CHAPTER IV

LEGAL AID AS HUMAN RIGHT:
INTERNATIONAL PERSPECTIVE
AND ANALOGUES PROVISIONS
IN VARIOUS COUNTRIES
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4.1 Introduction

At the International level, Legal Aid as Human Right is implicit in the Covenants and conventions, which obliges the state responsibility to provide Legal Aid which ratify them. Provisions of Equal protection of Laws, fair trial and remedy is the corner stone of Rule of Law in various countries. Legal Assistants irrespective of financial resources is provided in criminal cases and subject to the mean’s test in civil cases. In this chapter the provisions relating to Equal Legal Assistance to the poor as envisaged in International Covenants and conventions, in general and legal services in particular is discussed. Legal services in countries like U.S.A, U.K., Canada, Spain, Denmark, France, were stated to understand states obligation to provide legal services at state cost and representations by professional lawyers, public defenders were analyzed.

4.1.1 Legal Aid as Human Right

The source of a human right is neither the state nor any particular system, it is the person. This is the key to its universality. A human right is a right that every person has; it inheres in the person, it is with each of us from birth, it is ours because we are human, and it is necessary to our living with dignity, to our exercise of reason and conscience. Those who do not enjoy their rights are not without rights they are deprived of their enjoyment of them. ‘Access to law’ means a right to be told the law, to be given the opportunity to know and understand the law, to use and comply with the law, to gain its benefit and protection. Legal representation is one way of achieving access to law. Legal aid programs are widespread, and spreading wider.
They are part and parcel of the rule of law, and where the rule of law is, or is being developed, so legal aid programs are, being developed\textsuperscript{171}.

Nowhere, however, is legal aid a right, except within closely defined circumstances. Speaking to an international conference on legal aid and human rights, was an opportune time to set out an argument for recognition of legal aid as a human right, a fundamental right for all people. Legal aid could mean much more than legal representation, and a right to legal aid could mean much more than a limited right to representation in court. We can, instead, think of legal aid as providing public access to law, to law that is preventive and protective, that brings change and hope, that relieves poverty and promotes prosperity.

We can think of legal aid as providing public access to legal information, to legal advice and to legal education and knowledge. None of this broad and bold conception of legal aid – legal aid beyond legal representation – is recognised as anyone’s by right. When there is legal aid beyond legal representation, it is provided for a range of reasons – Smith has suggested six: charity, poverty reduction, and efficiency in the legal system, rule of law, lawyers’ self-interest and human rights. A right to legal representation is rarely stated explicitly. Rather, it is established by inference from the systems and institutions of the state. Superior courts and learned writers around the world have recognised a right to legal representation, in some circumstances, through two ways of thinking: by implication in constitutional guarantees of equality, and by implication in a guarantee of a fair trial.

Within five years of the end of Second world war two major events took place affecting the future of state responses to the needs of the poor for access to law. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), in which Article 7 proclaimed a universal right to equality before the law and its protection, without discrimination, a right reaffirmed and elaborated almost 30 years later in the International Covenant on Civil and Political Rights (ICCPR), Art. 26. The second event was the establishment in the UK in 1949 of a National Judicare legal aid scheme, which heralded an unprecedented emphasis on legal aid around the world, and the establishment of new legal aid schemes in a number of other welfare capitalist societies.

4.2 Universal Declaration of Human Rights

The declaration of Human Rights was adopted by the General Assembly on December 10, 1948. The Declaration sets a new international standard. The Universal Declaration of Human Rights could at best be “a first step in a great revolutionary progress. The Declaration has been hailed “as an historic event of the profound significance and as one of the greatest achievements of the United Nations. The Declaration is not a treaty and contains no implementation machinery, yet it constitutes a “common standard of achievement for all peoples and all nations”. As such it has a normative value. The Declaration is the mine from which other conventions as well as national constitutions protecting these rights have been and are being quarried.


The provisions of the Declaration, directly or indirectly providing social justice to poor are as follows: "Preamble of 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 the 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."
The Declaration comprises a preamble and 30 articles, relating to the human rights and fundamental freedoms to which all men and women, everywhere in the world are entitled without any discrimination to promote respect for these rights and freedoms. Some of the Articles of the Declaration deal with Socio-economic justice. Article 1 reads: \(^{173}\) "All human beings are born free and equal in dignity and rights. This Article lays emphasis upon the concept of equality. Article 2 sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Under this article seeds of legal aid have been sown. It provides guarantee against discrimination on the basis of "property." The rich and the poor are given equal rights and equal protection. If poverty comes in the way of enforcement of these human rights, it amounts to denial of equality on the basis of property and there will be violation of this article. 'With the help of legal aid to the poor, the concept of equality can be maintained for imparting social justice to them.'\(^{174}\)

Article 3 proclaims the right to life, liberty and security of person, a right essential to the enjoyment of all other rights. The Constitutions of various countries also provide that the right of life, liberty and security cannot be taken away without due process of law or the procedure established by law. Due

\(^{173}\) http://w.w.w.un.org/en/documents/udhr. Article 1. All human beings are born free and equal in dignity and rights. Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

\(^{174}\) Dr. S. S. Sharma: Legal services, public Interest Litigation & para-Legal services central law Agency, Allahabad, p 44.
procedure requires that adequate opportunity of hearing must be provided to a person before denial of his right. Hearing implies, hearing through a counsel. It becomes the duty of the State to provide legal aid to a person who cannot afford the fee of the counsel.

Article 5 provides that no one shall be subjected to torture or the cruel, inhuman or degrading treatment or punishment. Without legal aid a person will be sufferer of injustice leading to disgraceful, inhuman or degrading treatment with him. Therefore, for effective implementation of this article, priority should be given to legal aid programmes.

Article 6 provides that everyone has the right to recognition everywhere as a person before the law. Persons standing on different levels of platforms cannot be treated equally. A person having ample means will certainly dominate over indigent persons, Poverty is treated as a sin. The poor are always isolated from affluent society. Is it not a sort of denial of equality before the law? One of the solutions of this problem is legal aid to the poor. The States obligation to provide legal aid to the poor and indigent persons emanated from its commitment to the Rule of Law. The Right to Legal Aid under this Article is based on the principle of equality that no one should be denied the opportunity of fair trial because of his /her indigence. These equality rights can be effective only when individuals are given opportunity to obtain legal aid and assistance when required so that they may have access to the Courts for a fair and impartial trial. Thus the concept of legal aid is essentially based on the principle of equality so that no one is denied ‘equal’ access to justice because of structural inequalities prevailing in the society.\textsuperscript{175} Article 8 provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights granted to him by the

\textsuperscript{175} http://w.w.w.un.org/en/documents/udhr.
Constitution or by other laws. Under Article 9 No one shall be subjected to arbitrary arrest, detention or exile. The poverty is rampant in society and it is a bitter truth that without free legal aid the poor cannot effectively get remedy on violation of his human rights or fundamental rights.

Article 10 provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Here, guarantee has been given that equality will be maintained to a fair hearing in civil as well as in criminal cases. What more is needed for legal aid? 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. Under Article 22 everyone as a member of society, has the right to social security. Further, the economic, social and cultural rights are treated as indispensable for the dignity of human being and the free development of his personality. Articles 23 to 27, too, provided for economic, social and cultural rights.

Though right to legal aid is not expressly enumerated in the Declaration of human rights yet one may find that it exists implicitly. The Universal Declaration of Human Rights has become a yardstick to measure the degree of respect for human beings. Since 1948, the declaration is a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the directions for all subsequent works in the field of human rights, and has provided the basic philosophy for many legally binding international instruments designed to protect the right and freedoms, which it proclaims. Although, the Declaration is not a 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 The European Convention on Human Rights and the European Social
Charter:

The Council of Europe and International Organization, was formed by west
European Nations in 1949. Article 3 of the Statue of Council of Europe provides that
every member “must accept the principles of the rule of law and of the enjoyment by
all persons within its jurisdiction of human rights and fundamental freedoms” For the
Protection and promotion of human rights and fundamental Freedoms two treaties
have been concluded under the auspices of the Council of Europe, the European

The European Convention on Human Rights was signed in Rome on
November 4, 1950 and entered into force on 3 rd September 1953. The Rights and
freedoms recognized in this convention are set forth in the first section of the
convention (Article 2-18) and in four additional agreements known as protocols No.
1, 4 and 7 to the convention. The word “All persons in Article 3 includes the principle
of Rule of Law conferring enjoyment of every human being his rights and
fundamental freedoms implies no distinction has to Rich and Poor, everyone has
right to protection of human rights. Poor persons too have right to a protection. Here

\[^{176}\text{International Relations – The World Community in Transition, Third Indian Edition (1970), p.37, According to Palmer and Perkins “The declaration is merely a statement of principles, not a legally binding instrument; but it has become one of the best known of international documents, and it has often been referred to in resolutions of the U.N., the specialized agencies, regional arrangements and other international organizations, and in national constitutions, legislation, and court decisions. It is a beacon light for all mankind, even though it has been honored more often in the breach than in the observance”. Starke has also written, “……the Declaration could not and did nor purport to be more than a manifesto, a statement of ideals, a “path-finding” instrument. V.K.Krishna Iyer, “Mass Expulsion As Violation of Human Rights “1.J.I.L. Vol. 13 (1973) p.169;,,E.S Fawcett, The Law of Nations)p.156.7. Introduction to International Law, Tenth Edition (1989) (Allen Lane The Penguin Press, London, 1968p.364.}^\]
comes the concept of legal aid. Article 6 (3) (c) of the conventions deals with Legal Aid in Criminal cases. Article 6(3) provides that “Every one charged with a criminal offence has to defend himself in person or 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”. The Convention provides Legal aid, to a person charged with a criminal offence, to defend himself. The Convention does not provide Legal Aid as a Right. To avail free Legal Assistance, person charged with Criminal offence has to prove that he has insufficient means to pay, for Legal Assistance.

