CHAPTER-II

CONCEPT AND DEVELOPMENT OF LEGAL AID
CHAPTER-II

CONCEPT AND DEVELOPMENT OF LEGAL AID

2.1 Introduction

In Democratic society like India, rule of law emphasized that poverty and ignorance should not be an impediment to obtain justice to poor and weaker sections of the society. Various States appointed several committees to frame schemes on Legal Aid. The Reports of these Committees obligated the State’s to provide free legal assistance to the poor and indigent. The study relates to meaning, concept and historical development of Legal Aid.

2.1.1 Meaning of Legal Aid

Legal aid, as a significant welfare right, is not the exclusive product of political right to seek defense in a court of law. But it is an outcome of the twentieth century struggle against poverty to ensure just human living to the people at large. At one time legal aid was considered to be hybrid in some form of Political Right of Charity from the rich to the poor. This view is hardly tenable in the wake of the changing Socio-economic conditions in every modern society. In fact, there is a great deal of transformation in the political and social right and legal aid is not placed at all on lower footing in the modern complex of these rights. But it must be stressed that legal aid, as a right, decisively needs to be protected by positive law through affirmative state action. If law has to play a purposeful and significant role in the socio-economic reconstruction of the country, legal aid must be given meaningful education to the poor about the law and their legal problems in a democratic order.

Judge Learned Hand32 said: “If we are to keep our democracy there must be one

32 Judge Learned Hand, Speech at the 75th Anniversary Dinner of the legal Aid Society of New York, Feb 16, 1951 Brief Case 4,5 see at Dubey, Rambabu, "Role of Law teachers in Legal aid schemes and legal aid clinics." Central India Law Quarterly 1988 Oct-Dec P-550 to 556.
commandment: Thou shall not ration Justice”. Democracy therefore requires that the machinery of Justice must be readily accessible to all.

Legal aid is a basic indispensable postulate of the legal system and certainly not a matter of charity. In common parlance it is opined that import of legal aid to the poor is of seminal significance. Certainly, legal advice, prevention of litigation and promotion of settlements are important component of programme. Free legal services are important in civil and criminal proceedings as well as in quasi-judicial and administrative hearings. Likewise, legal aid for the working class in labour disputes, for the peasantry in agrarian disputes, for the minorities in communal disputes, is part of the wider scheme. Legal help to the scheduled Castes and Scheduled Tribes, legal rescue to the weaker segments like women, children, physically and mentally handicapped groups, prisoners, religious and political dissenters, inhabitants of geographically remote regions and the like, must figure in any comprehensive national legal service project. Many civil and criminal actions and reliefs under other laws or against administrative actions never surface up snowed down by chill penury33.

In the traditional sense, legal aid included appointment of a lawyer at the expense of state, exemption of court fee, process fee other payable fee. Later on, the scope of the legal aid was expanded and the pre-litigation aid has been covered under it. In its wider sense, legal aid also includes public interest litigation, Lok Adalats, Legal Literacy; which are important limbs of legal aid. There need not be any precise and exact definition of legal aid as the limit and extent of legal aid largely depends upon many factors, like the nature of the case, eligibility of recipients, requirement of assistance and the number of resources available with the legal aid agencies.

In a criminal case, it is the right of a poor accused to be represented by a lawyer. If the accused cannot afford a counsel for himself, then the court will have to provide him a lawyer for his defense at the expense of the state. This Legal Aid in a criminal case is recognized as a matter of right. In case an accused remains unrepresented his right of personal liberty is violated, legal aid becomes his Constitutional right as essential part of personal liberty.\(^{34}\) In civil case, legal aid is an assistance for redressal of grievances and matters incidental thereto. Such cases cannot be claimed as a matter of right as it is not available to all persons, the annual income is also taken into consideration for determining the eligibility of the recipients of legal aid.\(^{35}\).

Legal Aid is a free legal service. The basic objectives\(^{36}\) of legal aid are:

- No person should be denied of Justice only on the ground of poverty and other social disability
- There should be operation of quality in dispensation of Justice
- Political democracy should gives effect to social democracy.
- All the persons should be able to reap the fruits of democracy
- There should be an easy and guaranteed access to Justice
- The poor should not face the painful side of law
- Due regard must be given to the principles of natural Justice, and no person should be condemned unheard.
- The rigor of law should be softened in favour of indigent people
- The law should additional support to vulnerable, downtrodden and backward masses of the society.

\(^{34}\) Under Art.21 of the Constitution of India


\(^{36}\) Report of the Committee on Legal Aid and Advice in State of Bombay, 1987 (1950)
The state should become a welfare institution and should provide social
Justice to all.

The Other classification\textsuperscript{37} of objectives of legal aid are

1) Not to deprive any person, man, woman or child of equal protection of the law
2) To promote the knowledge of law among the indigent and ignorant persons

Mr. Justice Krishna Iyer unveils the total doctrinal understanding of legal aid for Indian use as he observes: "Simple pamphlets in the language of the people, motion pictures, radio and TV publicity explaining criminal statutes affecting the common people are a sine qua-non of legal aid in its wider connotation. When such law seeps down to the masses, the legal aid lawyer explains obscurities, and when the law hurts or needs clarification or is unworkable, he transmits this message for change to appointed agencies. The legal aider, in the context of ignorant indecencies, is more than a lawyer. He is friend, philosopher and guide and seeks the assistance of student clinics, social workers, labour leaders and the like. His ability to mix, sympathise, explain to the layman and help by legal advice and petitioning to authorities, apart from dealing with cases in court, makes him a liaison officer".

