions of the state authority in the district as they may be delegated to it from time to time.

Co-ordinate the activities of the Taluk Legal Services Committee and other legal service in the District, to organise Lok Adalats are some of the functions of the authority.

For promoting the cause of legal service to the poor District Authority has to co-ordinate with Non Governmental institutions and Universities⁴⁷.

⁴³ belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge

⁴⁴ Sec.9(3)

⁴⁵ Sec.9(6)

⁴⁶ Sec.10, In state of Goa these provisions inserted in Chapter VI in Goa State Legal Services Authority Regulations, came into force in 1998

⁴⁷ In state of Goa, North Goa District Legal Services Authority as well as South Goa DLS, organizing their legal aid programmes in co-ordination with Law colleges.

7.6.4 Taluk Legal Services Committee⁴⁸

The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee for each taluk or mandal or for group of taluks or mandals. Sections 11-A and 11-B were inserted by the Act 59 of 1994 whereby provisions relating to Taluk Legal Services were added in the Legal Services Authorities Act, 1987. The Taluk Legal Services Committee work under the rules made by the different States. Relating to its composition, conditions of services in certain States, additional functions have also been assigned, e.g. in Andhra Pradesh where the functions are subject to superintendence of the District and the State Authority.

The senior most Judicial officer is the ex-officio Chairman. Members nominated by government and members appointed by committee discharge the functions.

The administrative expenses of the Committee are to be defrayed out of the District Legal Aid Fund by the District Authority.

Functions of Taluk Legal Services Committee

The Taluk Legal Services Committee performs functions, such as: co-ordinate the activities of legal services in the taluk; organise Lok Adalats within the taluk and perform such other functions as the District Authority may assign to it.

By observing above authorities, a) the structure is designed to co-opt the judiciary into the administration of legal aid while at the same time adding to

⁴⁸ Sec.11A

the responsibility of the judiciary. For instance, a senior judge who already has judicial and administrative responsibilities within the judicial system has now to oversee the administration of the legal aid scheme as well. b) The fact that state governments exercise controls over the subordinate judiciary in the matter of filling up of vacancies, can question the so called independence of the judiciary.⁴⁹

7.7 ENTITLEMENT OF LEGAL SERVICES

Chapter IV of Legal Services Authorities Act 1987 deals with entitlement of Legal Services in Secs.12 and 13.

7.7.1 Criteria for Giving Legal Services⁵⁰

All laws are made for all men irrespective of their status and standing in society. Even a man who may not have any status, office, post or rank in society is a citizen with expectations for a just and humane order. The object of this provision is to provide legal aid to the weaker section of the society.

NALSA provides for free legal aid to the persons covered by S 12 of LSA and includes persons in custody and in psychiatric hospitals, victims of trafficking in human beings, victims of disasters, ethnic violence, caste atrocities, flood, drought, earthquake or industrial disaster.

Nature of services provided include advocates' fees, payment of court fee for filing case before a court, expenses for typing and preparation of petition and

⁴⁹ S.Muralidhar, Law Poverty and Legal Aid , Butterworths,(2004) at p.120.

⁵⁰ Sec.12

documents, expenses for summoning witnesses and meeting expenses incidental to litigation. NALSA also provides for preventive and strategic legal aid by undertaking legal awareness programmes and transforming villages into litigation free.

A court is under obligation to inform the accused or any person coming under Section 12 of Legal Services Authority Act that he is entitled a free legal service and unless this is done and failure to do so is sufficient ground for remand, retrial or re-hearing of the case in question. This provision is commendable as it takes care of S.C, S.T, Woman⁵¹, Children, Industrial Workmen, and People in Custody in protective home and so on.

There is proposal that it has to include in the list Senior Citizens and Victims of terror attacks.

Legal aid facility has been implemented for over 15years, but the information of such scope of assistance is not with majority of those who really need such assistance. The law for such aid is in place but lacks implementation in the manner it was envisaged.

To do justice to those who have taken the pains to support litigants who do not have the means to approach the Court for redressel, it is important to spread information of such schemes for the benefit of the low or middle income group.

⁵¹ In a state of Kerala, 3200 people, majority of whom are women, commit suicide every year. They think that suicide is the best way to get justice because this world has no hope, says Madhava Menon: If this is the state of mind of even educated people, then shame on the law schools and legal profession. –state in a conference at NLJUS, West Bengal.

7.7.2 Disentitlement from getting legal aid⁵²

Though legal aid is applicable to all needy persons, Chairman of Executive Committee has discretion to extend this benefit to some other category of persons. *–Persons not entitled to the legal aid unless the Chairman of the Committee approves it as a special case*

- i. Proceedings wholly or partly in respect of defamation or malicious prosecution or any incidental proceedings,
- ii. A person charged with contempt of court proceedings or any incidental proceedings,
- iii. A person charged with perjury,
- iv. Proceedings relating to any election,
- v. Proceedings in respect of economic offences and offences against social laws such as the Protection of Civil Rights Act 1955 and the Immoral Traffic (Prevention) Act 1956 unless in such cases the aid is sought by the victim.

Persons not entitled to the legal aid and where even the Chairman cannot sanction

Legal aid is also denied where a person seeking the legal services -

- i) Is concerned with the proceedings only in a representative or official capacity.

⁵² *Supra* note 2 at, 83-84

- ii) If a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his interests are not likely to be prejudiced because of the absence of proper representation.

In the above two circumstances even the Chairman cannot sanction legal aid as a special case.

Procedure

After court has informed the party about his right to legal aid or where the party is aware about the right, he has to plead for legal aid by written document which satisfies the following formalities:

- (i) Persons who satisfy all or any of the criteria specified in Sec.12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.
- (ii) ii) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit⁵³.

For obtaining free legal aid, application may be made to

- a) In case of Supreme Court, to the Member Secretary, National Legal Services Authority, 12/11, Jamnagar House, Shahjahan Road, ND-110011 or to the Secretary, Supreme Court Legal Services Committee,

⁵³ Sec.13(1) and (2) for entitlement to Legal Services

109, Lawyers chambers, post office wing, Supreme Court Compound,
ND-110001.

- b) In case of High Court, to the Member Secretary, State Legal Services Authority of the concerned state or to the Registrar General – cum - Secretary, High Court Legal Services Committee.
- c) In case of District level, to the District-cum-Sessions Judge, District Legal services Authority of the concerned district or to Chief Judicial Magistrate-cum-Secretary, District Legal service Authority⁵⁴.

7.8 FINANCE, ACCOUNTS AND AUDIT

In most western countries Legal Aid Programme is confined to one aspect, i.e., providing assistance to the poor so that he can go to the Court to get his grievance redressed or to defend himself. In India Legal Aid Programme applies to various aspects such as –

- i. Financial assistance in Court cases or cases before administration of tribunals or departments
- ii. Conducting Lok Adalats
- iii. Legal awareness campaigns
- iv. Pre-litigation adjudication.⁵⁵

⁵⁴As per National and State Legal Service Authority Regulations. Each state is having its own regulations. For instance in the state of Goa regulation 16 provides for filing of application for legal services and regulation 17 for scrutiny of applications by secretary of concerned legal services authority. See also leaflet distributed by North Goa District Legal Services Authority, Panaji, preserved by the researcher in his file A of applications.

⁵⁵Justice.Jain N.C, “Legal –Aid, its scope and effectiveness of the Legal-Aid Rules in this regard” *AIR*, Nagpur, (1996) Jour 184

The Central Government, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.⁵⁶

*Sources of funds*⁵⁷

The Central Authority is to establish a Fund to be called the National Legal Aid Fund⁵⁸. Similarly State Authority and District Authority shall establish a fund to be called the State Legal Aid Fund⁵⁹ and District Legal Aid Fund⁶⁰ respectively.

In addition to the National Legal Aid Fund, the Supreme Court Legal Services Committee is also funded by costs⁶¹ awarded by court and directed to be paid directly to the Committee. Where the petitioner, needlessly and irresponsibly filed an SLP, The Supreme Court, while dismissing the appeal with exemplary cost of Rs.5000/- further ordered that this amount should be deducted from the personal pay of the officer/ officers who has /have recommended filing this SLP. The Chief Secretary, Maharashtra Government was directed to deduct this amount from the personal pay of the officer/officers concerned and send it to the account of Supreme Court Legal Aid Committee.⁶² Similar orders have been passed in many other cases.⁶³

⁵⁶ Sec.14, The Legal Service Authorities Act 1987.

⁵⁷ *Supra* note.2 at 91

⁵⁸ Sec.15

⁵⁹ Sec.16

⁶⁰ Sec.17

⁶¹ Sec.17(1)(c)

⁶² *State of Maharashtra v. Uttamrao Rayala Nikam* (1994) 2 SCC 116.

⁶³ *Municipal Corporation of Delhi v. Asian Art Printers (p) Ltd* (.1994) 6 SCC 87 and *Satish Chandra v Registrar of Co-operative Societies*, (1994)4 SCC 332.

A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto:

- a) All sums of money paid to it or any grants made by the Central Authority for the purpose of this Act;
- b) Any grants or donations that may be made to the State Authority by the State Government or by any other person for the purpose of this Act;
- c) Any other amount received by the State Authority under the orders of any court or from any other source.

In *Lawrence Fernandes*, it was held that the State Government had no power to either sanction or release the funds out of the budgetary allocation of the authority. Once the amount is allocated in the budget to the authority, it becomes the funds of the authority and the Government has no power over it.⁶⁴

The irony of unutilised resources in a situation where the extent of the unmet area of legal services is formidable continues even 15 after the implementation in 1995 of the Legal Service Authorities Act.⁶⁵

7.9 LOK ADALATS⁶⁶

Lok Adalats in each State are set up under the Act by the State Boards to provide for speedy disposal of cases. Lok Adalats were started with dual aim of relieving courts of their heavy workload and developing an alternative dispute settlement mechanism. The settlement of legal disputes through Lok Adalats at

⁶⁴ *Lawrence Fernandes v. Karnataka State Legal Service Authority*, AIR 2001 Kant. 56.

⁶⁵ *Supra* note 49 at 124

⁶⁶ Sec.19-22 of Legal Services Authorities Act 1987.

pre-litigative stage helps to reduce the inflow of cases in our already overburdened courts.

LSA also provides for establishment of permanent and continuous Lok Adalats in all districts for disposal of pending matters, disputes at the pre-litigative stage and also establish permanent and continuous Lok Adalats for Government Departments, Statutory Authorities and Public Sector for speedy disposal of the pending cases, disputes at the pre-litigative stage. Matters taken up by the Lok Adalats include matrimonial cases, motor accident cases, civil cases, criminal (compounding offences) cases, redressing senior citizens' grievances, labour disputes, Bank recovery cases, disputes with mobile cellular companies, land acquisition cases, pension cases, workmen's compensation matters, consumer grievance cases, electricity matters, telephone bill disputes, Municipal matters including House Tax cases, NREGA matters, grievances of labourers in the unorganized sector and cases pending before the Supreme Court of India and High Courts.

Some of the benefits that litigants derive by taking their disputes to such Lok Adalats are:

- i) Parties don't have to pay any court fees and if the case is already filed in the regular court.
- ii) There is no strict application of procedural laws (such as the Civil Procedure Code, 1860 and the Evidence Act, 1872) before the Lok Adalat;

iii) The litigant will be getting speedy disposal in the process of Lok Adalat. When comparing the functioning of both the systems, i.e Lok Adalat system and regular Judicial Court system, undoubtedly, for public in general and for a litigant in particular, justice being administered by regular judicial Courts will be bad in taste. People will start losing confidence in the working of such courts.⁶⁷

iv) Disputes can be referred to the Lok Adalat directly instead of approaching a regular court first;

v) Parties are free to voluntarily compromise or settle through the process of “give and take”.

vi) The decision of Lok Adalat is binding on the parties to the dispute.

vii) No appeal can lie against the Lok Adalat’s order. The reason for this is that unlike a regular court whose final decision is based on appreciation of evidence, in a Lok Adalat the decision is mutual arrived at by both parties to the dispute. As the decision in the Lok Adalat is not imposed upon by a third agency, a case for appeal will not arise and is thus not allowed.

In the working of the LSAA, it is clear that the major area of activity has been the organising of lok adalats⁶⁸ on a periodical basis. While in many states⁶⁹ the authorities have laid down detailed provisions in the regulations for the holding of lok adalats, some states have seen this as a separate area for rule making.

⁶⁷ Lok Nath Sangra, “Concept of Lok Adalat vis-à-vis Regular Judicial System” *AIR*, Nagpur, (1997) Jour.106

⁶⁸ S 2(1)(d) LSAA defines Lok adalat to mean a lak adalat organized under Chapter VI,LSAA . A Lok Adalat is intended to be a mechanism to encourage a consensual resolution of a dispute.

⁶⁹ Andhra Pradesh, Goa , Madhya Pradesh, Punjab and West Bengal

The pattern however is largely similar in most states. In many respects the lok adalats are planned as an activity closely linked to court proceedings. In some states every Saturday, some states alternative Saturday it is functioning. In some states mediation and conciliation centre also started. A reference to the lok adalat can be made by any one of the parties to the litigation. It can dispose of compoundable criminal cases also. On the one hand the holding of lok adalats is encouraged by the judiciary to settle accident claims cases, insurance claims and claims by banks against defaulters, labour cases, bank recovery cases, land acquisition cases, inventory proceedings⁷⁰Negotiable instrument cases, pre-litigation cases, on the other hand it is unclear what is happening to the litigant in Individual cases on account of the mass settling of cases.

The organisation of lok adalats and legal aid camps has not necessarily been a success either because of the manner in which they were conducted or because they were farce with the cases being referred to lok adalat even after a settlement had already been arrived at⁷¹.

7.10 FAST TRACKING CRIMINAL CASES

The experiment of holding of courts within jail premises began in Tihar Jail in Delhi in May 2000. Batches of criminal cases got decided with many of those accused of petty offences confessing to their crimes and thanking the judge for the speedy disposal of their cases.⁷²The proceedings were described thus:

⁷⁰ Matters relating to succession in state of Goa, enter the names of legal heirs on revenue records of the government.

⁷¹ Supra note 49 at 122

⁷² *The Hindu*, New Delhi, (13th June 2000) 12

...unlike in regular courts, there were no counsels representing the accused. In fact, there were no arguments. The legal officer read out the charge, and if the accused accepted it, the magistrate pronounced his judgment. The accused, however, had the choice of defending himself.⁷³

This is being conducted as part of the legal aid activity of National Legal Services Authorities. The Chief Justice of India, who is the Patron-in-Chief of the NALSA, accompanied by the Union Law Minister attended one such jail on July 29, 2001 when 117 poor prisoners detained for their involvement in petty offences were ordered to be released.

The Central Government has, in April 2001, accepted the recommendations of the Eleventh Finance Commission and commenced the establishment of fast track courts throughout the country to tackle the mounting arrears of civil and criminal cases.⁷⁴ This was essentially aimed at speedier disposal of pending cases and the costs budgeted for included the salaries payable to the judge and court personnel, and infrastructural facilities like building and transport. It did not account for either the need or the costs involved in providing legal aid to indigent accused if any in the cases assigned to these courts.⁷⁵

⁷³ *The Indian Express*, New Delhi, (14th May 2000) 10

⁷⁴ *Supra* note 3 at 123

⁷⁵ *Id* at 124

7.11 THE SUPREME COURT LEGAL SERVICES COMMITTEE REGULATIONS, 1996⁷⁶

In exercise of the powers conferred by Section 29 of the Legal Services Authorities Act 1987, the Central Authority made the regulations, relating to the term of office and other conditions relating to the members of the committee, powers and functions of the Committee, meetings of the Committee, application for legal services and disposal of application, modes of legal services etc.

Term of office of the members is two years. Any person deserving legal service for bringing or defending any action in the Supreme Court may make an application in writing on that behalf. However if the applicant is illiterate or is not in a position to write the Secretary or an officer of the Committee shall record his verbal submissions and obtain his thumb impression/signature on the record and such record will be treated as his application.⁷⁷

Forms of Legal Services

Free Legal Aid to eligible includes Advocates services(honorarium to advocates), court fees, expenses for typing and preparation of petition/documents, other expenses incidental to litigation, expenses for summoning of witnesses, Cost of obtaining and supply of certified copies of judgment, orders and other documents among others.

The Committee may either on its own motion or otherwise withdraw legal services granted to any aided person in the event of it being found that the

⁷⁶ Published in the Gazette of India, Extra, PartII, Section 3(1) dated 26-7-1996 (w.e.f.26-7-1996)

⁷⁷ Regulation 11

aided person was possessed of sufficient means or that he obtained legal service by misrepresentation or fraud; or in the event of any material change in the circumstances of the aided person, or in the event of any misconduct, misdemeanour or negligence on the part of the aided person in the course of receiving legal service⁷⁸.

7.11.1 The Supreme Court Middle Income Group Legal Aid Society⁷⁹

The Supreme Court Middle Income Group Legal Aid Society has been constituted under the Societies Registration Act to provide partial legal service to the middle class section of the society whose annual income does not exceed Rs.2,00,000/- per annum. The function of this Society is confined to the jurisdiction of the Supreme Court of India.

The Society has been recognized vide Regulation 3(4) of the Supreme Court Legal Services Committee Regulations, 1996, framed pursuant to Section 29 of the Legal Services Authorities Act, 1987. It has formulated a totally self-funded Scheme whereby the applicant pays the fees of the Advocates and the Senior Advocates but at a highly reduced fee structure unlike the normal fees. The office of the Society is presently functioning at 109, Lawyers Chambers, Supreme Court Compound (Fax/Phone: 91-11-23388597) and establishment services to it are being provided by the Supreme Court Legal Services Committee.

⁷⁸ Regulation 18

⁷⁹ [http:// www.supremecourtfinida.nic.in](http://www.supremecourtfinida.nic.in) visited on 17/4/10

Salient Features of the Scheme are as follows:

- i. The Scheme is applicable for cases intended to be filed in Supreme Court. The litigant can approach the Society in two situations *viz.*, to file or defend a case in the Supreme Court.
- ii. The applicant may indicate any three names both in relation to the Advocate-on-Record or the arguing counsel or the Senior Counsel as the case may be in the order of preference from out of the panel maintained by Society.
- iii. Any intending litigant desirous of availing the benefit of the Scheme is required to fill up the form prescribed and accept all the terms and conditions contained therein. The Pro-forma also contains a schedule of fee and expenses as applicable from time to time. A sum of Rs.500/- is payable to the Society as service charges.
- iv. If the Advocate who is appointed under the Scheme is found negligent in the conduct of the case entrusted to him, then he is required to return the brief together with the fee which may have been received by him from the applicant under the Scheme.

7.12 THE SUPREME COURT LEGAL SERVICES COMMITTEE RULES 2000⁸⁰

In exercise of the powers conferred by Section 27 of the *Legal Services Authorities Act 1987*, the Central Government in consultation with Chief Justice of India, made the following rules.

⁸⁰ Published in the Gazette of India, Extra, Part II, Section 3(1) dated 3-7-2000 (w.e.f.3-7-2000)

It contains eight rules. Rule 3 deals with the number, experience and qualifications of Members of the Supreme Court Legal Services Committee. The Supreme Court Legal Services Committee is to consist of not more than nine members. A person is not to be qualified for nomination as a Member unless he is –

- i. An eminent person in the field of law or
- ii. A person of repute who is specially interested in the implementation of the Legal Services Schemes or
- iii. An eminent social worker who is engaged in the upliftment of the weaker sections of the society including scheduled Castes, Scheduled Tribes, Women, Children, rural and urban labour.

Under sec.7, the upper limit of annual income of a person entitling him to legal services, if the case is before the Supreme Court, does not exceed Rs.50, 000 per annum.

7.13 JUDICIAL VOICE

Indian Judiciary made a dynamic interpretation of the provisions of Legal Services Authorities Act in the right context of our socio-economic milieu to enlarge and expand the concept of legal aid.

- i. The crucial words in the statute are “the obligation of the state to provide free legal aid by suitable legislation or by schemes or in any

other way so that opportunities for securing justice is not denied to any citizen by reason of economic or other disabilities”⁸¹

- ii. Though Article 39A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence, if as in common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend in. It is high time that senior counsel practicing in the Court concerned volunteer to defend such indigent accused as a part of their professional duty.⁸²
- iii. It was the duty of members of Bar and Benches to make litigants of this class (like woman, etc) be made known of their legal right under the Legal Services Authorities Act.⁸³
- iv. Where the petitioner has not been informed of her right of free legal aid in High Court and she filed this revision- application through Advocate, the Gujarat High Court Legal Services Committee directed to provide free legal aid to the petitioner. This Advocate has also not informed her or appears to have not informed to her of the right to have free legal aid. This woman has unnecessarily incurred heavy expenses of litigation of this civil revision application. The aggregate amount of expenses and the fees, if any paid by her in case to her counsel exceeds the amount to be given to her by the Gujarat High Court Legal Services Committee,

⁸¹ State of Maharashtra v. Manubhai Pragaji Vashi AIR 1996 SC 1

⁸² Kshore Chand v. State of Himachal Pradesh, 1990 Cri LJ 2289.

⁸³ Rajeshreeben Dharmendrabhai Patadia v. State of Gujarat, 2002 Cri LJ NOC 5 (Guj)

she has to bear the burden of difference. Where the amount of expenses and the fees is less than the amount of expenses and fees to be sanctioned by the Committee, then to that extent only the amount has to be paid.⁸⁴

- v. A lawyer did not defend the accused and the accused took a plea that the theft was committed in the studio /shop but the charge shows that the offence was committed in the house. It is up to the learned Chief Judicial Magistrate to rectify the error or to frame a fresh charge. Learned Chief Judicial Magistrate shall also enquire from the accused as to whether he comes under any of the provisions of Section 12 of the State Legal Services Authority Acts and Rules and if it appears that, the accused comes under any of the provisions, he is entitled to legal aid at the cost of State. The accused was convicted on its own plea of guilty. It is not on the record that the Chief Judicial Magistrate had informed the accused that he is entitled to free legal assistance. Offer for legal aid by Presiding Officer of a court has to be reflected in the Order-sheet.⁸⁵
- vi. The Court, on the first available opportunity to it to ascertain from the litigant concerned whether he or she was desirous of taking the free legal services or not; where he or she desired.⁸⁶
- vii. Only a sitting Judge of the High Court concerned can be appointed Chairman of the State Legal Services Authority (SLSA).⁸⁷

⁸⁴ Prafullaben Dhirubhai Kanjiya v. Dhirubhai Kachrabhai Kanjiya AIR 2001 (Guj) 160

⁸⁵ Anand Bardewa v. State of Sikkim 1999, Cri LJ 1804 at 1807 (Sikkim)

⁸⁶ Sugreev v. Sushila Bia, AIR 2003 Raj 149.

viii. In the affidavit filed by the National Legal Service Authority, it is has been accepted that the functioning of the SLSAs, where retired judges have been appointed as Chairman, is not satisfactory.⁸⁸

7.14 NATIONAL LEGAL SERVICES AUTHORITY PLAN OF ACTION FOR 2009-2010⁸⁹

In order to implement the Legal Aid Schemes and Legal Services Programmes of NALSA in accordance with the object of the Legal Services Authorities Act, 1987, following plan of Action for the financial year 2009-2010 is drawn up:

A. Legal Awareness Programme

a) Continuation of Micro Legal Literacy Projects in all states.

Continuation of the NALSA awareness and Lok Adalats relating to NREGA matters.

b) State Legal Awareness programmes in the States on the following laws:

1. Maintenance and Welfare of Parents and Senior Citizens Act, 2007
2. Gram Nyayalaya Act, 2008
3. Protection of Women from Domestic Violence Act, 2005
4. Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995

⁸⁷ A Bench of Justice Arijit Pasayat and Justice D.K. Jain passed this order on a writ petition filed by the Supreme Court Bar Association alleging that appointment of a retired Judge of the High Court as Chairman of the SLSA concerned in different States “falls foul of the desired legislative effect”.

⁸⁸ <http://www.hindu.com/2007/04/18/stories> visited on 23rd April 2007.

⁸⁹ Letter No. DLSA/NG/327-Part-II/2009/311 dated 2nd June 2009, from North Goa District Legal Services Authority addressed to the Principal, Salgaocar College of Law. Forwarding letter from National Legal Services Authority, New Delhi. Plan of action circulated to the District and Taluka Legal Services authorities.

5. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
6. Laws relating to Marriage
7. Labour Laws
8. Environmental Protection Laws
9. Campaign against Female Infanticide
10. Campaign against Human Trafficking
11. Conduct awareness programmes and seminars with the involvement of National Women's Commission, Ministry of Social Welfare, Ministry of Child Welfare and Development and Ministry of Rural Development.

B. Para-legal Volunteer Scheme:

It is a scheme for building up a group of volunteers from among the rural people to act as intermediates between the common people and legal services institutions at Central, State, District and Taluka levels.

C. Legal Aid Clinics⁹⁰

NALSA circulated a plan of action 2009-2010 in which it has envisaged a role for Legal Aid Clinics. The following are the points from that letter.

- i) Establishing Legal Aid Clinics in all Gram Panchayats (similar to primary health centres) by engaging competent lawyers as legal consultants in the

⁹⁰ National Plan of Action for Legal Services Activities for the year 2009-2010 formulated by NALSA vide copy of the letter and plan of action dated 15/4/2009 from member secretary NALSA to member secretary Goa State Legal Services Authority.

clinics. Give wide publicity about the clinics with the help of local Self-Government Institutions.

ii) Setting up Legal Aid Clinics in all Law Colleges and Law Universities and to encourage students to adopt remote village areas as their area of operation.

For this purpose, the following strategies may be adopted.

- a) The students may be divided into small groups and deputed to the adopted villages
- b) In urban areas, colonies and slum areas where economically and socially backward people reside may be chosen for setting up Legal Aid Clinics
- c) A team of senior Professors/Lecturers including part-time Lecturers should guide Law students.
- d) Rapport between the students and the people of the adopted area should be maintained throughout the year.
- e) Law students shall identify the problems, which require Legal Aid. They shall discuss the problem with the teacher-in –charge and if it warrants further free legal services, the matter should be brought before the Legal Services Authorities/Committees concerned.
- f) The students shall be encouraged to organize legal awareness classes for small groups of people (4 or 5 houses together or 10 to 12 people). It should be more in the form of informal gatherings.
- g) The students should aim at preventive and strategic legal aid.

- h) In appropriate cases, senior students and post-graduate students who have already enrolled as lawyers may be entrusted with the filing and conducting of the litigation in the Courts free of cost.
- i) No fee shall be collected from the beneficiaries of legal aid clinic.

By following this process students as well as public will be benefited.

- a) As far as students are concerned they will get practical experience in the matter of dealing with clients i.e. interview method, by which they will get rich experience to trace out the facts of the case in detail. They will get exposure in the public before they started the practice. The gap between the curriculum and real practice can be reduced. Students while they study the subjects can understand by applying the practical problems when they come across in their legal aid cells.
- b) As far as general public is concerned, this legal aid cell system can make into reality one of the main objects of National Legal Services Authority i.e. legal awareness. In fact poor people can't afford to approach professional advocates to enquire about their rights. Most of the innocent and poor people were affected and suffered in person and property being ignorant of their rights. By the establishment of Legal Aid Cells by Law Colleges in rural areas most of the people will be benefited.⁹¹ Particularly Legal awareness programmes with regard to laws like Right to Information Act, Consumer Protection Act, latest

⁹¹ In fact V.M.Salgaocar College of Law serving the public through their students. This particular college has 38 legal aid cells and following all the provisions of National Plan of Action 2009-2010 proposed by NALSA. In fact this college started these legal aid clinics a decade ago.

amendments in existing laws⁹², Social welfare schemes like National Rural Employment Guarantee Schemes, some other special schemes in their particular states⁹³ will prove most beneficial to the general public.

D. Legal Aid

- a) Payment of better honorarium to the lawyers who provide Legal Aid
- b) Inclusion of all designated senior lawyers in the Legal Aid Schemes and requesting them to undertake at least two cases free of charge every year
- c) In appropriate cases, payment of the entire expenses including the normal fees of the lawyers.
- d) Annual evaluation of the progress of cases in which Legal- aid was given. Success rate of the legal aid cases also should be a component of the evaluation measures.

This part of action plan is important as the payment of advocate fee being low is one of the causes for most of the senior advocates not accepting the membership in legal aid panel. Unless the senior advocates also accept and take up legal aid cases, the purpose of NALSA or Art.39A of the Constitution will not be achieved. There was a proposal few years back that every advocate has to appear examination after 10 years of practice, and only those advocates pass the exam are eligible to continue practice. But the proposal did not materialise. Instead of that proposal making a condition precedent to continue in practice,

⁹² Criminal Procedure Code amendments (Which came in to force from December 31, 2009) with regard to powers of police—awareness camps conducted for the police personnel in police stations. Researcher was one of the resource person for such awareness programme conducted by the college at Anjuna police station in State of Goa, where in around 50 police personnel attended.

⁹³ Dayananda Bhandodkar scheme, below poverty line schemes in State of Goa.

(after ten years) advocate has to produce documentary evidence that he has dealt with legal aid cases in a particular number, is purposeful.

Legal aid should not just be a right to go to the courts and be presented; it is also about things such as filling in ration cards, enabling society to make use of its basic rights⁹⁴.

And finally, there is no research in India on legal aid and its effectivity either academically or judicially⁹⁵.

Many law schools, have started legal aid clinics but then run out of funds, although they are entitled under the LSA Act to funds. Legal Services Authorities has to work in co-ordination of law colleges for better administration of LSA.

7.15 SCHEMES, PROJECTS AND PROGRAMMES DRAWN UP BY THE NATIONAL LEGAL SERVICES AUTHORITIES⁹⁶

National Legal Services Authorities drafted and circulated several schemes from time to time for the effective functioning of State Legal Services Authorities in co-ordination with District and Taluka Services Authorities. The following schemes are among them.

⁹⁴ In fact Law College student in State of Goa, through their legal aid cells helping the poor people in filling their application forms for senior citizens, ration cards, birth certificate forms, drafting of affidavits etc.

⁹⁵ Recently some colleges got project to conduct research on legal aid concept in colleges /universities under UNDP project.

⁹⁶ National Plan of Action for Legal Services Activities for the year 2009-2010 formulated by NALSA vide copy of the letter and plan of action dated 15/4/2009 from member secretary NALSA to member secretary Goa State Legal Services Authority

7.15.1 Implementation of NREGS⁹⁷

Scheme of supporting implementation of NREGS through State Legal Services Authorities with the object of generating awareness through legal literacy and awareness campaigns and to establish grievance redressal forum by organizing Lok Adalats to resolve the legal problems of the rural workers who are guaranteed employment under NREGS.

7.15.2 Micro Legal Literacy Scheme⁹⁸

According to this scheme more focus shall be on the local issues. Micro Legal Literacy camps shall be conducted in a simple manner and it shall be one which includes interaction with public. Micro Legal Literacy Camp team shall consist of

- a) A Judicial Officer (optional)
- b) Two panel lawyers
- c) One lawyer preferably from the area where the camp is being organized.
- d) Councillor or ward member of the area.
- e) Social worker/s
- f) Educationalist.

⁹⁷Draft scheme for discussion in the round table meeting, National Legal Services Authority, 12/11, Jam Nagar House, Shajahan Road New Delhi—110011.

⁹⁸ Micro Legal Literacy Scheme for the year 2008-2009 (November –March) National Legal Services Authority, 12/11, Jam Nagar House, Shajahan Road New Delhi—110011.

7.15.3 Student Legal Literacy Clubs/Legal Aid Clubs in High Schools and Colleges⁹⁹

With a view to utilizing the energy and talent of the students in colleges and schools for dissemination of information about Legal Aid Programmes and to create awareness among masses, National Legal Services Authorities directed the State Legal Services Authorities for setting up Legal Literacy Clubs/Legal Aid Clubs in all High Schools and Colleges. In Colleges and Universities such Clubs may be set up in association with the National Services Scheme (NSS).