The rights under this convention are the right to life and a general right of non-Discrimination Article 13 of the convention provides that everyone whose “rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 of the Convention provides that “the enjoyment of rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinions national or Social Origin, associated with a national minority, property, birth or other status. The two institutions established for the enforcement of human rights and fundamental freedoms as set forth in the European Convention on Human Rights are(A) The European Commission of Human Rights.(B) The European Courts of Human Rights. In addition to these two bodies, the committee of Ministers, which is the governing body the Councils of Europe, is also empowered to enforce the decisions of the Europeans Courts of Human Rights. When the Europeans Commission of Human Rights decides that there is violation of human rights, it is the council of ministers, which decide the measures to be taken for the enforcement of human
The European Convention\textsuperscript{177} is still the only international human rights agreement providing such a high degree of individual protection.

**European Committee on Legal Cooperation (2002)**

The European Committee on Legal Cooperation has prepared an action plan on legal assistance systems in 2002. It incorporates the principles laid down by the European Convention on Human rights and Fundamental freedoms, under Article 6 which, inter alia, provides that everyone charged of an offence has the minimum right to defend himself in person or through legal assistance of the lawyer of his choice, if he has no sufficient means to pay for court or lawyers' fees.

The action plan of 2002 had laid down the following guidelines for legal assistance system operating in European Countries. They are:

1. Appropriate legal aid and assistance is an integral part of criminal justice system in order to ensure equal access to justice for all irrespective of their social or economic status. They may include—
   a. Provision of legal assistance through a lawyer;
   b. Providing information and legal advice to those who are facing criminal trial or suspected of having committed an offence;
   c. Defending accused persons in criminal cases;
   d. Preparing files in civil cases and representing the client in civil litigation;
   e. Assisting persons in dealing with public authorities, when some legal matter is at issue;

\textsuperscript{177}http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights Article 14 embodies the principle of equality no discrimination on the ground of property. Every person has equal right of protection if his and freedoms are violated. No one shall be denied justice on the ground of poverty. The right to hearing by counsel is inherent in protection.
(f) Legal Aid and assistance for enforcement of judgments or sentence or orders which include filling applications for remission of sentence or pardon preparation of review petitions.

The European Committee on Legal Cooperation had emphasized the role of lawyers in successful implementation of the legal aid and assistance schemes. The member states must allocate sufficient funds and other resources for the purpose. Professional associations of lawyers should cooperate in the organization of legal aid programmes and provide legal aid to those who are likely to be denied access to justice of want of funds.

4.4 INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS, 1966

The Declaration of Human Rights was also followed by two significant instruments, which transformed the principles enunciated in the Declaration into treaty provisions and established legal obligation on the part of each ratifying country. These instruments were: International Covenant on Civil and Political Rights and its optional protocol, and The International Covenant on Education, Social and Cultural Rights.

Civil and political rights are sometimes called the 'first generation' of human rights. They are classically perceived as rights to be free from government interference. They may be contrasted with so-called 'second generation' rights, economic, social, and cultural rights, such as rights to an adequate standard of living, education, and health, which are traditionally conceived as rights requiring positive government action.

178 Civil rights cover rights to protect physical integrity, procedural due process rights, and non-discrimination rights. ‘Political rights’ enable one to participate meaningfully in the political life of one's society, and include rights such as freedom of expression, assembly, and association, and the right to vote.
The most comprehensive and well-established UN treaty on civil and political rights is the International Covenant on Civil and Political Rights 16th December, 1966 (ICCPR), which has yielded the lion's share of UN jurisprudence in this area. They were duly ratified came into force on 23rd March, 1976 India also ratified these covenants with protocol, with certain reservations. Other UN human rights treaties have generated important material on specific civil and political rights, which are Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) has produced important material on the right to be free from torture, inhuman or degrading treatment, or punishment. The two non-discrimination treaties, the International Convention on the Elimination of All Forms of Racial Discrimination 1966 (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)179, have generated substantial material on the right to be free from discrimination.

Article1 provides that All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Article 2 guarantees Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*, Each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the

violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

**Article 14 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.

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have 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;** (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.
ARTICLE 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4.5 THE INTERNATIONAL ECONOMIC, SOCIAL AND CULTURAL RIGHTS

At the International conference on Human Rights at Tehran, it was realized that for effective implementation of civil and political right, the need of economic social and cultural rights were recognized Economic, social and cultural rights are incorporated in the International covenant on Economic, social and cultural rights, adopted by the General Assembly on 16 December, 1966 and entered into force on 3 January 1976. The state parties to the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political, other opinion, national or social origin, property, birth, or other status. The covenant includes the following rights: right to work; right to education, right to health; right to adequate food; right to culture; right to enjoyment of just and favourable condition of work; right to social security and right to adequate standard of living. The state parties under the International covenant on Economic, social and cultural rights are under an obligation to take steps towards the realization of the rights incorporated therein.

4.6 The United Nation Declaration on the Elimination of All forms of Racial Discrimination.
The United Nation Declaration on the Elimination of All forms of Racial Discrimination under Article 7 provides that state parties undertake prohibit and to eliminate racial discrimination as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right of equal treatment before tribunals and all other organs administering justice (Article 5).


The Eighth United Congress on Prevention of Crime and Treatment of Offenders *was held in Havana (Cuba) in 1990 and the theme taken up for deliberation was ‘International Crime Prevention and Criminal Justice in the Twenty-first Century.’ It was unanimously resolved that State Governments should ensure that sufficient fund and financial resources are available for providing free legal services to the poor and other disadvantaged persons. It was also emphasized that professional associations of lawyers should actively co-operate in the organization of legal-aid services. Basic principles on role of Lawyers approved by the General Assembly on 18 December, 1990 in criminal justice specifically dealing with (a) Effective access of legal assistance for all groups of society: (b) The right of the accused to counsel and to seek legal assistance of their own choice; (c) Education of the public on the role of lawyers in protecting fundamental rights and liberties.\(^\text{180}\)

The ‘United Nations Standard Minimum Rules for Treatment of prisoners,(UN resolution 43/173 of December 9, 1988) already contain a provision that a detained person shall be entitled to have legal counsel assigned to him/her by a judicial or other authority in all cases where the interests of justice so require if he/she does not have sufficient funds to pay for his defense. Under -trial prisoners

\(^{180}\) Dr. U. Chandra : *Human Rights* (Allahabad law agency 1999) P126 and 128 (The first UN Congress on Prevention of crime and treatment of offenders was held in Geneva in 1955. Thereafter such congress are held every 5 years in different parts of the world.)
must be provided legal aid if they cannot arrange a legal counsel for their defense due to lack of funds or indigence.

4.8 The American Convention on Human Rights (also known as the Pact of San José) is an international human rights instrument. It was adopted by the nations of the Americas meeting in San Jose, Costa Rica, in 22 November 1969. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18 July 1978. According to its preamble, the purpose of the Convention is "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."

Chapter I establishes the general obligation of the states parties to uphold the rights set forth in the Convention to all persons under their jurisdiction, and to adapt their domestic laws to bring them into line with the Convention. The 23 articles of Chapter II give a list of individual civil and political rights due to all persons, including the right to life "in general, from the moment of conception" humane treatment to a fair trial. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Legal Aid is implicitly mentioned in Convention under Articles 7, 8, & 24. The right to free legal services is an essential ingredient of fair trial for a person accused of offence and it is implicit in the guarantee of Art.8. The detenu right to consult legal counsel is provided to protect the liberty of person.

Article 7. Provides Right to Personal Liberty (1) Every person has the right to personal liberty and security. (2) No one shall be deprived of his physical liberty
except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

(3) No one shall be subject to arbitrary arrest or imprisonment.

Article 8. Guarantees Right to a Fair Trial\textsuperscript{181} 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b. Prior notification in detail to the accused of the charges against him;

c. Adequate time and means for the preparation of his defense;

d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. The inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

Article 24 All persons are Equal before the Law. Consequently they are entitled without discrimination, to Equal Protection of Laws. Access to justice is

\textsuperscript{181} http://en.wikipedia.org/wiki/American_Convention_on_Human_Rights
guaranteed irrespective of financial capacity. No discrimination, on the ground of poverty to avail protection of laws.