2.2 Various aspects of Legal Aid: Legal service programme

In 1970, the Gujarat Government, constituted a committee under the
chairmanship of chief Justice of Gujarat High court, Mr. Justice P.N. Bhagawati, to
suggest measures in organizing legal aid programmes. The Report stated that an
effective legal service programme covers three distinct services (1) Legal Aid; (2)
Legal Advice; and (3) Preventive Service. While the first item of legal service,
namely, Legal Aid is purely litigation oriented, the second item, Legal Advice, refers
to advice on legal problems which may arise in the life of an individual and it may

\textsuperscript{37} Altaf Hussain, \textit{Legal Aid to the weaker sections of the society} in Commercial Law Gazette, 10\textsuperscript{th} August, 1981 p 4.
include drafting of documents and negotiations with a view to settling a dispute so that it does not require to be taken before a Court or Tribunal. The third item of Legal Service is preventive Service, which a legal service organization can render to the poor as a class. Its sole purpose is to prevent, on a mass scale, through education, instructional changes, organization of the poor etc., the innumerable injustices which the poor as a class suffer and from which it is apprehended there is no escape for them except by revolution.

2.2.1 Definition of Legal Aid

The new encyclopedia Britannica defines legal aid as the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help.\textsuperscript{38} The International Commissioner of Jurists includes the provisions of legal advice and representation in the courts to all those threatened as to their life, liberty, property or reputation, who are unable to pay it.\textsuperscript{39} According to Justice. Krishna Iyer, “The spiritual essence of Legal Aid movement consists in inviting law with a human soul: Its Constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social Justice through the legal order.\textsuperscript{40} Article 8 of the Universal Declaration of Human Rights provides: “Ever one has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights granted to him by the Constitution or by other law”.

\textsuperscript{38} \textit{The New encyclopedia Britannica}, Vol. 1974 (ed.) P.122
\textsuperscript{39} \textit{The International Commission of Jurists, Report of Committee IV, Clause X}, New Delhi, 1959
\textsuperscript{40} The Government of India, Ministry of Law, Justice & Company Affairs, \textit{Report of the Expert Committee on Legal Aid Processionals Justice to the poor} May 1973,
Arthur Berney has described legal aid in India as Constitutional imperative and “the courts must rule that the assistance of trained personnel be produced to any party who requires such aid”. If law is to play a meaningful role in the true sense in bringing about social and economic reconstruction, it should establish dynamic systems of communication with the people through the operation of law. Law must establish liaison between the statute book and those deprived of their rights.

Lord Denning, the chief exponent of philosophy of legal aid believed it to be the spirit and corner stone of equality, Liberty and concept of audi-alteram partem. Lord Denning has aptly, observed that “Since the second world war, the greatest revolution in the law has been the mechanism and evolution of the system of legal aid and it is a fundamental human right. The development of law remains permanent, poignant, path-making, purposive, prominent, progressive and pervasive.

Lord Denning, viewed legal aid and said that “It should not delay or deny Justice. It should not be used as an instrument of oppression and undue influence in civil matter. Nothing rankles more the human heart than a brooding sense of inJustice. Illness we can put up with. But, inJustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury and the poor who need it most, cannot have it because its expense puts it beyond their reach”.

According to Dash legal aid means “giving to persons of limited means gratis or for nominal fees, legal advice and legal assistance in court in civil and criminal

---


matters.” Its primary objective is to impossible for any man, woman or child to be denied the equal protection of law, simply because he or she poor.\textsuperscript{43}

The Researcher views legal aid means professional legal assistance by trained personal equally in civil and criminal cases. The legal aid as judicial right is not totally related to the traditional political right to approach the courts for securing Justice but intimately related to modern struggle against poverty, thereby to ameliorate the condition of the poor by securing them such social rights like the right to adequate diet, to decent housing, to medical care and to merit-based employment. Right to legal aid comes in the category of modern social rights. The crux of the thought here is what Kautilya said: “Philosophy is ever thought of as the lamp of all sciences, as the means of all actions (and) as the support of all laws (and duties)\textsuperscript{44}.

Former Prime Minister Mrs. Indira Gandhi referring to the aims and objectives\textsuperscript{45} of the Legal aid Programme observed that:-Legal Aid is not a mere Constitutional obligation. In our country it is a social imperative. It should not be viewed as charity but it should be conceived as an integral part of Indian legal system. It should try to prevent pointless litigation and provide quick method for the resolution of disputes and reconciliation without resort to protracted and costly litigation.

Dr. Dhayani writes: the term ‘legal aid’ is a modern phenomenon which commits legal community to the welfare of the poor in the society. In fact, it is a voluntary source mobilization of law men of their legal talent, efforts and the time in the service of the poor which affords them an opportunity to seek Justice from the court with or without little costs. In the traditional sense of the term, legal aid is an

\textsuperscript{43} S.K Dash: “Legal Aid to the poor in India Administrator 1981 26 (2) P.
\textsuperscript{44} Kautilya Arthasastra, Ch.2, sec. 12 (1.2.12.
assistance rendered by professional lawyers to those who need it and who are unable to exercise and enforce their human and other legal rights for want of money social backwardness.\textsuperscript{46}

Dr Madhava Menon,\textsuperscript{47} academician and legal aid activist defines ‘Legal Aid has been taken to mean the organized effort of the Bar, the Community and the Government to provide the service of the lawyers free or for a token charge to persons who afford to pay lawyers fee further explaining the words in the definition, Professor Menon writes “The concept means not only a representation through lawyer at state expense in court proceedings but will include legal advice, legal awareness, legal mobilization, public interest litigation, law reform and a variety of strategic and preventive services which instead of assisting such individuals on a case-by-cases will help them as a class to avoid helplessness arising from poverty and promote equal access to Justice.