7.15.4 Legal Services Authorities at Gram Sabha¹⁰⁰

As the Father of our Nation said “India Lives in Villages”. Villagers are a group of people who lead a simple life with grievances or disputes of simple nature. In order to fulfil the objective of Article 39A of the Constitution of India, it is the duty of all legal services institutions to bring justice to the doorsteps of the people rather than remaining in the offices and remote-controlling the legal services activities. Villagers quite often suffer geographical barriers for ‘access to Justice’ because of the sheer distance from the seats of justice.

Gram Sabha being an assembly of villagers where one can listen to their grievances, it is desirable that the District Legal Services Authority/ Taluk Legal Services Committee send one representative, preferably a panel lawyer

⁹⁹ Circular from National Legal Services Authorities to Goa State Legal Services Authority, vide No. L/60/2009-NALSA dated 6th January, 2010

¹⁰⁰ Circular from National Legal Services Authority, to Goa State Legal Services Authority, vide no. L/64/2009/NALSA dated 29th January, 2010

and a member of the staff for recording and receiving the grievances of people which require legal assistance for their redressal. They may explain to the villagers about various facilities available in Legal Services Authorities. They may be done with the permission of the Gram Sabha.

7.16 LEGAL SERVICES AUTHORITIES IN VARIOUS STATES IN INDIA

Based on Legal Service Authorities Act state governments also effectively started to frame rules and regulations.

7.16.1 State of Andhra Pradesh

The Government of Andhra Pradesh passed a scheme to provide free legal aid to the poor in the year 1964. Again, the Andhra Pradesh State Legal Aid Advice to the Poor Rules was framed in the State of Andhra Pradesh in the year 1980, which came into effect from 1985. The Andhra Pradesh State Legal Aid and Advice Board started to publish a small publication in Telugu "*Chattalu-Mana-Hakkulu*" (Statutes and our Rights) comprising the gist of certain important States and Central enactments about the rights of the weaker sections of the society¹⁰¹.

Provisions of the Act pertaining to the State Authority came into force on 28-11-1995¹⁰². Hon'ble Mr. Justice N.Y. Hanumanthappa, Judge, Andhra Pradesh High Court and Executive Chairman, Andhra Pradesh State Legal Services

¹⁰¹ Dr. Sharma S.S., Legal Services, Public Interest Litigations and Para-Legal Service (Central Law Agency, Allahabad 1st Ed.2003)132

¹⁰² Published in Andhra Pradesh Gazette, Part II,Ext.,No.463, dated 22nd November 1995

Authority gave a call to the Legal Services functionaries in the State to re-dedicate themselves to the legal aid movement for providing free and competent legal services to the weaker sections of the society to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities and emphasised to organise more and more Lok Adalats to bring about settlement of disputes through negotiations, mediation and conciliation.

A high-level meeting observed that the police and judicial officers should discuss the feasibility of holding “Prison Lok Adalats” to settle compoundable cases in the jails itself and to see that the police officials take active part in the Lok Adalats and Legal Literacy Camps as and when conducted in their respective areas. The Director General and Inspector of Police, Andhra Pradesh have issued instructions to all concerned in this regard.

The State Government has issued instructions to all the District Collectors and Heads of the Departments to identify the pending cases between different Government Departments, Corporations and their employees or general public for taking steps for their settlement through Lok Adalat.

Based on the proposal from Andhra Pradesh State Legal Services Authority “Excise Week” was observed from 18th to 23rd September 2000 in the State of Andhra Pradesh. During this week, the State Legal Services Authority organised Lok Adalats in different districts for settlement of compoundable cases falling under the Prohibition Act. With the co-operation and active

participation of the District Authorities, Mandal Committees, Judicial Officers, Government Officials, Lok Adalats settled 41,235 cases in one week.¹⁰³

The Andhra Pradesh State Legal Services Authority also organised a state level Orientation Course for Judicial Officers on 30.9.2000 in Hyderabad. The course was inaugurated by Hon'ble Justice S.P. Bharucha, the then Judge, Supreme Court of India and Executive Chairman, the NALSA. In his inaugural address he emphasised that regular Orientation Courses should be held so that judicial officers are informed about the new Legal Aid Scheme and Programmes.

The provisions of chapter III of the Legal Services Authorities Act were extended to the State of Andhra Pradesh with effect from 9-11-1995. The Andhra Pradesh State Legal Services Authority Regulations, 1996 have also been framed.¹⁰⁴

*Constitution of A.P State Legal Service Authority*¹⁰⁵

Andhra Pradesh State Legal Services Authority Rules, 1995 deals with constitution of the Andhra Pradesh State Authority, According to the rules,

- i. Chief Justice of the High Court shall be its Patron-in-Chief
- ii. A serving/retired judge of High Court shall be its Executive Chairman:
and
- iii. A District Judge from State Higher Judicial Service shall be its Member-Secretary and
- iv. Following shall be its ex- officio members

¹⁰³ Id

¹⁰⁴ Id at. 133

¹⁰⁵ Rule.3 of A.P State Legal Service Authority Rules 1995

- a) Advocate General of the State
 - b) The Principal Secretary in the Department of Law
 - c) The Secretary in the Department of Law
 - d) The Secretary in the Department of Home
 - e) Chairman of State Scheduled Castes and Scheduled Tribes Commission
 - f) Two Chairmen of the District Authority, as may be nominated by the State Government in consultation with the Chief Justice of the High Court.
- v) In addition, the State Government may nominate, in consultation with the Chief Justice of the High Court, other members from those possessing following experience and qualifications:
- i) If he is an eminent social worker engaged in the upliftment of the Scheduled Castes, the Scheduled Tribes, women, children, rural and urban labour or
 - ii) If he is an eminent person in the field of law
 - iii) If he is a person of repute who is especially interested in the implementation of Legal Service Scheme.

Functions and Powers of the Member- Secretary¹⁰⁶

Some of the functions mentioned in rule 4 are:

- i) To give free legal services to the eligible and weaker sections of the society

¹⁰⁶ Rule 4.

- ii) To work out modalities of the legal services schemes and programmes approved by the State Authority and ensure their effective monitoring and implementation
- iii) To exercise the powers in respect of administrative housekeeping, finance and budget matters as Head of Department in the State government
- iv) To manage the properties, records and funds of the State Authority¹⁰⁷
- v) To maintain true and proper accounts of the State Authority including checking and auditing in respect thereof periodically
- vi) To prepare annual income and expenditure account and balance sheet of the State Authority
- vii) To liaise with the social action groups and District and Mandal legal services Authorities
- viii) To maintain up-to-date and complete statistical information including progress made in the implementation of various legal services programmes from time to time
- ix) To process proposals for financial assistance and issue utilisation certificate thereof¹⁰⁸
- x) To organise various legal service programmes as approved by the State Authority and convene meetings/seminars and workshops connected with Legal Services Programmes and preparation of reports and follow up action thereon

¹⁰⁷ Rule 4(d) of A.P State Legal Service Authority Rules 1995

¹⁰⁸ Rule.4(i)

- xi) To produce video/documentary films, publicity literature and publications to inform general public about the various aspects of legal services programmes
- xii) To lay stress on the resolution of rural disputes and to take extra measures to draw schemes for effective and meaningful legal services for settings rural disputes at the doorsteps of the rural people¹⁰⁹
- xiii) To perform such of the functions as are assigned to him under the Scheme formulated under clause(b) of Section 4 of the Act; and
- xiv) To perform such other functions as may be expedient for efficient functioning of the State Authority.

Under the amended S.89 C.P.C., amended by (Amendment) Act, 1999 and the Legal Services Authorities (Amendment) Act, 2002 by which Secs.22A to 22E are added, Permanent Adalats are to be constituted and Judicial Officer in an appropriate case can refer the matter to Conciliation and Mediation to Permanent Lok Adalat & new scope of Lok Adalats has been extended to deal with disputes of various public bodies. As per Sec.22 E, the award of permanent Lok Adalat shall be final and deemed to be a decree of Civil Court.¹¹⁰

In exercise of the powers conferred under the provisions of Sec.29A of the Legal Services Authorities Act 1987, State Government made the regulations¹¹¹. It contains IX chapters. Chapter I deals with title,

¹⁰⁹ Rule.4 (I)

¹¹⁰ Sirohi J.P.S, Public Interest Lawyering, Legal Aid and Para Legal Services (Allahabad Law Agency, Faridabad 1st Ed.2003) 90

¹¹¹ Published in Andhra Pradesh Gazette, RS Part II Ext.No.18, dated 16th August 1996.

commencement and definitions, Chapter II deals with vesting of executive authority, Chapter III deals with State Authority, Chapter IV deals with High Court Legal Services Committee, Chapter V deals with District Authority, Chapter VI deals with Taluka Legal Service Committee, Chapter VII deals with Conduct of Business, Chapter VIII deals with receiving application appointing advocate etc., Chapter IX deals with Lok Adalats¹¹².

In exercise of powers conferred by Section 6, 8-A, 9, 11A, and 28 of Legal Services Authorities Act 1987 State Government made the rules to regulate the method of recruitment and other conditions of service of the Officers and employees of A. P. State Legal Services Authority, High Court Legal Services Committee etc.¹¹³

7.16.2 Arunachal Pradesh¹¹⁴

First Legal Aid scheme has been passed in 1983 for providing Legal assistance to the poor in the State of Arunachal Pradesh known as Arunachal Pradesh Legal Aid and Advice Scheme, 1983. The chapter III of the Act came into force on 27-1-1998.

7. 16.3 Assam

The Free Legal Aid Scheme was introduced for the first time in the State of Assam in the year 1978 by making a set of rules, namely, the Assam Legal Aid Rules, 1978, under Article 39A of the Constitution of India. The said set of

¹¹² *Supra* note 2 at, 233-255.

¹¹³ Published in the Andhra Pradesh Gazette, Part I, Ext., dated 1st January, 2000.

¹¹⁴ *Supra* note. 91

rules was superseded subsequently by another set of rules, namely, the Assam Legal Aid Rules, 1984. Some of the rules were amended in 1986, but recently new legal aid rules have been framed which are known as the Assam Legal Aid Rules, 1987¹¹⁵. In 1996 Assam Legal Service Authority Rules were drafted.¹¹⁶

7.16.4 Bihar¹¹⁷

In Bihar, the Legal Aid Act was enacted as early as 1983 and the State Legal Aid Board started functioning actually from the year 1989. During the year 1990 a great deal of endeavour was made by the Bihar State Legal Aid Board streamline the working of legal aid so that quick free legal aid may be provided to the weaker sections of the society. To achieve this objective the Board constituted Legal aid Committees at District and Sub-Divisional level.

Chapter III of the Act dealing with State Authority came into operation on 24-9-1996. With a view to arouse awareness of the mass especially the weaker section of the people, a large number of leaflets containing details about free legal aid were distributed on the occasion of the Republic Day, 1990. In exercise of the powers conferred by Sec.28 of the Legal Services Authorities Act 1987, the Governor of Bihar made the rules.¹¹⁸

¹¹⁵ *Supra* note 93 at 134

¹¹⁶ Published in Assam Gazette, Extra No.88 dated 8-5-1996 vide Notification No.LGL 176/94/142, dated 19-4-1996

¹¹⁷ *Supra* note. 93 at 134

¹¹⁸ The Bihar State Legal Services Authority Rules 1996, Vide No. C/LA.38/94/2747, dt.2nd August 1996.

7.16.5 Chandigarh¹¹⁹

The Union Territory Administration, Chandigarh has amended the rules to be known as Chandigarh Legal Services Authority Rules, 1997 so as to provide that the litigants who get their pending court cases settled through Lok Adalats would be entitled to refund of the court fees paid by them at the time of filing of those cases before the regular courts. Such refunds will be made by the Collector (Deputy Commissioner), Chandigarh on submitting a certificate issued by the Adalat that a settlement has been arrived at by the Lok Adalat in that particular case.

Permanent Lok Adalat, in the Union Territory of Chandigarh was established on the 7th August 1988 and 12,696 cases relating to different categories have been disposed of in the Permanent Lok Adalat from 7-8-1988 to 29-10-1999. Similarly, a permanent Lok Adalat was established in the High Court of Punjab and Haryana at Chandigarh with effect from 11th January 1999 where 1,510 cases have been settled up to 30th September 1999¹²⁰.

7.16.6 Delhi¹²¹

The Delhi Legal Aid and Advice Board was constituted by the Administrator of Delhi by a notification dated 8th May 1981. For the Union Territory of Delhi, a scheme for legal aid and advice was prepared and which was approved by the Government of India on 7th December 1981. The Scheme is known as "The Delhi Union Territory Legal Aid and Advice Scheme, 1981," which was made

¹¹⁹ *Supra* note. 2 at 327

¹²⁰ *Supra* note. 93 at 136

¹²¹ *Ibid*

operative with effect from 15th February 1981. Prior to the said Scheme Delhi Legal Aid Society was providing legal aid to needy persons, which was getting small grant of Rs. 800 per year from the Delhi Administration.

In consultation with Chief Justice of High Court of Delhi the Lt. Governor of National Capital Territory of Delhi made the rules¹²².

7.16.7 Gujarat

The State of Gujarat appointed a Committee to consider the question of grant of legal aid to poor persons and the backward classes in 1970 under the chairmanship of Justice P. N. Bhagawati. The report of the Committee was submitted in the year 1971. In order to act upon the recommendations of the said Committee, the Government of Gujarat launched a Pilot Project, Free Legal Aid and Advice in the year 1972 as an experimental measure.¹²³ The Government of Gujarat framed the rules namely, The Gujarat State Legal Services Authority Rules, 1997.¹²⁴ It contains V chapters. Chapter III dealt with High Court Legal Services Committee, Chapter IV dealt with District Court Legal Services Committee, Chapter V dealt with Taluk Legal Services Committee. The Gujarat State Legal Services Authority made its Regulations in 1998.¹²⁵

¹²² Notify. F. 8/1/96-judl. II, dated 31.01.1996

¹²³ *Supra* note. 93, at 136

¹²⁴ Published in Gujarat Gazette, Part IV-A (Extra) No.38 dated 3rd May 1997.

¹²⁵ Published in Gujarat Gazette, Extra, Part IVC, dated 20th April 1998.

7.16.8. Haryana

In 1982, the Government of Haryana passed legal aid rules, called the “Haryana State Grant of free Legal Service and Advice to the Poor Rules, 1982.” The Haryana State Legal Aid Board with a budgetary provision of Rs. Five lacs per annum has Maharishi Dayanand University, Rhotak and another at Kurukshetra University, Kurukshetra.¹²⁶

The Government of Haryana made the rules and regulations for the constitution of Legal Services Authorities in the year 1995¹²⁷.

7.16.9 Himachal Pradesh

The State of Himachal Pradesh framed legal aid rules for poor persons in the year 1980, which were known as Himachal Pradesh State Legal Aid to the Poor Rules, 1980. These rules were repealed and substituted by new set of rules framed in 1984, namely the Himachal Pradesh Legal Aid Rules 1984. Permanent and Continuous Lok Adalats as per scheme propounded by the NALSA have been established at Shimla, Una, and other parts of the State¹²⁸. The Himachal Pradesh State Legal Services Authority made the regulations to give effect to the provisions of the Act.¹²⁹

¹²⁶ *Supra* note. 93 at 139

¹²⁷ *Supra* note. 2 at 393

¹²⁸ *Id* at 140

¹²⁹ Noti.No.9/LSA/Regulation/96 dated 15-5-1996, Published in H.P.Rajpatra Ext, dated 17th May1996.

7.16.10 Jammu and Kashmir¹³⁰

The State of Jammu and Kashmir framed comprehensive Legal Aid Rules in the year 1984, namely the Jammu and Kashmir State Legal Aid to the Poor Rules, 1984. The Jammu and Kashmir State Legal Aid Board constituted under Rule 2 of said rules was reconstituted in the year 1987.

7.16.11 Karnataka

Karnataka Legal Aid Board Act, 1981¹³¹; Karnataka Legal Aid Board Rules, 1983; Karnataka Legal Board Regulations, 1983 and Karnataka Legal Aid Schemes are important legislations with regard to legal aid.¹³²

7.16.12 Kerala

Kerala has framed Legal Aid Rules, in 1958 known as Kerala Legal Aid (to the poor) Rules, 1958. Under these rules, legal aid was available in the cases before the High Court, Court of Sessions and a Magistrate's Courts in Civil as well as Criminal matters. The Government of Kerala made the rules namely, The Kerala State Legal Services Authorities Rules.¹³³

7.16.13 Madhya Pradesh

In 1960, the State of Madhya Pradesh passed a scheme for providing legal aid to the members of Scheduled Tribes, namely, the Madhya Pradesh Scheduled

¹³⁰ *Supra* note. 93 at 140

¹³¹ Published in the Karnataka Gazette Extra. On 27.5.1981 and received the assent of the President on 25-5-1981.

¹³² *Supra* note. 2 at 483

¹³³ Published in Kerala Gazette, Ext, dated 28th January 1998.

Tribes (Legal Aid) Rules 1960. The legal aid to other indigent was not available in M.P till 1976. In 1973 a Committee was constituted under the chairmanship of Shri Ranjendra Kumar Nayak for preparing a comprehensive legal aid scheme to cater to the needs of poor people. The report was submitted in 1975. Based on recommendations of the said Committee legal aid has been given statutory recognition by passing an Act known as *Madhya Pradesh Samaj Ke Kamjor Vargon Ke Liye Vidhik Sahayata Tatha Vidhik Salab Adhinyam*, 1976¹³⁴. The provisions of the Act dealing with the State Authority came into existence on 21-8-1996.

7.16.14 Maharashtra

In Maharashtra, legal assistance to backward classes was available since 1958. The Government made annual grant to the Bombay Legal Aid Society, which is the oldest private Legal Aid Society in India. A comprehensive legal aid scheme, known as Maharashtra Legal Aid and Advice scheme was formulated in the year 1979 .With a view to advising and assisting the State Legal Aid Board the Government of Maharashtra constituted an advisory council. In 1986, the Government framed Lok Adalat rules known as ‘The Government of Maharashtra State Lok Nayayalaya Rules, 1986.’ In the same year, rules for legal aid clinics were also framed, namely Maharashtra State Legal Aid Clinics Rules, 1986¹³⁵.

¹³⁴ *Supra* note. 93 at 141 and see also *Supra* note.2 at 589

¹³⁵ *Id* at 142 and see also *Supra* note.2 at 641

7.16.15 Manipur

In the State of Manipur, legal aid is provided under Legal Aid Rules, which were framed in 1982. In comparison to other states, the Manipur Legal Aid rules were in more detail, divided into eight chapters and have covered every aspect of legal aid. In order to encourage amicable settlement outside the Courts, Conciliation Cells had been established¹³⁶.

7.16.16 Meghalaya

The Meghalaya State Scheme was started in 1982. Chapter III of the Act dealing with the establishment and function of the State Legal Services Authority came into operation in the State of Meghalaya on 4th May 1988¹³⁷.

7.16.17 Mizoram

In Mizoram, Legal Aid Scheme had been formulated in the year 1984. Chapter III of the Act dealing with the establishment and function of the State Legal Services Authority came into operation in the State on 22nd August 1997¹³⁸.

7.16.18 Nagaland

In 1984, the Government of Nagaland framed legal aid rules namely the Nagaland Legal Aid and Advice to the poor Rules, 1984. There are 30 rules dealing with various aspects of legal aid. The chapter III dealing with the

¹³⁶ *Id* at 94

¹³⁷ *Ibid* and also see *Supra* note. 2 at 710

¹³⁸ *Supra* note. 93 at 143

establishment and function of the State Legal Services Authority came into operation on 19th June 1998¹³⁹.

7.16.19. Orissa

The State of Orissa framed Legal Aid Rules for the first time in the year 1975, namely, the Orissa Legal Aid to Poor Rules, 1975. These rules were repealed and substituted by new scheme and Programme of Legal Aid in the year 1981. A State Level Committee constituted in Law Department resolved for Legal Aid and Advice Programme. The Government of Orissa approved both the programme and scheme, which are known as the Orissa State Legal Aid and Advice Programme, 1981 and the Orissa State Legal Aid and Advice Scheme, 1981¹⁴⁰.

7.16.20 Punjab

In 1959, the Government of Punjab made a Scheme to provide legal assistance to the poor in a limited way. However comprehensive legal aid rules were framed in the year 1977, known as Punjab State Grant of Free Legal Services and Advice to the poor Rules, 1977. For organising and supervising Legal Service and Advice Council has also been constituted¹⁴¹.

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ *Id* at 144

7.16.21 Pondicherry

In the Union territory of Pondicherry, a Legal Aid Scheme was passed in the year 1983 known as Pondicherry Legal Aid and Advice Scheme 1983. The Pondicherry Legal Aid and Advice Board has rendered legal services to poor persons in various spheres¹⁴².

7.16.22 Rajasthan

The State of Rajasthan is one of the backward States in India. It exhibited its backwardness even in the field of legal aid activities. A comprehensive legal aid scheme was prepared and forwarded by the Central Government to State Government for implementation of the same in 1960. The first systematised effort in this direction was taken in the year 1973 by appointing a committee to examine legal aid facilities to the poor. Rajasthan Legal Aid Rules, 1976 which came into force from 15th May 1976. The Government framed new rules in 1984¹⁴³.

7.16.23 Sikkim

The Cabinet of Sikkim Government decided on 7-2-1981 to constitute the Sikkim State Legal Aid and Advice Board and the same was constituted vide Government Notification No.18/LD/82 dated 23rd Feb.1982. In the same year the Sikkim State Legal Aid and Advice Board passed a Legal Aid Scheme, known as Sikkim State Legal Aid and Advice Scheme, 1982. However rules

¹⁴² *Supra* note. 93 at 145

¹⁴³ *Ibid*

have been framed for providing legal aid in criminal cases. These rules are called the Sikkim Legal Aid to the Poor Accused at State Expenses Rules, 1982.

The State Legal Services Authority under the Legal Services Authorities Act 1987 has been constituted in April, 1998. Chapter III of the Act dealing with the establishment and function of the State Legal Services Authority came into operation in the State of Sikkim 9th November 1995¹⁴⁴.

7.16.24 Tamil Nadu

The Government of Tamil Nadu constituted one man Committee (consisting of Mr. Justice P Ram Krishna) to advice on legal aid and its report was submitted to the Government in 1973. In order to implement the recommendations made in this report and in fulfilment of the guarantee given under Article 39-A of the Indian Constitution the Government of Tamil Nadu sponsored the registration of a society called Tamil Nadu State Legal Aid and Advice Board, 1976. In order to give maximum advantage to the poor accused under Section 304(3) of the Criminal Procedure Code, the Government extended the scope of said section in the cases before the courts of Judicial Magistrate of I Class, II Class and Executive Magistrates.

The Chapter III of the Act dealing with the establishment and function of the State Legal Services Authority came into operation in the State of Tamil Nadu on the 6th March 1997¹⁴⁵.

¹⁴⁴ *Supra* note. 93 at 150 see also *Supra* note. 2 at 861

¹⁴⁵ *Ibid*

7.16.25. Uttar Pradesh

In 1981, the Government of Uttar Pradesh framed a Scheme of Legal Aid known as the *Uttar Pradesh Rajya Kanuni our Paramarsh Yojan, 1981*. The Scheme contains 17 clauses. Although the scheme of Legal Aid was formulated in the year 1981 but satisfactory work could not be done till the year 1985. Chapter III of the Act dealing with the establishment and function of the State Legal Services Authority came into operation in the State of Uttar Pradesh on 5th July 1997¹⁴⁶.

7.16.26 West Bengal

The Government of West Bengal formulated its first scheme for legal aid to the poor in the year 1974. In order to reorient the said scheme, the Government of West Bengal has passed new and comprehensive scheme for providing free legal services to the weaker sections of the community known as the West Bengal State Legal Aid and Advice Scheme 1982. The establishment and function of the State Legal Services Authority came into operation in the State of West Bengal on 1st July, 1996¹⁴⁷.

7. 17. PROS AND CONS OF THE LEGAL SERVICES AUTHORITIES ACT

A legal system and its effectiveness have to be gauged or measured by the extent of its usefulness to the common man.

¹⁴⁶ *Id* at 151

¹⁴⁷ *Id* at 152

There are several laudable aspects in the Act. For example most citizens do not know that under its provisions, free legal services are available to all members of a Scheduled Caste or Scheduled Tribe; all women and children; victims of trafficking in human beings; persons with disabilities; persons under circumstances of undeserved want such as being a victim of manmade disaster, ethnic violence, caste atrocity, flood, draught etc; industrial workman and persons in custody. Since the Act applies to all persons who are members of the Scheduled Castes and Tribes and all women and children irrespective of their financial status the implication is that free legal services are available to 75 percent of the country's population.

Legal Service includes rendering of any service in the conduct of any case or other legal proceedings before any court, or any other authority or tribunal and giving advice on any legal matter. It means that persons covered by the Act are entitled to legal advice, legal representation and legal adjudication free of cost. And since the Act contemplates the establishment of "Permanent Lok Adalats" at such places and for exercising such jurisdiction in respect of one or more public utility services and such areas as may be specified in the notification. Services like transport, postal, telegraph, telephone, power, water, public conservancy or sanitation, service in hospital or dispensary insurance service and any other service which the government may declare to be public utility service come within the definition of the term "Public Utility Services".

There are just some of the finer aspects of the Act. But there are some provisions which need to be looked into. They are:

- a) Once an application is made to Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute;
- b) To the process of conciliation or adjudication by the Lok Adalat, the provisions of Code of Civil Procedure 1908 or the provisions of the Indian Evidence Act shall not apply;
- c) Every award of the Permanent Lok Adalat shall be a decree of a civil court and a decree can be made by a majority of the members. This means that the lay members can overrule the judicial officer;
- d) Every award made by the permanent Lok Adalat under this Act shall be final and cannot be called in question in any court;
- e) The provisions of Act are to have overriding effect over any other law;
- f) There is no provision for any appeal.

Lok Adalats do perform and can perform invaluable service as conciliators or mediators. But then to tell the parties that even if they do not agree to settle the matter the Lok Adalat would go ahead and pass a decree which will then be binding on them is horrendously arbitrary and unreasonable.

Somewhere down the lane we have started blaming our procedural and evidence laws or the docket explosion in our legal system. Let the State first realise that it is not the laws themselves but the manner of their implementation which has resulted in the proverbial law's delays. However good the laws may be on paper, unless we have sufficient infrastructural support and adequate number of competent and honest judges to implement them, they will lose their capacity to render justice. Throwing overboard the Civil Procedure Code and

the Evidence Act is no answer to judicial backlogs. In the long term it will have a most pernicious effect on the system. Even on a short term basis no advantage is discernible. This is because, though the Legal Services Act does not provide for an appeal against the orders of the Lok Adalat, invoking the High Court's Writ Jurisdiction under Articles 226 and 227 cannot be ruled out as it is a basic feature of our Constitution. The ultimate result would be that all these matters will come knocking at the doors of the High Court, thus suffocating an already overloaded High Court.

The provisions of the Legal Services Authorities Act seek to reduce justice dispensation to an informal and casual process. Such measures will serve no purpose save to throw the foundation of the legal system into total chaos and disarray. Let the Executive and the Legislature realise that the reason for the pathetic state of our litigation disposal rate is the next to non-existent infrastructure, enormous delays in filling up vacancies, low entry level barriers into the legal profession and appallingly low judge –to-population ratio in India. The objection of the lawyers to the provisions of the Act is relevant and most definitely merits a review¹⁴⁸.

the Preamble to the Act shows, that the Act has been enacted to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society, to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities and to

¹⁴⁸ Available At <http://www.hindu.com/thehindu/op/2003/01/14/stories/2003011400050200.htm> visited 23.4.2007

organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

Thus, the Act has two-fold objectives before it

- a) The Constitution of Legal Service Authorities to provide free and competent legal services to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities.
- b) ii) The organisation of Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

The Preamble brings to the fore the stark reality that till now opportunities for securing justice were denied to the weaker sections of the society and there were no competent legal services to achieve the said objective.

Secondly but for the organisation of Lok Adalats until now, the existing legal system was ineffective to promote justice on a basis of equal opportunity. In other words, equal opportunity for obtaining justice was not available to them.

The Preamble of far-reaching consequence in that, while it is an unequivocal avowal by the Government about its failure or inability to provide proper opportunities to the weaker sections of the society to obtain justice, the statement that Lok Adalats were being organised in order that the legal system promotes justice on a basis of equal opportunity, is to say the least, that so long and so far as the Lok Adalats were not organised, justice was not being dispensed with, in so far as the weaker sections of the society and citizens suffering from economic or other disabilities, were concerned on the basis of

equal opportunity. This is an indirect aspersion on the working of the judiciary in independent India and an innuendo to suggest that in the matter of dispensation of justice, it was not extending equal opportunity to them and thus failed in its duty enjoined by the Constitution.

In respect of functions of the State Authority and the District Authority, respectively dealt with under Ss.7 and 10, while Cl.(a) of sub-sec.(2) of s.7, speaks of giving legal services, Cl. (a) of sub-sec.(2) of S.10, speaks co-ordinating the activities of legal services “without actually” giving legal services. In addition, instead of giving, providing would have been a better word.

Again Sec.7 (2) (b), speaks of conducting Lok Adalats by the State Authority. While Sec.10 (2) (b) speaks of organising Lok Adalats. The use of different words to convey the same meaning in similar context is beyond comprehension.

While under S.5, the Central Authority has to work in co-ordination with governmental, non-governmental agencies, Universities and others, the State Authority under S.8 has to work in co-ordination not only with governmental agencies, Universities and others but with non-governmental voluntary social welfare institutions. The difference in the use of words, can on an in depth study of provisions together, lead to the conclusion that while under S.5, the non-governmental agencies could be of any type, voluntary or non-voluntary with or without social welfare as their aim under S.8 the non-governmental institutions must be voluntary institutions and should also be social welfare

institutions. Thus non-governmental institutions or agencies of any other type are excluded from the purview of S.8. There is no such limitation in the case of the District Authority in respect of co-ordination with non-governmental voluntary social welfare institutions or agencies, as the language employed in S.11 is the same in this respect as the language employed in S.5. If like the Central Authority, the District Authorities could work in co-ordination with non- governmental agencies or institutions, without limitation as to their nature, like voluntary social welfare institutions, it is incomprehensible why the said limitation has been engrafted on the State Authority.

A person belonging to the categories of persons described in S.12 is entitled to legal services provided the authority is satisfied that he has a prima facie case to prosecute or to defend. The list of categories of persons entitled to legal services is exhaustive and brings within its ambit persons of all types entitled to legal services. Sub-sec (1) of S.13 indirectly invests the authority with the ~~power to find out whether a prima facie case exists for extension of legal services to a person.~~¹⁴⁹

It is also clear in the highly stratified Indian Society that the sources of poverty is not merely an economic phenomenon and it is linked up with a variety of complex social relationships aggravated by long period of colonial rule. Any program for using the law in at least reducing the effects of poverty will, therefore, necessarily require knowledge on who, the poor are, what their problems are, and how they are related to the existing law and legal services.

¹⁴⁹.Sanchiher G.L “Flaws and Anomalies in the Legal Services Authorities Act, 1987”, *AIR*, Nagpur, (1991) at 67.

The following points could be taken into consideration for development of this concept in its essence:

1. Review of the working of Legal Aid System.
2. Review of the Alternative dispute Resolution System in the country.
3. Up gradation of Judicial Infrastructure, including computerization, and
4. Up gradation of Judicial Manpower.