4.9 The African Charter on Human and People’s rights:

The Draft of an African Charter on Human and People’s Rights providing inter alia for bodies responsible for promotion and Protection was taken at the Summit of Heads of States and Government of the Organization of African Unity (OAU), held in Monrovia in 1979. And finally adopted at Nairobi Summit in 1981. The charter came into force on 21 October, 1986*. The provisions’ of the Charter are enforceable within the framework of the Organization of African Unity which is a regional inter governmental organization established in 1963. It is a unique feature of the African Charter that it places same emphasis on the enforcement of the rights as well as the duties. Some of the rights incorporated in the African Charter are: Right to Equality before law and equal Protection of law182, right to inviolability to person


Article 3 1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

Article 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7 1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

Article 26 States parties to the present Charter shall have the duty to guarantee the independence of
including the right to the respect of the dignity and to the recognition of legal status.
The right to hearing, The right to Economic, Social, Cultural and Development.

**PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA**

The African Commission on Human and Peoples’ Rights; adopted at its 26th session held in November 1999, on the Right to a Fair Trial and Legal Assistance, in which it decided to prepare general principles and guidelines on the right to a fair trial and legal assistance under the African Charter.* Solemnly

the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

*Articles 5, 6, 7 and 26 of the Charter, which contain provisions relevant to the right to a fair trial; ; Website: http://www.achpr.org

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183 Website: http://www.unodc.org/documents/justice-and-prison-reform/Webbook_Legal_Aid_in_Africa_lr.pdf on August 30, 2011 Includes bibliographical references (p. 110-113) In its resolution 2007/24 on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa, the United Nations Economic and Social Council recognized the importance of providing legal aid to suspects and prisoners and its effect on reducing the length of pre-trial detention, prison overcrowding and congestion in the court. The Council also noted that many Member States lacked the necessary resources and capacity to provide legal assistance. It therefore called upon the United Nations Office on Drugs and Crime (UNODC) to "study ways and means of strengthening access to legal aid in the criminal justice system" and "assist African States, upon request, in their efforts to apply the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa". The present Handbook on Improving Access to Legal Aid in Africa is derived from that mandate. The intention is to provide an overview of the progress that has been made towards improving access to legal aid services in criminal justice systems in Africa in order to assist policymakers, practitioners and all stakeholders (considered to include development partners, Governments, bar associations, NGOs and grassroots action groups) actively involved in criminal justice reform in three ways: by providing the general information needed for developing national legal aid service delivery strategies, by offering alternatives to conventional models of legal aid delivery and by outlining promising practices on the continent, some particularly suitable for post-conflict societies.

Recalling its mandate under Article 45(c) of the African Charter on Human and Peoples’ Rights (the Charter) “to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African states may base their legislation”; and Right to a Fair Trial and Legal Assistance Article 30 An African Commission on Human and Peoples’ Rights, is to promote human and peoples’ rights and ensure their protection in Africa.
proclaims these Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and urges that every effort is made so that they become generally known to everyone in Africa; are promoted and protected by civil society organisations, judges, lawyers, prosecutors, academics and their professional associations; are incorporated into their domestic legislation by State parties to the Charter and respected by them:

A. General Principles Applicable To All Legal Proceedings:

In the determination of any criminal charge against a person, or of a person’s rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body. The essential elements of a fair hearing include: equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or other convictions, national or social origin, means, disability, birth, status or other circumstances; equality of access by women and men to judicial bodies and equality before the law in any legal proceedings; respect for the inherent dignity of the human person, especially of women who participate in legal proceedings as complainants, witnesses, victims or accused; adequate opportunity to prepare a case, present arguments and evidence and to challenge correspond to opposing arguments or evidence; an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings; an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body.

B. Access to Lawyers and Legal Services:

States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject
to their jurisdiction without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.

States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar. States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.

C. Legal Aid And Legal Assistance:

The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it. The interests of justice should be determined by considering: in criminal matters: the seriousness of the offence; the severity of the sentence. in civil cases: the complexity of the case and the ability of the party to adequately represent himself or herself the rights that are affected; the likely impact of the outcome of the case on the wider community. The interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon. An accused person or a party to a civil case has the right to an effective defense, or representation and has a right to choose his or her own legal representative at all stages of the case. They may contest the choice of his or her court-appointed lawyer.

When legal assistance is provided by a judicial body, the lawyer appointed shall: be qualified to represent and defend the accused or a party to a civil case; have
the necessary training and experience corresponding to the nature and seriousness of the matter; be free to exercise his or her professional judgment in a professional manner free of influence of the State or the judicial body; advocate in favour of the accused or party to a civil case; be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.

Professional associations of lawyers shall co-operate in the organisation and provision of services, facilities and other resources, and shall ensure that:

(i) when legal assistance is provided by the judicial body, lawyers with the experience and competence commensurate with the nature of the case make themselves available to represent an accused person or party to a civil case;
(ii) where legal assistance is not provided by the judicial body in important or serious human rights cases, they provide legal representation to the accused or party in a civil case, without any payment by him or her.

g) Given the fact that in many States the number of qualified lawyers is low, States should recognize the role that para-legals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.

States should, in conjunction with the legal profession and non-governmental organizations, establish training, the qualification procedures and rules governing the activities and conduct of para-legals. States shall adopt legislation to grant appropriate recognition to para-legals.

Para-legals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession. Non-governmental organizations should be encouraged to establish legal assistance programmes and to train para-legals.
States that recognize the role of para-legals should ensure that they are granted similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence.

**The Third United Nations Conference** on the prevention of Crime and Treatment of Offenders held in 1965 at Stockholm realised the need for legal aid and stated The availability of legal aid for accused and convicted persons was discussed. There was unanimity on the need to provide legal assistance to arrested and accused persons and to those convicted of crime who may wish to appeal. This is justified not only in terms of human rights and society decency but also because the failure to provide adequate legal aid may have well leave the convicted persons with a sense of injustice the lack of an adequate legal aid system thus tends to increase to recidivism.

**4.10.1 Tehran Conference** The International Conference on Human Rights was held in Teheran (Iran) from 22nd April to 13th May, 1968 to promote the Human Rights equally. Eighty four states participated in the Conference (India). The Second Committee after holding 13 meetings, adopted Resolution “XIX-Legal Aid” ensuring Right of access to individuals to competent tribunals irrespective of financial inability to recourse it, to strengthen the observance and protection of Human Rights and fundamental freedoms. The Teheran Conference Aims to review the progress made in the 20 years since the adoption of the UDHR and to formulate a program for the future184.

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The conference recommended on Legal Aid:

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

(b) That standards be devised for granting financial, professional and other legal assistance in appropriate cases to those whose fundamental rights appeared to have been violated.

(c) That Government should consider ways and means of defraying the expenses involved in providing such comprehensive legal aid system.

(d) The Government 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 Government should co-operate in extending the availability of competent legal assistance to aggrieved individuals who need it.

(f) That the United Nations provide the necessary resources, within the limits of the Human Rights Advisory Services Programme.

4.11 Legal Aid in Foreign countries: Legal aid in England and Wales

On the basis of recommendation of Rushcliffe Committee Legal Aid and Legal Advice Act 1949 was enacted. Legal aid in England and Wales was originally established by the Legal Aid and Advice Act 1949. The Legal Aid and Advice Act 1949, being "An Act to make legal aid and advice in England and Wales more readily available for persons of small or moderate means [and] to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of the moneys provided by Parliament,' passed into law on 30th July, 1949. The Act 1949 Provides, too, for simple legal advice and for claims and 'small claims, that is, legal aid for taking steps to assert or dispute a claim where litigation has not yet risen.
The Act 1949 has been slightly amended and extended by the Legal Aid Act 1960 and the Legal Aid Act 1964. The statutory provisions relating to legal aid in criminal cases are to be found in Part IV of the Criminal Justice Act 1967.

The Access to Justice Act 1999 allows the Lord Chancellor to authorize legal aid funding in cases which are otherwise out of scope of the legal aid scheme under the exceptional funding provisions. Legal aid in England and Wales is administered by the Legal Services Commission, and is available for most criminal cases, and many types of civil cases with exceptions including libel, most personal injury cases and cases associated with the running of a business. Family cases are also often covered. Depending on the type of case, legal aid may or may not be means tested. A defendant potentially have legal aid assistance if their application passed the

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185 Legal Aid in England and Wales oyez practice notes practical legal aid by Edward Moeran P.1,
Over seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Magna Carta:“To no one will we sell, to no one will we deny or delay right or justice.
* Ian mclean and Peter Morrish Harris :Criminal Law P. 585. By Section 73 of the Criminal Justice Act 1967 legal aid is available in the following circumstances.: Where a person is charged with an offence before a magistrates' court or appears or is brought before a magistrates' court to be dealt with, the court may order that he shall be given legal aid for the purpose of the proceedings before the court* and any other magistrates' court to which the case is remitted in pursuance of section 56 (1) of the Children and Young Persons Act 1933. Where a person convicted by a magistrates' court desires to appeal to the Crown Court, either of those courts may order that he shall be given legal aid for the purpose of the appeal and where any such person gives notice of appeal, either of those courts may order that the other party to the appeal shall be given legal aid for the purpose of resisting the appeal.*

Section 74 defines legal aid as meaning representation by a solicitor and counsel assigned by the court, including advice on the preparation of that person's case for the proceedings. However for the purpose of any proceedings before a magistrates' court, representation by only a solicitor should normally be ordered and for the purpose of section 73 (5) (appeal to the court of appeal) representation by only counsel may be ordered. It also provides that a legal aid order for a trial or appeal there from shall be authority to the solicitor or counsel, as the case may be, to advise whether there are reasonable grounds of appeal from that trial or appeal and to assist in the making of notices of appeal, etc.