According to Sharma “Legal Aid should be appreciated as a dynamic concept of distributive Justice and the rule of law.\textsuperscript{48}

According to Dr Juneja legal aid means “The object of legal aid is to bring the indigent at par with his adversary in litigation. It can be done either by providing him with lawyer and exempting him from court expenses or by otherwise making him equal to his adversary.\textsuperscript{49}

\textsuperscript{46} S.N Dhayani :\textit{Law Morality and Justice: Indian Developments},1984 p.114
\textsuperscript{47} N.R. Madhav Menon: \textit{Legal Aid and Justice for the Poor (Article)}in Upendera Baxi (ed.) \textit{Law and Poverty:critical Essays} 1988 p.366
\textsuperscript{49} P.C Juneja ,\textit{Equal Access to Justice}, The Bright Law House, Rohtak 1993 p.306
Lojas Fornando observes 50 “Legal services are a means for reaching a fundamental social change which results in a new concept of Justice and democracy.

Jagat Narain observes51 “legal aid is understood as financial assistance to a person who wishes to assert or defend his rights in a court of law and who wouldn’t be able to do so without such assistance, in view of his financial means.

The researcher supports with Dr. Madhava Menon view that legal Aid includes legal assistance, legal mobilization, public interest litigation and it is the organized effort of the Bar, the Community and the Government.

2.2.2 LEGAL ADVICE: The scheme of legal aid also includes legal advice in the nature of preventive litigation.52 Legal advice is independent of any proceedings instituted or likely to be instituted in courts, or tribunals or any other judicial body. Legal advice is meant for solving legal problems and sometimes other than legal problems which also arise in the life of an individual. This may include drafting of documents and negotiations to settle a dispute so that it may not lead to litigation before a court or tribunal. It may also include diverse services which are altogether different from the traditional legal service. Legal advice is intended to prevent litigation in the court through educational and institutional changes and to understand the nature of the problem of the poor in the correct perspective.

The Bhagawati Committee (Bombay) defines legal aid and advice in the following words: Legal aid means assistance in conducting or defending proceedings

51 Jagat, Narain ,Legal Aid – Litigational or Educational An Indian Experiment, Journal of the Indian Law Institute, 28(1986) pno.72
in the courts whether by remission of court fee, free legal representation, provision for the payment of witness' expenses or otherwise. Legal advice means advice on legal matters, drafting a simple document and negotiations, apart from conduct of litigation, but we do not include conveyancing or probate matters or the drafting of wills, although certain of these matters.” Legal aid and advice are both necessary for a comprehensive legal aid programme within the legal aid scheme, legal advice should play an important role in preventing litigations in courts. All the Mandals/Talukas/Districts should play a positive role in the conciliation of disputes. Legal advice should be available to the poor sections of our State without any difficulty and the legal aid committees should be in a position to educate the poor people about their rights as well as their enforcement in case of infringement. Actually, the legal aid committees will have to chalk out a programme to help in keeping the poor outside court by proper counseling and advice.

If a person is well advised, litigation can be avoided at the earliest stage of dispute. A case gets spoiled if legal is given at a very late stage. Several cases go before a court because of lack of proper advice at the proper time, which results in waste of time, energy and resources, and this is more particularly with the illiterate and poor persons or persons of meager means or persons belonging to society and economically backward communities. They are exploited and blackmailed by creditors who threaten them to take the matter in the Court of law. These poor people often submit to the wishes of the creditors and settle their disputes out of court against their own interest. It is the general experience of the lawyers and the bar that 30 to 40 per cent of cases come to the lower courts because of lack of proper advice. Such cases can easily be eliminated by giving appropriate advice to the poor litigants, at the appropriate time. Sometimes it happens that badly drafted before the litigation drag the poor man into the court of law. Consequently, be wastes his skills, time and money. Legal advice can prevent litigation and educate the poor about his problems.
It constitutes one of the important items of the preventive legal service. Legal advice is more important and urgent than legal aid. The programme should be organized on the following lines: 1. System 2. Criteria for rendering legal advice 3. Kinds of legal advice. Every legal aid committee should have lawyers to advise the needy persons. This will require full-time legal advisers or a qualified secretary conversant with the provisions of various Central and State laws, and working of the courts to do Justice to the person seeking advice. The legal aid committee should also not charge any fee for legal advice from adivasis (tribal) people belonging to the Scheduled Tribes and society and economically backward sections of our State Legal Advice in the Form of Consultation.

The legal aid committee in Mandals/ Districts to provides consultation service to persons of meager means and also persons who will be outside the limits prescribed under the means test. Consultation service will have to be effective and prompt to the satisfaction of the applicant. A lawyer in charge of consultation service will be chosen from a panel of lawyers who will be appointed by the legal aid committee. Whether the consulting advocate will be full-time or part-time employee will depend on the workload of the legal aid committee.

2.2.2.1 Drafting of Documents The legal advice also includes drafting of proper documents to secure rights of poor persons and save them from difficulties and expensive and time consuming litigation. A poor persons may have problems with landlords, moneylenders, landholders, relating to untouchability and marriage, etc.
2.2.3 The concept of Preventive Legal Service should be considered from three aspects: 53 Reasons for the inadequacy of the remedial legal service programme;

(i) The basic approach of the preventive legal service programme and the fundamental principles underlying it; and

(ii) The specific content of the preventive legal service programme. We shall examine these aspects in the order in which we have referred to them.

The illiteracy and ignorance of 70 per cent of our population presents another difficult problem. It is obvious that the success of a traditional legal service programme would depend upon at least two factors: (1) the person affected should be able to realize that the problem he faces is a legal problem and that a lawyer can help him; and (2) he must know where he can get such legal help. These two preconditions are markedly absent in our country and their absence would render any traditional legal service programme ineffective and deprive it of meaning and utility. Mere opening of legal service offices ready and willing to help the poor, if at all they come to the offices, would not alone suffice.

Their illiteracy and ignorance would keep them out of the reach of the legal service offices. The ordinary man looks upon law as irrelevant, regards courts not as courts of Justice but as courts of law, whose decisions are based on evidence filtered through technical and incomprehensible rules and guided and influenced by skill and manipulation of lawyers and views the entire system of administration of Justice as impersonal, alien and remote with a mixed feeling of awe and suspicion or at least

\[53\] Ibid at p. 139
with a skeptic eye. The remedial legal service programme, obviously cannot work successfully in such an atmosphere and surrounding.