7.18 CONCLUSION

The assumption of our legal system is that all citizens have equal access to means of legal redress. Access to inexpensive and expeditious justice is a basic human right. As it was said Legal Services start with three A's: Awareness, Assertiveness and availability¹⁵⁰. In practice legal services of all kinds have gone to the highest bidders. Wealthy persons and large corporations receive the highest quality advice. The poorest in the society, the "third world population", receive negligible or very haphazard and poor legal advice. The term "third world" is used in all inclusive expression for the exploited elements of society, the depressed minority groups, the workers, and the peasants. It also includes society's "deviants" – prisoners, mental patients, radicals, dissenters, as well as the powerless groups generally, such as youth, women and the disabled. Legal Services Authorities Act, 1987 truly and justifiably, acts as the watchdog of our benevolent system of dispensing Legal and Social Justice as well as protector of the poor, deprived and downtrodden sections of our society. However in

¹⁵⁰ Madava Menon.N.R, expressed at NUJLS conference on Legal Aid.

view of the disparities and loopholes of the Act as mentioned above in 7.18, the Act need to be revamped so as to make it ambiguity – free and more efficacious.

After discussing the efficacy of Legal Services Authorities Act 1987, the Eighth chapter deals with Working of Legal Aid System in State of Goa. It analyses Goa Legal Services Authorities Rules, Regulations, and Schemes and so on. Also empirical data from questionnaires, Interviews and published statistics have been analyzed with the help of tables, graphs and percentages.

CHAPTER VIII

Working of the Legal Aid System in the State of Goa

8. INTRODUCTION

“The man of moderate means, who is faced with large expenditure in protection of his legal rights, is just as deserving of help as the man who is penniless and is faced with smaller Expenditure”¹

The empirical study of this research work, as we made a mention in the first chapter, is confined to the State of Goa. The reason for such a selection was that absolutely no research on legal aid had been conducted to assess, evaluate and analytically examine the working of the scheme in this State. The researcher being faculty in Law College and a member of State Legal Service Authority in State of Goa was another potent and a persuading factor for picking up State of Goa as the area of research. Again, for the purpose of expediency and keeping in view various constraints, two District Legal Services Authorities and State Legal Service Authority in State of Goa were selected for the study.

Further an attempt was made to test the hypothesis of the study with the collected data. The data was collected by using both primary and secondary sources.

This chapter is the yolk of the thesis where the substance and content of the provisions dealing with administration of the legal services is clearly, intently and critically looked into. This chapter contains 10 sub topics. It begins with

¹ Simon James & Chantal Stebbins, *A Dictionary of Legal Quotations* (Universal Law Publishing, New Delhi, 5th Indian reprint, 2004) 109

profile of Goa (8.1) which contains territory of Goa and post liberation laws in Goa; second part deals with Goa State Legal Services Authorities Rules (8.2); third part deals with Goa State Legal Services Authorities Regulations (8.3); fourth part deals with Goa State Legal Services Authorities (8.4), fifth part deals with Schemes of legal aid in Goa (8.5), sixth part deals with beneficiaries of legal aid in the State of Goa (8.6), seventh part deals with legal aid awareness activities (8.7), eighth part deals with expenditure of legal services authorities in the State of Goa (8.8), ninth part deals with role of law colleges in State of Goa with regard to legal aid activities (8.9), next part is the most important part i.e. opinion survey of Advocates, Judicial officers and legal luminaries in State of Goa by questionnaire method and by interview method. (8.10)

8.1 GOA: THE TERRITORY FOR EMPIRICAL RESEARCH

8.1.1 Profile of Goa

Goa is a very small state on the Southwest coast of India in the Konkan region bathed by two great rivers, the Mandovi and Zuari. It is located between Western Ghats and Arabian Sea. It is bound by Maharashtra in the North, Karnataka in the south and east. The beautiful coastline and lush greenery all across Goa, gives it a very special place in the tourism map of India and the people here are very pleasant and hospitable. The territory of Goa is situated

between the parallels of 15- 47'-59" North and 14-53'-54" East and 74-20'-11"West.²

It was under the sway of Kadambas, the dynasty is said to have flourished around 500B.C. and lasted until the thirteenth century. Later the territory came under Yadavas of Devagari and then under the dynasty of Adil Shah of Bijapur. The Portuguese conquered Goa in February 1510 lost it and reconquered it in November of the same year. Goa continued under the Portuguese until it was liberated in December 1961³. It was part of Union Territory of Goa, Daman & Diu till 30th May, 1987, when it was carved out to form a separate state.⁴

The word Goa was a misnomer at least in the first two centuries. The areas known as Old Conquests comprised the talukas of Ilhas, Salcette, Bardez and Marmagoa. The first Portuguese administration was confined to the above strip of 220 square miles. The Portuguese later extended the rule to the New Conquests and from around the third quarter of eighteenth century, the term Goa was applied to the territories as enclosed to the present boundaries.

The territory of Goa has a length of 105 kms from north to south and it measures 60 Kms in its width west to east, its total area is 3,702 sq.kms. It is made up of 11 talukas, namely, Tiswadi, Bardez, Pernem, Bicholim, Sattari, Ponda, Sangurem, Cancona, Quepem, Salcette and Mormugao. For administrative purposes, it has been constituted into two districts i.e. North Goa (Six talukas-total area of 1736 sq.km) and South Goa (five talukas – total area

² Government of Goa, Daman and Diu, *Agricultural Census* (Economic Tables)

³ Carmo D'Souza, *Legal System in Goa, Laws and Legal Trends* (Published by Agnelo D'Souza, Goa, vol.1, 1994) 2

⁴ 25th State in Independent India, Inserted by the Goa, Daman and Diu Reorganization Act, 1987(18 of 1987) Sec.5 (w.e.f.30-5-1987)

of 1966 sq.km).⁵For the purpose of implementation of development programmes, the State is divided into 12 community development blocks⁶. As per 2001 census, the population of the State is 13, 42,998. In all there are 383 villages of which 233 are in North Goa district and 150 in South Goa district. As per the 2001 census there are 44 towns of which 14 are Municipalities and remaining are census towns.

Boundaries of Goa State are defined in the North Terekhol River which separates it from Maharashtra, in the East and South by Karnataka State and West by Arabian Sea. Goa lies in Western Coast of India and is 594 kms (by road) away from Mumbai city.

A very striking feature of Goa is harmonious relationship among various religious communities, who have lived together peacefully for generations. Though a late entrant to the planning process, Goa has emerged as one of the most developed states in India and even achieved the ranking of one of the best states in India with regards to investment environment and infrastructure.

8.2 LEGAL AID IN GOA UNDER THE PORTUGAL REGIME

Under the Portugal regime in Goa there was a legal aid – in seed form – to the deserving poor in certain judicial problems. It was not as explicitly provided as we have it now in the post-liberated Goa. The following revealing note⁷ excerpted from a Portugal gazette is proof enough to substantiate the above

⁵ Silvia m.de Mendonca C Noronha, *Exploited Children*, (Koteshwara Rao (ed.), Kanishka Publishers, New Delhi, 1st ed., 2000) 175

⁶ Available at <http://www.goagovt.nic.in>.

⁷ A facsimile of the original Portuguese Gazette in which it was published is attached as annexure number. VII and VIII.

statement. The following note is only a gist of the original Portuguese relevant material.

“Legal Aid then known as Judicial Assistance existed in some form or other during the Portuguese period at least as early as 1907. For instance the King of Portugal on hearing the Consultative Board of Overseas and the Council of Ministers decreed the extension of Carta de Lei to the State of India (Goa, Daman and Diu) which created Judicial Assistance in Civil matters. The Carta de Lei was decreed on 25th April 1907.⁸

The latest law on the field of Judicial Assistance prior to the liberation of Goa was contained in decree no.33.548⁹ of 1944. Article 35 of this decree repealed expressly the provisions of decree law No.15.344 dated 12/4/1928 and particularly Articles 814 to 855 of decree law no.15,344 Dt. 12/4/1928 . Hence this decree of 1944 applied to Goa on the eve of liberation and continued to do so until it was repealed by other laws promulgated subsequently in the post liberation period.

It is decided here to give a brief outline of the decree of 1944 which was in force on the date of liberation¹⁰. Art. 1 of the said decree (33,548) stated that the Judicial Assistance contemplated two types of benefits:

- a) Assistance of Advocate without payment of fees and
- b) Dispensation of payment of costs.

⁸ Gazette of Estado da India no 42, dated 28/5/1907. Also see D.G.No.94,de 29-4-907

⁹ Decree no .33.548 dated 23.2.1944 and enforced in territory of Goa by ministerial order no.11.504 dated 2010/1946.

¹⁰ 19th Dec.1961.

The Sole Para to the article explains that in criminal matters also there is Judicial Assistance to the benefit of accused person and also in favour of aggrieved person who are permitted to prosecute the case on a complaint.

Art. 2 gave the benefit not only to pauper litigants but extended it to collective bodies of public utility. However no assistance was to be given unless proper application was made by the concerned person. Paragraph one to the above article explained who were to be considered as pauper. Paragraph three explained that it was permissible to grant partial assistance considering ones assets.

Art. 3 gave details of personal circumstances of the pauper who could be refused Judicial Assistance. For instance Aliens residing in Portuguese territories but citizens of those countries which were not conferring such benefits on Portuguese were not entitled for this benefit unless those countries were signatories to the Hague convention of 17th July 1905.

Art.4 indicated that the said assistance could be given before filing the proceedings or even during the pendency of proceedings.

Art.5 stated that it was possible to request for Judicial Assistance before the end of the trial.

Art.6 provided that in the criminal matters whenever an application was made by the accused, the proceedings were stayed until disposal of the application for Judicial Assistance.

Chapter II contained the provisions for the Constitution of the Commission as well as procedure for providing Judicial Assistance. During the Portuguese time there was a one representative of the Government, a Judicial Officer with the same qualification as a Judge known as “Ministerial Publico” and he was always to be heard on the application for Judicial Assistance. In case the application was rejected an appeal was provided under the same chapter. Whereas Chapter III dealt with the effects of the grant of Judicial Assistance, chapter IV indicated when the assistance came to an end.”

8.3 POST LIBERATION LAWS

The State of Goa was liberated on 19th December 1961 and an administrator was appointed to normalise the situation. Persons born prior to 20th December 1961 were given Indian citizenship. The Twelfth Amendment of the Indian Constitution¹¹ was enacted to include the territories of Goa, Daman and Diu into the First Schedule as a Union Territory and to apply to the territories the provision of Article 240, which enabled the President to make regulations for the peace, progress and good government of the territory. Therefore, the President made Regulations at the earlier stage. The Constitutional Fourteenth Amendment permitted the creation of a legislature for the Union territory of Goa, Daman, and Diu.¹²

¹¹ Constitution (Twelfth Amendment) Act, 1962. By this amendment territory of Goa, Daman and Diu, formerly a Portuguese colony was integrated into India as a Union Territory.

¹² Constitution (Fourteenth Amendment) Act, 1962 added a new Article 239-A which provided for the creation of the Legislatures and Council of Ministers in some of the Union territories.

Some important laws were passed during the early period such as ---

- a) The Goa, Daman and Diu (Administration) Ordinance, 1962¹³
- b) The Goa, Daman and Diu (Administration) Act, 1962¹⁴
- c) The Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962¹⁵
- d) The Goa, Daman and Diu (Laws) Regulation, 1962¹⁶
- e) The Goa, Daman and Diu (Laws) No.2 Regulation, 1962¹⁷

The Union Territory of Goa, Daman and Diu at the time of Liberation had a well-developed system of laws based on Portuguese jurisprudence. On Liberation, it was not feasible to maintain this legal system in the isolated pockets and it became imperative to bring in laws and legal trends prevailing elsewhere in India. This process of change was achieved to a great extent during the first five years after Liberation.

Many acts and laws prevalent elsewhere in India were extended to the Union Territory. The (Laws) Regulations of 1962, 1963 and Taxation Laws Regulations (1963) were mainly responsible for extending several Acts in force in States of India to the Union Territory. These Acts were enforced within a

¹³ Official Gazette no.10, 10th March 1962 at 31-32. This ordinance was promulgated by the President to provide for the administration of the Union Territory of Goa, Daman and Diu. The content of the Ordinance was incorporated into the Goa, Daman and Diu (Administration) Act, 1962.

¹⁴ All India Reporter 1962, Vol 49, Acts of Indian Parliament at.1-2. This Act was enacted by Parliament in order to provide for the administration of the Union Territory. The Act was deemed to have come into effect from 5th March 1962.

¹⁵ Official Gazette no 12, 22nd March 1962 at 37. This Order was deemed to have come into force from 20th December 1961.

¹⁶ Official Gazette No 41, 6th December 1962 at 279-285. This Regulation was promulgated by President under Article 240 of the Constitution. Acts and Ordinances specified in the schedule were extended to Goa, Daman and Diu.

¹⁷ This Act was enacted by Parliament to provide for Legislative Assemblies and Council of Ministers for the following Union Territories: (a) Himachal Pradesh, (b) Manipur, (c) Tripura, (d) Goa, Daman and Diu and (e) Pondicherry.

couple of years to the Union Territory, bringing the laws here on par with laws elsewhere in the country. For instance, the taxation laws were extended in the new financial year, on 1st April 1963 with the enforcement of Income Tax Act and other Acts. The Panel legislation in the form of Indian Penal Code and the Code of Criminal Procedure were extended on 1st October 1963. The Civil Procedure was extended in mid June 1966.¹⁸

The Legal Service Authorities Act 1987 applicable to State of Goa from 31st March 1997.¹⁹ This Act is applicable to the entire state which would cover all courts including High Court, District and Sessions Courts in North and South Goa, all subordinate Courts, and NDPS Court. In the State of Goa, High Court Legal Service Authority, District Court Legal Service Authorities and Taluka Level Legal Service Committee are working. Researcher is one of the nominated members of State Legal Service Authority since 2008.

8.3.1. Goa State Legal Services Authority Rules 1996

The Government of Goa in exercise of the powers conferred by Sec.28 of Legal Services Authorities Act 1987, in consultation with the High Court made the Goa State Legal Services Authority Rules, 1996.

Goa, as in many other fields, has taken the lead in the case of legal aid also. Goa government passed, Goa State Legal Services Authority Rules, 1996. The then Government of Goa was convinced that, in the administration of justice in both criminal and civil courts the members of the scheduled castes and

¹⁸ *Supra* note.3 at 254

¹⁹ S.O 149 (E) dated 31st March 1997

scheduled tribes and other persons who are poor are, in most of their cases, not in a position to engage counsel to appear and plead for them, and the absence of counsel for the conduct of their cases often cause great hardship on account of their cases being not properly presented before the courts of justice. It is with the noble intention of mitigating this unhappy aspect of administration of justice, Government of Goa made the rules to provide legal aid to the poor namely Goa State Legal Services Authority Rules,1996²⁰.

8.3.1.1 Goa State Legal Services Authority Rules: Basic features

These rules prescribe the number, experience and qualification of other members of state authority, powers and duties of member secretary of state authority, terms of office and other conditions relating to members and member secretary of the state authority. Similarly members of District authority, Taluk Legal Services Committees and their qualifications, services and the salaries, allowances are also prescribed.

a) Powers and Duties: The powers and duties of the member-secretary of the state authority inter alia shall be

- i) To give free legal services to the eligible and weaker sections.
- ii) To work out modalities of the Legal Services Schemes and Programmes approved by the State Authority and ensure their effective monitoring etc²¹.

²⁰Notification No.6/28/92/LD(Misc.1) 18th November,1996 (Published in the Official Gazette, Government of Goa dated 26th November 1996

²¹ Rule 4

b) Eligibility for Legal Aid: Any citizen of India whose annual income from all sources does not exceed Rs.50,000²² or such higher amount as may be notified by the State Government from time to time, shall be entitled to legal services, under cl.(h) of Sec.12 of the Act.

c) Experience and Qualifications of persons of Lok Adalats: A person is not qualified to be included in the Bench of Lok Adalat unless he is—

- i) an eminent social worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children , rural and urban labour or
- ii) a lawyer of standing or
- iii) a person of repute who is specially interested in the implementation of the Legal Services Schemes and Programmes.²³

8.3.2 Goa State Legal Service Authority Regulations 1998

The State Legal Services Authority in exercise of the powers conferred under the provisions of Section 29A of the Legal Services Authorities Act, 1987 in consultation with the Hon'ble Chief Justice of Bombay High Court, made the Goa State Legal Services Authority Regulation 1998.

8.3.2.1 Basic features of Regulations

Regulations deal with vesting of executive authority, functions of the State Authority and constitution, duties and functions of Legal Service Committees.

²² Vide Notification GoA/GSLSA/2/2005 dt.13th July 2005

²³ Rule 17

*a. Vesting of the Executive Authority*²⁴

The Executive Authority of the State is vested in the Executive Chairman and may be exercised by him through the Member Secretary who is to act under the control of the Executive Chairman. The Executive Authority of the High Court Legal Services Committee vests in its Chairman and may be exercised by through the Member Secretary who can act under the control of the Executive Chairman. The Executive Authority of the District Authority is vested in its Chairman and may be exercised by him through its secretary who can act under the control of the Chairman. The Executive Authority of the Taluka Committee vests in its Chairman and may be exercised either by himself or through such other officer who is chosen for the purpose.

*b. Functions of the State Authority under the Act*²⁵

- i. To conduct legal literacy camps in different parts of the State with a view to transmitting knowledge about the legal aid schemes conducted in the State and with a view to spreading consciousness about the legal rights and duties of citizens with special reference to the tribal and rural populations, women, children, disabled, handicapped and the weaker sections of the Society.
- ii. To finance public interest litigations before appropriate courts in the State Authority is prima facie satisfied that such litigations are for the general benefit of a large body or class of persons who cannot by

²⁴ Regulation 3

²⁵ Regulation 4

themselves take recourse of law due to penury, illiteracy or other similar reasons.

- iii. To conduct legal aid clinics in different parts of the State in collaboration with Law Colleges Universities and other social service organisations.
- iv. The State Authority may establish or direct the District Authority to establish, standing conciliation Committees for resolving legal disputes between the parties.

c. Duties and Functions of the High Court Legal Services Committee²⁶

Regulation 5 of Goa State Legal Services Authority Regulations consists of duties and functions of High Court Legal Services Committee²⁷ for providing free legal services to the eligible persons and conducting of the Lok Adalats.

d. District Authority

The term of office of the members of the District Authority has to be two years²⁸. The State Government may on the recommendation of the Patron-in-Chief and in consultation with Executive Chairman of State Authority remove any nominated member.²⁹

e. Additional functions of District Authority

Conduct legal literacy camps, and legal aid clinics³⁰; supervise, direct and guide the working of the Taluka Committee in the District; receive applications for legal services and ensure that every applications is promptly processed and

²⁶ Regulation 5

²⁷ Regulation 6 deals with constitution of High Court Legal Services Committee

²⁸ Regulation 8

²⁹ Regulation 9

³⁰ Regulation 10

disposed of; consider the cases brought before it for the Legal Service, including pre-litigation and encourage and promote conciliation and settlement in all legal proceedings, including pre-litigation.

*f. Conduct of Business*³¹ – The Member-Secretary of the State Authority, has to call meeting of the Authority at least once in a month as and when the business may warrant. The Minutes of the proceedings of every meeting has to be prepared by the Member-Secretary.

g. Legal Aid

i) Filing of application for legal services³²

A person seeking legal services by the High Court Legal Services Committee, District Authority or the Taluka Committee, as the case may be, has to send an application under affidavit containing the brief facts of the case, and where the applicant is a person as in Section 12(h) of the Act, not being one under any other classes of that Section, the Affidavit has also to state the details of the properties possessed by him and his annual income from all the sources.

ii) Scrutiny of Applications³³

The applications have to be scrutinised and disposed of by the Secretary of the High Court Committee, by the Secretary of District Authority and by the Chairman of the Taluka Committee, as the case may be.

³¹ Regulation 13-14

³² Regulation 16

³³ Regulation 17

- iii) Duty of Legal practitioner to take further action, after the decision of a case by the Court³⁴

The legal practitioner as soon as the case is decided has to apply for a copy of the judgment and decree if any and immediately on receipt of the copies shall submit them to the body appointing him together with his detailed comments. The Taluka Committee, the District Authority or the High Court Committee, as the case may be, shall take steps to recover the expenses of the services rendered from and out of the costs, if any awarded by the Court to the person concerned and received by him. Such bodies may also consider where necessary the feasibility of filing any appeal, revision or writ petition as they deem fit.

h. The Fees payable to the Legal Practitioners

The fees payable to the Legal Practitioners, representing the parties, in the matters to be filed and conducted is assigned by the High Court Legal Services Committee, District Legal Services Authority and Taluka Legal Services Committees, which shall be as per Schedule I, II, III appended to these Regulations respectively. However, for reasons to be recorded in writing the presiding judge may award a higher fee.³⁵

Schedules

This regulation has three schedules appended to it. The first schedule is with reference to regulation 19 on fees payable to legal practitioner's appearing in

³⁴ Regulation 18

³⁵ Regulation 19-21

the high court. The second schedule is with respect to regulation 20 on fees payable to legal practitioners appearing in district court matters. The third schedule is with respect to regulation no 21 with respect to fees payable to legal practitioner appearing in taluka civil and criminal courts.

Table 1

SCHEDULE I

(Vide Regulation No.19)

High Court Legal Services Committee	Minimum (per case) Rs.	Maximum (per case) Rs.
Writ Petition in the High Court	500.00	700.00
Writ Appeal in the High Court	600.00	800.00
Letters Patent Appeal	600.00	800.00
Second Appeal in the High Court	1000.00	1500.00
First Appeal in the High Court	1200.00	1600.00
Appeal from Order	400.00	600.00
Civil Miscellaneous Application	200.00	200.00
Civil Revision Petition	400.00	600.00
Criminal Appeal	500.00	1000.00
Criminal Revision	400.00	600.00
Criminal Miscellaneous Application	200.00	200.00

It may be observed that fees to legal aid counsels in High court vary on the basis of Writ, Appeal, Miscellaneous Applications, and Revision. It shows that the fees for Advocates in First Appeal and Second Appeal cases are more than in other matters.

³⁶ The figures in the table have been updated 31st March 2010

Table 2
SCHEDULE II
(Vide Regulation 20)

District Court Legal Services Committee	Minimum (per case) Rs.	Maximum (per case) Rs.
Session Case	800.00	1200.00
Criminal Appeal	400.00	600.00
Criminal Revision	200.00	300.00
Regular Civil Appeal	600.00	800.00
Miscellaneous Civil Appeal	400.00	600.00
Motor Accident Claim Petition	600.00	1000.00
Miscellaneous Civil Application	100.00	200.00
Miscellaneous Criminal Application	100.00	200.00

Table 2 explains fees of Legal Aid counsels in District and Sessions Court. It shows that comparatively fees to Sessions case are more than in any other matter in the District Court. But in fact the researcher observed that³⁸ there was much dissatisfaction among the advocates with regard to payment of fees. Because for entire case Rs.800 is so meagre whereas for Government Advocate payment is according to hearings i.e. per hearing they are paid Rs.300 or more.

³⁷ The figures in the table have been updated 31st March 2010.

³⁸ For further information see "Opinion of Advocates" in page no.303 of this research thesis

Table 3

SCHEDULE III

(Vide Regulation No.21)

Taluka Legal Services Committee	Minimum (per case) Rs.	Maximum (per case) Rs.
Special Civil Suit in the Court of Civil Judge Sr.Division	800.00	1200.00
Regular Civil Suits in the Court of Civil Judge, Sr. Division/Civil Judge, Jr. Division	600.00	800.00
Regular Criminal Case	400.00	600.00
Criminal Cases to be tried summarily	200.00	300.00
Miscellaneous Civil Application	100.00	200.00
Miscellaneous Criminal Application	100.00	200.00

Table 3 shows that the fee of the legal aid counsel depends on subject matter of the suit/criminal case. However the amount is very meagre for a case. It was observed that the main reason for adverse response of the advocates is mainly due to the fee structure. Unless Advocates fees to meet their minimum expenses, they cannot come forward as expected by the Authorities⁴⁰.

³⁹ The figures in the table have been updated 31st March 2010.

⁴⁰ The Goa State Legal Services Authority proposed, in plan of action for 2010-2011, to increase Honorarium for the lawyer so as to bring more competent, renowned and Senior lawyers in the field for rendering legal services and legal aid

8.3.3 Legal Service Authorities in State of Goa

In the exercise of the powers conferred under Legal Services Authorities Act⁴¹, Government of Goa constituted the State Legal Services Authority. Similarly High Court Legal Services Committee⁴², District Legal Services Authorities⁴³ and Taluka Legal Services Committees⁴⁴ were constituted.

8.3.3.1 Goa State Legal Services Authority

This Authority consists of an Executive Chairman, Member Secretary, Ex-officio members and non-official members. In exercise of the powers conferred by of Section 6 (2) (c) of Legal Services Authorities Act read with sub rule (3) of the Goa State Legal Services Authorities Rules, 1996 the Government of Goa in consultation with the Hon'ble Chief Justice of High Court of Bombay nominates non- official members from different fields.

8.3.3.2 North Goa District Legal Services Authority and Taluka legal Services Committee

In exercise of powers conferred in Sec.9 and Sec.11A of the Act, Government of Goa constituted the following authorities for district and taluka level in North Goa District.

⁴¹ Sec.6, Legal Services Authorities Act

⁴² Sec.8A, Legal Services Authorities Act

⁴³ Sec.9, Legal Services Authorities Act

⁴⁴ Sec.11A, Legal Services Authorities Act

Table 4

Sl. No	Name of Authority/Committee	Venue
1	North Goa District Legal Services Authority, Panaji.	District & Sessions Court, Panaji.
2	Tiswadi Taluka Legal Services Committee, Panaji.	District & Sessions Court, Panaji.
3.	Bardez Taluka Legal Services Committee, Mapusa.	N.D.P.S Court, Mapusa, Goa.
4.	Ponda Taluka Legal Services Committee. Ponda.	Civil and Criminal Court building, Ponda – Goa.
5.	Bicholim Taluka Legal Services Committee, Bicholim.	Civil and Criminal Court building, Bicholim – Goa.
6.	Pernem Taluka Legal Services Committee, Pernem.	Civil and Criminal Court building, Pernem – Goa.
7.	Sattari Taluka Legal Service Committee, Sattari.	Civil and Criminal Court building, Valpoi – Goa.

Source: North Goa District Legal service Authorities, Panjim, Goa

Table 4 shows that in North Goa District there is one District Legal Services Authority and six taluka Legal Services Committees one for each taluka.

8.3.3.3 South Goa District Legal Services Authority and Taluka Legal Services Committee

In exercise of the powers conferred in Sec.9 and Sec.11A of the Act, Government of Goa constituted the following authorities for district and taluka levels in the South Goa District.

Table 5

Sr.No	Name of Authority/Committee	Venue
1	South Goa District Legal Services Authority, Margao	Principal District & Sessions Court, Margao
2	Salcete Taluka Legal Services Committee, Margao	C.J.M Court and Civil Judge Senior Division,
3.	Mormugoa Taluka Legal Services Committee, Vasco	Civil Judge Senior Division and JMFC
4.	Cancona Taluka Legal Services Committee, Cancona	Civil Judge Junior division and JMFC
5.	Quepem Taluka Legal Services Committee, Quepem	Civil Judge Senior Division and JMFC
6.	Sanguem Taluka Legal Services Committee, Sanguem	Civil Judge, Junior division and JMFC

Source: South Goa District Legal service Authorities, Margao, Goa

Table 5 shows that in South Goa District there is one District Legal Services Authority and five taluka Legal Services Committees, one for each taluka.

8.4. PANEL OF ADVOCATES – GOA STATE LEGAL SERVICES AUTHORITY⁴⁵

Goa State Legal service Authority appoints a panel of advocates for representing the indigent persons. Similarly, District Legal Service Authority and Taluka Legal Service Authority appoints a panel of advocates. However, at District and Taluka levels, different advocates are appointed to represent the case at different stages such as remand and trial. In addition to District and Taluka level, a panel of advocates is also appointed to represent indigent persons in Lok Adalats.

8.4.1. Scheme for Legal Aid Counsel in the Courts of Magistrates in the State of Goa⁴⁶

The Authority has implemented legal aid counsel scheme in the Courts of Magistrates. Remand advocates have been appointed to take up and defend the cases of arrested persons. Similarly, legal representation is available at different levels such as trial stage and also for preparing appeal.

a) Scope and the purpose of the Scheme

Emphasis of the scheme shall be to provide Legal Assistance to persons in custody at the following three stages namely:

- i. Opposing applications to Magistrate for remand to police custody and getting released the persons in custody, on bail.**

⁴⁵ List approved by Hon'ble Executive Chairman of GSLSA on 26th November 2008

⁴⁶ In exercise of the powers conferred by section 29-A r/w clause (g) of section (2) and Clause (G) of section 12 of the Legal Services Authorities Act 1987 (Act No.39 of 1987) as amended and in pursuance of the direction of the National Legal Services Authority dated 10th June 1998 vide their letter No.F.No 6(2)/98-NALSA -1269 the Goa State Legal Services Authority made the scheme.

- ii. Legal Assistance to persons in custody during trial for his defence.
- iii. Legal Assistance for preferring appeal or revision in the case of adverse orders against the person in custody.

b) *Entitlement to legal aid and assistance*

Any person in custody as provided in section 12(g) and produced before a magistrate during investigation, enquiry or trial, who is not represented by an Advocate shall be entitled to the services of a Legal Aid Counsel⁴⁷

c) *Panel of legal aid counsel*⁴⁸:

Prior to passing of the Legal Services Authorities Act, Presiding Officers of the Courts by exercising their powers used to appoint amicus curie. But now there is a panel of legal aid counsel in all courts. The following are some of the important rules for panel advocates.

- a. The District Legal Services Authority shall in the first instance identify all the Courts of the Magistrates in their respective Districts for attaching Legal Aid Counsels.
- b. In case the work load in a particular court or courts is too little, one Legal Aid Counsel may be attached to two courts.
- c. The District Legal Services Authority to which the implementation of the scheme is entrusted may prepare a panel of Legal Aid Counsel preferably with a standing of minimum 5 years on criminal side.

⁴⁷ Clause 4 , Scheme for Legal Aid Counsel

⁴⁸ Clause 5, Scheme for Legal Aid Counsel

- d. The panel so prepared by the District Legal Services Authority shall be sent to the State Authority for the approval of the Honourable Executive Chairman.
- e. The term of the panel of the Legal Aid Counsel shall be three years from the date of its approval.
- f. The District Legal Services Authority shall, before the expiry of the term of the panel shall initiate the process for the preparation of a fresh panel.
- g. The District Authority may, in preparing a fresh panel consider suitability including the past performances, of Legal Aid Counsel whose term is to expire, for re-employment.

d) *Displaying the name and address of the legal aid counsel:*⁴⁹

Merely appointing/nominating advocates for legal aid is not fulfilling the basic concept. Public in general and indigent persons in particular has to know the names of the advocates and the available facility. Hence publication of the scheme as well as the names of the panel advocates plays vital role in serving the purpose.

- i. The names and addresses of the Legal Aid Counsels so empanelled shall be displayed on the notice board of the District Legal Services Authority as well as that of the Courts concerned to which a particular member on the panel is attached as a Legal Aid Counsel with a requisite information as to who are eligible persons to have Legal Aid under this Scheme. It shall also be clearly mentioned in such display that no payment is

⁴⁹ Clause 6, Scheme for Legal Aid Counsel

required to be made by the party or on his behalf, in cash or in kind to the Legal Aid Counsel.

- ii. The Scheme of Legal Aid Counsel shall be given wide publicity in the area falling within the jurisdiction of the District Authorities and the Taluka Committees by displaying hoardings at places like police station, jails, lock ups etc.

e) *Appointment of legal aid counsel and termination of the facility*⁵⁰

The Magistrate appoints the advocate on the basis of need of the party and stage of the case. Similarly once the purpose is achieved or party misused the facility, the legal aid facility can be terminated.