Section 75* Provides that the power to make a legal aid order shall be exercisable by a court having power under section 73 of this a Act to do so where it appears to the court desirable to do so in the interests of justice.

Section 76* empowers the courts to order a person to whom legal aid has been granted to pay contributions in respect of the relevant costs, either in one sum or by installments; the collecting authority is the clerk to the magistrates' court named in the order by the court making the order of contribution. * by section 77* the court may refer the matter to the supplementary benefits committee for an inquiry into that person's means.

Section 80 gives power in certain circumstances to the court to amend or revoke any order made.

Section 81 (2) of the Criminal Justice Act 1967 provides that, subject to regulations under section 83 of this Act, the costs of legal aid ordered to be given to a legally assisted person for the purpose of any proceedings shall include sums on account of the fees payable to any counsel or solicitor assigned to him and disbursements reasonably incurred by any such solicitor for or in connection with those proceedings. Transcripts. Where it has been necessary in order to prepare an appeal to pay for a copy of the transcript or short transcript * of the trail, the costs of that transcript would seem to be a proper. Disbursement for the purposes of section 65 (2). Alternatively, application may be made to the Court of Appeal for a free transcript. *Procedure for recovery. The procedure for the recovery of legal aid contributions in criminal cases is governed by the Administration of Justice Act 1970, s. 43 and sched. 10. The collecting court is the magistrates' court from which the accused was committed in respect of proceedings on indictment of that magistrates' court which is specified by the court of trail

exceptional funding criteria. Criminal legal aid is generally provided through private firms of solicitors and barristers in private practice. There are a limited number of public defendants. Civil legal aid is provided through solicitors and barristers in private practice but also non-lawyers working in law centers and non-for-profit advice agencies.

The provision of legal aid is governed by the Access to Justice Act 1999 and supplementary legislation. The Act, 1999 provides that the Commission consists of the members whose number shall not be less than seven but not more than number. Public defender organizations have been set up in England comprising small groups of salaried staff appointed by the legal service commission. Besides, private practitioners (Legal aid delivery by private practitioners funded on case by case bases, as now as judicare While the salaried lawyers employed by legal services authority to undertake full representation of defendants are called public defenders) are engaged to defend the indigent persons on case by case bases. Thus mixed model has been found to be successfully working in England for the last few years.

4.11.2 Legal Aid in United States:

Legal aid in the United States appeared as early as the 1870s. In united states, Legal Aid is a promise of equal justice for all. As early as in 1876 German Legal Aid Society, in the city of New York is created with independent legal services agency to render the help to the indigent and poor persons. Arther Von Briesen, the Executive of the German Legal Aid society in 1890 expanded and proliferated the concept of Legal Aid across the country and throughout Europe. He advocated that, Legal Aid is not a charity but is a way to provide justice for all. The spread of the
Legal Aid movement in the United States has been due largely in the intense efforts to private voluntary organization. Government aid is looked upon with disfavor on the ground that it brings with it governmental control. Legal Aid is given by various types of organizations, the social service organizations, the law school clinics and the Bar Association Offices.

The University of Donward constituted a “Clinical Legal Aid programe ” in 1904, affiliated with law schools and which as search became the coordinating and unifying factor for the Donward legal aid society.

In 1919 Reginald Herber Smith, in his book titled as "Justice and the poor " sensitized the necessity of roll of Bar to contribute to legal the services poor. In 1921 The American Bar Association took upon itself the duty of encouraging the establishment and maintenance of Legal Aid Organizations. In course of time a partnership was formed between the Legal Aid Organizatins and the Bar, This combination proved effective national legar ship to the Legal Aid movement. In 1923 National Legal Aid Defender Association (NLADA) , constituted to render Legal Aid. Smith view of lawyer renderings free services was not shared by Bar. During 1940 & 1950 the legal aid was very much expanded as there was a heavy demand for the same. Initiated by the British movement in the legal aid, The Government Financing for legal representation under the Legal Aid and Advice act 1949, Development of Legal Aid in United States originated. During the early 1960’s over a series of cases, the United States Supreme Court ruled that American poor and needy do have the right to counsel, but only in criminal cases. It was only in a few states such as California that included guarantees the right to support in cases like paternity actions and involuntary terminations of parental rights commonly known as “quasi-criminal” cases. The federal government and some states have

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offices of public defenders that are there to assist poor and needy defendants, while other states will have systems for outsourcing the work to private practising lawyers.

**LEGAL AID IN CRIMINAL CASES:**

On the basis of Allen report (Report of the Attorney General Committee on poverty and the Administration of criminal justice of 1963.) The Criminal Justice Act 1964 was passed. The Act of 1964 provides for the appointment of a counsel for the "Financially unable" at every stage of proceedings. The appointed lawyers are compensated for their services and are appointed from lists prepared by the Bar Association or from a Legal Aid agency. The working together up private practitioners and full time public defenders from legal aid agency is a significant experiment in the United States in Criminal Justice. ¹⁸⁷ The United States Constitution VI Amendment, provides assistance of counsel for accused in Criminal cases. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of state and district. The Supreme Court in powell V Alabana in 1932 expounded and expanded the doctrine of right to, counsel to accused in Criminal cases¹⁸⁸,

**LEGAL AID IN CIVIL CASES:**

In 1960, there was a Renaissance in Legal Aid under the Economic Opportunity Act' 1964 for the first time, The Legal Aid services for civil matters became subject of regular federal functioning. Under this Law, the Office of Economic Opportunity (OEO) was constituted in Washington, under "War against

¹⁸⁸ http://www.laoc.org/United_States.html

In the early 1960s a new model for legal services emerged. Foundations, particularly the Ford Foundation, began to fund legal services programs located in multi-service social agencies, based on a philosophy that legal services should be a component of an overall anti-poverty effort. An advice project was expanded in the summer of 1967 in North Kensington. This became the first Law Centre, which was officially opened in July 1970. powell V Alabana 287 U.S. 45 in 1932
Poverty Programme" and it assist poor in civil matters. The normal idea of the OEO is to support existing the legal aid schemes. The Act itself does not specifically mention legal aid. It, recognised legal awareness to poor to know the legal rights and to assist the poor people out of poverty by supporting “Legal Service Programme” within , community action programmes. to render legal services, to educate the poor as to their legal rights “Preventive Law” i.e. an attempt so far as possible to prevent the poor from getting into legal difficulties, Functioning the legal aid officers at convenient times for clients , particularly in the evening and at weekends, Favouring co-ordination of legal services with social services on the ground the poor people with legal problems almost have a social problems and vice versa Setting up of “Neighbourhood Law Office” i.e., Law Officers set up in areas where the poor people live with the aid of OEO it also suggest that placing of offence in prison in juvenile court buildings, in landlord and tenants court buildings and in welfare department officers. Under the Act, Federal Assistance granted is not exceed 90% cost of a scheme. In America, Legal aid programme is implemented by the Legal Service Corporation Act, 1974. It is a private , non profit organisation established by the Congress in 1974 to provide financial support to the poor in civil matters by ABA, National Bar Association, Voluntary Service Members, who are legally talented to serve the poor the goal of corporation is to provide all the poor of America minimum access to legal services. Legal Aid is available for many types of Civil Legal Problems. In 1974, Congress created the Legal Services Corporation (LSC) to provide federal funding for civil (non-criminal) legal aid services. LSC’s funding has fluctuated dramatically over the past three decades depending upon which political parties were in control of Congress and the White House.¹⁸⁹.

In qualifying cases, free legal help is furnished along three basic systems: (1) the staffed legal aid or public defender model, where attorneys are full-time

employees: (2) the private contract model, where individual attorneys or law firms agree to provide some or all of the jurisdiction’s indigent attorney work; and (3) the appointed counsel model, where the court assigns attorneys who are then paid by a court or county fund (this is common in criminal defense and rare in civil matters.

Up until the passing of the Legal Aid Act in 1988, responsibility for legal aid lay with the Law Society. In 1988 the system was formalised and was bought under the control of central government who established the Legal Aid Board. With some exceptions, the Legal Aid Board was given responsibility for the funding of all work paid for by the state.