It difficult to persuade witnesses to come and give evidence because they are too poor and weak to bring any moral pressure on the witnesses to come and depose to the truth and they are also unable to pay the actual travelling and halting expenses of the witnesses; they are mostly illiterate and ignorant and so are their witnesses and with their undeveloped and uncultivated mind, they are totally incapable of standing skillful and astute cross-examination by competent and intelligent lawyers even if they are deposing to the truth with the result that their interests suffer and lastly, the adversary system of administration of Justice which is followed in our Courts also works to their great disadvantage to them 54.

The poor pass through innumerable harassments, hardships, humiliations and suffering, at the hands of the police and other public officers --- a pennon quite common, yet not often noticed by people because it is mutuality not so obtrusive. The law which the poor encounter in their day to day life is not “the law of the poor” but “law for the poor” which is based upon police powers and presumed right of the society to preserve public order and to protect one segment of the community from another. This law is constantly directed against the poor and the poor are easily vulnerable to it because much of their life is public and the vested interests always look upon them as potential threats to the continuance of the social order in which they have thrived and prospered.

The efficacy of the traditional legal service programme depends on two major factors: one is “legal competence” which we understand to include awareness and assertiveness and the other is the capacity to perceive a problem as a legal problem.

The poor are often unaware that the problem which facts them is a legal problem capable of resolution by the legal process. They do not ask for legal service because they do not know that their need is a legal need. The view of the legal process held by them is an extremely narrow and restricted view. It is, therefore, necessary to have a more dynamic and effective legal service programme which would extend the problem identification and legal assertion horizons of the poor, develop new areas of problem identification and new styles of approach to the law and redirect the nature of the demand for legal services so that the poor would be able

54 Ibid at p 141
to see law as an instrument of social change and use it as such for the purpose of finding permanent solution to their problem.

2.2.3.1 The characteristics of the preventive legal service programme

The preventive legal service programme calls for frontal attack on poverty rather than merely its symptomatic treatment and as a necessary consequence, it does not regard individual-oriented treatment as adequate or satisfactory but insists on group-oriented and institution directed approach to the problem of poverty.

The preventive legal service programme in contradistinction with the remedial legal service programme, explicitly recognizes the inter-relatedness of the social, economic, legal, educational and psychological problems which beset the poor and the consequent necessity to involve all segments of society in a many-pronged attack on these problems and hence calls for the closets. Collaboration and co-operation between lawyers working for the poor and other social workers working in diverse fields of social services.

Briefly speaking, the preventive legal service programme is calculated to strike at the root of the problem of poverty by seeking to change the social and economic institutions and at the same time educate and organize the poor so that they may become conscious and powerful and the institutional changes may become real and permanent.

The preventive legal service programme should, therefore, comprise six distinct kinds of services to be rendered to the poor, namely (A)Legal Advice, (B)Education, (C)Representation (D)Research and Innovation (E)Institutional Changes; (F)Organization.

Legal Advice The first stage to prevent litigations or disputes is to give legal advice in time. The primary aim and objective of law is, and must be avoidance of friction and conflict with a view to obviating disputes and litigation rather than their actual settlement after they have arisen. There is great need for consultative services which sociologists have found to be increasingly urgent in our complex and perpetually baffling society. The wellbeing of all citizens is promoted by receiving timely advise from lawyers on the many and frequent questions of law affecting their lives, their property and their opportunities. In the life of the poor, prevention or

---

55 Ibid at p 146,147
avoidance of a legal trouble or dispute is much more important than in the life of a rich man, because for him, one such trouble of dispute resulting in prosecution or litigation may spell family catastrophe or disaster.

**Education:** The subject of education is to be divided into three categories namely, education of the poor and the disadvantaged, education of social workers who are working for the poor in diverse social fields and education of advocates who would be rendering legal service to the poor under the legal service programme. Each one of these categories of education is an important item in the preventive legal service programme and it is no exaggeration to say that successful implementation of the preventive legal service programme depends to a large extent on the degree and extent to which proper education can be given in each of these three areas. But through each of these categories of education is important in itself, the most important and significant is the category of education of the poor in law.

To serve the purpose of law education of the poor in law must necessarily be the most important of all elements of the legal service programme for the poor. People should have knowledge of law and should have confidence in it. Unfortunately, the poor man is ruled by a legal system which he neither understands nor trusts. To integrate Justice into the much broader field of social security, it is necessary to educate the poor about their rights and obligations. The nature of law itself makes it necessary for everyone to have some knowledge of it, at least of its most important.

The absence of legal awareness leads to deception, exploitation, deprivation of rights and benefits, sufferings and harassments at the hands of the police, public officials and other powerful groups in the community. Legal needs are generally crisis-oriented because ignorance prevents from anticipating legal troubles and approaching the lawyer for consultation and advice in time. Poverty magnifies the impact of the legal troubles and difficulties.

The lawyer also cannot help them because they do not know when to go to a lawyer. The result is poverty which becomes a condition of total helplessness and helplessness. This miserable condition in which the poor find themselves can be alleviated to a large extent by educating them. If they are educated in their rights and obligations under the law, it would serve four important ends, namely; (i) Save them from legal troubles arising simply from ignorance (ii) Enable them to seek legal advice in time, which would avoid further legal difficulties and prevent necessity of
litigations (iii) Generate power among the poor because knowledge is power, and lastly, (iv) Make them self-reliant.

The educational programme must include within its broad sweep, information to the concerned sections of the poor about legislation proposed to be undertaken by the State Government on the Central Government as also legislative Bills pending in the State Legislative and the Parliament which are intended to confer rights and benefits on the poor.