- i. The empanelled Legal Aid Counsel attached to a particular Court or Courts shall be appointed by the Magistrate presiding over that Court, to represent the person in custody, if he is not otherwise represented, to oppose an application for remand to police custody, to apply and contest application for bail to get such person released or to defend him at the trial of any summons or warrant case or any case tried by summary procedure.
- ii. The appointment of Legal Aid Counsel for the person in custody shall be made by an order in writing to be passed by the magistrate presiding over that court and copy of the order of appointment in the prescribed proforma (Form "A") shall be given to the counsels so appointed and one copy shall be sent to the District Authority for record.

⁵⁰ Clause 7, Scheme for Legal Aid Counsel

- iii. The facility of Legal Aid Counsel given to the person in custody shall stand terminated—
 - a. On and from the day such person is set free from custody on bail or otherwise or
 - b. The person in custody engages any other advocate of his own or is found by the Magistrate to be misusing the facility of Legal Aid Counsel or
 - c. On attainment of the purpose for which Legal Aid Counsel was appointed.
- iv. If there are several different proceedings against the person in custody there shall be separate order of appointment of Legal Aid Counsel for each such proceeding.

f) *Duties and Functions of Legal Aid Counsel*⁵¹

Legal Aid Counsel shall be obliged to be prompt and punctual by remaining present before the court assigned to him during remand hours and also at the time and place fixed by the Magistrate.

It shall also be obligatory for the Legal Aid Counsel to be sincere and diligent in rendering all the necessary services as per law to the person in custody with the aim of protecting interest of such person.

g) *Appeal, Revision etc Before the Sessions Court or the High Court*⁵²

If the person in custody against whom orders are passed prefers an appeal or revision before the Sessions Court or High Court⁵³ can avail the service or assistance of Legal Aid Counsel.

⁵¹ Clause 8, Scheme for Legal Aid Counsel

⁵² Clause 9, Scheme for Legal Aid Counsel

h) *Removal of the Name From the Panel of Legal Aid Counsels*⁵⁴

Role of the judiciary will not come to an end by appointing a council for the party who is unable to afford, but continues till the case is completed. This means judiciary has to observe the proceedings and steps taken by the legal aid counsel. If the presiding officer finds that legal aid the legal aid counsel is not functioning properly for the interest of the client, he has to inform the Chairman of the District Legal Services Authority, who in turn has to hold a fact finding inquiry in the matter of allegation. On completion of inquiry he has to submit the report along with recommendations to State Legal Services Authority. According to the directions of State Legal Services Authority, the District Legal Services Authority can remove the name of the advocate from the panel.

i) *Remuneration or fee payable to legal aid counsel*⁵⁵

Remuneration or fee to the Legal Aid Counsel shall be dependent on the nature of proceeding. A consolidated remuneration for opposing remand, making application for bail, shall be according to Schedule I. Similarly fee differs from stage to stage and that of a summons case and a warrant case, depends upon the Schedules.

In addition to the amount mentioned above, the amount actually spent on account of payment of Court fee, typing charges and other incidental

⁵³ Subject to approval of the Member Secretary

⁵⁴ Clause 10, Scheme for Legal Aid Counsel

⁵⁵ Clause 11.

expenditure shall also be payable to legal aid counsel if borne by him and subject to production of proof of such expenditure.⁵⁶

The claim for remuneration or fee shall be supported by a copy or copies of the order of appointment and a certificate of attendance under the signature of the Presiding Judge of the Court concerned, and in case of High Court under the signature of the Court Superintendents.

It is submitted that the cumbersome procedure is one of the cause for adverse response from Bar towards legal aid panel.

The expenditure to be incurred towards payment of fee/remuneration or incidental charges shall be defrayed from State Legal Aid Fund or Grant in Aid allotted to the authorities.

Schedules

This Scheme has three schedules appended to it. The first schedule is with reference to clause 11 on fees payable to legal practitioners appearing before the Judicial Magistrate. It has four categories, remand, summons case, warrant case and case tried by summary procedure. The second schedule is with respect to clause 11 on fees payable to legal practitioners appearing in Session's Court matters. The third schedule is with respect to clause 11 with respect to fees payable to legal practitioner appearing in High Courts.

⁵⁶ Sub clause 1(V) of Clause 11.

Table 6

Schedule I (See Clause 11 of the Scheme)

Sl. No	Nature of Proceedings before Magistrate	Minimum	Maximum	But not exceeding in the whole
1.	Remand/Bail etc.	Consolidated fee of Rs.500/-p.m	Consolidated fee of Rs.500/- p.m	Consolidated fee of Rs.500/-p.m
2.	Summons Case	Rs.75/-(per effective date of hearing)	Rs.100/-(per effective date of hearing)	Rs.750/-(per effective date of hearing)
3.	Warrant Case	Rs.100/-(per effective date of hearing)	Rs.200/-(per effective date of hearing)	Rs.1000/-(per effective date of hearing)
4.	Any case tried by Summary Procedure	Rs.50/-(per effective date of hearing)	Rs.75/-(per effective date of hearing)	Rs.500/-(per effective date of hearing)

Table 6 shows that for Remand and Bail petitions there is a consolidated fee. Of course it is a welcome provision being most of the cases for remand and bail being to preliminary stage of the case. It is to be noted that when a person from outside the state or district is arrested he may neither be in a position to appoint an advocate nor would it be possible for his relatives to approach a Court within reasonable time. With regard to other matters as shown in the table, amount is so meagre even though it is on the basis of hearing.

⁵⁷ This scheme approved on 26th Nov. 2008. The figures in the table have been updated 31st March 2010

*Schedule II*⁵⁸

Table 7

Schedule II

Sessions Court

Sl. No	Nature of Proceedings	Minimum Consolidation fee P.M.	Maximum Consolidation fee P.M.	not exceeding the whole P.M.
1.	Application for bail	Rs.500/-	Rs.500/-	Rs.500/-
2.	Revision	Rs.750/-	Rs.750/-	Rs.750/-
3.	Appeal	Rs.1000/-	Rs.1000/-	Rs.1000/-

From the above table it is quite evident that though the scheme is titled as scheme for advocates in Magistrates Courts but tables annexed to the scheme give the particulars of fees of Sessions Court and High Court too. This table provides for fees for bail, revision and Appeal as a consolidated amount.

*Schedule III*⁵⁹

Table 8

High Court

Sl.No	Nature of Proceedings	Minimum not exceeding P.M.	Maximum exceeding P.M.	not exceeding the whole P.M.
1.	Application for bail	Rs.750/-.	Rs.750/-.	Rs.750/-.
2.	Revision	Rs.1000/-	Rs.1000/-	Rs.1000/-
3.	Appeal	Rs.1500/-	Rs.1500/-	Rs.1500/-

⁵⁸ *Id.*

⁵⁹ *Id.*

As it can be seen from the above table, with regard to High Court matters, evidently the fees is better than in the remaining courts. It was observed by the researcher that getting Legal Aid advocates at higher courts is more difficult than in lower courts. Only senior advocates practise in higher courts. Hence for senior advocates the amount mentioned in the table is so meagre too be attractive. However, if senior advocates sincerely feel that it is a social obligation, and such culture develops among the members of the Goa Bar, they will come forward to assist the poor and needy.

8.5 BENEFICIARIES OF LEGAL AID

One of the main objects of the research is to find out the number of beneficiaries in the State of Goa with respect to Legal Service Authorities at all levels i.e. the High Court Legal Services Authorities and the District Legal Services Authorities.

8.5.1. Beneficiaries of legal aid in High Court, Bombay Bench at Goa from the year 2002-2009

In order to statistically analyse the number and type of beneficiaries the following data was collected from the State Legal Services Authorities for the period 2002-2009.

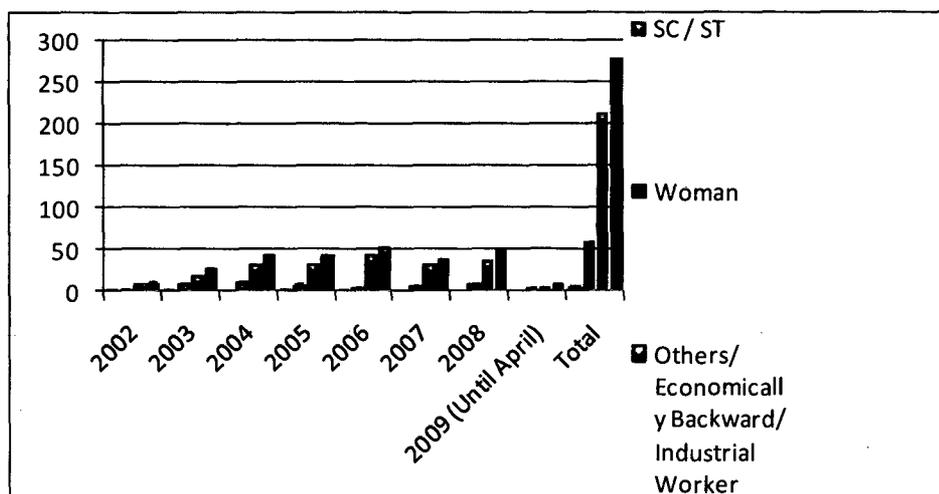
Table No. 9

Year	SC &ST	Woman	Others/Economically Backward /industrial worker	Total
2002	1(SC)	1	9	11
2003	1(ST)	10	18	29
2004	Nil	12	33	45
2005	2(ST and SC)	9	34	45
2006	2	5	45	52
2007	Nil	7	32	39
2008	Nil	10	38	48
2009 (till April)	Nil	4	5	9
Total	6	58	214	278

Source: State Legal service Authorities, Goa

From Table 9, it is evident that majority of the beneficiaries are from economically backward class and industrial workers. The beneficiaries under the category of SC and ST are low as the population in those categories is small in the State of Goa. With the rising consciousness and the accelerated working of the scheme in the state, we notice that there is an increase in legal aid beneficiaries. The details of the table are shown in the form of bar chart (Fig.No.1).

Fig No. 1



8.5.2 Legal aid beneficiaries in North Goa District from the year 2002-2009.⁶⁰

Table 10

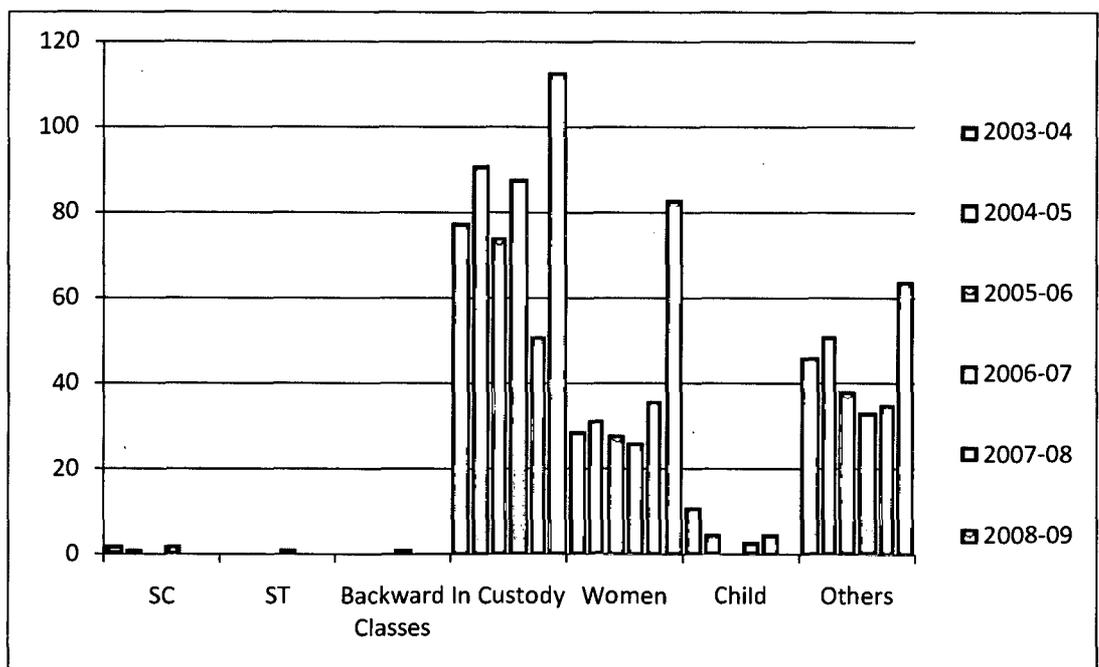
Year	SC	ST	OBC	In Custody	Women	Child	Ors.	Total
2002-2003	-	-	-	-	-	-	-	61
2003-2004	2	-	-	78	29	11	46	166
2004-2005	1	-	-	91	31	5	51	179
2005-2006	-	-	-	74	28	-	38	140
2006-2007	2	1	1	88	26	3	33	154
2007-2008	-	-	-	51	36	5	35	127
2008-2009	-	-	-	113	83	-	64	260
Total	5	1	1	495	233	24	267	1026

Source: North Goa District Legal Services Authority, Panjim

⁶⁰ Source—Information from the Chairman, North Goa District Legal Services Authority, Panaji, Goa, vide letter no. DLSA/NG/327-II/2008/3y, dated 15th January 2008.

Based on table 10 it is evident that the majority of the beneficiaries in North Goa district are persons in custody. It is also evident that the women beneficiaries are also gradually increasing. With the rising consciousness, the accelerated working of the scheme in the state, we notice an increase in legal aid beneficiaries. It may be noted from the table that the number of beneficiaries is gradually increasing. The details of the table are shown in the form of bar chart (Fig.No.2).

Fig No. 2



8.5.3 Legal aid beneficiaries in South Goa District from the year 2003-2008

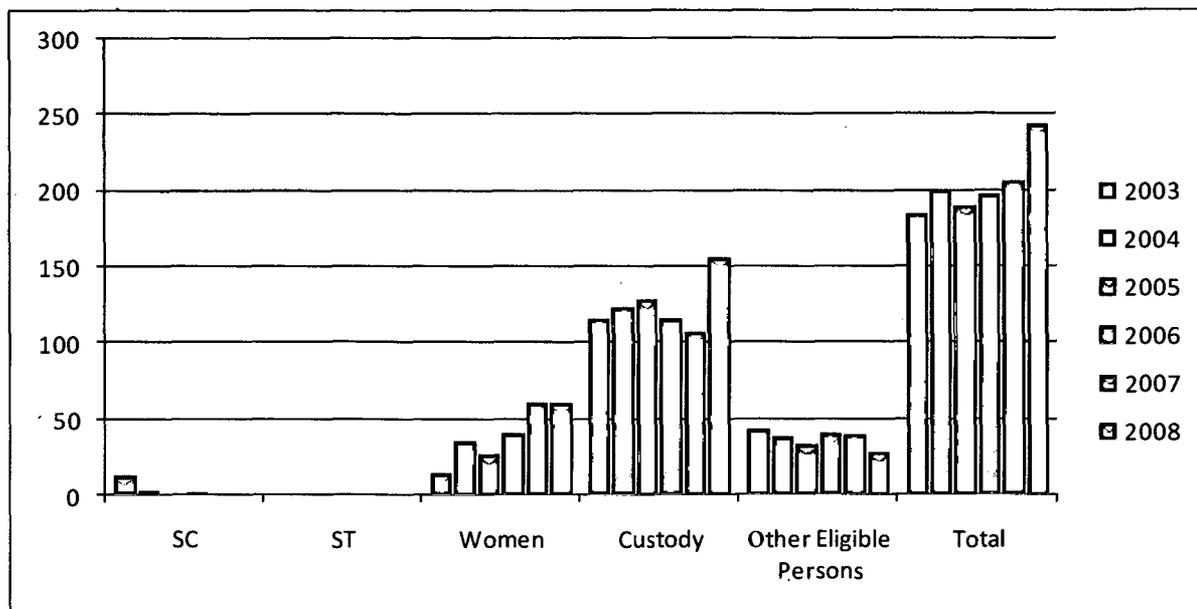
Table. 11

Year	SC	ST	Women	Custody	Other Eligible Persons	Total
2003	12	-	14	116	43	185
2004	3	-	36	123	37	199
2005	1	-	27	129	33	190
2006	2	-	40	115	40	197
2007	-	-	61	106	39	206
2008	-	-	60	156	28	244

Source: South Goa District Legal Services Authority, Panjim

Table 11 shows that beneficiaries in South Goa are higher compared to North Goa. One similarity in both Districts is that out of the beneficiaries, persons in custody are more in number. It reveals that the provisions of legal aid are being utilised by those arrested persons who are unable to appoint an advocate. In fact the researcher noticed, from information given by the Senior Advocates in interviews that mostly habitual offenders are benefiting from these provisions. The details of the table are shown in the form of bar chart (Fig.No.3).

Fig No. 3



8.6 LEGAL AID AWARENESS ACTIVITIES

The provisions of law will be purposeful and fruitful only when the beneficiaries come to know about the provisions and utilise the provisions for their purpose. This proper utilisation depends upon organization or conducting of various legal aid camps in the rural areas to reach the people. It is decided to outline first the news letter of Goa State Legal Services Authority and then follow it with tables and charts of the programmes conducted and expenditure incurred by the concerned authorities.

8.6.1 Goa Nyaya Deep

A news letter of Goa State Legal Services Authority titled '*Goa Nyaya Deep*' was launched in the year 2002. This newsletter seeks to promote legal literacy and awareness among the citizens in the state of Goa and to propagate the

activities of the various Legal Services Authorities in the State so that legal assistance is made available to common man, especially the poor, the weak and the marginalised, to enable him to access justice.

This journal contains the activities of legal service functionaries and provides information about the schemes and programmes initiated by the Authority from time to time, statistical data, articles on various legal aspects and welfare legislations. The journal will spread awareness about the legal aid facilities⁶¹.

⁶¹ Available at http://slsagoa.nic.in/newsletter/goanya_march2002.pdf visited on 18-4-10

8.6.2. Legal Awareness camps conducted in North Goa district from the year 2002-2009⁶²

Table 12

Sr.no	Year	Nos. of Legal Literacy Camps	Expenditure	Addl. Camps/ week etc.	Expenditure
1	2002-03	12	-	--	--
2	2003-04	12	-	---	---
3	2004-05	12	12,633	13	20,694
4	2005-06	11	9,072	23	22,513
5	2006-2007	12	22,337	25	30,069
6	2007-2008	11	10,541	34	35,031
7	2008-2009	10	8,351	22	23,775
Total	7years	80	62,934	117	1,32,082

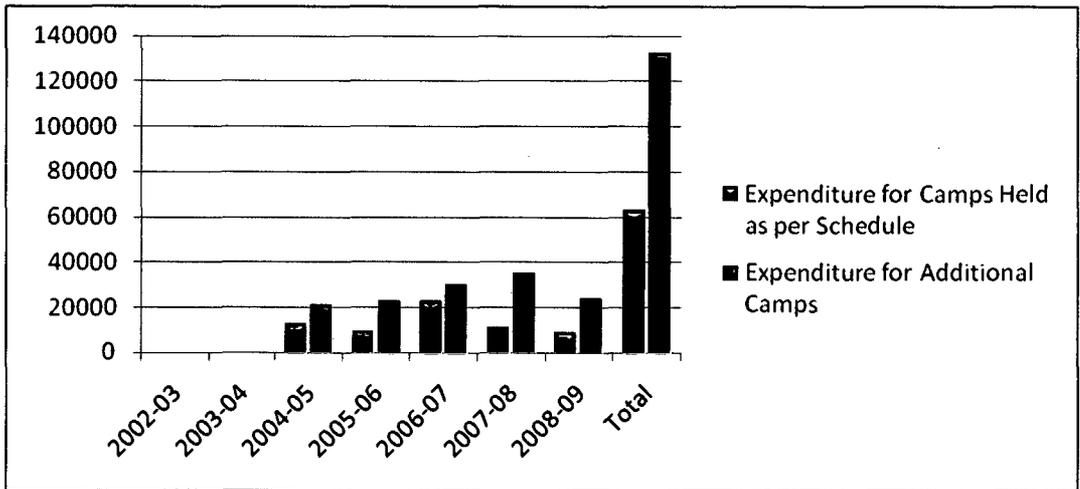
Source: North Goa District Legal Services Authority, Panjim.

It can be observed from the Table 12 that North Goa District Legal Services Authority conducted one camp per month till 2004. However, the authorities, in addition to the major activities, started conducting minor programmes since 2005. In fact these activities are inadequate to create awareness among the public about the legal aid.

⁶² Source—Information from the Chairman, North Goa District Legal Services Authority, Panaji Goa, vide letter no. DLSA/NG/327-II/2008/3y, dated 15th January 2008

The Researcher observed that from 2009-2010 onwards District Legal Services Authorities started to conduct their legal literacy activities in association with the Law College Legal Aid Cells. Each legal aid cell conducted at least one programme. Also every month four legal aid cells conducted the legal awareness camp in association with District Legal Services Authorities. Details of the programme are discussed in 6.10 of this chapter under the subtitle “Role of Law Colleges in promoting Legal Aid”. The above table is analysed with the help of a bar chart (Fig.No.4).

Fig No. 4



8.6.3 Legal Awareness camps conducted in South Goa district from the year 2004-2008

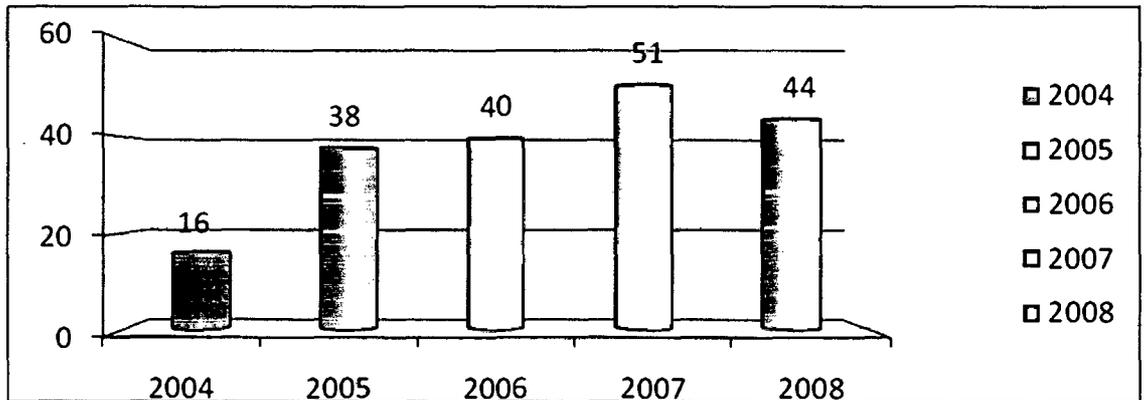
Table 13

Year	Programmes conducted
2004	16
2005	38
2006	40
2007	51
2008	44

Source: South Goa District Legal Services Authority, Panjim.

It can be observed from the Table 13 that South Goa District Legal Services Authority also conducted several legal literacy camps. During the camps, Authorities distributed literature on procedure for applying for legal aid which included information on how to apply, to whom to apply, who are eligible for legal aid, and about Lok Adalats etc. In addition Legal Services Authorities are conducting counselling and conciliation programmes on particular Saturdays in different Talukas. The details of table 13 are shown in the form of bar chart (Fig.No.5).

Fig No. 5



8.6.4 Micro legal literacy scheme

Goa State Legal Services Authority also approved the scheme of Micro Legal Literacy prepared by National Legal Services Authorities.

According to the above scheme, programmes have to be conducted on Saturday, Sunday, or any other holiday. These programmes have to be conducted in places like jails, hospitals, religious places, schools, Labour Colony etc. The topics/subjects/provisions of law which will be explained to them are based on the audience/target group. For instance, if the audience is women then the topic has to be relating to women laws.

District /Taluka Legal Services Committee have to form a team to conduct legal literacy camp. The team has to be well equipped with the various provisions of law to be addressed to the public. Material required for the team has to be supplied by Legal Service Authorities. Micro Legal Literacy Camp has to be conducted in a simple manner without any garlanding, putting shawl, lunch or dinner.

On the basis of above plan North Goa District Legal Services Authorities conducted micro legal literacy programmes in co-ordination with Salgaocar College of Law, Miramar, Panaji.⁶³

8.6.5 Legal Aid Clubs in Schools and Colleges

Under the guidelines of National Legal Services Authority⁶⁴ for setting up Student Legal Clubs, South Goa District Services Authority set up 17 clubs in the South Goa District.⁶⁵ They are:

(1) Government College of Arts, Science & Commerce, Quepem, Goa (2) Holly Cross Institute, Quepem, Goa (3) Guardian Angel Higher Secondary School, Curchorem, Goa, 4) St. Anthony School, Margao (5) Smt. Chandrabhaga Tukoba Naik Higher Secondary School, Curochorem, Goa (6) Shri. Mallikarjun Vidyalaya High School, Nagarcem, Canacona (7) St. Anne's Institute, Agonda, Canacona (8) St. Anthony's High School, Loliem, Canacona (9) Tudal High School, Tudal, Gaodongri (10) Shri Shradhanand Vidyalaya, Paingin, Canacona (11) Government High School, Agonda, Canacona (12) Government High School, Gaval Khola, Canacona (13) Government Higher Secondary School, Canacona (14) Shri. Mallikarjun College of Arts and Commerce, Delem, Canacona (15) Government High School, Valkini, Sanguem (16) Union High School, Sanguem (17) Utkarsha High School, Rivona.

⁶³ For details of the Micro Legal Aid Programmes Conducted by District Legal Services Authority see 6.10 Role of Law Colleges.

⁶⁴ See 5.16.3 in this thesis

⁶⁵ Vide letter no DLSA/MAR/L.L.Club/2010/320 dated 31st march 2010.

The clubs that were set up were briefed about the *modus operandi* of Legal Services, Pre-Litigation Settlement of disputes, Lok Adalats and ADR system generally. They are advised to encourage and identify persons in their neighbourhood who desire Legal Aid and who are in need of protecting their rights conferred on them by the laws.

8.7 SCHEME FOR LEGAL SERVICE TO DISASTER VICTIMS⁶⁶

A scheme was prepared by Goa State Legal Services Authority for Legal Services to disaster victims. According to the scheme a Core Group is required to be established under the control of the District Legal Services Authority to spring into action in the event of disaster whether man-made or natural. District Legal Services Authorities are entitled to intervene and co ordinate with the State Government authorities and the District Administration to ensure all these basic needs to the victims of such disasters.

8.8 ESTABLISHMENT OF MEDIATION CENTRE AND PERMANENT LOK ADALAT

Goa State Legal Services Authority established Mediation Centre and Permanent Lok Adalat on 21st March 2009 in the High Court Building.⁶⁷ Mediation Awareness Programme for Advocates and Training of Referral Judges was conducted by Goa State Legal Services Authority on 20th and 21st June 2009.

⁶⁶ Vide letter no GSLSA/Misc file/2009 dated 2nd Nov.2009.

⁶⁷ Researcher being the member of State Legal Services Authority personally witnessed the inaugural function.

8.9 STATE EXPENDITURE ON LEGAL AID

For successful organization of activities finance is one of the most important factors. In the State of Goa grants and utilization of funds also are important indicators of the legal aid programmes and activities organized by the Authorities.

8.9.1 Budget allotment and expenditure in State Legal Service Authority (High Court)

Table 14

Year	Budget allotted in Rs.	Expenditure in Rs.	Balance in Rs.
2007-2008	12,00,000	6,07,794	5,92,206
2008-2009	12,00,000	6,22,077	5,77,923

Source: State Legal Services Authority, Goa.

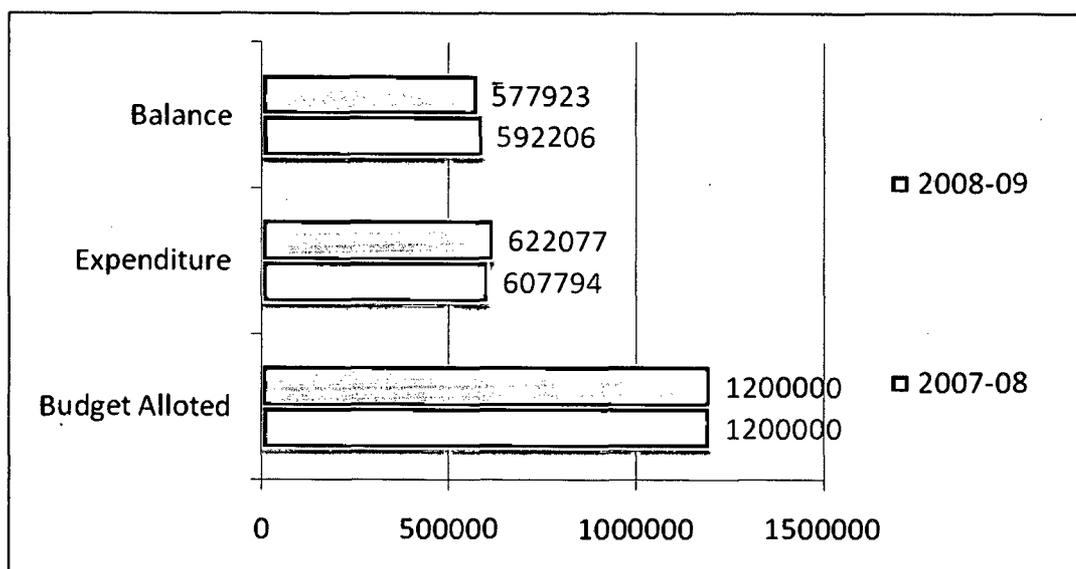
An analysis of Table 14 reveals that the fund utilised is around 50% of the allotted budget. It shows that State Legal Services Authority has to put more effort in organising effective programmes and spend more funds for proper purposes like conducting seminars, conferences and publishing and distributing awareness literature, which in turn will help the villagers to be aware of their rights.

It was observed that the Chairman of the Authority being a sitting Judge of High Court, is always busy with hearing of appeals etc, and is unable to allot sufficient time for functioning and monitoring of Legal Services Authority.

Hence, some of the Honourable Judges suggested that there is a need for independent secretary to exclusively deal with Legal Services Authority matters.

Table 14 is represented in the form of bar chart (Fig.No.6)

Fig No. 6



8.9.2 Grant-in-aid received, expenditure incurred in North Goa and balance surrendered to Government at the end of the year from 2003-2009

Table 15

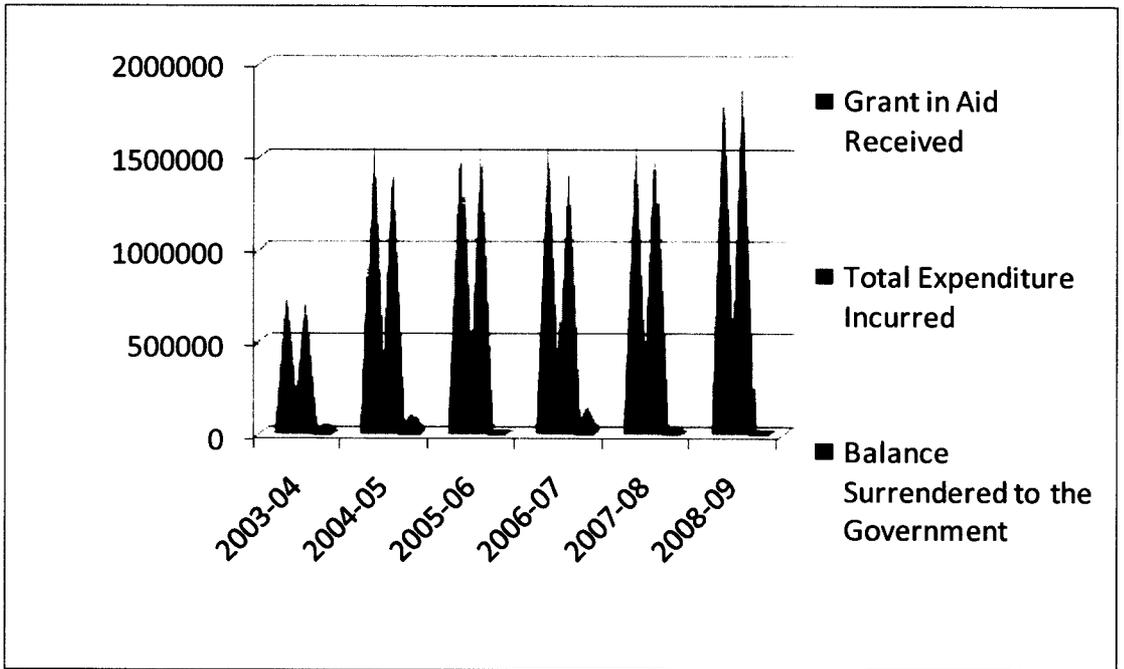
Year	Grant in aid received in Rs.	Total expenditure⁶⁸ incurred in Rs.	Balance surrendered to government in Rs.
2003-04	784000	732559	51441
2004-05	1600000	1490849	109151
2005-06	1600000	1586397	13603
2006-2007	1600000	1453199	146801
2007-2008	1600000	1568304	31696
2008-09	1925000	1924451	549

Source: North Goa District Legal Services Authority, Panjim

Table 15 shows that the North Goa District Legal Services Authority utilised almost the total of the allotted fund in the budget. Especially from 2007 it is evident that maximum amount used for the legal aid activities in under the heads of salaries, fees of Panel Advocates ,expenditure for conducting of various legal literacy programmes, inauguration of mediation centre and conducting national seminar on new enactments such as Senior Citizens Act 2007. The details of Table 15 are shown in the form of bar chart (Fig.No.7).