In 1999, the Access to Justice Act was passed. It abolished the Legal Aid Board and established the Legal Services Commission and redrew the whole system of funding and regulating legal aid. The Act gave it the power to radically reshape legal services. Civil legal aid now formed part of the Community Legal Service (CLS), and criminal work became the Criminal Defense Service (CDS). Any firm or agency which wants to undertake legal aid work now has to have a contract with either the CLS or CDS. Significantly, the Act also put a cap on the amount of money that could be spent on civil legal aid. The Legal Services Commission is an independent government agency under the Department for Constitutional Affairs (DCA). Ultimate responsibility for legal aid was given to the Lord Chancellor in the 1999 Act and, in 2006, renewed emphasis was given to legal aid by creating a new Ministerial post dedicated to the reform of legal aid. Day to day running of the scheme is devolved to the LSC, which runs the budget, awards contracts, controls quality and assesses bills and acts as a link with providers. Broader policy is determined by the DCA, and budgets are set by the Treasury.

LEGAL SERVICE FUND COMMISSION:
The Legal Services Commission funds provides a range of legal services. The different levels of service in civil matters are:

(a). Legal Help: Legal Help provides initial advice and assistance with any legal problem. (b)Help at Court: Help at Court allows for somebody (a solicitor or adviser) to speak on behalf of a client at certain court hearings, without formally acting in the whole proceedings. (c)Family Mediation; This level of service covers mediation for a family dispute, which means trying to reach an agreed settlement with the help of an independent mediator. (d)Legal Representation: The level of service provides legal representation in court if a client is taking or defending court proceedings. It is available in two forms:

* Investigative Help: funding is limited to investigation of the strength of the claim.
* Full Representation: funding is provided to represent a client in legal proceedings.

If a client is eligible for legal assistance and the application for legal aid has been approved, the cost of providing the service will be covered by the Legal Services Commission, although in certain cases clients may be asked to pay a contribution.

Eligibility Criteria to get Legal Aid: The Funding Code

The 1999 Act introduced a Funding Code which is a set of rules used to decide which individual cases can be funded by the Legal Services Commission. The criteria define what services the Commission will fund, ranging from basic legal advice to representation in court proceedings. Different criteria are set for different types of case according to priorities set by the Lord Chancellor. The criteria are complex, but solicitors have to consider each one. These include things like a ‘sufficient benefit test’, alternative funding and prospects of success. Some areas of law are also excluded, i.e. they are ‘out of scope’. These include areas such as the making of wills, defamation, conveyancing and boundary disputes. It also excludes
representation before most tribunals, although again there are some exceptions, such as representation at a Mental Health Review Tribunal and Representation before the Asylum and immigration Tribunal.

**Personal Income**

To receive legal aid, people must also be financially eligible. Clients have to provide evidence of their finances, such as bank statements, saving books and details of earnings. If people are in receipt of income support, income based jobseeker’s allowance or guarantee state pension credit they will qualify for funding without having to pay a contribution. The Legal Services Commission has an on-line Legal Aid calculator which works out if people are financial eligible. It can be found at Community Legal Services Direct.

Authorities to provide Legal Service Holding a contract with the Legal Services Commission, legally aided services for civil cases are available from firms of solicitors and legal advice centers, such as Law Centers. To be awarded a contract the firm or Law Centre will have been checked by the LSC to see if they meet certain standards and provide a quality service.

The DCA and the LSC plan to introduce a new system of ‘preferred supplier’ which will be based on firms and legal advice centers having a high level of expertise. This will be assessed by ‘peer reviewers’ – independent assessors who will look at files to assess the quality of the work and the outcomes/results achieved for their clients. At the moment, firms and agencies are able to apply for a ‘quality mark’. To receive funding from the LSC they must have the specialist quality mark. All Law Centers have this status. Currently there are other quality marks, such as ‘general help’ and ‘general help with casework’ in a subject category. However, agencies with these levels of quality marks are unable to access funding from the LSC. Community Legal Services Direct enables people to search an on-line directory
of organizations. There is also a help line on 0845 345 4 345. CLS Direct expanded in 2006 to provide a new services which will help to diagnose callers’ problems, offer general information about rights and give callers further options about where to get help. A means test will be completed over the phone. BSS won the contract in June 2006 and will provide the service from multi-media contact centre in Manchester.

In a series of cases, the US Supreme Court ruled that American indigents do have a right to counsel, but only in criminal cases. *Gideon v. Wainwright*. A few states (like California) have also guaranteed the right to counsel for indigent defendants in "quasi-criminal" cases like *paternity* action and involuntary terminations of parental rights The federal government and some states have offices of public defenders who assist indigent defendants, while other states have systems for outsourcing the work to private lawyers.

Legal aid is available for many types of civil legal problem. A civil legal case is one in which you have a dispute with a person, company or other organisation. Legal aid for civil cases is currently provided by a variety of public interest law firms and community legal clinics, who often have "legal aid" or "legal services" in their names. Such firms may impose income and resource ceilings as well as restrictions on the types of cases they will take, because there are always too many potential clients and not enough money to go around. Common types of cases include: denial or deprivation of government benefits, evictions, domestic violence, immigration status, and discrimination. Some legal aid organizations serve as outside counsel to small nonprofit organizations that lack in-house counsel. Funding usually comes from charities, private donors, the federal government and some local and state governments. Most typical legal aid work involves counseling, informal negotiation, and appearances in administrative hearings, as opposed to formal litigation in the courts. However, the discovery of severe or recurring injustice with a
large number of victims will sometimes justify the cost of large-scale impact litigation. Education and law reform activities are also sometimes undertaken.

Legal aid organizations that take LSC money tend to have more staff and services and can help more clients, but must also conform to strict government regulations that require careful timekeeping and prohibit lobbying and class actions. Many legal aid organizations refuse to take LSC money, and can continue to file class actions and directly lobby legislatures on behalf of the poor. Many organizations that provide civil legal services are heavily dependent on Interest on Lawyer Trust Accounts for funding.

However, even with supplemental funding from LSC, the total amount of legal aid available for civil cases is still grossly inadequate. According to LSC's widely released 2005 report "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans", all legal aid offices nationwide, LSC-funded or not, are together able to meet only about 20 percent of the estimated legal needs of low-income people in the United Nations.

**Pro bono** The problem of chronic underfunding of legal aid traps the lower middle class in no-man's-land: too rich to qualify for legal aid, too poor to pay an attorney in private practice. To remedy the ongoing shortage of legal aid services, commentators have suggested that mandatory pro bono obligations ought to be required of all lawyers, just as physicians working in emergency rooms are required to treat all patients regardless of ability to pay. However, most such proposals have been successfully fought off by bar associations. A notable exception is the Orange County Bar Association in Orlando, Florida, which requires all bar members to participate in its Legal Aid Society, by either serving in a pro-bono capacity or donating a fee in lieu of service. Even where mandatory pro-bono exists, however,
the funding for Legal Aid remains insufficient to provide assistance to a majority of those in need.

A number of delivery models for legal aid have emerged. In a "staff attorney" model, lawyers are employed on salary solely to provide legal assistance to qualifying low-income clients, similar to staff doctors in a public hospital. In a "judicare" model, private lawyers and law firms are paid to handle cases from eligible clients alongside cases from fee-paying clients, much like doctors are paid to handle Medicare patients in the U.S. The "community legal clinic" model comprises non-profit clinics serving a particular community through a broad range of legal services (e.g. representation, education, law reform) and provided by both lawyers and non-lawyers, similar to community health clinics.

In USA the legal profession itself took the initiative and emphasized the need for legal aid to indigent defendants in criminal cases in all the courts. Where a person accused of an offence does not have sufficient mean to pay for his defense though legal assistances of his own choice, he has right to be informed of his right to have legal assistance assigned to him where the interest of justice so require, free of cost at the state expense. Legal aid funding in civil cases is supplemented by private donations and grants but those are generally not public funds. Indigent criminal defence is more difficult to tally. Because criminal defense is constitutionally mandated, much of the budget comes from state or local governments.

The right to legal aid for the defense of indigent accused extends to pre-trial hearings and trial proceedings and subject to certain considerations in case of appeals. The test whether the legal aid to provide is in the interest of justice or not,
dependence on variety of factors such as (i) complexity of the case (ii) seriousness of the offence (iii) potential sentence involved and of course, (iv) possible involvement of accused.

The American legal aid system involves much more use of salaried lawyers employed by the legal services authorities and public defender organizations. Legal aid services are also made available for civil litigation as a part of the legal aid program which is conspicuously absent from the English legal aid model of Britain. For delivering the legal services in criminal cases, the services of private practitioners are also employed and they are paid remunerations on case by case basis. This mode of legal aid is popularly called judicare services. The system has, however, been criticized from the point of view of quality control and it is alleged that the private practitioners tend to charge high fees which makes the system expensive because of the uncontrolled costs. As against this, the public defender system which involves delivery of legal aid by regularly employed salaried lawyers is relatively less costly and these defenders render excellent services besides the usual court case work.