Intensive and extensive publicity, it would also be desirable that a printed form informing the opponent or the accused about the availability of legal services and advising him of the qualifications necessary to apply for such legal services procedure to be followed for the purpose of obtaining the same should be attached to every writ, summons, notice of appeal or revision application served on the opponent or notice or summons or warrant issued to the accused. Such a printed form should also be posted in conspicuous places in lock-ups and cells in all police stations and in all jails within the state and the police should also be required to hand over such a printed form to the arrested person at the time when the arrest is made. The poor should be reached by means of popular and interesting lectures given by good and effective speakers. There is also another method of communication which can be utilized to great advantage and that is the use of pictorial posters which explain a problem and give its solution. Pictorial posters of this kind are extensively utilized in the legal aid offices in the United States and they have been found to be quite useful in instructing the poor as to how problems which arise in their lives can be solved by legal process. If pictorial posters can be made simple and attractive and sufficiently graphic, they can serve a useful purpose in a country like ours. The use of radios is gradually becoming widespread and it has reached the most distant corners of the country. Even in remote villages, Community Centers have now radios and people have got into the habit of listening to radios.
The legal service programme can therefore make effective use of the radio must be short interesting and imaginative dealing with a concrete life-like situation which may commonly arise in the life of the poor Mobiles,cinema can be most potent and effective instrument for mounting up the educational campaign. Short and increasing movies made depicting a problem in the life of hypothetical family and showing how it can be solved by means of resort to legal process. Bhavais and dramas with appropriate themes may also be used for the purpose of educating the poor though this mode of communication would not be so easy to adopt as the mobile cinemas. **Representation** in preventive services is intended to police welfare administration and to assert legal rights before officers, to canvass interests of poor before rule-making bodies or legislatures. **Research** and experimentation on continuing bases is an essential support activity for Legal Aid to the poor. **Organization:** In every legal aid office there should be one full-time legal adviser in charge of the advisory wing a panel of advocates from the Bar who are ready and willing to offer their services must be formed and the work of giving legal advice should be distributed amongst them.

The full-time legal adviser may be the same person who is in charge of the legal aid office so that he may attend to litigation work during court hours and make himself available for giving legal advice in the mornings and evenings and on non-working Saturdays. Where a panel of advocates is required to be formed for doing the work of giving legal advice, the selection of advocates to be appointed on the panel must of course be left to the presiding Judge, who is the Chairman of the appropriate Legal Aid Committee and he should make such selection in consultation with the President of the Bar Association. The panel may be periodically changed so as to give an opportunity to other advocates to offer their services; but the presiding Judge should always bear in mind that the advocates selected must be reasonably competent and they should also be that they are in a position to give correct and proper advice to those who come to them. They should also be sufficiently experienced and in no event should their standing at the Bar be less than five years. The Presiding Judge should try to secure, as far as possible, that the advocates taken on the panel are public spirited lawyers passionately committed to the cause of
eradication of poverty. These advocates on the panel should not be required to do the work of giving legal advice free of charge. Some remuneration should be paid to them. What it should be is a matter which can be decided as a matter of policy by the State Legal Aid Committee. The legal aid office where legal advice is given should ensure both dignity and privacy to those who come for legal advice. The problems of the poor client are just as important and personal to him as the problems of those with means and as in the case of the latter, so also in the case of the former, privacy must be ensured and dignity in the proceedings must be maintained. The poor client must also not be required to come to the legal aid office every now and then. The legal adviser must give, as far as possible, on the spot advice and it is only if some information is required or further consideration is necessary that he may require the poor client to come again. The necessity of seeking legal advice should not become a source of trouble or harassment to the poor client.

The Report assigns responsibility for institutional changes to lawyers it seeks, to develop a public sector to remove the inequality in Legal representation.

2.3 LEGAL AID IN INDIA – ORIGIN AND DEVELOPMENT

Historical Development of Legal Aid:

During Vedic Period 56 the concept of Dharma was considered very important. One aspect of dharma was that both king and the subjects were under the commandments of dharma. In the latter period there were courts which heard the disputes between parties. But the absence of lawyers and court fees did not create need for legal aid.

During the Muslim period the administration of Justice was one of the important functions of the sultans. The king's court (Sultan's) exercise both original and appellate jurisdictions on all kinds of cases. Muftis highly qualified in law assisted the sultan. In fact need for legal aid for the poor was not felt seriously. The need for legal aid was felt only when a formal system of administration of Justice came into existence. In other words the courts, lawyers and court fee and other expenses

56 Dr S. Siva kumar, Legal Aid : How Effective are Domestic legal Aid Programme? IBR vol 27(1) 2000 p.107
created a situation in which economically poor people found it difficult to get Justice. They could get speedy and free Justice in the panchayat. But when they faced a wealthy adversary in the court they needed help. During reign of Shahjahan and Aurangzeb the state Vakils were given instruction to offer free legal advice to the poor.* A court system, more or less on the modern lines, started during the Mughal period. Therefore, the concept of legal aid also originates during that time. The British rule, which followed the Muslim period further, complicated the Judicial System by modifying the existing system and introducing English laws. They gave further impetus to the need for legal aid for the poorest of the poor .The British who ruled India for nearly two centuries formalized the judiciary. Complicated procedures were introduced. Justice system became a bundle of technicalities and formalities. Lawyer's fee made litigation a costly affair. Moreover, the technicalities made litigation time-consuming. Thus the legal system became an instrument in the hands of the rich for harassing the poor. Gradually the British colonial system of judiciary became inevitable part of Indian Society. In Britain, the history of the organised efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State.