⁶⁸ The expenditure includes salaries, Honorarium, Bonus, Travelling Expenses, Legal Literacy Camps, Office expenses, Refreshments for Lok Adalats, Remuneration at remand stage, Remuneration at trial stage etc.

Fig No. 7



8.9.3. Budget allotment and expenses in South Goa district legal services authorities

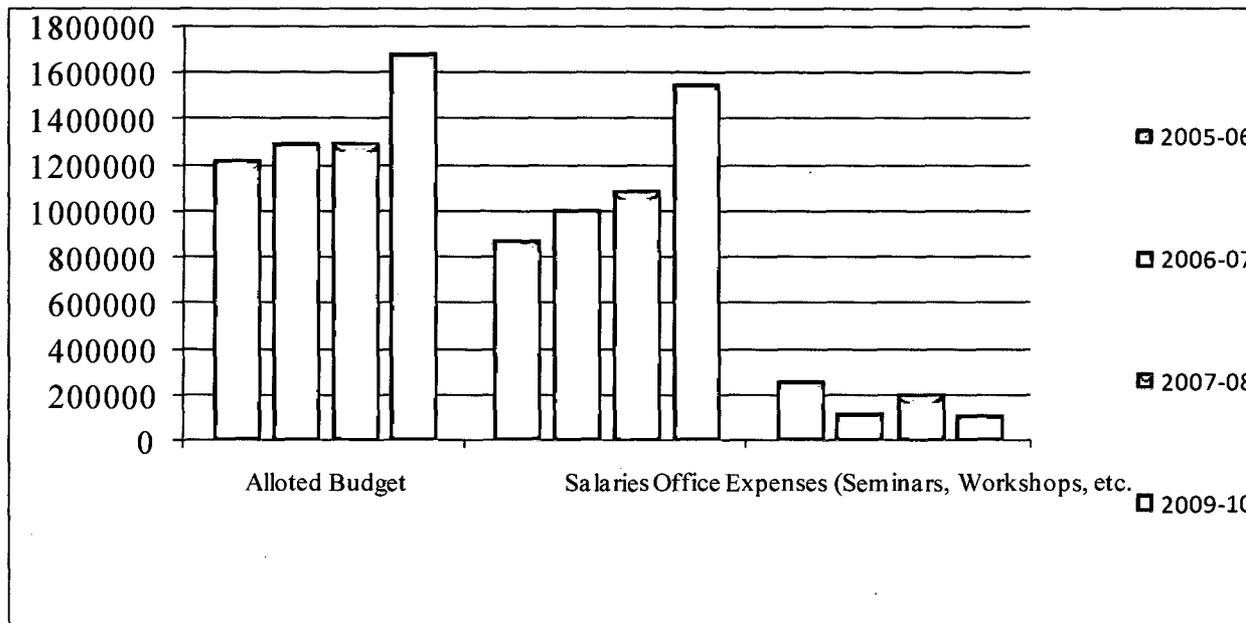
Table 16

Year	Allotted Budget in Rs.	Salaries in Rs.	Office expenses in Rs.
2005-2006	12,26,000	8,78,985	2,67,711
2006-2007	13,00,000	10,08,660	1,25,542
2007-2008	13,00,000	10,96,257	2,02,270
2009-2010	16,90,000	15,59,952	1,20,421

Source: South Goa District Legal Services Authority, Panjim.

As it can be seen from Table 16, the South Goa District Legal Services Authority utilized approximately 75% of allotted budget every year. It is evident that most of the amount was utilised for Salaries. The details of the table are shown in the form of bar chart (Fig.No.8).

Fig No. 8



8.10 ROLE OF LAW COLLEGES IN PROMOTING LEGAL AID – ITS CO-ORDINATION WITH LEGAL SERVICE AUTHORITIES

In the State of Goa there are two Law Colleges i.e Vasudevrao Mahadevrao Salgaocar College of Law, Miramar, Panaji and Ramnath Kare Law College, Margao.

V. M. Salgaocar College of Law in collaboration with District Legal Services Authorities conducted several legal literacy camps in all the talukas of North Goa. Each Legal Aid Cell conducted at least one legal literacy camp in their

area and in total around 40 legal literacy camps were conducted in collaboration with District Legal Service Authorities. Ramanth Kare Law College, too has conducted literacy camps.

V.M. Salgaocar College of Law started Legal Aid Cells in various villages of Goa, wherein batches of students have to sit in the respective cell every Saturday or Sunday to assist and advise the villagers in legal matters. V. M. Salgaocar College of Law has altogether forty Legal Aid Cells besides the Cyber Legal Aid Cell in the State of Goa. Most of the Legal Aid Cells are situated in village panchayats, and in schools. List of Legal Aid Cells of V. M. Salgaocar College of Law are appended as Annexure No.VII

a) Constitution of Legal Aid Cells

In each legal Aid cell 15 to 20 students, who belong to that village or nearby villages, will run the cell. Preferably, one senior student will be in charge of the cell. For each cell, one Professor of the Law College will be in –charge to monitor the activities of the cell. Every Monday the students in charge of the Legal Aid Cells have to show the report and attendance of the Cell to the concerned Professor in Charge.

Among the Professors every year, one or two professors are appointed as the Overall in charge of the Legal Aid Cells. In addition to this, each Professor will be in charge of four legal aid cells. These Professors have to monitor the Legal Aid Cells' activities. They attend the major activities of the cell i.e., where the students - cell members invite the villagers and local Advocates or government officers or police officers to educate the villagers with regard to

laws. As part of the activity, the members also organise an open forum by inviting the public to ask questions to the concerned guests.

Functions of Legal Aid Cells

Legal services Authorities with the co-ordination of these legal aid cells conducted several activities in the villages.

Conducting seminars on a particular topic is one among the activities.⁶⁹ The topics for the seminars include Right to Information Act, Consumer Protection Act, and National Rural Employment Guarantee Scheme etc. The following are some of the other activities conducted by the legal aid cells:

- i. Street plays to create general awareness about laws among the public
- ii. Conducting workshops for villagers on different issues relevant to them
- iii. Advise people in legal matters⁷⁰
- iv. Filling the forms for the senior citizenship cards and ration cards
- v. Drafting of Affidavit for application for birth certificate
- vi. Lectures in schools about basic laws like Consumer Protection laws or Fundamental Rights etc
- vii. Distribution of literature in vernacular language on legal aspects to create awareness in the villages

⁶⁹ The Principal and Professors, at the Faculty Meeting, decide one topic as a theme for the legal aid cells' activities for that particular year.

⁷⁰ Students themselves give the solutions or after consulting the Professors or concerned government officials, they advise the people.

b) Law Students Alliance on RTI

Students of V. M. Salgaocar College of Law started Law Students Alliance.

The alliance internalised an aspiration towards an ultimate goal of facilitating a just society. The alliance was launched on 15th January, 2007.

Their endeavour in launching this alliance was to carry the message of Right to Information to the grass root level of the society.

The programs included seminars at educational institutions, street plays in vernacular languages. They have conducted over 100 programmes on Right to Information in a short span of time.

c) Visits to Judicial Lock up and Jails

District Legal Service Authorities in association with the students and the faculty of the Law Colleges conducted jail visits to assist the inmates of jail and judicial lock up. Accordingly 12 students of V.M. Salgaocar College of Law with three faculty members visited various jails in the State of Goa.

The purpose behind these visits was to provide necessary legal assistance to the inmates. The team visited Panjim and Mapusa judicial lock-up and central jail at Fort Aguada. The team conducted a detailed survey regarding the number of convicts and term of imprisonment and the facilities provided to the inmates. The first visit at Fort Aguada focused on remission of sentence to the inmates undergoing life imprisonment. The team members interviewed all the life convicts on the nature of offence committed, duration of their detention, and any grievances they have. The information collected from the inmates and

particulars of the inmates was verified with the personal files of the inmates kept in the office of the Aguada Jail.

Accordingly the team found six suitable cases eligible to avail the benefit under Sec.433A of Cr. P. C and a report was submitted to the District and Session Judge. Further the team members also made enquiries about the right to counsel the inmates.

During the visit to Panaji and Mapusa judicial lockup the team found that in Panaji Judicial lock up, out of 36 under trial prisoners, nine required legal representation and legal assistance at state expense. The team also found that there are several discrepancies regarding the maintenance of the records of the inmates. Therefore, to make a concrete effort to provide legal assistance, it recommended holding a permanent legal aid cell in the Aguada jail and Panaji, on every second and fourth Saturday from 2p.m to 4p.m.

Some of the flaws in Lock up were,

- h. In Panaji Judicial lock up, the inmates are more in number than its actual capacity. Actual capacity is 24 but inmates are 36.
- i. In the records of judicial lock up, the date of birth column is not shown. Because of this defect it is not possible to find out whether accused are entitled to the benefit of Juvenile Justice Board.
- j. Date of arrest is not available in lock up records, which means the file which the police sent with the accused does not show date of arrest.

k. No proper ventilation for staff room

l. No library for staff

On the whole, the experience the students underwent in the jail visit was an eye opener. They got the firsthand experience of administration of criminal justice. As the legal aid authorities find paucity of funds, law students and the faculty provides an option for providing meaningful legal aid to the inmates. The collaboration not only eases the financial problems but also creates a mutual benefit to the inmates and the students. Students get experience in criminal trials, at the same time several problems of the inmates could be solved with the minimum effort from the legal service authorities.

d) Micro Legal Literacy

District Legal Service Authority, North Goa in association with Legal Aid Cells of V. M. Salgaocar College of Law conducted Micro Legal Literacy programmes in all the Legal Aid Cells during 2009-2010. The following table shows the details of the programme.

Table 17

Sr. No	Legal Aid Cell	Date	Place	Topic
1	Assnora	25 th July	Rashtroli Temple Sirsim, Tivim	Women's Rights
2.	Volpoi	25 th July	Government High School Honda Panchayat	Protection of Rights of Women Domestic Voilence
3.	Duler	26 th July	Guirim Panchayat	Property Rights -RTI
4.	Succorro	15 th Aug	Succorro Panchayat	Women's Property Rights
5.	Marcela	8 th Aug	Ganapati Temple, Khandola	Women's Property Rights
6.	Mala	5 th Sep.	Mahalaxmi Temple Panaji	Rigt to Information
7.	Bastora	6 th Sep.	Bastora Panchayat	Women's Property Rights
8.	Goa Velha	12 th Sep.	Goa Velha Hall	Child Rights
9.	Sangolda	19 th Sep.	Panchayat	Women's Property Rights
10	Moira	20 th Sep.	Panchayat Hall	Property Rights
11	Taleigao Durgawadi	21 st Nov.	Shetrapal Temple	RTI
12	Guirim	22 nd Nov.	Freedom Foundation	M.V. Act and Government Welfare Schemes
13	Santacruz	28 th Nov.	Holy Cross Church Hall	Government welfare Schemes
14	Priol	29 th Nov.	Madkairi Panchayat Hall	Mundkar And Agricultural Tenancy Act, Government Schemes.

15	Porvorim Lions	5 th Dec.	Village Library Hall Penha De Frunca Panchayat, Alto Porvor.	RTI
16.	Bandora	13 th Dec.	Panchayat	Women's rights and Government Welfare Schemes
17.	Merces	20 th Dec.	Our Lady of Merces	Mundkar Act and Agricultural Tenancy Act
18.	Old Goa	16 th Jan.	Panchayat	RTI
19	Pernem	17 th Jan.	Mopa Panchayat	Mundkar Rights
20	Chorao	23 rd Jan.	Mayem Panchayat	RTI
21	Siolim	30 th Jan.	Sodem Panchayat	RTI
22	Mandrem	31 st Jan.	Arambal Panchayat	Mundkar and Tenancy Rights
23.	Verem	6 th Feb	Unity hall Verem	Consumer rights
24	Shiroda	21 st Feb	Panchayat	Women's Rights and NREGA
25	Sanquelim	20 th Feb.	Shanta Durga Temple	RTI, Domestic Voilence and NREGA
26.	Bicholim	7 th Feb.	Piligao Village Panchayat	Government Welfare Schemes
27.	Britona	14 th Feb.	Dadeshwar Devasthan Hall	Women's Rights and NREGA

Source: Legal Aid Society, V. M. Salgaocar College of Law, Miramar, Panjim.

The concept of legal literacy in legal aid schemes plays a vital role to achieve the object of Legal Services Authorities Act. In this respect since 1996 Legal Services Authorities and V. M. Salgaocar College of Law independently

established legal aid cells and also are functioning independently. The researcher being nominated as a member of State Legal Services Authorities, a proposal was made to start the functioning of Legal Aid Cells in association with Legal Services Authorities. This idea was materialised with the immediate willingness of the Chairman, District Legal Services Authorities as well as the Principal of Law College. In every programme two advocates from Legal Services Authorities, one faculty member from College who is in charge of the cell and members of legal aid cell (college students) attended the programme. The students (organisers) being residents of the same locality, public response was also good and eventually majority of the public were benefited by these camps.

The present researcher observed that the judiciary and the Bar held a positive attitude to continue these activities in a similar way in future also.

8.11 EMPIRICAL INVESTIGATION INTO THE STATUS OF LEGAL AID IN THE STATE OF GOA

The Legal aid to the poor is well recognized in many countries as an important constitutional right to ensure a fair trial. The concept of social justice guides the administration of justice in every State. The prevalence of various laws, statutory rules and regulations, makes legal assistance mandatory. As the poor and, poverty-stricken do not have access to affordable legal assistance the constitutional goal of social justice requires the State to fill the void. Further

denial of such assistance may violate principles of natural justice or human rights.

Therefore this part of the thesis discusses on how such assistance was given in the State of Goa. For the purpose of an in-depth research, data was collected from North Goa District and Sessions Court, subordinate courts including Judicial Magistrate Courts/Civil Judge Junior Division at Panaji, Mapusa, Ponda and also South Goa District and Sessions Court, its subordinate courts. Further, the researcher interviewed Judicial officers and Advocates who are directly involved in providing legal assistance. A questionnaire was prepared to conduct the interview. Eighty eight advocates were selected at random from North and South Goa.

Out of the sample studied, 19% comprises Senior and Junior Judicial officers, 74% of Advocates involved in legal aid, 4% of the sample covers the beneficiaries of the legal aid and the remainder 3% of the sample comprises law teachers who are involved in legal aid activities. All of them gave positive response about the concept of Legal Aid in the State of Goa. However 30% out of the above were of the unanimous opinion that functioning of the Legal Services Authorities could considerably improve if there is an independent system for monitoring the Legal Services Authorities.

8.11.1 Opinion Survey of Advocates by Questionnaire method in State of Goa⁷¹

Table 18

Total No	Public Prosecutors	Legal Aid Panel Advocates	Advocates having experience up to 10years	Advocates with 10 -20 Years Experience	Advocates having experience above 20 years
88	3	15	53	9	8

The researcher has collected information from Advocates of Panjim, Margao, Ponda, Mapusa and Vasco. Public Prosecutors, Assistant Public Prosecutors, Legal Aid Panel Advocates and other Advocates are among the sample group. These advocates have wide range of experience. This sample therefore, represents opinion of all the advocates in the State of Goa. The information collected through the questionnaire was tabulated and summarized. For the benefit of clarity and brevity each type of question was shown separately with the help of tables and charts.

1. Only Senior Advocates are appointing in Legal Aid Panel

⁷¹ See questionnaire in Annexure II

Table 19

Persons	Number	Percentage
Interviewed	88	100 %
'YES''	28	32%
'NO''	43	49%
Not Answered *	17	19%

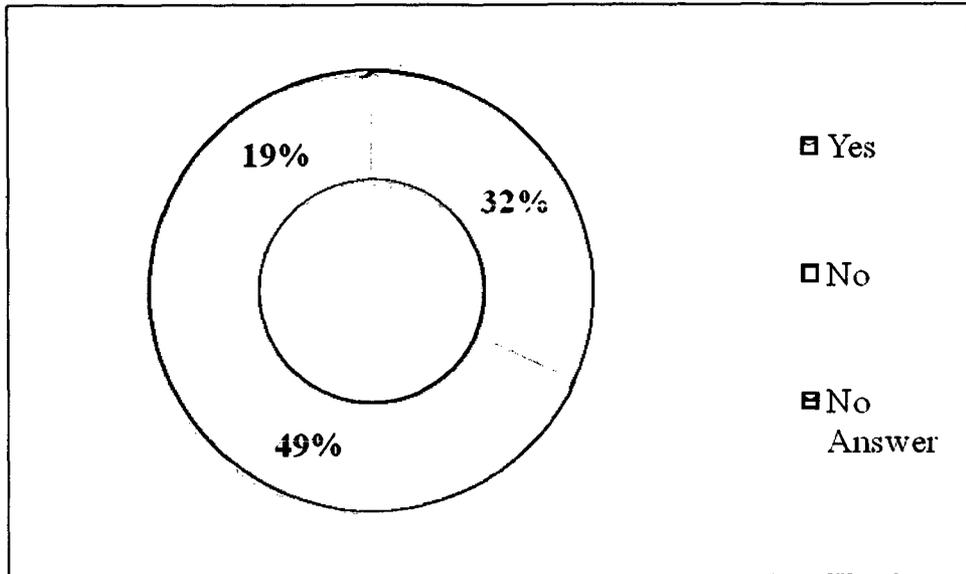
Some advocates' perception was gathered as to whether judges are nominating only Senior Advocates as members of Legal Aid panel or are they giving importance to budding advocates as well.

It can be observed from the above table that almost 50% gave response to Judges, and while appointing legal aid councils, are not giving preference to senior advocates alone. They have been giving importance to those advocates who are interested in handling legal aid cases. When seniors are not interested to take up legal aid cases for pecuniary reason as lower rate of payments and paucity of time owing to their own busy schedule etc. These Judges appointed junior advocates too. When 32% of advocates responded, judges preferred only senior advocates.

*19% Advocates did not tick yes/ no but instead made their own comments.

The details of the table are shown in the form of pie chart (Fig.No.9).

Fig No. 9



2. Charging of additional fees from the accused by legal aid advocates.

Table 20

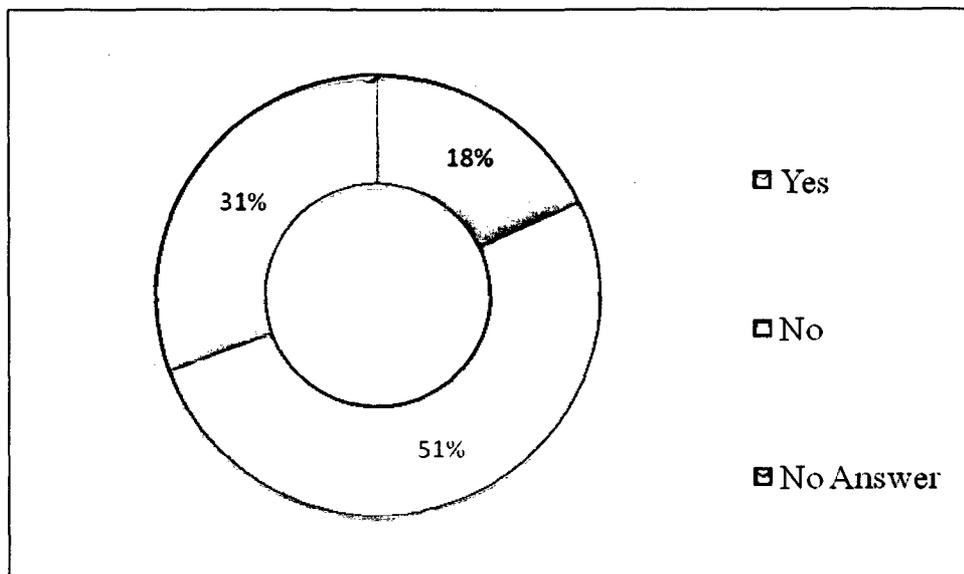
Persons	Number	Percentage
Interviewed	88	100 %
'YES''	16	18%
'NO''	45	51%
Not Answered	27	31%

The information received from 18% of the counsels shows that Legal Aid counsels are receiving additional fees from the accused. Though 51% replied in the negative, it has to be observed that 31% of the advocates are not interested to comment. When the researcher enquired the reason for receiving the additional fees, some of the advocates replied that it might be because of less fee while the purpose of collection of additional fees is only for stationery charges.

But in fact it was observed that Advocates could claim stationery charges from the authorities. Of course intially advocates have to bear the expenses till the expenditure is reimbursed.

The details of the table are shown in the form of pie chart (Fig.No.10).

Fig No. 10



3. Procedural delay is one of the reasons for long period of detention.

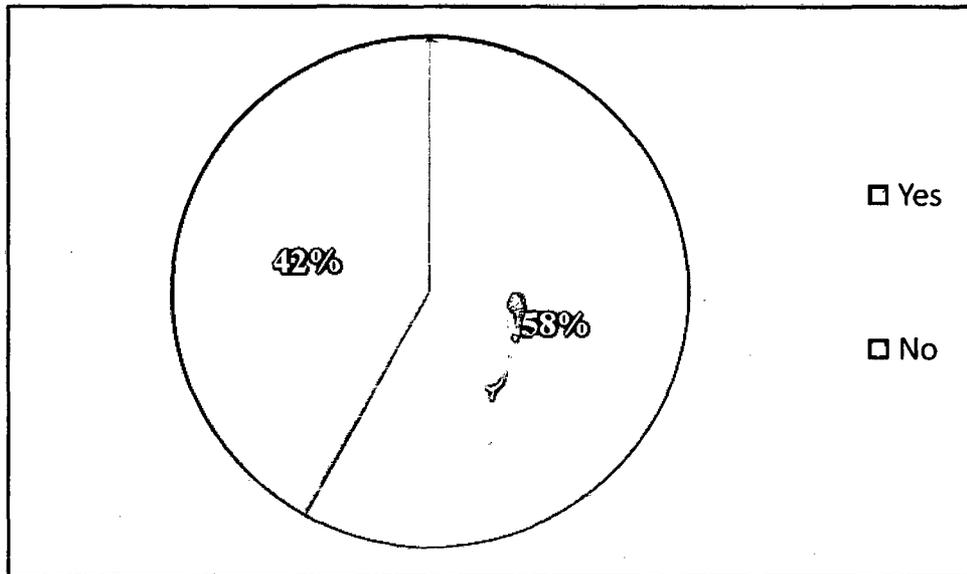
Table 21

Persons	Number	Percentage
Interviewed	88	100 %
'YES'	51	58%
'NO'	37	42%

The above table reveals that 58% of those interviewed are of the opinion that procedure for appointing an advocate is also one of the reasons for long period of detention.

But 42% of the advocates opined that procedure is simple. In every trial court one advocate was appointed for accused for hearing on remand. Hence the question of detention for long period due to procedural delay does not arise. The details of the table are shown in the form of pie chart (Fig.No.11).

Fig No. 11



4. Judges appointing advocates even from outside legal aid panel

Table 22

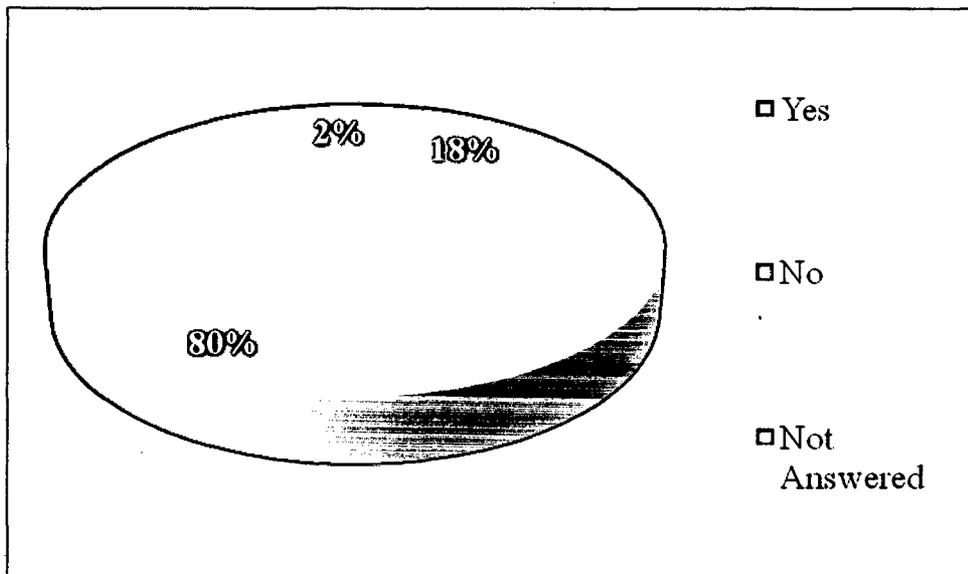
Persons	Number	Percentage
Interviewed	88	100 %
'YES"	16	18%
'NO"	70	80%
Not Answered	2	2%

As it can be seen from table 22 only 18% gave positive response. When 80% of advocates responded, judges appointed only from the panel. It is observed that when Legal Aid panel system was introduced, the question of appointing advocates from outside the panel did not arise unless it was a serious case and when a senior advocate was required; in that event the judge may request any senior advocate though not from the panel to take up the case. However by observing the above table, one can infer that such instances are very few and far between.

The researcher observed from the interview of a judicial officer that only in the High Courts, Judges appoint *Amicus Curie* as they have constitutional protection, they being constitutional bodies.

The details of the table are shown in the form of pie chart (Fig.No.12).

Fig No. 12



5. The persons who plays a crucial role in appointing the advocates from the panel are

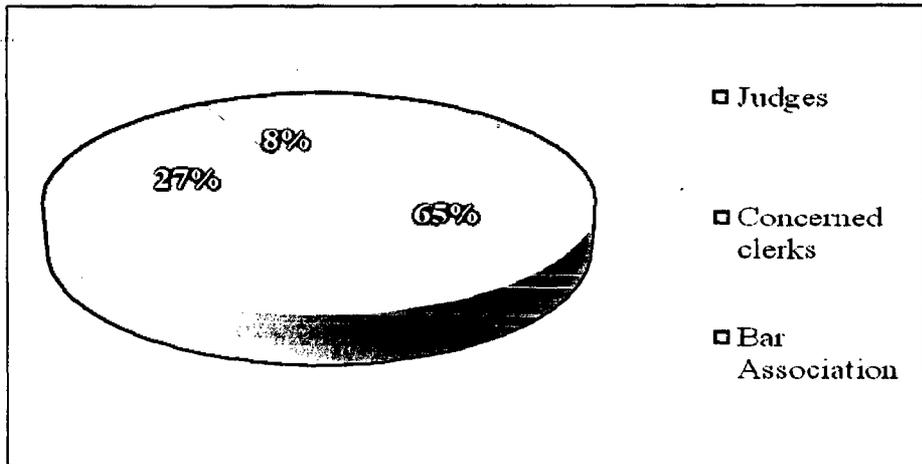
Table 23

Persons	Number	Percentage
Interviewed	88	100 %
JUDGES	57	65 %
CONCERNED CLERKS	24	27 %
BAR ASSOCIATION	7	8 %

From Table 23 it can be seen that 65% response, says that judges alone select the advocate. This reflects the pro active role of judiciary towards legal aid system. But by observing the table above, it can also be seen that 27% found that the concerned clerks, are responsible for selecting the advocates. It cannot, therefore be ruled out that concerned clerks of legal services authority play a vital role in allotting the case to a panel advocate. It is interesting to see that 8% responded that Bar Association also plays some role in the allotment of a case to legal aid counsel.

The details of the table are shown in the form of pie chart (Fig.No.13).

Fig No. 13



6. Legal Aid advocates instead of appearing by themselves entrusting the case to their juniors

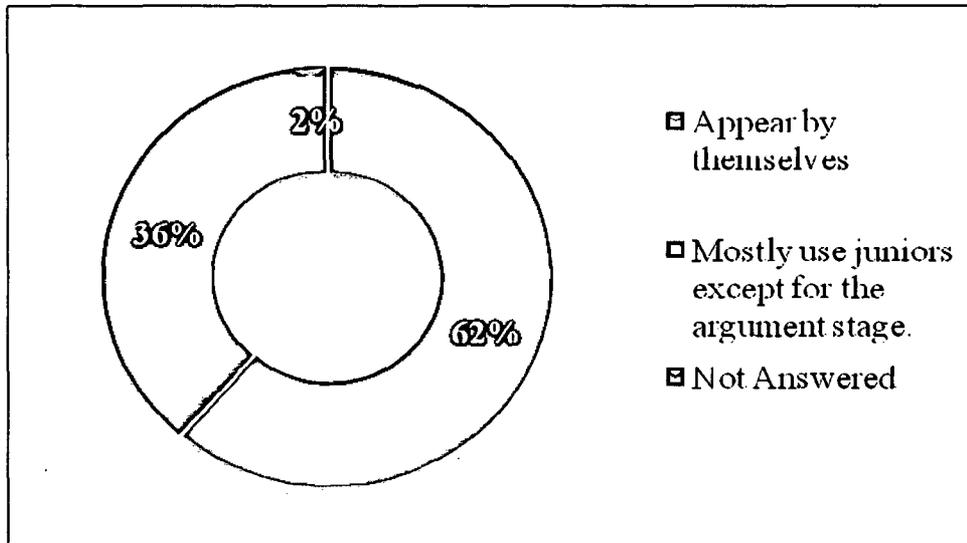
Table 24

Persons	Number	Percentage
Interviewed	88	100 %
Who said "Appear themselves"	54	62 %
Who said "Mostly use juniors except for argument stage"	32	36 %
Not answered	2	2 %

Based on Table 24, the following inference may be drawn. According to the above table it can be seen that 62% of the lawyers consider that Legal Aid advocates themselves appear for cases. But not a small ratio i.e 36% of

advocates replied that Legal Aid advocates delegating the work of legal aid cases to their juniors only. The details of the table are shown in the form of pie chart (Fig.No.14).