4.11.2 Legal aid in Australia

The Australian Government took its first major step towards a national system of legal aid when it established the Legal Services Bureaux in 1942. However, there was a move in the late 1970s to service delivery by the States and Territories (not the federal arm of Government). In 1977, the Australian Government enacted the Commonwealth Legal Aid Commission Act 1977 (LAC Act) which established cooperative arrangements between the Australian Government and State and Territory governments under which legal aid would be provided by independent legal aid commissions to be established under State and Territory legislation. The process of establishing the Legal Aid Commissions took a number of years. It
commenced in 1976 with the establishment of the Legal Aid Commission of Western Australia and ended in 1990 with the establishment of the Legal Aid Commission of Tasmania. The cooperative arrangements that were established by the Legal Aid Commission Act provided by Common Wealth and State and Territory legal aid funding agreements, which began in 1987. In July 1997, the Australian Government changed its arrangements to directly fund legal aid services for Commonwealth law matters. Under this arrangement the States and Territories fund assistance in respect of their own laws.

Australia has a federal system of Government comprising federal, state and territory jurisdictions. The Australian (Commonwealth) and State and Territory governments are each responsible for the provision of legal aid for matters arising under their laws. Legal aid for both Commonwealth and State matters is primarily delivered through State and Territory legal aid commissions (LACs), which are independent statutory agencies established under State and Territory legislation. The Australian Government funds the agreements with State and Territory governments and LACs. The majority of Commonwealth matters fall within the family law jurisdiction.

Legal aid commissions use a mixed model to deliver legal representation services. A grant of assistance legal representation may be assigned to either a salaried in house lawyer or referred to a private legal practitioner. The mixed model is particularly advantageous for providing services to clients in regional areas and in cases where a conflict of interest means the same lawyer cannot represent both parties.
The Australian Government and most state and Territory Government\(^{191}\) also fund community legal centers, which are independent, non-profit organisations which provide referral, advice and assistance to people with legal problems. Additionally, the Australian Government funds financial assistance for legal services under certain statutory schemes and legal services for Indigenous Australians. In Australia legal aid work is almost performed exclusively by private practicing law firms who accounts to Legal Aid for their fees, rather than state employees or “public defenders”. In these cases, the amount received from Legal Aid would always be less than private-paying clients. The major problem that legal aid faces in Australia is under funding. Not like their counterparts around the world, the budget provided by the Australian government to subsidies legal aids is very low and dependent on donation from charities is not enough. As a result those who require the assistant of legal aid and cannot afford private counsel have no recourse but to represent themselves.

**Legal Aid in Queens Land**

Women's Legal Aid (WLA) is a specialist unit within Legal Aid Queensland (LAQ) that provides services including legal information, advice, representation and specialist social work support to women. WLA also provides court assistance to women applying for domestic violence orders in the Brisbane Magistrates Court. The object of the mission is to increase access to legal services and improve the responsiveness of Legal Aid Queensland to meet women's needs and maintain effective working relationships with service providers and identify, review and respond to issues impacting on women's access to justice. WLA is based in the Brisbane and Woodridge offices of LAQ and provides direct services mainly in the areas of family law, domestic violence, criminal injuries compensation and care and protection matters. WLA also does some limited work in criminal and anti-discrimination matters. WLA is staffed by two legal officers, a social worker and

\(^{191}\) [http://www.laoc.org/Australia.html](http://www.laoc.org/Australia.html)
court assistance workers. The court assistance workers are based in Brisbane and assist women applying for domestic violence orders in the Brisbane Magistrates Court.

Priority is given to matters where women are having difficulty accessing legal aid services due to: the policies or guidelines of LAQ, the complicated nature of their matter and number of issues involved, the difficulties they experience in accessing legal aid services, specialised social work support being needed. WLA also assists in matters where a woman of Aboriginal or a woman of a non-English-speaking background or a woman with a disability is having difficulty accessing legal aid services. Clients of WLA do not have to live in the Logan and Beenleigh areas, but priority is given to women in this region.

There are several options for women clients to access Legal Aid Queensland including:

- legal advice clinics in all LAQ offices
- specialist unit telephone advice clinics
- legal information from the Client Information Services call centre.

**Women's Legal Aid Advice Clinic** Women's Legal Aid conducts a legal advice clinic every Thursday at the Woodridge office of LAQ. The solicitors have face-to-face appointments in the morning and telephone appointments from 10am onwards. Appointments at the Brisbane office are available on request.

**4.11.3 LEGAL AID IN CANADA**

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192 XIV law commission report. P. 590
http://www.laoc.org/Canada.html
In Canada the term 'Legal Aid' embraces 'Legal Advice .’ There is no unified Legal Aid in Canada. Each Bar Association has its own system. The Bar Association of Ontario has established a complete organization, passed a resolution at its annual meeting held in 1950 advocating the establishment of a Legal Aid Organisation under the auspices of the Association. In ten provinces, Legal Aid is being given in one form or another. The community chests are not utilized but lawyers individually or collectively bear the cost. Generally the courts appoint counsel to defend cases.

Legal aid in Ontario is administered by Legal Aid Ontario (LAO) Legal Aid Ontario provide funding to more than one million Ontario residents who need help with their legal problems. Legal aid is available to low income individuals and disadvantaged communities for a variety of legal problems, including criminal matters, family disputes, immigration and refugee hearings and poverty law issues such as basic employment rights, worker’s compensation, landlord/tenant disputes, disability support and family benefits payments.

Legal Aid in Ontario is provided in a number of ways the largest is a legal aid certificate program. The program provides low income people with certificates for a set number of hours of service to be provided by a private lawyer (i.e. a juridicare model) when the lawyer has completed their work, they bill Legal Aid Ontario for the services they provided. The certificate system is limited by the fact that many lawyers do not accept certificates because the hourly rates are too low. Lawyers are also wary of accepting cases because a certificate may not provide enough hours for the lawyer to provide adequate representation.

Ontario also has a community legal clinic system. Ontario’s 80 Community legal clinics are staffed by lawyers, community legal workers, and sometimes other professionals or law students. Each legal clinic *is run by a volunteer board of
directors composed of members from the community. Legal clinics provide information, representation and advice on various kind of legal issues, including social assistance, housing, refugee and immigration law, employment law, human rights, workers compensation, and the Canada Pension Plan. Many legal clinics also produce community legal education materials, offer workshops and information sessions, undertake law reform initiatives and engage in other community development activities including campaigns to change the law. Specialty legal clinics serve a particular community or focus on a specific area of law. Unlike general service legal clinics, most specialty legal clinics are not limited to serving a particular geographic area.

The clinic system is seen by many to be a preferred model of legal aid delivery. Services are provided at the community level and clients therefore benefit from the agency’s connections to other services, e.g. health care. Legal problems are seen in their social context and issues of broader societal concern can be identified by clients and staff. The model is also financially beneficial in that resources are invested in the development of long term stable service located in and informed by the communities they serve. This way, resources can be devoted to legal work that is most beneficial to the community. Clinics are independently governed, but primarily funded by Legal Aid Ontario.

Ontario also provides immediate legal aid service to those appearing in court via duty counsel. Duty counsel are salaried lawyers and per diem lawyers who will represent low income people in criminal or family court. There is also a duty counsel program which provides representation to low income tenants appearing before the Ontario Rental Housing Tribunal.
Funding for Legal Aid in Ontario has been frozen for many years. While the Ontario Liberal Government recently announced a 19 million increase in funding over the next three years, this will do little to remedy the serious and chronic underfunding of the system. The lack of funding means that legal aid lawyers are paid half as much as other government funded lawyers and must do their work with a severe lack of resources. The result is that many new lawyers with massive student debt cannot consider legal aid careers, other lawyers leave the system frustrated at the lack of recognition for their work, and those hiring new lawyers in the system find it hard to find well qualified lawyers who will even consider taking legal aid jobs. This undermines the system's quality of service and sustainability\textsuperscript{193}.

There is currently significant pressure on the Ontario Government\textsuperscript{194} to increase funding to the Legal Aid system to ensure that the quality of service remains high and the program as a whole is sustainable. At the same time, Legal Aid Ontario has embarked on a restructuring program, which aims to shrink the number of community legal clinics in Ontario. Lawyers are paid to do legal aid work. But, lawyers also support legal aid, individually and collectively, by contributing funds or services to make the legal aid system possible.

The CBA has launched a major national initiative to raise awareness of the importance of adequate legal aid services to our system of justice and to try to resolve the crisis. The CBA believes that lawyers have a responsibility to: actively support legal aid programs; speak out against threats to government-funded counsel, including underfunding of legal services and funding cutbacks; and contribute to a positive dialogue on how to improve legal aid service delivery.

\textsuperscript{193} \url{http://www.cleo.on.ca/English/pub/onpub/subject/legal.htm}
\textsuperscript{194} \url{http://www.ciasp.org/publications.ca/english/pub/onpub/subject/legal/htm}
\url{http://www.clasp.org/admin/site/publications/files/0158.pdf}
The CBA has five-point platform on legal aid reform:

Legal aid should be recognized as an essential public service, like health care. Public funding should be confirmed as necessary to ensure access to justice for low-income people. Public funding for legal aid must be increased. National standards for criminal and civil legal aid coverage and eligibility criteria are required. The federal government should revitalize its commitment to legal aid.