### 2.3.1 First Phase Before 1925 - 1958

In the pre-independence phase 1924, The Bombay Legal Aid Society was constituted with an object of making Justice accessible to the poor and reducing the cost of litigation, providing lawyers to the poor on the basis of need., rendering legal aid gratuitously and make provision for payment of court fee. An applicant on satisfy means test and having bona-fide case, is eligible to obtain legal aid the
government, the High Court of Bombay and other courts referred persons in case of legal aid to Bombay legal aid society.\textsuperscript{57}

The question of legal aid has been engaging the attention of the Government of India since 1945. The credit for drawing the attention of the Government of India to this important question goes to the Bombay Legal Aid Society which, has done pioneer work and rendered great service to the cause of legal aid in the State of Bombay. In 1945, the Bombay legal aid society invited the attention of the Government of India to the Report of the Committee on legal aid and legal advice in England and Wales appointed in 1944 by the Lord Chancellor under the chairmanship of Lord Rushcliffe. This committee was directed to enquire into the facilities existing in England and Wales for the grant of legal aid to poor person and to make recommendations for making legal aid and legal advice available to such persons in the conduct of litigation, whether civil or criminal, in which they were concerned. The Bombay legal aid society suggested the Government of India to appoint a similar committee to examine the problem of legal aid. In 1946 the Government of India enquired from the provisional Governments whether they would be able to provide greater facilities for legal aid to poor persons in both civil and criminal cases. The State Governments expressed that the existing provisions for legal aid in civil cases were sufficient but that the provisions for the grant of similar aid in criminal cases might be liberalized. On the ground of financial stringency, however, they were reluctant to undertake any scheme of the legal aid even to the limited extent of the further extension of such aid in criminal cases.

The Government of Bombay appointed a Committee in March, 1949 under the Chairmanship of Justice N.H Bhagwati (the then Judge of the Bombay High Court) to consider the question of the grant of legal aid in civil and criminal proceedings to

\textsuperscript{57} Dr. S.S. Sharma: \textit{Legal Services, public interest litigation and paralegal services}, P 51.
poor persons, persons of limited means and persons belonging to the backward classes and to make recommendations for making Justice more easily accessible to these persons. This Committee went exhaustively into the question of legal aid made a detailed Report in October 1949. The recommendations made by Bombay Legal Aid and Advice Committee were more or less identical to the recommendations of the Rushcliffes Committee. The Committee proposed that administrative machinery of legal aid should be constituted at four levels: 1) State level, ii) High Court level, iii) District level, and iv) Taluka level. The Committee also suggested two tests for determining eligibility for legal aid: I) Prima - facie case test (II) Means Test. As regards the criminal cases the former test was to be replaced by an "Interest of Justice test." It has further proposed that: No aid should be provided in trivial and trifling cases

   a) There should be declaration on oath about “Disposable Income” and “Disposable Capital.”
   b) There should be certificate from a respectable citizen or responsible officer regarding his means
   c) A bond should be executed by the party that there is no champerty and he will not make compromise without the consent of Legal Aid Committee.
   d) There may be cancellation of legal aid certificate in certain cases.

Finally the committee recommended regarding.

   a) Assignment of lawyers: Bar Association prepares panel of lawyers, preferable experience lawyers for legal aid. every member of Bar to handle at least six cases per year.
   b) Remuneration of the lawyers: after these six cases the lawyer to get remuneration.

---

An outline of Legal Aid Scheme as proposed by the Committee on Legal Aid and Advice in State of Bombay has been given in Appendix I in the XIV Report of First Law Commission, 1958, Volume.7 I.
c) Legal advice: Lawyers on the panel of legal aid committees were also expected to give legal advice.

d) Costs: when assisted party is successful cost was to be credited to the Legal Aid Fund and in case of his failure, the cost were to be deducted out of Legal Aid Fund.

The important point to be noted is that the Committee recommended only for ‘Partial Legal Aid ‘as per the Report of Rushcliffe Committee in England. The Major sources of funds for the legal aid committee would be (i) Central Government. (ii) State Government,(iii) Contributions by partially assisted person,(iv) Donations from local bodies, charitable trust, (v) Costs recovered in civil litigations,(vi) Fee collected for rendering legal advice.

Adequate publicity had to be given about the availability of legal aid every notice and summons issued by court would inform the recipient about legal aid notice board would also be put up at police stations to inform people picked up in connection with criminal investigation about the availability of legal aid.

The Bombay Legal Aid and Advice Committee had also considered the extent and scope of legal aid analysed.

(i) Legal Aid may be given to both plaintiff and defendant, complainants, petitioners etc.,

(ii) Legal Aid may be provided in all Courts. Legal aid was to available at the trial and appellate stages.

(iii) Legal Aid has to include.

(a) Court fees

(b) Process fees out of pocket costs.

(c) Diet money for Witnesses, cost of certified copies and
The Bombay Committee took a modern and contemporary view holding that the problem of Legal Aid is under the current conception of the obligations of the State, and was to be similar to other social insurance scheme like old-age pensions, free education and free medical relief. The state was asked upon to take the responsibility legal aid to poor persons and persons of limited means\textsuperscript{59}. The Committee was fully aware of the contentions of critics of legal aid which were, 1. Legal aid to the poor might make people more litigious and increase litigation, 2. That the scheme would be liable to abuse by dishonest and unscrupulous people 3. That the scheme of legal aid would impose a disproportionately heavy financial burden on the State. The Committee countered these apprehensions stating that they proceeded from lack of credit in the proper functioning of the legal aid schemes. With appropriate safeguards for determining the financial status of the applicant and for ascertaining the fitness of the reasons for which aid is given, it appeared that there was no chance of misuse of the scheme. \textsuperscript{60}In 1949, the Government West Bengal appointed a committee under the Chairmanship of the Mr. Arthur Trevour Harries (of Chief Justice of Calcutta high court).

As per the Committee’s recommendation free legal aid in civil and criminal cases was to be given to the following persons:

a. Plaintiff & appellants not possessed of sufficient means to pay the prescribed fee.

b. In other cases, persons not having property of more than Rs.250 excepting the necessary wearing apparel and the subject matter of the suit or appeal the total resources of family are to be considered.

Criminal Cases:

(i) Offenders punishable with death or life imprisonment, or for a term of 5 years or more

(ii) Persons who act bona-fide in the exercise of right of private defence of persons of property in cases were such persons have no means to defend themselves.