Fig No. 14



7. Conviction rate is more in Legal Aid cases

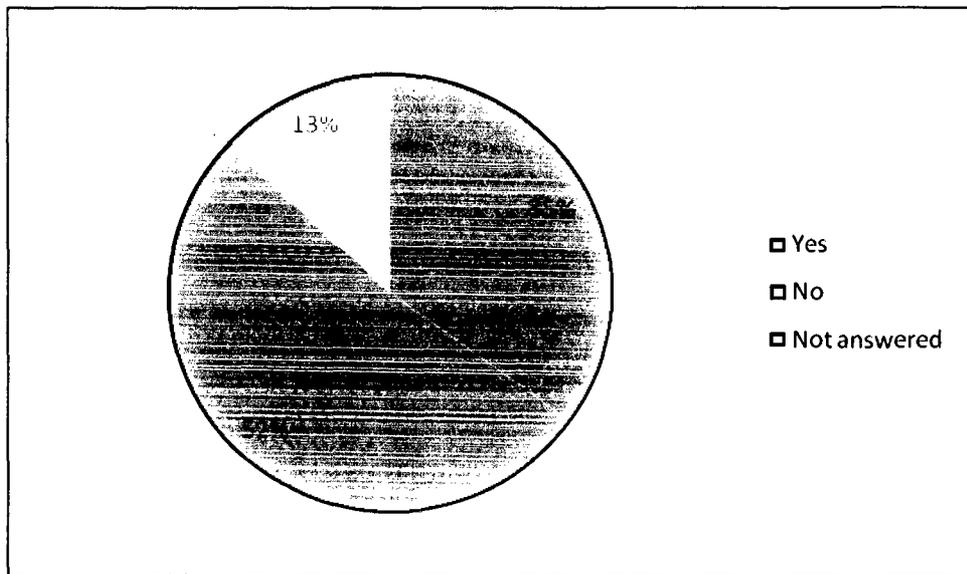
Table 25

Persons	Number	Percentage
Interviewed	88	100 %
“YES”	31	35 %
“NO”	46	52 %
Not answered	12	13 %

Table 25 reveals that 52% of the advocates responded that, once an advocate accepts the legal aid case, he treats the case on par with his private case.

But from the response of the 35%, it cannot be not ruled out that conviction rate is more in legal aid cases. This researcher observed from personal interviews with Senior Advocates and Judicial officers that fees being meagre, advocates often absent themselves at the time of hearing, also they do not well prepare for the cases and show no sincerity in dealing with the case. There have been several instances where the clients request the court to change the advocate, which is evidence enough that this 35% cannot be ignored. The details of the table are shown in the form of column chart (Fig.No.15).

Fig No. 15



8. Poor interest shown by advocate is the reason for more conviction in legal aid cases.

Table 26

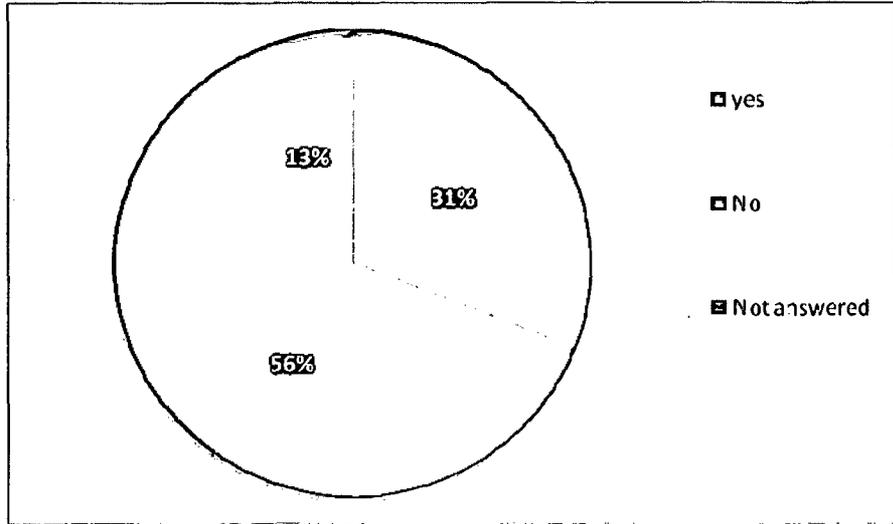
Persons	Number	Percentage
Interviewed	88	100 %
“YES”	26	31 %
“NO”	47	56 %
Not answered	11	13 %

Table 26 shows that 56% of those interviewed opined that, conviction of the accused is not because of the poor interest shown by the advocates, but 31% advocates responded affirmatively saying that advocates are not paying interest in legal aid cases.

The researcher observed during his visits to jail/judicial lock-ups that most of the accused did not even know the names of their advocates and this shows that it is some corroborative evidence for the response of 31%.

The details of the table are shown in the form of a pie chart (Fig.No.16).

Fig No. 16



9. Services of the legal aid advocates are satisfactory to accused.

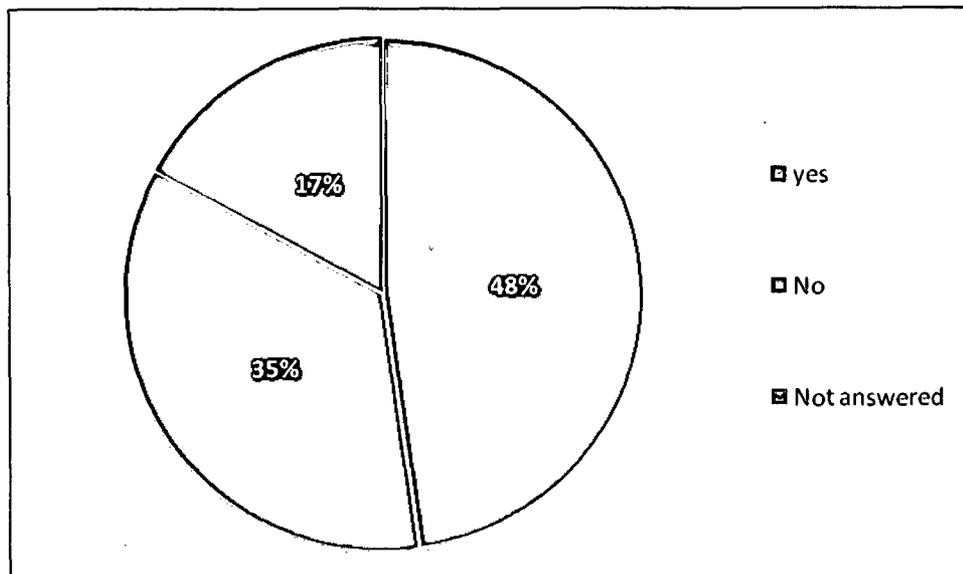
Table 27

Persons	Number	Percentage
Interviewed	88	100 %
“YES”	42	48 %
“NO”	31	35 %
Not answered	15	17 %

The analysis of Table 27 above reflects that the replies are both positive (48%) and negative (35%). And 17% did not show interest to answer. It shows that legal aid services are not satisfactory. It can be observed that legal aid representation is not adequate or on par with the adversary advocate.

The details of the table are shown in the form of pie chart (Fig.No.17).

Fig No. 17



10. The fees prescribed for legal aid advocate are meagre/sufficient.

Table 28

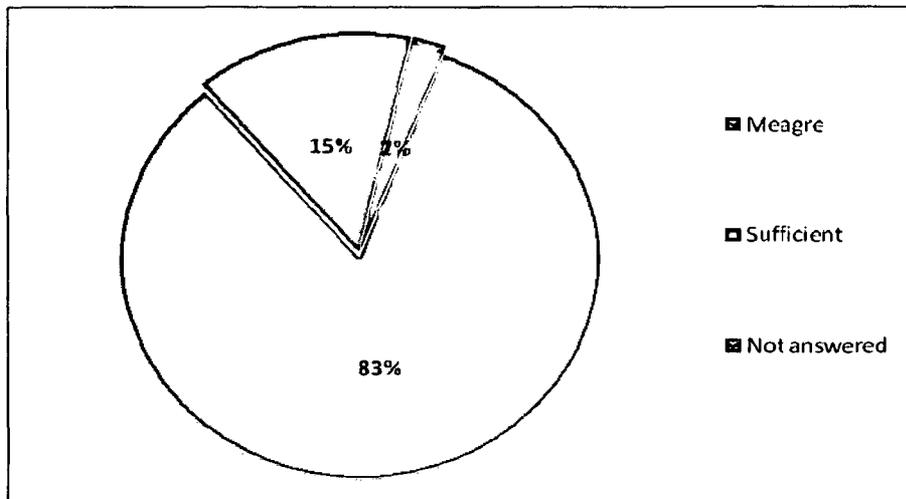
Persons	Number	Percentage
Interviewed	88	100 %
“Meagre”	73	83 %
“Sufficient”	13	15 %
Not answered	2	2 %

Based on table 28 the following observation may be made. 83% of the Advocates fraternity asserted that prescribed fee is meagre. So the implication would be that unless fee is enhanced senior advocates cannot come forward to be a panel member.

But from the response of 15% advocates, it can be observed that every advocate has a social responsibility also. In that respect question of sufficient fee does not arise.

The details of the table are shown in the form of a pie chart (Fig.No.18).

Fig No. 18



11. Final year LL.B students can be permitted to appear in legal aid cases.

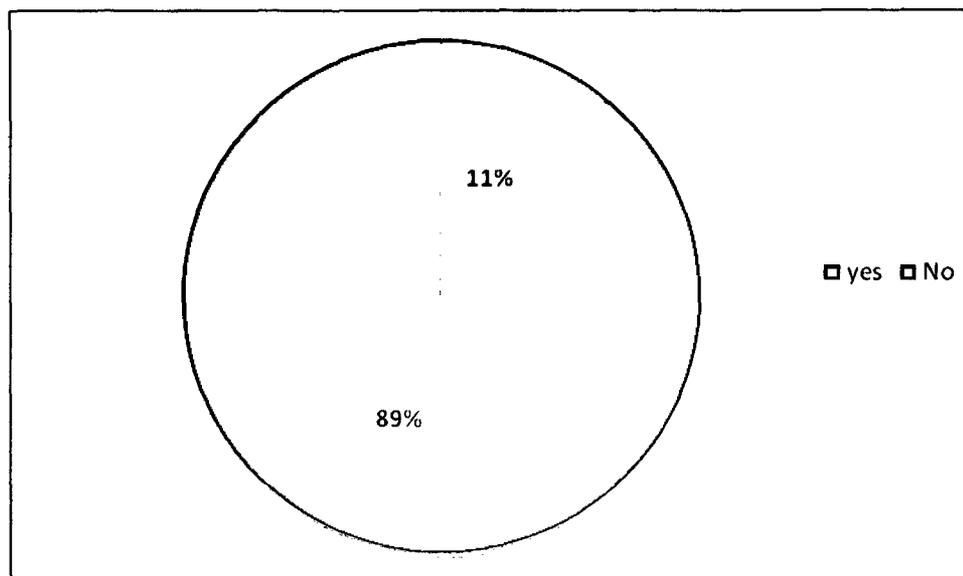
Table 29

Persons	Number	Percentage
Interviewed	88	100 %
Who said "YES"	10	11 %
Who said "NO"	78	89 %

It is evident from the Table 29 that the majority of advocates i.e. 89% are not in favour of permitting final year students of law to handle the legal aid cases. Only 11% are in favour of the proposal which shows that majority of advocates

are not in favour of the proposal. The details of the table are shown in the form of a pie chart (Fig.No.19).

Fig No. 19



8.11.2 Suggestions obtained from the Lawyer Community through Questionnaire-

The following are the suggestions made by the advocates for the improvement of Legal Aid Services.

a) About Legal Aid Counsel Fees

- i. State sponsored Free Legal Aid to the deserving persons is in fact a very good service provided by Government. But the fee offered to the Advocates for the legal services rendered is low. Therefore, some of the advocates are accepting such cases merely for the sake of getting experience with a case at hand.

- ii. It is desirable that the Advocates have to be appointed by paying sufficient salary.
- iii. In addition to better fees, travel assistance and jail visit expenses have also to be paid.
- iv. Presently the prescribed fee for Session's case is Rs.800/- for the entire trial, it should be enhanced to Rs.2000/-
- v. The payment for the Advocates on the panel should be on hearing-basis and not at fixed rate/amount.

b) About Senior Advocates as Legal Aid Counsel

- i) Under Legal Aid Scheme, an experienced lawyer should be provided to the accused.
- ii) Advocates should be appointed based on their experience
- iii) Experienced and senior Advocates should be appointed to handle cases that are important involving serious offences.
- iv) Juniors in the panel should be allowed to appear /enlisted only if they have some background in criminal law.
- v) Advocate appointed, should have completed at least 5 years of practice.
- vi) Advocates who have interest in criminal matters should be appointed.
- vii) Committee shall suggest the names of dynamic Advocates who are willing to take it as a challenge.

viii) Advocate need not be senior, but should be an interested person in taking the case of the poor class of the society.

ix) Only advocates with proven financial means and dedication should be entrusted with legal aid cases.

x) The system is to be revamped, including better involvement of senior lawyers.

c) Role of Judges/Legal Services Authorities

i) Every Judge on completion of a matter/case shall record his comments about the efforts and performance of the legal aid advocate in a separate circular, which will form part of the record of the main register of the Legal Service Authorities.

ii) The process for appointing legal aid counsels to litigants should be hastened.

iii) The accused, when arrested and brought before the Court, should be given a choice as to whether he would like to avail the services of free legal aid or not. If he opts for free legal aid, he should be provided with the services of an advocate from the legal aid panel on the same day who shall represent him in the matter.

iv) Mostly, Judges appoint Senior Advocates, who have many other cases and therefore they are not able to give due notice to the case. Hence junior Advocates should be appointed who can give proper attention and this will also facilitate gaining of good experience by such juniors.

v) Judiciary must play more significant role in appointing the legal aid lawyers.

vi) Performance of the Panel Advocates should be supervised. If a lawyer's service is not found satisfactory in the matter of three accused consecutively, the name of the lawyer should be deleted there from.

d) Role of Advocates

- i. The Advocates have to prepare the case to afford meaningful defence to the client, and the Client should not be put to any suffering, whatsoever.
- ii. It should be made compulsory for an Advocate to take at least one case of legal aid service in a year.
- iii. There should be substantial number of Advocates in the panel so that the Advocates are not burdened with too many cases.

e) About Legal Services Authorities in the State of Goa

- i) Legal aid under Legal Service Authorities in the State of Goa is working well.
- ii) Awareness is to be created at ground level.
- iii) Appropriate infrastructure should be provided to the legal aid lawyers by way of an appropriate full-fledged office with computers, stationery, counselling chamber etc.

8.11.3 Opinion Survey of Judicial Officers by Questionnaire Method in the State of Goa⁷²

To find out the opinion of the Judicial Officers in the State of Goa the researcher has used a questionnaire method. In this respect the researcher interviewed 23 judicial officers from the State of Goa. The List of Judicial Officers is put in the Annexure no III .The following is the categorization of the Advocates who answered the questionnaire.

Table 30

High Court Judge and Chairman of State Legal Service Authority	1
Judicial officers in Panaji	7
Judicial officers in Margao	4
Judicial officers in Ponda	3
Judicial officers in Mapusa	8

The result of the interview is summarized below

1. *Legal Aid advocates are competent enough to handle complex cases.*

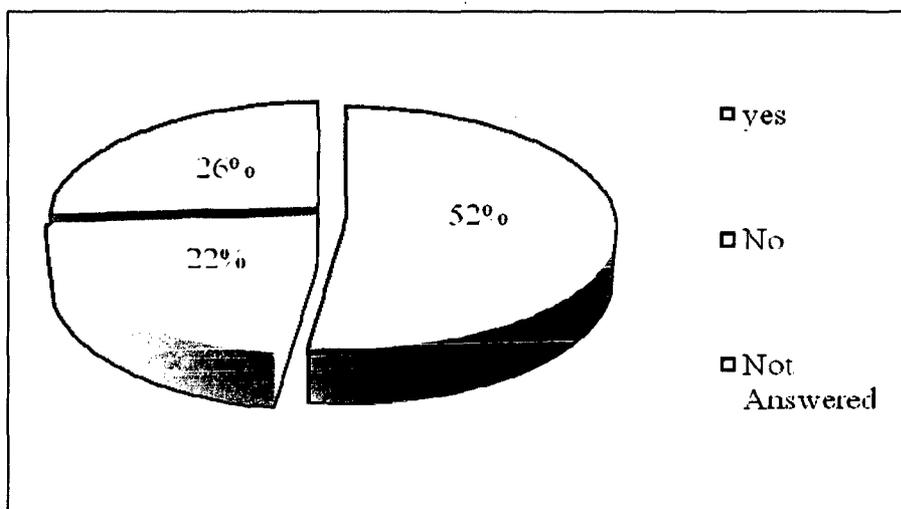
Table 31

Persons	Number	Percentage
Interviewed	23	100 %
“YES”	12	52%
“NO”	5	22 %
Not answered	6	26 %

⁷² See Annexure III for Questionnaire

From Table 31 it is evident that 52% admitted the competency of legal aid advocates in handling complex cases. But 22% of judicial members expressed their dissatisfaction towards the competency of the legal aid advocates. It is strange to see that 26% of Judicial Officers did not respond to this question. It can be observed that it may not be the competency rather the interest which advocates pay to the legal aid case that makes a difference. The details of the table are shown in the form of a pie chart (Fig.No.20).

Fig No. 20



2. *Senior Advocates are neglecting legal aid cases being they are occupied with their other cases.*

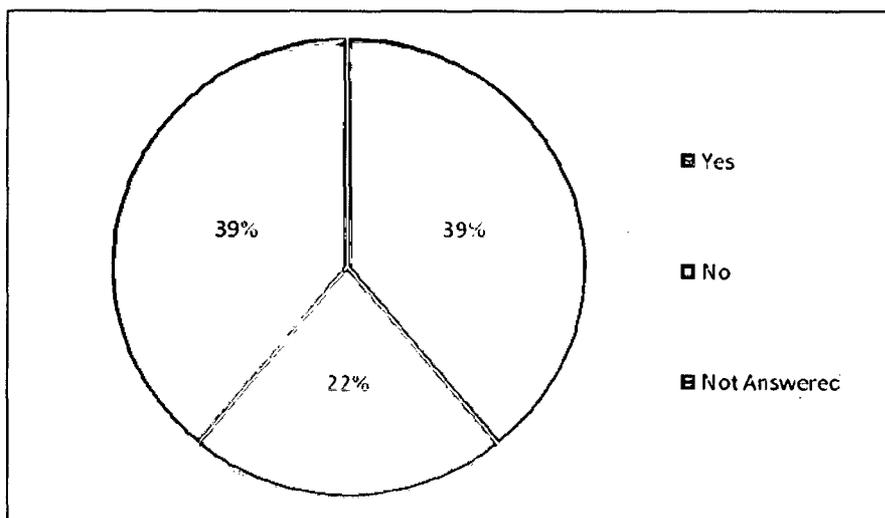
Table 32

Persons	Number	Percentage
Interviewed	23	100 %
“YES”	9	39 %
“NO”	5	22 %
Not answered	9	39 %

It can be observed from Table 32 that 39% of the judiciary accepted and admitted that Senior Advocates are neglecting or showing stepmother treatment to the legal aid cases. Similarly we have to observe 39% judicial officers did not answer the question, which shows that almost 78% of judiciary is not satisfied with the manner in which the Senior Advocates are dealing with legal aid cases. But by observing 22% response of the judicial officers one can assume that some of the seniors are dealing with legal aid cases sincerely.

The details in the table are shown in the form of pie chart (Fig.No.21).

Fig No. 21



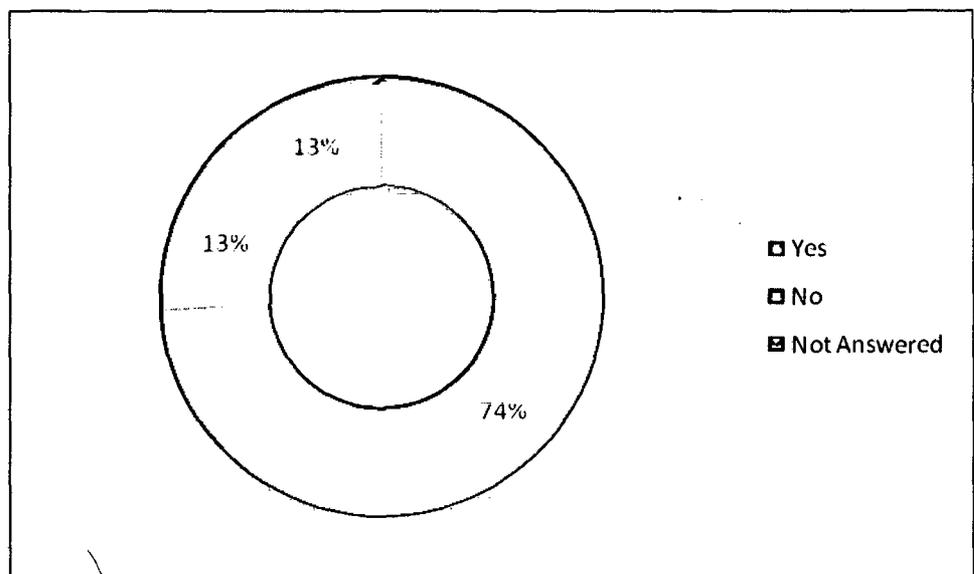
3. *Remuneration prescribed for engaging lawyers on legal aid panel grossly insufficient.*

Table 33

Persons	Number	Percentage
Interviewed	23	100 %
“YES”	17	74 %
“NO”	3	13 %
Not answered	3	13 %

As it can be seen from Table 33 that 74% of the judicial officers replied in a positive way by asserting that remuneration is meagre. Only 13% of judicial officers replied that remuneration is not grossly insufficient. The researcher observed that every advocate has a social responsibility to handle at least some cases during their profession. 13% of judicial officers did not respond for this answer. The details of the table are shown in the form of a pie chart (Fig.No.22).

Fig No. 22



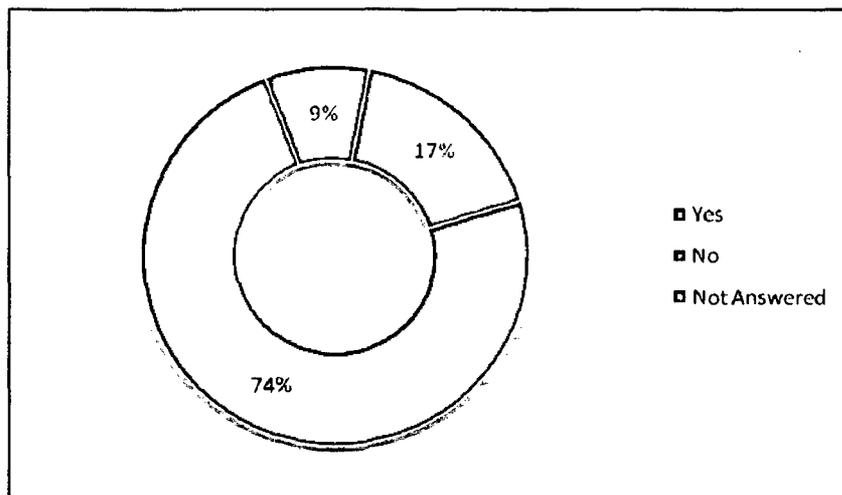
4. *The fee structure has to be changed.*

Table 34

Persons	Number	Percentage
Interviewed	23	100 %
“YES”	17	74 %
“NO”	2	9 %
Not answered	4	17 %

It can be seen from Table 34 that majority part of the judicial officers replied in the positive way this being a question in continuation of the previous question. So, the response of the judiciary i.e. 74% is similar to the answer to the prior question. The percentage of judicial officers who did not answer this question is 17%, which has increased considerably. Only 9% replied in the negative about change in fee structure. The details of the table are shown in the form of a pie chart (Fig.No.23).

Fig No. 23



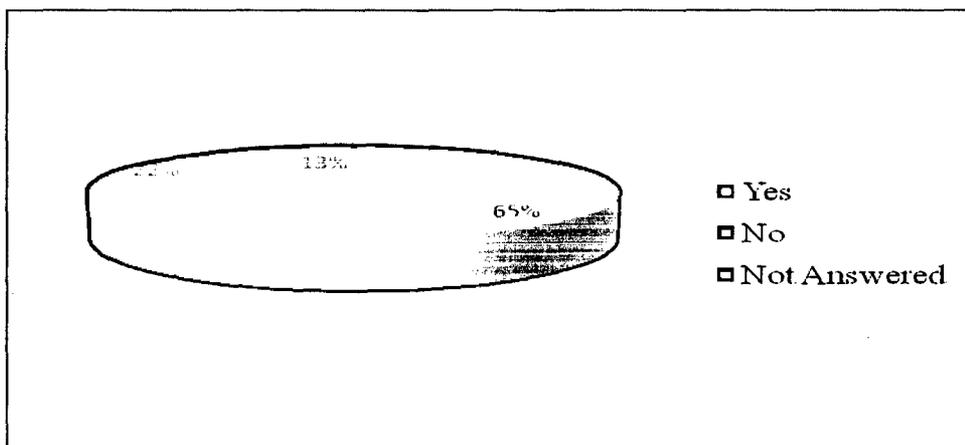
5. *Advocates who completed two years experience can also be appointed in the legal aid panel.*

Table 35

Persons	Number	Percentage
Interviewed	23	100 %
“YES”	15	65 %
“NO”	5	22 %
Not answered	3	13 %

It is clearly evident from Table 35 that 65% of the judicial officers accepted the inclusion of junior advocates in the legal aid panel, which shows that experience at the Bar is not the only criteria; rather sincerity, integrity and hard work are also equally important for the profession. 22% of the judicial officers replied in the negative. It might be having regard to serious cases which requires the expertise of more experienced lawyers. Definitely we have to accept these suggestions as far as sessions cases are concerned. The details of the table are shown in the form of pie chart (Fig.No.24).

Fig No. 24



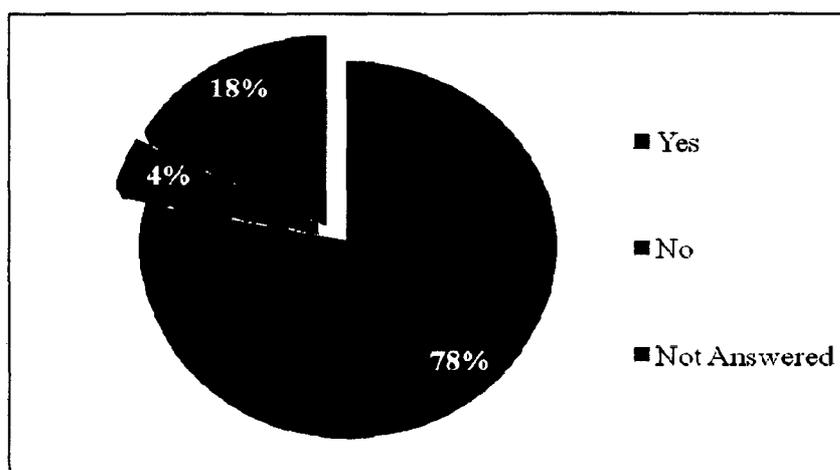
6. Free legal aid to the accused person really help the accused person

Table 36

Persons	Number	Percentage
Interviewed	23	100 %
Who said "YES"	18	78 %
Who said "NO"	1	4 %
Not answered	4	18 %

Table 36 above reflects that 78% of the judicial officer's (almost majority) seems to be satisfied about the impact of legal aid in helping the needy people. But it is interesting to see that 4% judicial officers are not satisfied with the effectiveness of the legal aid system in securing justice to the accused. The reasons for this can be inferred in the answers given by judicial officers and senior advocates in the interview personally undertaken by the researcher. 18% did not respond to this question. The details of the table are shown in the form of pie chart (Fig.No.25).

Fig No. 25



8.11.4 Suggestions derived from the Questionnaire

The following are the suggestions made by the Judicial Officers with respect to improvements in the Legal Aid Services.

a) Performance of Senior Advocates in Legal Aid Case

i) Advocates who have completed 5 years of practice are appointed before the Court of Sessions and those who have completed 10 years, are appointed before the High Court. Experience does not show that the Senior Advocates so appointed neglect such cases, though the possibility cannot be ruled out.

ii) If Senior Advocates are appointed, they being busy with their own matters are bound to neglect the legal aid cases.

b) Changes required in the legal aid scheme

i) There are times when Advocates with even 2 -3 years experience are competent to handle small situations like bails etc in less serious offences. The inclusion of such persons in the panel can be considered.

ii) This provision for Legal Aid is many times misused. Such misuse has to be prevented. Each advocate enrolled with the Bar Council shall be allotted a legal aid case so that legal aid cases do not remain the responsibility and domain of a few advocates.

iii) The appointment of Advocates who possess sincerity, integrity and honesty, alone will ensure the fulfilment of the purpose and object of free legal aid.

- iv) Few senior as well as experienced Advocates may be inducted in the panel of advocates for free legal aid cases, who can guide and direct the junior Advocates.
- v) Free Legal Aid should be provided to all accused in custody at the time of bail and remand.
- vi) The lawyer appointed in the legal aid panel should have hearty and sincere inclination to serve the society
- vii) The Legal Aid Board should choose those lawyers who show concern for the poor, respect for human right and offers his/her services for a social cause.
- viii) There are very few advocates in the panel because of which it is very difficult to proceed with all such matters. Hence panel is required to be renewed and names of maximum capable advocates should be enrolled in the same.

c) About Legal Aid Counsel fee

- i) State should pay the Advocates adequately so that they can take pains to handle these matters.
- ii) It is observed that sometimes the Advocate under free legal aid does not put up his appearance regularly. If the fee is increased perhaps, they will be more punctual.
- iii) Also by increasing the incentive more lawyers may come forward to defend the accused.

iv) Considering the cost involved including stationary, travelling etc. the present fee is grossly insufficient.

d) Should junior Advocates be appointed?

i) A minimum of at least 3 years experience is required for an Advocate to be appointed in the Legal Aid Panel

ii) However the competency of the Advocates should be given more credit than merely years of practice, while making appointments to the Legal Aid Panel.

iii) For handling complex cases involving life and liberty of a person, lawyers having more experience should be appointed.

e) Does the system of Legal Aid really help the accused?

i) It helps largely

8.11.5 Opinion Survey through Interview of Legal Luminaries in the State of Goa

To get a more realistic idea of legal aid, the Researcher personally interviewed eminent Judges, Lawyers and Academicians who have insight into the concept of Legal Aid in the State of Goa. These eminent legal luminaries know about the Goan conditions at grass root level as well as the emerging jurisprudence on legal aid. They are also associated with the evolving movement of legal aid in Goa. The Researcher also has carefully selected the sample to include judges, lawyers cum academicians, as well as lawyers who are involved in implementation of legal aid scheme for several years. Hence the sample is very

representative of eminent judges, lawyers and academicians who are in touch with ground realities of legal aid in Goa.

For convenience the Researcher has raised twenty questions which are edited under nine issues. The idea of raising questions under each issue is to pinpoint the direction of the discussion while at the same time permitting leeway to the respondents. The respondents are all eminent scholars and legal experts from the Bar, Bench and Academics. Though the researcher interviewed the Respondents at length and sought clarifications, here merely a brief summary of the core of interview has been presented. For the sake of convenience the respondents have been labelled as Respondent No. 1, 2, upto ten with their designation and anonymity has been maintained.

The Interview Schedule with issues and questions appears as Appendix IV. Here it is decided to present each issue separately for convenience.

a) Issue-I: Accessibility of Legal Services Authorities to the needy people

The following are the responses on the issue of Accessibility of Legal Services Authority to the needy people, whether they were accessible and if any measures are required to improve accessibility.

Respondent No. 1⁷³ was positive that the Legal Services Authority was accessible to the needy people. However he expressed the need to have proper Secretaries for administration of Legal Services Authorities at all levels i.e. State, District and Taluka. Otherwise in the present set up, the judiciary and

⁷³ An Honourable Judge, High Court of Bombay, Bench at Panaji.

staff are busy with their regular judiciary work; hence they are unable to devote quality time on legal services activities. If separate infrastructure is set up and full time secretaries are appointed the system will be more fruitful.

Respondent No. 2⁷⁴ replied in the negative and opined that Legal Services Authorities are not reaching the needy persons properly. As per the respondent, Legal Services Authorities must be segregated as distinct and independent authority by making appointments of Judicial Officers and staff for the same on full time basis. That would help to achieve more functional integrity, coordination, monitoring and would be effective in the long run. Regular judiciary cannot devote more time on Legal Services Authorities. More public awareness campaign on a war footing is required to be held and awareness of these facilities need to be disseminated at the grass root level, to make it really effective and to fulfil its purpose. Mere distribution of literature even in vernacular language would not serve the purpose especially in case of illiterates.