Five Ways Lawyers Subsidize Legal Aid work for less pay. When private practice lawyers work for legal aid clients and are paid on an hourly basis, they are paid at an hourly rate that usually works out to be between one-third to one-half less than what they are paid when they work for other clients. Work for No Pay. When private practice lawyers work for legal aid clients and are paid on a block fee basis — $x for a particular legal procedure — they complete the task regardless of the time it takes. Usually, this means that they are providing services for free. Hold Backs = Reduced Pay. In some jurisdictions, the legal aid plan does not pay the full tariff amount owing to a lawyer who has done work for a legal aid client. Instead, the plan “holds back” a percent of the amount, sometimes paying part or all of it back at the end of the year.

Dollar Contributions to Legal Plans Lawyers are required to put money they are holding on behalf of all their clients in trust accounts. In several jurisdictions, some of the interest earned on the money held in these trust accounts is contributed to the legal aid plan. This amounts to a cash contribution of millions of dollars. Volunteer Work to Support the Legal Aid System Across the country, lawyers sit on committees and assist in the administration of legal aid plans on a volunteer basis.

Legal Aid Funding for Criminal Law Matters:
In 1972, the federal government, through the Department of Justice Canada, negotiated legal aid cost-sharing agreements with the provinces. The federal government committed to contributing approximately 50% of the cost of providing criminal legal aid services in each province. The program was meant to provide legal assistance to accused people who had little or low incomes and were charged with an offence for which incarceration was likely upon conviction or were facing extradition or were appealing a judgment relating to these types of situations. Aside from setting these minimal coverage goals, including coverage for young offenders facing closed or open custody, the cost-sharing agreements did not dictate eligibility criteria or how a provincial.

Legal aid plan should provide services. Provinces provide criminal legal aid services through different service delivery models — government-funded legal aid clinics and private practice lawyers paid a set hourly rate or a tariff per type of case. In 1990-91, the federal government capped its legal aid contribution at approximately $86 million. Following policy review exercises in the 1990s, federal contributions dropped, falling to $82 million in 2000-2001. The trend was reversed in 2001-2002 when $20 million was added to the criminal legal aid budget on a temporary basis. In 2003, the federal government committed to increasing the amount available for criminal legal aid services to $126.5 million for 2003-04 and for 2004-05.

Legal Aid for Civil Law Matters. Federal funding for civil legal aid matters began in the late 1970s as part of the Canada Assistance Plan funding to the provinces, and the funds provided were linked to those actually spent. In 1994-95, this funding was rolled into the Canada Health and Social Transfer (CHST) and became an unconditional transfer payment to the provinces. At that time, approximately $99 million of federal money was being provided for civil legal aid services. Federal
support for civil legal aid services is part of what is now called the Canada Social Transfer (CST) and is not specifically identified or allocated.

**Legal Aid in the Territories.** The federal government has signed access to justice agreements with the territorial governments. Under these agreements, federal funds are provided for criminal and civil legal aid services, the native court worker program and public legal education and information (PLEI) programming. This arrangement reflects the Attorney General of Canada’s responsibility for the administration of justice in the territories. The federal contribution to the territories under the access to justice agreements for 2000-01 is expected to be just over $2 million.

### 4.11.4 Legal Aid in Denmark

In Denmark legal aid is provided by a law centre, Private legal aid institutions, through trade unions, specific lawyer, Legal expenses insurance policy, Guidance provided by the judge. **Legal aid provided by a law centre (advokatvagt):** There are more than one hundred law centres in Denmark, i.e. most of the larger towns and cities have one. The court can tell people where there is a law centre, and there are a number of Web sites that offer that information as well. At law centres, legal advice is provided by practicing lawyers who will give answers to specific questions without disclosing the person name and also the lawyers name. The law centres will provide free advice to anyone, regardless of income, but person have to actually go to a centre to get advice.

There are no special limitations or restrictions as to the type of case or question People can obtain advice on from a law centre. What the great majority of people ask about are legal problems arising from everyday occurrences. Law centres
give only verbal advice: they do not help people write complaints or fill out applications for full representation, nor do they help write documents such as leases. If Individual have a problem that is clear-cut and straightforward, the law centre lawyer will be able to advise to him on whether it is worth the time and money for him to proceed with the case.

**Free legal aid:** Private legal aid institutions have been set up in a number of Denmark's larger towns and cities where people can receive free legal assistance. Such institutions can be found in Copenhagen, Odense, Esbjerg, Aarhus and other locations. Legal aid is typically provided verbally in the form of advice given to people who go to their local legal aid institution. Most legal aid institutions will require applicants to meet the same financial eligibility requirements as applicants for full legal representation. The income criteria that apply to persons eligible to receive legal aid and full representation are specified in an executive order in terms of current income limits. In 2007, the maximum annual income for a single person eligible to receive legal aid is DKK 248,000. If person cohabit with or are married to another person, the household income limit is DKK 315,000. To these amounts can be added DKK 43,000\(^{195}\) for each child under 18 years of age still living at home. There are no fixed rules with respect to the matters in which the different legal aid institutions will provide free advice. As a starting point, free legal aid in all matters pertaining to private life is provided.

**Legal aid from a specific lawyer:** The great majority of lawyers provide free legal aid directly. The Web site of local district court will have a list of lawyers who provide this service. Person make an appointment with the selected lawyer, and the lawyer will typically meet him at his or her office to advise him. To qualify for this type of legal aid, person must fulfil the same financial requirements as people who are eligible for full representation.

There are three types of legal assistance provided in this setting: Level 1 assistance, which is legal advice provided verbally only; Level 2 assistance, which includes advice in addition to ordinary basic legal advice; and Level 3 assistance, which is assistance in connection with settlement negotiations. By pay DKK 210 (VAT included) for Level 2 assistance and DKK 950 (VAT included) for Level 3 assistance. In this kind of situation, the government will pay a subsidy of DKK 672 excluding VAT for Level 2 assistance and a total of DKK 2208 excluding VAT for Level 3 assistance. This kind of legal aid is not available in criminal cases, in cases concerning the circumstances of active business owners, in debt restructuring or debt relief cases, or in cases before an administrative authority or a complaints board.

**Full representation.** If person are eligible to receive full legal representation and costs ("full representation") free of charge, then he will be assigned a lawyer whose fee will be paid by the government. If he loses the case, then the government will also pay the case costs of the other party. Before the party can be granted full representation, there has to be a reasonable expectation that he can win the case. In cases dealing with termination of joint custody or other child custody cases, divorce cases, separation cases or other marital cases, the court may grant full representation. This may also happen if a number of different complaints boards have found in his favour and then the case goes to court.

In all other civil cases, it is the Civil Affairs Agency (Civilstyrelsen) that grants full representation, on the condition that the case has merit, i.e. it must have a certain importance and there is a fair chance that the court will rule in his favour. In rare exceptions, full representation may be granted in cases to do with commercial or business matters, or in slander or libel cases. If the Civil Affairs Agency rejects your application for full representation, then the decision can be appealed to the Appeals
Permission Board (Procesbevillingsnævnet). If party are granted full representation, then he must report it to his insurance company if he have legal expenses insurance. If such insurance coverage, then the insurance company must pay his expenses for legal counsel, etc.

**Legal expenses insurance**: The great majority of people in Denmark are covered by a household insurance policy that includes home contents insurance, etc. These policies typically also include legal expenses insurance, which means that, within certain financial limits, the insurance company will pay legal costs. These limits are costs up to about DKK 100,000. Legal expenses insurance covers legal proceedings that may arise in one's private life. However, it does not cover business-related disputes, tax cases, marital cases, cases about division of property, probate cases, slander or libel cases, criminal cases, or debt collection cases which do not involve a dispute over the size or validity of the claim.

Normally, applicant lawyer will contact insurance company to confirm that his case is covered by legal expenses insurance. If he have such coverage, it means he do not pay lawyer fees – other than the deductible specified in his policy – or any amount in excess of the maximum coverage that you are ordered by the court to pay to the other party if he lose the case. However, legal expenses insurance means that person do have to pay a deductible of ten per cent of the costs, with a minimum of DKK 2500. If person win the case, he do not have to pay the deductible.

**Legal aid through trade unions**: In addition to the more general legal aid schemes, a number of trade unions also take certain employment-related cases to court for their members. Various radio programmes also offer more general information on legal rights and obligations, and person can ask them questions, typically questions that have more to do with social welfare law.
Small claims procedure: A new type of legal proceeding called a "small claims procedure" introduced on 1 January 2008. These rules will apply to many different kinds of cases, but only cases involving less than DKK 50,000. Under these new rules, the court will help both parties conduct their case, also to a certain extent with assistance in formulating claims, pleadings and allegations and formulating questions to ask experts. If the case is legally or factually complicated, than the court will refer the case to normal proceedings.