(iii) Informants in cognizable cases, when they fail to get the help of police or when the cases are not sent by the police for trial etc.,

The committee was not preferred to give to legal aid in some cases as it felt that legal aid should not be given in a suit for defamation and election suits except in special circumstances to women when there is an imputation of unchastely to here. It suggested for a 3-tier system of legal aid as below:

(i) Calcutta Legal aid Society for High Court Cases.

(ii) Committee for City Courts and

(iii) Committee for District Court Cases

The Committee suggested that Court fee, process fee etc., need not be paid by the party assisted and that Legal Aid Fund should bear such expenses of assisted person. The cost should be credited to fund or vice – versa paid out of it. Like N.H.Bhagwati Committee Harris Committee has also not used the term & “Disposable Income” and “Disposable Capital” in the Means Test. The obvious reason is that the Report of N.H. Bhagwati largely based upon the Rushcliffe’s Committee Report in England. But the recommendations of Harris Committee were not implemented due to the insufficiency of funds. But sincere efforts and dynamic endeavours never go in vain. In spite of the fact that the recommendations of
N.H.Bhagawati Committee and Travor Harris Committee were not implemented their suggestions have a significant impact upon the movement for legal aid in India.

In 1952, Government of India directed the State Government to make provisions for legal aid in criminal cases in respect of offences punishable with not less than five years rigorous imprisonment and further appeals\textsuperscript{61}. Responding the central government direction; legal aid and advice society was formed in some states viz. west Bengal, U.P, Madras Orissa so on. In A.P, a Local cultural association had renamed itself a legal aid organisation. But again State Governments regretted their inability to do anything in this regard on account of financial stringency. In January 1956, the Government of India for the third time sought from the State Governments their tentative views for increasing the scope of legal aid to the poor. The Central Government has also informed the State that the scheme of granting legal aid to the poor was under consideration for inclusion in the five-year plan. The State Government was advised to examine this matter again and, if possible, make some token provision in their budget. The State Government was reluctant to embark on any scheme involving financial obligations. Some of them replied that they had made token provisions ranging from Rs. 1000 to 2000 in their budget in respect of legal aid. Unfortunately, the question of legal aid has been regarded as of very minor importance as compared to other projects and schemes under Five Years Plan.

In 1957 A Law Minister’s Conference was held for evaluation of legal aid programmes which reached the following conclusions:

(i) Each State should formulate scheme for legal aid to the poor.

\textsuperscript{61} Report of the Preparatory Committee for Legal Aid Scheme, Government of Madhya Pradesh 1975
(ii) The Scheme may envisage appointment of committee at different levels to entertain applications and to examine whether there is a prima facie case, deserving legal aid

(iii) The Scheme should enable requisitioning of the services of every member of the Bar up to six cases in a year.

(iv) At the experimental stage, the scheme may be framed by the executive orders.

(v) Each State should forward to the Ministry of Law, the Scheme formulated by it.

In 1958, the Kerala Government adopted Kerala Legal Aid (to the poor). Rules providing a scheme of Legal Aid. The court or the tribunal is empowered to grant Legal Aid to a person whose average monthly income does not exceed Rs.100/- Legal Aid under the Rules include payment of fees to counsel. The person claiming Legal Aid may engage a counsel of his choice though the fees payable are as fixed under the rules. The agency to administer the scheme is the court itself and the person receiving Legal Aid is required to executive an agreement under which he is bound to pay over to the Government the amount spent towards Advocate’s fee, if he is able to realize it under the judgment or decree of the court. A novel feature of the 1958 Kerala scheme is the provision to provide Legal representation in the cases involving interests of class of people considered poor.

In Maharashtra the Government by administrative orders brought into force four different schemes for Legal Aid in 1958 Legal assistance to the backward classes including scheduled castes and tribes in civil and Legal proceedings, Legal Aid to the undefended poor to accused persons in sessions cases, and Legal service to the ex-service men and their families receiving income bellow a prescribed limit.
Up to 1958, the voluntary legal aid organization in a few towns like Bombay, Calcutta and Bangalore played considerable role but they failed to give benefit of laws to the poor masses of the Society. 62 The Legal profession too, failed to discharge its social responsibility for providing legal aid to poor. In order to provide legal aid in criminal cases, provisions were made in all states for employment of a lawyer in the Courts of Sessions and the High Court for the defense of persons accused of offences punishable with death. Some States also made provision for the employment of counsel for poor persons in references from the verdict of the jury and appeals from acquittals. Therefore, the middle 1950’s showed little activity in the legal aid field 63.

2.3.1.2 Second Phase : XIV Report of Law Commission, 1958

The Law Commission in its Fourteenth Report devoted a complete chapter to Legal Aid Shri M.C. Setalvad as Chairman of the First Law Commission observed the principle of equal Justice implies free legal aid stated has, "unless some provision is made for assisting the poor man for the payment of court fee and lawyer's fee and other incidental cost of litigation, he / she is denied equality in the opportunity to seeking Justice." and made elaborate Report on legal aid. The Law Commission strongly recommended that due regard should be given to the Report of Bombay Legal Aid and Advice Committee and Arthur Trevour Harris Committee and the recommendations of these committees should be implemented with full force and spirit. The need for legal aid has increased enormously with the growth of industrialization and urban conditions of life. The large number of legislations in the modern state with inevitable technicalities of law has occasioned a considerable increase in litigation.

The Law Commission suggested that the Legal Aid will have to be given first to person accused of crime, particularly crimes of serious nature. Members of

62 Supra note 26 at p54
63 Dr.L.M.Singhvi: Law and Poverty, N.M. Tripathi Private Ltd. Bombay (1973)p 296
scheduled cases and scheduled tribes who generally are without means will have to receive preferential consideration.