Respondent No. 3⁷⁵ felt that the Services were accessible to the poor and the needy. Yet he felt that continuous awareness campaigns are necessary. Print media and Electronic media (mainly Doordarshan) has to play a vital role in campaigning about the facilities and functions of Legal Services Authorities. Such programmes have to be shown in T.V Channels at least once in a month. They could even scroll messages on legal aid continuously during peak time programmes, especially in the vernacular language. Also State Legal Services

⁷⁴ An Honourable District and Sessions Judge in State of Goa.

⁷⁵ Honourable District and Sessions Judge in State of Goa.

Authorities and District Legal Services Authorities can publish important laws like Domestic Violence Act, Right to Information Act, and Child Labour Prohibition Act etc. in vernacular language and distribute to the needy people. Recently one more concept has been adopted by NALSA where in members of the Legal Services Authorities have to attend the *Grama Sabha*. It is a welcome step by NALSA.

Respondent No. 4⁷⁶ felt that the legal services were not available to the needy people up to the expected level in Goa. He agreed that people from low income group, uneducated etc. do not know how to use the facility for free legal aid. He suggested that the Government has to conduct detailed awareness campaign by means of affixing notices on buses and trains, and also the information has to be printed on the ration cards and senior citizen cards etc. Pro-active method of creating awareness is important in this area. He felt that accessibility and awareness has to come together. One of the important suggestion which he made was to start a helpline wherein public can easily access legal aid. In the villages, boards are to be affixed containing help line number and rules of eligibility. Another interesting proposal made by him was that even in Vakalatnama Form, a clause had to be inserted, contained the following words "Have you informed the client about the provision for legal aid?" Similarly Television, Radio, and all public media had to be used as the means of creating awareness for legal aid. Even SMS could be employed nowadays to create awareness.

⁷⁶ Principal, Law College in State of Goa.

Respondent No. 5⁷⁷ expressed his opinion on the first issue and felt that the Legal Services Authorities in Goa are not sufficiently accessible to the needy people. He also emphasized on the failure by the Legal Services Authorities in creating awareness among the needy people. It was necessary on the part of the authority to hold programmes in the villages; more particularly in remote villages.

Respondent No. 6⁷⁸ felt that the issue of accessibility to these authorities to the needy people had different aspects. The primary issue was how to educate the needy people to go to Legal Services Authority. Though there are no procedural handicaps to approach the Legal Services Authorities and the present system is much better today than it was earlier, the basic problem arises is creating a confidence in the minds of the needy about the Legal Services Authority.

Respondent No. 7⁷⁹ expressed dissatisfaction towards the system of Legal Services Authorities. According to him it does not work in Goa. Public has no confidence in this system. Only because of the helpless situation of being in lock up, accused people were availing of this facility. Whereas in civil cases, no one practically approaches the Authorities.

Respondent No. 8⁸⁰ expressed his opinion in a positive manner but opined that mere holding of legal aid camps did not make impact. There was a need to assess the effectiveness of the camps thus organised.

⁷⁷ Senior Advocate practicing at Bombay High Court Bench at Panaji

⁷⁸ Senior Advocate practicing at Bombay High Court at Panaji.

⁷⁹ Senior Advocate cum Academician

⁸⁰ Senior Advocate cum Academician

Respondent No. 9⁸¹ also expressed dissatisfaction on the accessibility of authorities to the needy people. He also supported his opinion with lack of awareness among the needy people. He suggested that the local administrators bodies like ward panchas had to understand the concept and importance of free legal services. There is a need to sensitize the representatives of people at ward levels, self help groups in rural areas and *Mahila Mandals*, about the importance of Legal Services Authorities. Through these bodies accessibility could be made effective.

Respondent No. 10⁸² was of the view that the legal services were not sufficiently accessible. He referred to the statutory flavour given to Legal Services Authorities, but felt that much was required to be done. He spoke at length about old people, handicap persons, and the destitute who have lost the earning member in the family. He suggested that all these sections needed special care. In fact justice delivery system must go to their houses, rather than expecting them to come to the Courts.

Respondent No 11⁸³ was of the view that legal services authority are accesable to the needy people. On the point whether anything was required to improve the services he was of the opinion that member secretary for every authority must be an independent person separately appointed for that purpose alone like recent appointment of full time secretary in the District Court.⁸⁴

⁸¹ Senior Advocate in Goa

⁸² Senior Advocate in Goa

⁸³ Member Secretary, State Legal Services Authority and Registrar(Judicial) High Court of Bombay at Goa.

⁸⁴ In March 2011 first full time secretary appointed as member secretary for District Courts.

Respondent No. 12⁸⁵ felt that legal service authorities were not easily accessible to the needy people. He suggested that legal aid camps should be held in villages. As per him students/trainee lawyers should not merely advise but actually pursue and follow up the matters.

b) Issue II: Availability of Right to Counsel in State of Goa

The following are the responses on the issue of right to Counsel, whether it was effectively available and also outlining the factors that hinder this right from being effective:

Respondent No. 1 felt that those who were approaching the authorities were availing of the facility.

Respondent No.2 expressed his discontent with respect to effectiveness of the right to counsel. One of the factors was the meager remuneration to advocates. As a result Authorities were not getting sufficient counsels for their legal aid panel. He opined that it is unfortunate that some of the legal aid advocates are working without any commitment and initiative.

Respondent No. 3 stated that at the stage of remand in every court, one advocate appointed by Legal Services Authorities, takes up the matter on behalf of the accused. In the remaining matters/ proceedings, most of the advocates are not willing to come forward due to the meagre remuneration. Further, due to the inadequate remuneration, advocates do not pay interest in the case. He opined that the amount to be paid had to be equal to the

⁸⁵ Senior Advocate in Goa

remuneration paid to Government Advocates. Unfortunately nowadays the spirit of dedication to the profession looks to be lost. He however felt that it is a good sign that at least some advocates were willing to take up legal aid cases on the request by the judges, though they were not part of the legal aid panel.

Respondent No. 4 replied that "Right to counsel means and includes counsels who are interested to handle the case". To create this concern they must be paid a reasonable fee. In addition to that he opined that recognition of advocates by giving them preference in recruitment as government lawyers and appointing them as commissioners etc. are the means to motivate the advocates to take up the legal aid cases. Recognition lies in treating them as privileged advocates.

Respondent No. 5 opined that the right to counsel is not effectively available to the needy in Goa as the counsel is not adequately and quickly remunerated. Secondly the counsel fee being meagre, it did not attract good advocates. In his view the authorities had to tap social service oriented counsels, who are less busy so that they are easily and effectively available to the needy. Thus the right to counsel can be more effective.

Respondent No. 6 stated that under the auspices of Legal Services Authorities today counsel is made available with much greater ease than it was before. But he opined that the panel preparation needs to have a re-look. Advocates have to realize that that they have to accept the legal aid cases if they have a desire to learn. The cases brought by the needy people pose very tricky problems, and at times very complicated issues. When the advocate wins the case it is a benefit primarily to the advocate and merely incidental to the accused. He was

against the preparation of a panel of legal aid advocates. It should be an obligation for every advocate to render legal aid free. It must be made compulsory for advocates irrespective of seniority. The effective representation is not just giving a counsel, but a counsel who would do justice for the case.

Respondent No. 7 did not offer any comment to the issue.

Respondent No. 8 stated that once the case was entrusted to an advocate, they were dealing the case as if it was their own private case. However he opined that there were some instances of legal aid advocates receiving money from the clients.

Respondent No. 9 expressed dissatisfaction towards the implementation of right to counsel. It had to be voluntary service. But in present situation voluntary activity without abundant financial gain is not really understood. Most of the juniors are using legal aid as a stepping stone in their carrier. There was no real commitment to the cause and basic concept is itself misunderstood. There was a need for a panel of advocates, one in each Court, like the government advocates, on contract basis. They should be provided infrastructure like office and paid a monthly salary. He opined that Advocates are not supposed to misuse the office for their personal purpose and that Legal Service today was not a service but a means of trading.

Respondent No. 10 on the point of Right to Counsel stated that advocates were willing to do charitable service. The Legal Services Authority had to devolve a mechanism by which services of senior and experienced lawyers are availed of, by taking the matters in their chambers.

Respondent No. 11 felt that the right to counsel was not effectively available to the poor people in Goa. He felt that at taluka level very few advocates are interested to be part of legal aid panel. Even in the District & Sessions Court there are only six advocates in the panel. Hence it is very difficult to entrust the cases to advocates where there is such a limited number. Sometimes in one case six or seven people are involved as accused. In such situation the judge cannot entrust to one advocate as there may be conflict in the point of evidence. Also unfortunately many junior raw advocates accept such cases. Some case can be handled effectively only by senior advocates. This is required not only in the proceedings of the Judiciary (courts) but also in matters before executive magistrates (mamlatdar) and similar officials. Some senior advocates advise is required specially in drafting of applications, affidavits etc.

Respondent No. 12 opined that the right to counsel was not effectively available to all the needy people in Goa.

He mentions the following factors as hindrance to make right effective a) lack of awareness as to the legal aid facilities available b) quality of legal representation c) pittance offered to advocates on legal aid panel.

c) Issue III: Confidence of Indigent Litigant on Justice Delivery System

Following were the response on the issue whether indigent litigants have confidence in the Justice Delivery System.

Respondent No. 1 said that the litigants were just satisfied. He opined that incidental expenses like paper and other stationery etc. must and can be given to the litigant.

Respondent No.2 was of the opinion that clients were not generally happy with the service of legal aid advocates. Some clients convey the message that the representation is not adequate or in par with the advocate of the adverse party.

Respondent No.3 felt that advocates were doing their job sincerely. He stated that in his experience no accused person has requested him to change the advocate given by legal aid. He also expressed satisfaction with the Conciliation Centre and felt that it was functioning well under legal Services Authorities.

Respondent No. 4 opined that in order to build confidence of litigants, there was a need for fundamental reforms in compensation cases. Poor litigants were not to be treated like the rich persons. Generally, in land acquisition cases compensation to the owner of a small piece of land is equal to that awarded to a rich person. However, when that land was his sole earning property compensation has to be more than for those who own several other properties. Courts need to look at the broader aspect and go beyond the mandate of a particular case. Poor and needy people should be given preferential treatment in matters of justice.

Respondent No. 5 felt that the indigent litigants were not at all happy with the service obtained through legal aid. The adequacy of justice delivery system is also not at the desired level. According to him in the legal services, justice

delivery system has to be reoriented. He opined that Lok Adalats had to be empowered to determine a dispute so as to arrive at a compromise or a settlement. (Presently Lok Adalats work on yes - yes or no – no basis). Unless the authority had teeth, justice cannot be administered even by way of settlement or compromise. Therefore Lok Adalats have failed to achieve the intended purpose.

Respondent No. 6 felt that some of the Judges were not treating the clients properly. He was in favour of scrapping the system of Appointment of Advocates through panel procedure. According to him the criteria for providing legal aid had to be done away with. The moment a person requests for legal aid, it must be provided to him without any scrutiny. Generally those who are unable to afford advocate only approach the Court for legal aid.

Respondent No. 7 did not offer comments on the issue.

Respondent No. 8 opined that generally the clients had confidence in the advocates. There were some cases where parties requested the court to change their advocates. Sometimes it is the advocates who withdraw from the case for personal reasons.

Respondent No. 9 was of the view that sometimes clients were not satisfied with the services of legal aid. There were many instances of clients asking for a change of the legal aid advocate. Unfortunately sometimes advocates had asked the expenses (like stationery) from the party. In fact those expenses could be claimed from the Legal Service Authorities.

Respondent No. 10 felt that the indigent litigant does have faith in the judiciary. The only handicap was that it was not easily accessible as it was made out to be. There was a need for drastic fundamental reforms in justice delivery system, in the sense that there is need for a complete overhauling of the justice delivery system.

Respondent No.11 was of the opinion that probably the indigent litigants are not satisfied with the adequacy of justice delivery system. He felt that there was delay in deciding cases. For instance in NDPS courts where number of cases are filed ,there are only three advocates in the panel. In the District & Sessions Court there are only six advocates. Very often there are instance where the accused party seeks to change the advocate due to non-appearance of the Counsel. There is a difficulty in changing the advocate as so few of them are available on the panel. He suggested that practical amendment has to be made to Advocates Act, so that it will be compulsory for each and every advocate to accept at least one or two legal aid cases in a year.

Respondent No. 12 felt that indigent litigants are not satisfied with the adequacy of justice delivery system. He was infavour of fundamental reforms in justice delivery system to help the indigent litigant than mere legal aid.

d) Issue IV: Reasonability of Fees to Legal Aid counsel

The following are the responses on the issue of fees paid to legal aid counsel and whether such fees affect the quality of work:

Respondent No. 1 stated that three years back the fees of legal aid counsels were enhanced. Now again proposal for the enhancing of fees was in the process, which takes into consideration the present cost of living. Even if money was fixed per each hearing, there must be an outer limit prescribed. Generally quality of service of advocate will not be affected due to less remuneration.

Respondent No. 2 felt that the fees were indeed very low. That would defiantly affect the quality of work.

Respondent No. 3 was in favour of increase in fees something in par with the Government Advocates

Respondent No. 4 opined that the prescribed fee was much less than the required fee.

Respondent No. 5 felt that the prescribed fee for the counsel was not reasonable which affected the quality of service. As fees were low and involved laborious procedure for reimbursement, the counsels did not put in proper professional skills.

Respondent No. 6 stated that advocates have to realise that legal profession is a noble profession. When every advocate has to take a legal aid case, the question of meagre amount does not arise. Advocates have to accept legal aid cases due to several reasons. Juniors are bound to get exposure and experience. This is in fact the actual remuneration (fees) which cannot be calculated in terms of money. For senior advocates, in several cases they are getting fees even without making any effort when for instance the case is dismissed at

default of other party etc. So accepting one or two cases per year does not create any difficulty to their ongoing practice.

Respondent No. 7 felt that fees were not an issue at all. Even if the fees were increased that would not satisfy the advocates. He also did not agree with the fact that quality of work was affected due to fees. Basically advocates were accepting legal aid cases not for the sake of amount.

Respondent No. 8 felt that the fees were very low and the quality of work was definitely affected.

Respondent No. 9 philosophised that the fees were reasonable if the counsel understood the concept and spirit of legal aid as well as were interested in his advocacy skills. If the above is not kept in mind the quality of service was bound to be affected.

Respondent No. 10 stated that the fees for the legal aid advocate were reasonable as they were doing it as service. He opined that otherwise the concept of service was lost.

Respondent No.11 on the point of fees stated that though the word fee is mentioned in the Act it is in fact honorarium. Earlier i.e prior to act came into force, judicial officers requiring some advocates acting like court friends to advise some important matters and also to deal with some indigent cases without fees. But in some instances those advocates (*amicus curie*) used to ask some money from the clients. To avoid this, legal services authorities Act provided some nominal honorarium. Being social work one cannot measure whether fees is adequate or not.

Respondent No. 12 felt that the fee prescribed for legal aid counsel were not reasonable. He opined that quality of counsel work effected due to fees in a number of cases.

e) Issue V: Category of People Entitled to Legal Aid

On the issue whether the respondents were satisfied with the categories of people mentioned as entitled to legal aid and whether they had suggestions for amendment or inclusion of any other classes, following were the response.

Respondent No.1 stated that senior citizens and people affected by natural calamities had to be included making them entitled to legal aid.

Respondent No. 2 felt that all classes were covered for legal aid except senior citizens. Hence senior citizens had to be included in the list. Of course (like the principle of creamy layer) those who had the capacity to appoint advocates had to keep out of the legal aid.

Respondent No. 3 felt that almost all were well covered under legal aid. Only the implementation was not so effective. On this point he felt that awareness was required.

Respondent No. 4 opined that the categorization seemed to be unfair. He felt that apart from women and children, the others must be purely on economic considerations only.

Respondent No. 5 felt that the income slab prescribed under section 12 of the Act should be considerably increased. Categories in Sec.12 (a) should be

deleted totally. There should not be any category except for the income restrictions.

Respondent No.6 felt that legal aid is to be provided to whoever approaches the court as indigent. Generally it was observed that those who are unable to pay the advocate fees alone approach for legal aid. Those who have capacity to appoint an advocate will never approach the court for legal aid. Hence there was no need to continue with the existing criteria or for creating new criteria.

Respondent No. 7 did not offer comments on this point.

Respondent No. 8 emphasised that all the categories mentioned were hardly availing of the facility properly. It was used mostly by hard core habitual offenders, who benefited from the services offered.

Respondent No. 9 was of the view that it was sufficient to have only one class i.e. based on economic grounds.

Respondent No. 10 was not satisfied with the categories mentioned. He suggested that handicap people, estranged children etc to be included.

Respondent No. 11 felt that women and children are also included in the legal aid category as beneficiaries. Thus the provision did not make the difference between rich and poor women. So, even rich women could get the benefit of legal aid which defeats the provisions of the Act.

He opined that senior citizens and freedom fighters could also be included in the list of eligible persons.

Respondent No. 12 was satisfied with the classes of people mentioned in the Act as entitled to legal aid. In his opinion there was no category of people from weaker class that were left out from the list.

f) Issue VI: Procedure for Legal Aid

The following were the response on the issue of procedure for legal aid, whether the respondents were satisfied or desired any changes in it.

Respondent No. 1 replied that the procedure was very simple.

Respondent No.2 desired more transparency and suggested that it could be achieved if there was a separate permanent set up with infrastructure like building, office, extra manpower for Legal Services Authorities.

Respondent No. 3 felt that the procedure was very simple. In case of remand there was no need to follow the procedure as one advocate is appointed in every court for the accused at remand stage.

Respondent No. 4 suggested that the Presiding Officer should inquire with the litigant, about whether he would want to avail of legal aid or not, and the same recorded as part of proceedings before framing of issues or charges.

Respondent No. 5 was not at all happy with the procedure prescribed for applying for legal aid. He opined that it was laborious. He suggested a single window system for all applications pertaining to High Court Legal Services Committee, District Legal Services Committee, and Taluka Legal Services Committee. He also suggested that application should be disposed of, within a particular time schedule, so that applicant knows whether he is entitled or not.

Respondent No. 6 opined that the system of Panel of Advocates should be removed. He felt that procedure for filling an application with income certificate is complicated. He suggested simplifying it like asking the party about their advocate. If the person had no advocate then immediately an advocate should be appointed from the court hall.

Respondent No. 7 felt that the procedure was very simple.

Respondent No. 8 was of the view that the procedure was simple as far as the party was concerned.

Respondent No. 9 affirmed that the procedure was simple.

Respondent No. 10 felt that the procedure was simple. Yet he opined that there was need for some changes. He also suggested that legal aid cells are to be opened everywhere including villages and that legal aid counsels be available at such places.

Respondent No.11 opined that procedure is very simple. There is no need of change. In every case judge asks the accused about counsel and if the client replies that he is unable to appoint advocate court will provide an application in simple format to be filled by him to appoint such advocate.

Respondent No. 12 – As regards to the procedure he suggested that the form seeks legal aid should be more user friendly. They could be available at Kiosks, such as Mahiti Gharn all over the state. He also suggested that involvement of law college students in understanding the problem, preparing legal brief and actually briefing the advocates on legal aid panel.

g) Issue VII: Role of the Bench

On the issue of the role of the Bench in legal aid and whether it played an active role the following were the response and suggestions.

Respondent No.1 felt that the majority of judges are playing pro-active role.

Respondent No. 2 suggested for an independent office for Legal Aid Service Authorities. Then one could expect pro active role on the part of the Bench. Settlement of pre litigation matters had to be encouraged by the judiciary. Awareness has to be created in the litigants about settlement of disputes through pre litigation system. In this process senior citizens (may be retired judges, or any other person who have much knowledge in particular fields) can play active role. Their presence is fruitful. Their experience can be properly used. Parties may be pleased to accept neutral person's settlements which can give qualitative justice.

Respondent No. 3 stated that the Judiciary was the back bone of legal aid movement. Thus it is a more meaningful 'consensus – justice' to the common man. Judiciary has to continue the procedure. Judges have to attend legal aid programme.

Respondent No. 4 stated that the Judiciary has been pro-active since inception of legal aid, but that was not sufficient and sometimes there were inconsistencies. There has to be a system of prescribing obligations on judicial wing to ensure that the legal aid provided to deserving litigant is adequate and of quality.

Respondent No. 5 opined that Judiciary should play a more pro-active role in providing legal aid. There were several instances, where judiciary imposed costs in cases to be forwarded to the Legal Aid fund, so as to augment the fund. However the judiciary, according to him, should also play a pro-active role in order to see that the augmented fund is utilized in specified areas and for needy considerations. The same should happen to the legal aid fund provided by the Government. Judiciary should accept the role of monitoring the legal aid activities, so that the weak links in the systems do not become weaker.

Respondent No. 6 opined that Judiciary must play a pro-active role. Whenever a judge comes to know that the party has not appointed advocate due to financial constraint or some other reason, he may appoint a legal aid advocate. Depending on the nature of the case the Judge has to appoint the advocate. If it is serious case senior advocate has to be appointed, and for a less serious case juniors can be appointed. When the Judge realises that legal aid advocate is not properly representing the case, then the Judge has to suo moto change the advocate.

Respondent No. 7 suggested that judges have to use senior advocates for legal aid. If the judge requests a senior advocate, no advocate will refuse even though they are not in the panel. In fact the panel system has to be scrapped. Some of the senior advocates want to help the parties in the name of legal aid but they are not interested to apply for being in the panel of advocates.

Respondent No. 8 felt that the judiciary was doing well on this issue.

Respondent No. 9 opined that judiciary played an active role. However that was at policy level. Gradually implementation is falling. This is also due to lack of coordination among various levels of Legal Services Authorities.

Respondent No. 10 opined that Judiciary played a very active role with respect to legal services. They were not only providing but also showed willingness in providing legal services under the Act.

Respondent No.11 felt that especially in State of Goa the bench plays a very active role. They have carried several bi-monthly, monthly programmes including lok adalts, legal camps and legal clinics and mediation. The system of mediation is slowly developing. Para legal services are involving in Goa. He opines that from 1996 when Justice A.S. Anand pattern in chief, he was the guiding force for evolution of legal aid movement.

Respondent No. 12 felt that the Bench should consider the gravity of the case and on such a basis appoint amicus curaie or request competent experienced lawyers to take up matters in legal aid.

The approach should not be to dole out some favour to a Junior member of Bar without ascertaining whether legal aid is offered to the litigant or not.

h) Issue VIII: Role of the Bar

The following were the response about the role of the bar; whether the Respondents were satisfied by it and their suggestions.

Respondent No. 1 stated that many advocates were doing well so far as legal aid services were concerned. However some advocates were reluctant as the fees were meager.

Respondent No.2 opined that the Bar was contributing its might towards the society. He stated that advocates needed job satisfaction which could be obtained by involving in legal aid.

Respondent No. 3 stated that advocates were very cooperative and doing well as far as their role with regard to legal aid is concerned. He opined that if their remuneration was increased, senior advocates too would enrol in the panel. He stated that it was unfortunate that some of the legal aid advocates were accepting fees from their clients.

Respondent No. 4 opined that advocates entrusted with the responsibility of legal aid service are burdened in the absence of the appropriate remuneration or recognition.

Respondent No. 5 said that he was satisfied with the role of the Bar in providing legal aid. He stated that advocacy was a noble profession and the advocates have a great social role to play in the society. He can serve the society in his own way. A true professional lawyer should have legal aid at the back of his mind and should provide it to the deserving clients.

Respondent No. 6 said that he was not happy at the way the advocates were dealing with legal aid cases.

Respondent No. 7 opined that lawyers representing legal aid cases had to do it as an honour and not merely because he is in the panel. The impression that,

only advocates who do not have sufficient work engage in legal aid, has to be removed from the public perception.

Respondent No. 8 stated that in the JMFC Courts, young entrants were willing to take the cases. Whereas in Court of Sessions, seniors were not coming forward to be members in the panel. However when judges request the advocates to take up cases, they never refuse. If the fees are increased this problem will not arise.

Respondent No. 9 felt that the role of the Bar as far as legal aid service is concerned was not satisfactory. Bar has to be sensitized to the cause. It is necessary to sensitize the students towards this cause when they are in third year of the five years course. Otherwise once they come to the profession they get habituated to earn money, forgetting their responsibility to the society.

Respondent No. 10 suggested that members of Bar had to encourage selected junior lawyers to form part of panel.

Respondent No. 11 was not satisfied with the role of the Bar. He suggests that there should be an amendment to the advocates Act which makes it compulsory that each and every advocated has to deal at least with one or two case. He added a proviso saying that civil cases have to be entrusted to those advocates who are practising only in Civil cases. Similarly in Criminal matters. He suggests that advocates have to be appointed on rotation basis. On the point of preparation of panel he was not in favour of giving choice to advocates to be a member of panel . He felt that Bar association has to decide on the names of

the advocates to figure on the panel. Advocates should be bound by the decision of the Bar.

Respondent No. 12 felt that Bar should give in its best as far as legal aid is concerned. Bar council of India can also make some provisions whereby every lawyer is obliged to clock some legal aid service hours.

i) Issue IX: Role of Law Colleges

On the issue of the role of the two Law Colleges in Goa, the following were the responses.

Respondent No. 1 opined that both the Law Colleges were having Legal Aid Cells and their work could be enhanced if they worked along with the Legal Services Authorities.

Respondent No.2 opined that the Law Colleges were faring well as far as legal aid was concerned.

Respondent No. 3 stated that the Law Colleges were having an important role to play. Law Colleges and Taluka Committees should coordinate in organising programmes of Legal Services.

Respondent No. 4 was not satisfied with the role played by the Law Colleges and opined that they could be of much more service if their role was recognised in the litigation system. He stated that law students should be entrusted with such cases, where they could help the lawyer to gather information including case law. Such service could also be remunerated wherever possible.

Respondent No. 5 felt that role of the two Law Colleges in Goa with respect to legal aid was not satisfactory. Law students, as future lawyers had to go to remote corners and hold meetings to spread the messages of legal aid. The students should be instrumental in understanding and spreading the concept of legal aid. They should spot and identify the needy in the areas of their work and inform them accordingly as to what is legal aid and even assist them in availing such aid. He suggested that law students should be made a part of legal aid schemes envisaged under Act of 1987 so that they acquire the required qualities by the time they are called to the Bar.

Respondent No. 6 felt that the Law Colleges without doubt were doing very good service.

Respondent No. 7 felt that Law Colleges did more for publicity than real serious work. He suggested that Legal Literacy Camps had to be conducted on the relevant subject to the concerned persons. Conducting Legal literacy Camps without concentrating on the audience served no purpose. Public did attend but returned home with great dissatisfaction. He suggested that Colleges had to plan systematically the topic for the targeted group. Mostly, topics like Panchayat Act, Rules of Grama Sabha, and misuse of NREGA etc. would serve the purpose.

Respondent No. 8 felt that V.M. Salgaocar College of Law was working sincerely towards legal aid and was doing well. Kare College of Law was working only with respect to legal problems, whereas Salgaocar College students were involved in social welfare schemes and legal literacy camps,

mostly in association with Taluka Legal Services Authorities, which was a welcome concept.

Respondent No. 9 stated that the Colleges were doing well in this respect and with every batch the work is being done more and more. He suggested that more incentives should be given to encourage students.

Respondent No. 10 suggested that if the students were given some tasks by Legal Services Authorities like internship, they would besides getting exposure be doing some service to humanity. That would also serve the purpose of Legal Services Authorities.

Respondent No. 11 opined that as far as Goa is concerned law colleges were doing excellent jobs. However there was a scope for improvements. As per him legal aid cells were working properly. However he was found that student can not give advise on the spot when the party approaches them rather they have to consult the faculty or the advocates. In small matters usually there is no need for an advocate. In such cases it was sufficient to consult the professors of the college or other persons who are well versed with the subject. As per him students have to be advised that they should not misguide the clients.

Respondent No. 12 felt that the student could be permitted to take up few cases, but they should follow them up to their logical conclusion. Besides students should be involved in taking instructions from litigants, preparing legal brief and actually briefing the advocates on legal aid panel. He opined that students should be advised to give their best for legal aid irrespective of success or failure or actual cost without consideration for marks allotted.

8.12 CONCLUSION ON HYPOTHESIS

Researcher started with five hypotheses which he contrasted with, namely, (a) available statistical data, (b) empirical data collected by way of questionnaire and (c) data from a brief opinion survey of selected eminent legal experts in Goa. This systematically compiled data was analysed in chapter 8 and is used by the researcher here for arriving at Conclusions on Hypothesis.

Even though Right to counsel is included as a fundamental right, majority of the people are unable to take advantage of this right due to their illiteracy, poverty and lack of awareness.

By observing Table 9 it can be seen that the beneficiaries in the High Court are very few, which means most of the people are unaware of the provisions for legal aid/ right to counsel.

It is apparent from Table 10 and 11 that persons in custody are more in number who enjoy the benefit of legal aid. Though the number is more at District and Sessions Court level as compared to the High Court, it cannot be evidence enough to believe that a good number of people are aware of the right.

From Tables 12 and 13, it is apparent that the legal services authorities are trying to foster legal awareness among the people by conducting various activities pertaining to its motto. It is clear from Sub- heading no 6.7.5 titled 'Legal Aid Clubs in Schools and Colleges', that Legal Services Authorities are making efforts to create awareness even in rural areas. Table 17 also shows that Legal Services Authorities in association with the Law Colleges are conducting micro legal literacy programmes.

It is evident from Table 20 that many people have no knowledge about the benefits that are promulgated under the legal aid scheme. This table further shows that some advocates are collecting additional fees from parties in the name of stationery etc. which they claim as part of legal aid. This occurs as and when the parties are unaware, that the legal aid benefit includes stationery expenses too. The response from the judiciary to the questionnaire submitted to them, Table 36 shows assuredly, that the legal aid provisions help the accused person to secure justice. This shows that there is some awareness among the needy people about the legal aid.

With regard to the first hypothesis that majority of the public do not know about right to counsel, is partly proved to be true, by contrasting the responses of Respondents 2, 4, 5, 9 and 10 in the opinion survey by interview method, with regard to the Issue No. I⁸⁶

With the circumstantial and direct evidence from above sources the researcher has proved the first hypothesis partly. Because of the activities of the Goa State Legal Services Authorities and their year plans it can be expected that in near future greater majority of public will come to be aware of the right to counsel.

The indigent litigant has no confidence in the effectiveness and adequacy of the justice delivery system due to procedural technicalities, poor service from the free legal aid lawyers, and establishment apathy.

The contents of the Tables 9, 10 and 11 point out that very few have been benefitted or approached the authorities for their needs. Thus, it is revealed that

⁸⁶ Issue No. 1 is regarding the accessibility of legal services to the needy people

litigants' confidence towards legal aid system is not firm. Circumstantial evidence from Table 24 reveals that one of the reasons for litigants not having confidence in the legal aid system is that senior advocates, instead of personally dealing with the legal aid case, are totally delegating it to their juniors. 31% of advocates as shown in Table 26, who answered the questionnaire, gave their opinion that conviction is more in legal aid cases due to poor interest shown by advocates. This in itself shows that litigants are losing confidence in the legal aid system. Of course 56% did not accept the above contention. Hence more than fifty percent of advocates corroborated that litigants have confidence in the system. In this respect Table 27 is very relevant wherein only 48% of advocates expressed that accused are satisfied with the service of the advocate. With regard to the response of judiciary on the question of competency of legal aid advocate as shown in Table 31, just above fifty percent i.e. 52% expressed satisfaction, whereas 22% were not satisfied and remaining 26% did not reply to this question. However to the question of the role of legal aid in securing justice, 78% of judiciary have expressed faith in this system which by contrast is evidence enough from Table 36.