Guidance provided by the judge: Finally, there is a provision in the Danish Administration of Justice Act about guidance provided to parties that go before a district court without being represented by a lawyer. According to these rules, the judge may ask questions for clarification purposes if a party's claim or statements about the case are incomplete. The judge may also request that a party state his/her position on factual or legal issues. In addition, the judge can request that a party produce documents or evidence or bring in expert witnesses. The judge also provides guidance to the party on what should be done to explain the case and on how the party's interests can be safeguarded otherwise during the procedure. In providing such guidance, however, the judge may not in any way put him- or herself in a situation that could give rise to doubt as to his or her impartiality.

4.11.5 Legal aid - France

In France The Legal Aid scheme is governed by the Legal Aid Act, 1991(No 91-647 of 10 July 1991) and Decree No 91-1266 of 18 December 1991. It covers: Legal aid proper: financial aid for court proceedings and out-of-court settlement proceedings; Aid towards advocates’ fees in criminal proceedings that are available as an alternative to prosecution (settlement and mediation), for legal assistance for those held by the police for questioning, and for disciplinary proceedings in prisons; and access to the law (information, guidance, free legal consultation).Legal aid
entitles the recipient to free assistance from an advocate or other legal practitioner (bailiff, avoué, notary, auctioneer, etc.) and to exemption from court costs. Legal aid is given by the legal aid bureau at the Regional Court subject to requirements as to resources, nationality, residence and admissibility. Legal aid is given to claimants and defendants in contentious and non-contentious matters in all courts. It can be given for all or part of the proceeding and to assist in coming to a settlement before the action comes to trial. Legal aid can also be given for the purposes of seeking enforcement of a judgment or other enforceable document.

A legal aid application form can be availed from the Regional Court or the District Court. French national resident abroad, the form can also be applied for in consulates and the Civil and commercial judicial aid bureau: Bureau de l’entraide judiciaire en matière civile et commercial, Direction des affaires civiles et du sceau, Ministère de la Justice, 13 place Vendôme, 75042 Paris Cedex 01. A foreign national not resident in France, can obtain the legal aid form from the central authority designated by your country for transmitting international legal aid applications. Most countries have designated their Ministry of Justice. France has designated the above-mentioned department of its Ministry of Justice - the Civil and commercial judicial aid bureau – as empowered to send and receive applications.

Applications should be made to the Free Legal Aid office in the appropriate jurisdiction with following particulars a special Legal aid application form (listing all documents requirements) and an income declaration form, both available at the Town Hall or local courthouse. A Photocopy of a valid identification or residence card, if applicable. A photocopy of the Family Record Book (married, divorced or single applicants with dependent children), Documentary evidence of income (income tax receipt or exemption, if applicable), Applicants should specify the object of the proceedings for which they are requesting Legal Aid. They should also enclose any
documents concerning the case (e.g. an employment contract or dismissal letter in the case of a proceeding before the Industrial Tribunal.) Parties to send application to the Legal Aid Bureau for the area where you live or where the court is. There is a single legal aid bureau at each Regional Court, which handles applications for legal aid for cases in that court itself and in other courts in its area: District Courts, Administrative Courts, Industrial Relations Tribunals, Court of Appeal and Administrative Court of Appeal. The exception from this single bureau rule is that there is a bureau attached to each of the following: Court of Cassation; Conseil d'État (which is the supreme administrative court); Refugees Appeal Board.

All litigants are free to choose their own advocate. If party choose advocate, he must give his name on the legal aid application form. If litigant do not know an advocate, one will be designated for him by the president of the bar for the Regional Court. Legal aid is given full or partial. If litigant receive full legal aid, this will cover all the costs of the proceedings, including the fees paid direct to the advocate or other practitioners (bailiff, avoué, notary, etc.). These fees are calculated on a fixed scale depending on the type of procedure. If litigant receive partial legal aid at one of six rates depending on his resources (85%, 70%, 55%, 40%, 25% or 15%), borne by the State. He has to pay a supplementary fee, not on a fixed scale but agreed between him and the advocate, reviewable by the president of the bar, whom you can approach in the event of a dispute. Legal is provided in appeal cases.

Legal aid can be withdrawn (section 50 of the 1991 Act) during or after the proceedings if: aid was obtained on the basis of inaccurate statements or documents; in the course of the proceedings you receive such resources that legal aid would not have been given if you had had them at the time of the application as a result of the enforceable judgment you receive such resources that legal aid would not have been

given if you had had them at the time of the application; or the proceedings that you have commenced with the legal aid is found to be dilatory or abusive.

4.11.6 Legal Aid In Spain

In Spain the public service of the Justice Administration is free. There are no fees or charges for using the service. However, going to court commonly entails certain costs. These mainly include: solicitors' and barristers' fees, costs of publishing announcements in official journals, deposits required for lodging certain appeals and experts' fees. These costs normally have to be paid up front by the party concerned. At the end of the trial the court has to decide which party is ultimately to bear the costs; in Spain this is known as the “condena en costas” (order to pay costs) and it is governed by the “loser pays” principle.

In Spain legal aid (“asistencia jurídica gratuita”) is a right for members of the public who cannot afford the costs of a trial. Recipients of legal aid do not have to pay the following costs:
- pre-trial legal advice
- solicitors' and barristers' fees
- costs of publishing announcements in official journals
- deposits required for lodging certain appeals
- experts' fees, Interpretation services, Translation of documents, Travel expenses if the applicant has to appear in person.

BENEFICIARIES OF LEGAL AID

All Community citizens of insufficient means (for cross-border disputes, only individuals are eligible). non-Community nationals who are legally resident in Spain

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or who have their entitlement recognised in international conventions (such as conventions on international child abduction) on the same terms as Community nationals; in labour matters, any employed person regardless of nationality and means; public-interest associations and foundations. are beneficiaries. To qualify as having insufficient means, the total monthly income of person and persons family unit must not be more than twice the National Minimum Wage (“salario mínimo inter professional”) set annually by the Government. In 2005 the minimum wage was €513 per month. For cross-border disputes, even if you earn more than this amount you may be eligible for legal aid if you are unable to meet the costs of the proceeding owing to the differences between the cost of living in your Member State of residence and Spain.

Cases for which Legal Aid is provided Legal aid is available for all cases, whether or not contentious, involving sums of over €900 and it covers all proceedings, appeals and enforcement of judgments. In cases involving smaller sums, for which the services of a solicitor and barrister are not compulsory, legal aid may be granted where the other party does have legal representation or where explicitly called for by the judge or court to ensure that the two parties are on an equal footing. A specific procedure to be adopted for urgent cases -On consideration of the circumstances of the case or its urgency, the judge or court may order a solicitor and barrister to be temporarily appointed with immediate effect. Nonetheless, without prejudice to this appointment, legal aid may be denied if the person concerned fails to demonstrate that they have insufficient means in accordance with the ordinary procedure.

The form is available from Legal Guidance Departments (Servicio de orientación jurídica) of Bar Associations (Colegios de Abogados), Offices of Senior Judges (Decanatos) at courts and provincial Legal Aid Commissions (Comisiones
Claimant should give following particulars: financial situation and the financial situation of the members of his family unit; His personal and family circumstances; the legal protection sought; the particulars of the litigants. In Spain the legal professional who appears in court normally has to be someone other than the solicitor (abogado); this is the barrister (procurador). Barristers represent their clients in court throughout the trial.

4.12 Conclusion

Legal Aid as Human Right is implicit in the covenants and conventions which obliges the state responsibility to provide Legal Aid which ratifies them. UDHR emphasized the concept of equality provides guarantee against discrimination on the basis of property. These equality rights can be effective only when individuals are given opportunity to obtain Legal Aid and Assistance and access to the court for a fair and impartial trial. The concept of Legal Aid is recognized under Art. 3 of the European convention on Human Rights. The word all persons protects the human rights and fundamental freedoms equally irrespective of financial constraints. American convention on Human Rights guarantees access to justice irrespective of financial capacity to all persons. African charter recognizes the two aspects of legal service programme: Litigation oriented and preventive aspect. State provides professional association of lawyers to assist accused or indigent person.

In England Legal Aid provisions are governed by the Legal Aid and Advise Act 1949. Legal Service Commission provides Legal Aid in criminal cases through public defender associations comprising small group of salaried staff appointed by commission. Civil Legal Aid through private firms of solicitors and barristers in private practice. The US VI Amendment of the constitution provide assistance of the counsel for accused in the criminal cases by an impartial jury of state and district. The Access to Justice Act 1999 provides legal services in civil matters by way of
legal help, Help at court, Family mediation and Legal Representation. The great majority of people in Denmark, they are covered by household insurance policy includes legal expense insurance, which means that within certain limits the insurance company will pay legal cost. In Australia, Legal Aid Commissions use a mixed model to deliver legal representation services. A grant of assistance legal representation may be assigned to either a salaried in house lawyers or referred to private legal practitioner. In Canada, there is no unified Legal Aid each Bar Association has its own system. Legal Aid in Ontario provides Legal Aid Certificate Programme. The programme provides low income people with certificate for a set number of hours of service to be provided by a private lawyer (i.e., a juridicare model) when the lawyer has completed the work the bill will be paid by the Legal Aid Ontario.
CHAPTER - V

STATUTORY PROVISIONS
GOVERNING LEGAL AID