The responses to issue III⁸⁷ of eminent legal experts are relevant to this hypothesis. Respondents 2, 5 and 9 expressed their doubts about the confidence of litigants in legal aid advocates. However most of the remaining respondents expressed their positive attitude to litigant's confidence in judicial system.

⁸⁷ Issue 3 was with respect to confidence of the indigent litigant in the justice delivery system

With the above empirical data it is proved that litigant's confidence in legal aid advocates is not high. So, Advocates have to show their sincerity, and commitment to the legal aid cases. It can also be understood from the above facts that some of the advocates, judiciary and legal experts felt that the litigants feel confident in the legal aid system. Hence hypothesis II is partly proved.

Low fees prescribed for the legal aid counsels attract very few talented lawyers and as a result Legal Service Authorities failed to execute the concept of "Poverty Jurisprudence."

One of the major hurdle in the legal aid system is that remuneration/fee of the legal aid advocate is meagre. By observing the Schedules in Legal Services Authorities Regulations and Legal Aid Counsels Scheme shown in the Tables 1, 2, 3, 6, 7 and 8 in chapter VI, one can understand that remuneration is fixed per case but not as per hearing and in no case the amount exceeds more than Rs. 1500. In most of the matters the fees are fixed from Rs.200 to Rs.800 only. This figure itself conveys that fee is relatively very low. We can understand that no case can be settled within a short time. Experience shows a minimum of 2 to 5 years will be required for a settlement of any case, whether it is through legal aid or otherwise.

With regard to the answers of advocates to the question of additional fees charged by a legal aid advocate from the accused, as shown in Table 20, it is evident that 18% gave positive response and 31% did not give response. This in

itself reveals that the fee which the authorities have fixed is low and not satisfactory. By observing the table 28 one may easily come to a conclusion that the fee is meagre. It is to be noted that 83% admitted this proposition to be true. Similarly from the responses of the judiciary to the questionnaire with regard to the competency of the advocates in legal aid cases, as shown in Table 31, 22% were not satisfied and 26% did not answer. This in itself shows almost 50% were dissatisfied with the advocates' efficiency. It means that it is not in fact the competency of the advocates which is doubted but the lack of interest shown towards legal aid cases. It is submitted that one of the major reasons for showing poor interest might be that the remuneration is meagre. With regard to the issue on fees, the response which the survey papers addressed to the judicial officers drew is that, nearly 75% admitted that fees fixed for panel advocates, in regulations and schemes, is grossly insufficient. The data shown in table 33 and 34 is followed by an analysis and graph as shown in Figures 22 and 23.

The respondent's opinion gathered by interview, on issue IV⁸⁸ are quite relevant for this hypothesis. Respondents 2, 3, 4, 5 and 8 replied that the prescribed fee is meagre and it affects the advocate's services. From the above statements and answers collected in the empirical study, one can conclude that Hypothesis III is proved to be correct.

⁸⁸ Issue IV deals with the aspect of fees paid to the Legal Aid Counsel and whether such fees affect the quality of work

The sympathy of Legal Service Authorities towards free legal aid is more perceptible when the claimants are members of schedule castes and schedule tribes.

Tables 9, 10 and 11 reveal that though the Legal Service Authorities are theoretically favourable to Schedule Caste and Schedule Tribes, in practice that does not seem to be the position in Goa. The beneficiaries from the category of scheduled caste and scheduled tribes as shown in the table are meagre. So the above data is not adequate enough to justify the hypothesis or to prove it otherwise. This could be due to the fact that the movement in favour of Schedule Caste and Schedule Tribes entered Goa much after Liberation. The pre-Independence movement in favour of backward classes that was witnessed across the rest of the country did not take place on parallel lines in Goa. In fact this hypothesis needs further socio-historical research on these categories in Goa to back the present legal opinion.

The sympathy of Legal Service Authorities towards free legal aid is more perceptible when the claimants are women.

It is evident from the Tables 9, 10 and 11 that women, who are having a special niche in the system of legal aid theoretically, are also increasingly being benefitted from it as compared to the position in earlier years. The traditional concept that women do not approach courts of law is no longer valid. Hence the sympathy shown towards women has brought about perceptible social change. Hence it justifies the hypothesis.

The Concluding chapter contains a brief summary of the whole thesis and finally ends with practical suggestions meant for Legal Aid Authorities as well as for the Law colleges.

CHAPTER IX

Conclusions and Suggestions

“The poor and illiterate should be able to approach the courts and their ignorance and poverty shouldn’t be an impediment in the way of their obtaining justice from the courts.”¹

- Justice P. N. Bhagwati

9. CONCLUSION

In a genuinely ‘social welfare oriented state’ every individual however big or small, rich or poor, endowed with or deprived of, has a definite role and importance. Largeness of society, inadequate economic resources and complicated procedures can never be an excuse for the legal system failing to realise the importance of justice to everyone.

As discussed in the second chapter, an effective and functioning system of legal aid is one of the indicators of a fair and just, justice administrative system. This study has been oriented around this concept of rendering effective justice while there is an added obligation on the state to provide the necessary assistance and support to the needs of the poor and deserving, so that justice prevails.

Legal aid is therefore a universal concept and an international obligation of every nation which claims to be part of the civilized international community.

Third and fourth chapters gives due reverence to this concept of the universality of States’ obligation. The international conventions and practices of several differently placed nations have a system of effective legal aid to claim itself to be a nation governed by rule of law.

India of course has not been lagging behind in this endeavour; we in India would naturally draw from our ancient heritage and culture. In that sense legal

¹ Sujan Singh, *Legal Aid Human Right to Equality* (Deep & Deep Publications, Rojouri Gardens, New Delhi, 1994) 2

aid did exist though rudimentary in nature right from the Vedic ages. Of course like many other matters the concept did not flourish or enlarge as it should have. The fine thread and sense of social belongingness and responsibility did continue to exist in the subconsciousness of the nation as traced in the third chapter. The subsequent periods of history did not ignore or discard the need and idea of legal aid. Despite the different rules and different systems the legal aid continues to exist. It could be asserted with certainty that at no point of time in the history of India that the nation existed without legal aid system as amply explained and illustrated in the fifth chapter.

Of course legal aid as a vehicle would be ineffective without a system of procedures. The fundamental procedural law applicable in the Indian justice delivery system viz. C. P. C and Cr. P. C clearly brings out the intention of the law makers that legal aid has to be an essential component of justice. The intricacies and detailed procedures and its efficacy in providing legal aid is critically analysed in the sixth chapter. If anyone anywhere speaks of the Indian Justice delivery system the first thought that comes to one's mind is that of our judiciary and more so of the Supreme Court, which has effectively proved not only to the nation but to the whole world that India is a democratic nation ruled by law. It is of course, no doubt, judiciary that has asserted itself in ensuring legal aid which should become the order of the day. Thanks to stalwarts like Justice Bhagwati and Justice Krishna Iyer that legal aid has become a respectable right to the poor and needy in India. Their judgments as cited in this chapter confirm the fact that giving of legal aid is a *sine qua non* of

just judicial system. One can ascertain that if not for the stern and uncompromising insistence of these judges of the High Courts and the Supreme Court, legal aid in its present form might have been delayed at least by half a century.

The effect of international dictates judicial pronouncements and more than anything else the compelling needs of the nation resulted in the enactment of the path breaking legislation namely the Legal Services Authorities Act, 1987. This Act ensures legal aid. The statement of objects of the legislation has rightly cited Art.39A as the basis and reasond'tre for this legislation. Chapter VI has been entirely devoted to the detailed discussion of the legislation, the institutions of various authorities including National Legal Services Authorities, State Legal Services Authorities. Their constitution, powers and functions are all critically analysed in the fifth chapter to prove currently there exists a system, to deliver justice to the poor and needy. Of course in India it is not law at fault but the men who administer the law fail to fulfil the objectives and dreams of the nation. Chapter VII therefore is an impartial analysis of the law, rules and systems.

Chapter VIII is the yolk of the thesis when the substance and content of the administration of legal services provisions is closely, intently and critically looked at. The focus of the study being the State of Goa, it begins with Goa State Legal Services Authority Rules and Regulations and takes stock of the existing systems of the constitution and functioning of Legal Services Authorities in Goa.

The study of course included intensive field research techniques and on-the-spot analysis wherein, a number of judges and advocates involved connected and concerned with Legal Services Authorities were interviewed on various aspects of system of legal aid that exists in Goa. As a natural consequence of this finding to support and substitute their views and ideas, the researcher has assessed the documentary evidence from 2002 onwards and presented a balance sheet of the state expenses in the name of legal aid. Considering that the concept of legal aid is not limited, the researcher took into consideration the various activities of the Legal Services Authorities and stressed upon the legal aid needs to inculcate, including the peripheral avenues like legal aid activities of law colleges. The system of legal aid to inmates of prison has also found the subject matter of in-depth analysis.

This being a research study conducted systematically following the rules and dictums of research methodology, the researcher would like to review his hypothesis as below.

After the brief summary of the thesis it is decided to continue with the following:

- i) Conclusion on Hypothesis
- ii) Suggestions.

9.1 CONCLUSION ON HYPOTHESIS

Even though Right to counsel is included as a fundamental right, majority of the people are unable to take advantage of this right due to their illiteracy, poverty and lack of awareness

From the circumstantial and direct evidence the above hypothesis has been proved partly².

The indigent litigant has no confidence in the effectiveness and adequacy of the justice delivery system due to procedural technicalities, poor service from the free legal aid lawyers, and establishment apathy.

From the empirical data collected and analysed the hypothesis has been partly proved.³

Low fees prescribed for the legal aid counsels attract very few talented lawyers and as a result Legal Service Authorities failed to execute the concept of "Poverty Jurisprudence."

From the questionnaire data analysed and the interviews the hypothesis has been proved.⁴

The sympathy of Legal Service Authorities towards free legal aid is more perceptible when the claimants are members of schedule castes and schedule tribes.

The data was not adequate either to justify or to prove it otherwise. The hypothesis needs further socio-historical research on these categories⁵.

² Refer page no.379-382

³ Refer page no.375-376

⁴ Refer page no 370-373

⁵ Refer page no 374

The sympathy of Legal Service Authorities towards free legal aid is more perceptible when the claimants are women.

The hypothesis has been proved as correct after analysing the statistical data available⁶.

9.2 SUGGESTIONS

It may not be adequate to end this thesis merely on conclusions but as an individual genuinely concerned about the system of legal aid, it is felt that some concrete and pragmatic suggestions will help the authorities, as to the areas and moot points in which the immediate and possible actions could be initiated. The suggestions are:

1. Sincere and honest advocates who are interested in the case and competent to handle should be appointed for legal aid, and not merely on the basis of seniority. To create confidence in the litigant about the system of legal aid, appointment of legal aid counsel plays a vital role.
2. The appointed advocates are not supposed to receive any additional fees from client even for stationery as they can claim from the Legal Services Authorities. The Concept of Legal Aid would be defeated as long as legal aid advocates demand the additional fees from the clients in the name of stationery or something else.
3. Judges have to appoint /request Senior Advocates where nature of the case so requires it, irrespective of whether he is a panel advocate or not.

⁶ Refer page no 375

Judges have to appoint advocates depending on the nature of the case and should not appoint just any advocate in the panel who may not do justice to the case. If the case is of a serious nature they can inform a Senior Advocate to take up the matter even though he is not on the legal aid panel.

4. Legal Aid Advocates should themselves deal with the case; they are not supposed to delegate the work to their untrained or budding junior advocates. This is especially so, when the case reaches trial stage and argument level, Legal Aid advocate has to handle the case personally and with utmost sincerity and more commitments.
5. The advocates have to deal with legal aid cases in such a way as to erase the blame, that convictions are more, in legal aid cases. Otherwise the basic object of Art.39A of the Indian Constitution and the efforts of great judges like Justice Bhagwati and Justice Krishna Iyer on legal aid movement would become futile.
6. Law students are to be permitted to assist the legal aid advocates in the manner students assist the Judges in the High Courts and the Supreme Court. Legal Services Authorities and Judiciary have to recognise the importance of law students, towards legal aid system and allow them to handle minor proceedings just as final year medical students are allowed to help the doctors in initial stages. Same concept can be adopted by the Legal Services Authorities.

7. When fee is meagre, advocates are not coming forward to be a panel advocate. In these circumstances, in each court one advocate may be appointed on contract basis for 3 years as a legal aid advocate. Authorities have to pay him monthly fixed salary.
8. Every judge on completion of a case has to record his comment about the performance of the legal aid advocate during such trials. This will be a check on the performance of advocates in legal aid cases. It will help to improve the quality of services of advocates in legal aid cases.
9. Legal Aid awareness programmes should focus at the village folk especially where uneducated, needy people like S.C, S.T and Working class reside. When programmes are planned, it is important that the topic for presentation is based on the interest or concern of the audience. Weaker sections of the community can be educated and instructed by means of interesting lectures given by good and effective speakers in simple language.
10. Every advocate has a social responsibility to take up at least some minimum number of legal aid cases. As advocate's profession, is a noble profession every advocate has to help the needy people at his level. Lawyers have to offer their services to the poor. Bar association should be sensitized to the cause, and must come forward to contribute in this humanitarian effort.
11. Legal Services Authorities has to be segregated as distinct and independent authority by appointing Judicial Officers and staff to run it

on full time basis. That would help to achieve more functional integrity, coordination, monitoring which would be effective in the long run. Regular judiciary cannot devote more time on Legal Services Authorities. The situation demands to have a proper secretary to administer Legal Services Authorities at all levels.

12. Publication on important topics such as “Worker and Law”, “Women and Law” “Tenancy”, “Land Laws” etc are required to educate the masses through vernacular languages, and distribute to the needy people, free of cost. The Authority has to spread legal awareness amongst the people by advertising through electronic media, print media and by publishing articles in various newspapers.
13. Members of Legal Services Authorities have to attend without fail *Grama Sabhas* as per new scheme of National Legal Aid Authorities. This will help the villagers to know about Legal Services Authorities and the object behind it. Basically when advocates attend the *Grama Sabhas* some minor problems can be settled on the spot.
14. A clause has to be inserted in the *vakalatnama* that the advocate has informed the client about the facility of legal aid advocate. This will help the needy people to be aware of legal aid.
15. There is a need to check the efficacy of the legal aid camps. Thereby the authorities can plan for the future programmes more effectively.
16. First of all village administrative bodies have to understand the concept of legal aid. There is a need to sensitize the representatives of the people

at ward level, self help groups in rural areas and mahila mandals about the importance of Legal Services Authorities, by which they can plan awareness programmes successfully and efficiently. Legal Aid, to be effective and meaningful, needs to be well-spread in the rural areas of the country.

17. Recognition to legal aid advocates be given by giving preference in recruiting candidates for the post of government lawyers and appointment, of commissioners, is one of the methods to motivate the advocates to join the legal aid panel.
18. Procedure for payment of advocate fee has to be redressed. When the remuneration has to be paid to the lawyer, he may not be demanded to submit an attendance certificate which causes delay. As they are working for legal aid and fees being not at par with other cases, the concerned may scrutinize the application for fee, and clear the file by paying the fee right at the moment. Otherwise it will be a harassment to the advocates, which ultimately discourages him from accepting such jobs.
19. Conciliation Centre has to function well. Panchayats should be permitted to play a greater role at the Conciliation Centre. To create confidence among the public at large on the functioning of Legal Services Authorities, organising conciliation centres could play an important role.

20. Lok Adalat must have the power to determine a dispute beyond yes-yes or no-no basis. Lok Adalat must not be a mere mediator but should also have some extra powers to settle the disputes effectively.
21. Senior citizens and, people affected in natural calamities, victims of terrorist attacks and freedom fighters should be included in the category of persons who are entitled to claim legal aid. There is a need to amend Sec.12 of the Legal Services Authorities Act by inserting the above categories.
22. Co ordination among Legal Services Authorities is required. High Court Legal Services Committees, District Legal Services Authorities and Taluka Legal Services Committees have to work in coordination with each other.
23. A special study may be made with respect to S.C and S.T in Goa. *Vis-a-Vis* legal aid benefits to the said category.
24. Funds for legal aid need not come solely from the State, but munificent public may contribute to it. Because, legal aid serves a social cause and caters to the basic requirements of human society. Such public participation will strengthen legal aid movement in India.
25. In the villages, a help line can be opened. It has to function on all working days from 10 a.m to 5p.m. It may be manned by competent lawyers. This help line system saves time, money and energy of poor people.

26. The Legal Services Authorities may organize street plays, skits, etc. to educate and entertain the general public so as to promote awareness of social and legal issues like Female Foeticide, Child Labour, and Domestic Violence against Women etc.
27. Law Colleges have to organise Lok Adalats by involving retired judges, Senior Advocates, Law teachers, and respected members of society to help conciliated settlement of disputes pending in courts and tribunals.eg. Insurance cases etc.
28. There must be training programmes for law students and social activists to appear before judicial and quasi judicial forums to represent under privileged groups.
29. Public Interest Litigation should be made use of by law students in the region to ensure implementation of various welfare laws on behalf of the poor.
30. Law Colleges should analyse existing laws from the perspective of the disadvantaged and draft alternative bills for adoption by law makers.
31. Social reformation and resurgence movements usually require man power and youth, therefore, law colleges shall come forward to alleviate the suffering of the unfortunate poor. Hence, a periodical study of the situation be made and persuade the officers to implement the accepted measures as visualised and granted by the government.

To conclude, it is hoped that some of the suggestions will enable the legal aid movement in Goa to grow both within the Law Colleges as well as amidst the Legal Services Authorities. The other objectives of these suggestions are to empower law students in the advocacy skills as well as to inculcate in them the culture of social work and commitment to the poor. As the researcher has been involved in the evolution of legal aid in Goa in the twenty first century, he has developed unique insights into the dynamics of legal aid movement in Goa. So he has made efforts to motivate further researches wherever he found lacunae. It is hoped that with much more in-depth studies and researches, the virgin field of legal aid in Goa will yield abundant results and Goa will be a model for other states.

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Annexure

ANNEXURE I

Full name of the Applicant
(in block letters)
Full Address

Date -----

To,

The Secretary,
District Legal Services Authority, Panaji
Chairperson/Chairman of Taluka Legal Services Committee-----.

Sir/Madam,

The applicant above named hereby applies for free legal services of an advocate for filing/defending suit, Criminal case, Appeal, etc.-----
----- (state nature of proceedings) on my behalf before the authority/court ----- (state here name of the Authority/Court and case number) at-----.

The particulars required to be furnished under section 12 of the Legal Service Authorities Act, 1987, rules and the Regulations made there under are given hereunder—

I am a member of Scheduled Caste/Scheduled Tribe.

I am a victim of trafficking in human beings or begar as referred to in article 23 of the Constitution.

I am a woman/ a child.

I am a person with disability as defined in cl.(1) of Sec.2 of the persons with disabilities (equal opportunities protection of rights and full participation) Act 1995.

I am a person under circumstances or undeserved want such as being a victim or a mass disaster, ethnic violence, caste atrocity, flood, draught, earthquake or industrial disaster or

I am an industrial workmen or

I am in custody, including custody in a protective home within the meaning of cl.(g) of Sec.2 of the immoral traffic (prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of Cl.(j) of Sec.2 of the Juevenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of Cl.(g) of Sec. 2 of the Mental Health Act, 1987 (14 of 1987) , or

I am a person in receipt or annual income less than Rs.50, 000/- (rupees fifty thousand only).

(Only person coming under Sr.no.2 (n) above should furnish information at Sr.no. 4 and 5. Please note that other persons coming under Sr. no. 2(a) to 2(g) need not furnish the information in Para 4 and 5.)

State here in brief the particulars of the case to be instituted or defended:

Details of properties possessed by me are as under :

(The particulars are to be furnished only by the person coming under category 2(h).

- I. -----
- II. -----

Total annual income derived by me from all source is Rs.----- (Rupees -----
-----)

(The particulars are to be furnished only by the person coming under category 2(h).

The Applicant, therefore, prays that he/ she be granted free legal services of an Advocate.

(Signature of the Applicant)

A F F I D A V I T

I -----
son/daughter/spouse

of -----, major in
age, r/o House No.-----ward No.-----Taluka-----

District -----

State of Goa, do hereby solemnly affirm and state on oath that the particulars furnished by me in paragraphs 2(a) to 2(h) , 3,4 and 5 are true to my own knowledge and no part of it is false.

VERIFICATION

I, -----do hereby declare and verify that the contents of Affidavit herein above are true to my own knowledge.

Solemnly affirmed on this -----day of -----.

(Applicant)

Identified by:

Advocate/Sarpanch/Taluka Committee Member/ Jailor/Escort.

Note: Affidavit to be sworn before appropriate Authority

9). In your opinion are the accused satisfied with the services of the legal aid advocates?

a) Yes

b) No

10). In your opinion the fees prescribed for legal aid advocate are

a) Meagre

b) Sufficient

11). In your opinion should final year LL.B students permitted to appear for accused under Legal Aid panel.

a) Yes

b) No

12. In view of the above questionnaire or otherwise from your experience at the bar please make suggestions for the improvement of Legal Aid Services if any.

ANNEXURE III
QUESTIONNAIRE FOR JUDICIAL OFFICERS

(Kindly Tick mark the appropriate option)

Name---

Designation---

Court---

- 1) Are the advocates on the legal aid panel competent enough to handle complex cases?
 - a) Yes
 - b) No
 - c) No Comments.

- 2) Since only senior advocates are appointed on the legal aid panel, is it not that they are bound to neglect such cases as they are occupied with other cases where they are paid more?
 - a) Yes
 - b) No
 - c) No Comments

- 3) Are the scales of remuneration prescribed for engaging lawyers on legal aid panel grossly insufficient?
 - a) Yes
 - b) No
 - c) No Comments

- 4) Should the fee structure be changed?
 - a) Yes
 - b) No
 - c) No Comments

5) Should junior advocates of at least minimum two years experience be appointed on the legal aid panel?

a) Yes

b) No

c) No Comments

6) Does the provision of the free legal aid to the accused person really help the accused person to secure justice?

a) Yes

b) No

c) No Comments

7) Any change/changes you would like to suggest, in this provision of free legal aid to the accused person.

ANNEXURE IV

OPINION SURVEY OF LEGAL EXPERTS

Issue I: Accessibility of Legal Services Authorities to the needy people.

1. Are Legal Services Authorities in the State of Goa sufficiently accessible to the needy people?
2. What needs to be done to improve these services?

Issue II: Right to Counsel

1. Is the right to counsel (legal representation) effectively available to all the needy people in Goa?
2. Mention some factors that are a hindrance to make this right more effective?

Issue III: Confidence of Indigent Litigant on Justice Delivery System

1. Are indigent litigants satisfied with adequacy of justice delivery system?
2. Is there a need for fundamental reforms in justice delivery system to help indigent litigants than mere legal aid?

Issue IV: Fees to Legal Aid counsel

1. Are the fees prescribed to Legal Aid counsel reasonable?
2. Is the quality of counsel's work affected due to fees?

Issue V: Category of People entitled to Legal aid

1. Are you satisfied with all the classes of people mentioned in the Act as entitled to legal aid?
2. In your opinion is there some weaker class left out that must be taken care of?
3. Are you of the opinion that there is a need to amend the law to include or exclude some class of people?

Issue VI: Procedure for Legal Aid.

7. Are you satisfied with the procedure to apply for Legal Aid?
8. What changes if any do you suggest for this purpose?

Issue VII: Role of the Bench

9. In your opinion has the judiciary played a pro-active role in providing legal aid?
10. What suggestions would you propose in this regard?

Issue VIII: Role of the Bar

11. Are you satisfied with the role of the Bar in providing Legal Aid?
12. Do you have any suggestions in this regard?

Issue IX: Role of Law Colleges.

13. Are you satisfied with the role of two law colleges in Goa with respect to Legal Aid?
14. Do you have any suggestions to make it more dynamic?
15. How can law students be instrumental in promoting legal aid to needy members of the society?

ANNEXURE V
COURTS IN STATE OF GOA

High Court of Bombay (Panaji Bench)

Courts in North Goa

1. District and Session Judge, Panaji.
2. The 1st Additional District and session Judge.
3. The Additional District & session Judge, Mapusa.
4. The 2nd Additional District and session Judge .Panaji
5. The Civil Judge, Sr. Division J.M.F.C' A' Mapusa.
6. The Civil Judge, Sr. Division J.M.F.C' A' Ponda.
7. The Civil Judge ,Sr. Division J.M.F.C' A' Panaji
8. The Civil Judge, Sr. Division J.M.F.C' B' Mapusa.
9. The Civil Judge, Sr. Division J.M.F.C' B' Panaji.
10. The Civil Judge, Sr. Division J.M.F.C' C' Mapusa.
11. The Civil Judge, Sr. Division J.M.F.C' B' Mapusa.
12. The Civil Judge, Sr. Division J.M.F.C' Bicholim
13. The Civil Judge, Jr. Division J.M.F.C' Pernem.
14. The Civil Judge, Jr. Division J.M.F.C' E' Court Mapusa
15. The Civil Judge, Jr. Division J.M.F.C' B' Court Bicholim.
16. The Civil Judge, Jr. Division J.M.F.C' 'C' Court Panaji
17. The Civil Judge, Jr. Division J.M.F.C' Sattri at Valpoi
18. The Civil Judge, Jr. Division J.M.F.C' 'C' Court Ponda
19. The Civil Judge, Jr. Division J.M.F.C' 'F' Court Mapusa
20. The Civil Judge, Jr. Division J.M.F.C' 'D' Court Ponda
21. The Civil Judge, Jr. Division J.M.F.C' 'C' Court Bicholim
22. The Civil Judge, Jr. Division J.M.F.C' 'D' Court Mapusa.(vacant)
23. The Civil Judge, Jr. Division J.M.F.C' 'B' Court Ponda (vacant)

Courts in South Goa

1. Court of district and session Judge, South Goa Margao.
2. Court of Additional District and session Judge (I) South Goa Margao.
3. Court of Additional District and Asst. Session Judge (II) South Goa Margao.
4. Court of Additional District and Asst. Session Judge (III) South Goa Margao.
5. Court of Additional District and Asst. Session Judge (IV) South Goa Margao.
6. Ad.hoc Additional District and Asst. Session Judge South Goa, Margao.
(Fast track Court)
7. Court of the civil Judge Sr. Division J.M.F.C. Margao.
8. Court at the Additional Civil Judge.
9. Court of the Additional Civil Judge Sr. Division, & J.M.F.C (II), Margao.
10. Court of the Addi. Civil Judge Sr. Division, & J.M.F.C (III), Margao.
11. Court of the Civil Judge Jr. Division J.M.F.C.' C 'Court, Margao.
12. Court of the Civil Judge Jr. Division J.M.F.C.' D 'Court, Margao.
13. Court of the Civil Judge Jr. Division J.M.F.C.' E 'Court, Margao.
14. Court of the Civil Judge Jr. Division J.M.F.C.' F 'Court, Margao.
15. Court of the Civil Judge Sr. division J.M.F.C, Vasco d agama.
16. Court of the Additional Civil Judge Sr. Division & J.M.F.C Vasco
17. Court of the Civil Judge Jr. Division J.M.F.C.'C' Court, Vasco
18. Court of the Civil Judge Sr. Division. & J.M.F.C 'D' Court
19. Court of the Civil Judge Sr. Division. & J.M.F.C Quepem.
20. Court of the Civil Judge Jr. Division J.M.F.C Quepem.
21. Court of the Civil Judge Jr. Division J.M.F.C Canacona

ANNEXURE VI

V.M.Salgoacar College of Law --

Legal Aid Cells

i) Valpoi Legal Aid Cell ii) Pilgao Legal Aid Cell iii) Assanora Legal Aid Cell iv) Sanquelim Legal Aid Cell v) Anjuna Legal Aid Cell vi) Calangute Legal Aid Cell vii) Verem Legal Aid Cell viii) Bandora Legal Aid Cell ix) Dharbandora Legal Aid Cell x) Shiroda Legal Aid Cell xi) Siolim Legal Aid Cell xii) Cyber Legal Aid Cell xiii) Mobile Legal Aid Cell xiv) Pirna Legal Aid Cell xv) Sangolda Legal Aid Cell xvi) Mandrem Legal Aid Cell xvii) Arpora Legal Aid Cell xviii) Mala Legal Aid Cell xix) Taleigao Legal Aid Cell xx) St.Cruz Legal Aid Cell xxi) Brittona Legal Aid Cell xxii) Old Goa Legal Aid Cell xxiii) Mercedes Legal Aid Cell xxiv) Banda Legal Aid Cell xxv) Pernem Legal Aid Cell xxvi) Moira Legal Aid Cell xxvii) Charao Legal Aid Cell xxviii) Parvorim Lions Legal Aid Cell¹ xxix) Socorro Legal Aid Cell xxx) Margao Legal Aid Cell xxxi) Marcela Legal Aid Cell xxxii) Vasco Legal Aid Cell xxxiii) Sancoale Legal Aid Cell xxxiv) Priol Legal Aid Cell xxxv) Bastora Legal Aid Cell xxxvi) Porvorim Legal Aid Cell xxxvii) Revora Legal Aid Cell xxxviii) Gurim Legal Aid Cell.

¹ This legal aid cell is running in association with Lions club.

ANNEXURE VII

PARTE OFFICIAL

MINISTERIO DOS NEGOCIOS DA MARINHA E ULTRAMAR

Direcção Geral do Ultramar

1. Repartido -- 2. Secção

Propozel o governo do Estado da Índia que sejam declaradas extensivas ao território ultramarino as disposições da lei que no reino de Portugal criou a assistência judiciária civil, e do decreto que no mesmo Estado a regulamentou, quando se verificarem motivos de identidade que determinem a aplicação das aludidas disposições a propositos de fidei-judicia por data de 30 de novembro de 1907.

Tendo ouvido a Junta Consultiva do Ultramar e o Conselho de Ministros.

Usando da faculdade concedida pelo § 1.º do artigo 15.º do Primeiro Acto Adicional á Carta Constitucional da Monarchia;

Ha por bem decretar o seguinte:

Artigo 1.º São extensivas ao Estado da Índia as disposições da carta de lei de 21 de julho de 1899, que criou no reino a assistência judiciária civil, e do decreto de 1 de agosto do mesmo anno, que a regulamentou.

Art. 2.º Fica revogada a legislação em contrario.

O Ministro e Secretario de Estado dos Negocios da Marinha e Ultramar assím o tenha entendido e faça executar. Paço, em 20 de abril de 1907. — R. L. *Agnes de Gualles de Farcanelles.*

(D. O. nº 91, de 29-4-1907)

Facsimile of the original Portuguese gazette 1907 showing the kind of Legal aid then in vogue. Ref. Chapter VI.

ANNEXURE VIII

MINISTÉRIO DA JUSTIÇA

Decreto n.º 11.319 - Revoca o decreto n.º 11.319 de 1947, que altera o Regulamento de Custas Judiciais. Deixa toda a legislação em vigor, exceto a que for objeto de diploma, e nomeadamente os artigos 14.º e 15.º do decreto-lei n.º 11.319 de 1947 e disposições que se lhe referam.

Usando da faculdade conferida pela 2.ª parte do n.º 2.º do artigo 109.º da Constituição, o Governo decreta e eu promulgo, para valer como lei, o seguinte:

ASSISTÊNCIA JUDICIÁRIA

CAPÍTULO I

Disposições fundamentais

Artigo 1.º A assistência judiciária nas causas cíveis consiste em dois benefícios:

- a) Patrocínio gratuito;
- b) Dispensa do pagamento prévio de custas, que serão todavia contadas.

§ Único. A assistência judiciária também terá lugar nos processos criminais, em provento do ofendido ou das outras pessoas a quem a lei conceder a faculdade de acusar, quando este for o crime penal dependente de querrela, acusação ou requerimento particular.

Facsimile of the original Portuguese gazette 1947 showing the kind of Legal aid then in vogue. Ref. Chapter VI.