The Law Commission made the following recommendation on legal aid.\textsuperscript{64}

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

(ii) The legal profession if not entirely, accepts the responsibility for the administration and working of schemes of legal aid.

(iii) The Legal profession owes a moral and social obligation to poor members of society which should be discharged by every member of the profession doing a certain amount of legal work free for poor persons

(iv) The Scheme of Bombay Legal Aid and Advice Committee, 1949 and West Bengal Committee to be adopted with some modifications by all States as soon as financial conditions permit.

(iv) Bar Association should take immediate measures to render legal aid on a voluntary basis.

The Commission also recommended that immediate steps must be taken to provide legal aid facilities to poor persons\textsuperscript{16}. They are:

(i) Representation by lawyers at the Government expense to accused persons without means in all cases tried by the Court of Sessions

\textsuperscript{64} XIV Report of Law Commission, at 597,
(ii) Representation by Lawyers should be made available at the Government expense to persons, without means in criminal proceedings.

(iii) Representations by lawyers in jail, appeals should be made available at the Government expense.

(iv) The expression “Pauper” used in order XXXIII of the Code of Civil Procedure should be replaced by the expression “poor persons” or “Assisted Persons”.

In 1960 the Government of India prepared an outline scheme of legal aid and sent it to all states and various legal aid institutions for implementation but the states expressed their inability to do so due to lack of funds. This basic National Scheme was very elaborate and involved all the aspects of legal aid.  

2.3.1.3 Third Phase:

The scheme provided that every State shall constitute a legal aid fund which shall receive money from State Government, grants from Central Government, contributions from partially assisted persons, costs realized by assisted persons from their opponent, fees received for legal advice and private donation. For administering legal and State, District and mandal / taluk levels. In civil cases it provided three eligibility tests namely means test, prima facie case test and test of reasonableness. Under the said scheme, legal aid was available to both plaintiff and defendants, petitioners as well as to opponents. In criminal cases, the scheme provided that every applicant accused of an offence punishable with imprisonment shall be granted legal aid.

\[\text{G.O Koppel ,} \text{Legal Aid in India J.Q.I.L.I(1966) 246}\]
The significant point to be noted in the said scheme was that it provided for legal aid in all courts including tribunals in which representation by lawyers is not precluded. It was also suggested that legal aid should be given statutory force. Permanent legal aid office should be established which shall remain open during entire office hours. But majority of the States paid poor response in implementing this scheme. In 1962, the Conference of State Law Ministers was convened by the Government of India to discuss the matters of legal aid but no concrete decisions were taken upon it. The problem of legal and was again considered in “Third All India Lawyers Conference” in 1962 in which it was resolved that it is the duty of the State to provide legal aid.66

The problem of legal aid also attracted the attention of political leaders and parliamentarians. They had gone a step further in this direction and suggested statutory recognition of the legal aid. On March 13, 1970 a bill to be known as “The Free Legal Aid Act, 1970” was introduced into the Lok Sabha by Mr.Madhulimaye, Member of Parliament. The objects and reasons mentioned in the Statement appended with the Draft Bill were as follows:

(i) Article 22 of the Constitution of India guarantee to all persons the right to counsel and to be defended by a legal counsel of their choice.

(ii) In civilized countries it is considered to be the responsibility of the State to provide for free legal assistance to all those who are indigent, in the interest of proper administration of criminal law and preservation of citizens’ personal liberties.

(iii) In India also, in cases involving murder charges the courts sometimes provide legal counsel, but this cannot be claimed by the accused as a right, and any way this practice does not apply to a large number of cases not involving capital punishment.

66 Ibid.at 247
(iv) For want of free legal aid, many of the accused cannot defend themselves properly, and this sometimes results in their longest conviction.

(v) This bill seeks to provide free legal aid to indigent persons. The provisions of this Bill, while it will impose some financial burden on the State, will act as a deterrent on indiscriminate arrests, framing of false charges and harassment of the ordinary citizens by the police. Even if this does not lead to a significant fall in the total number of criminal cases, provision of free legal assistance will ensure fair trial and better administration of Justice. But the bill was not passed by the parliament.

The National Conference on Legal Aid of 1970 held in New Delhi also discussed the problems of legal aid and insisted for legislation to make it statutory obligation of the States. The Conference focused various view-points on the necessity of evolving a comprehensive legal aid programme. It also called upon the courts, the bar, law faculties to come forward and contribute their best in evolving a nationwide programme to help the economically under-privileged citizens of India. It was expressed in the Conference that there is a vast gap between the Constitutional guarantee under Article 22(1) and everyday reality faced by the persons of no means or insufficient means. Article 22(1) of the Constitution provides that no person shall be denied the right to be advocated by a legal practitioner of his choice. No indigent person in a criminal case can obtain a lawyer at the cost of the Government unless his crime is punishable by the death sentence, and even then the legal aid may not be easily available.67

The Advocates (Amendment) Bill was introduced in Rajya Sabha (Upper House of the Parliament. This shifted the responsibility of legal aid upon the shoulder

---

67 *Legal Aid and World Poverty; A Survey of Asia, Africa and Latin America, Committee on Legal Services to the poor in the developing countries* (1974) 228.
of Bar Council to work for poor without funds from Government.\footnote{The Advocates (Amendment) Bill, 1970, Bill No. XL of 1970 (introduced in rajya Sabha on August 18, 1970).} In 1972, the new Law Minister Mr. H.R.Gokhale expressed Government’s keen interest in implementing legal aid programme in Parliaments.

He expressed before the House, comprehensive scheme of legal aid that it is not confined to the High Courts or the Supreme Court only. The real stage where the litigation started was at the taluka level (i.e.) the bottom level where the people were helpless and were at the mercy of some unscrupulous lawyers or some people who are interested in fostering litigation. Therefore, there could be no two opinions that it was the duty of the Government to go into the question very carefully.

2.3.2 \textbf{Report of Justice P.N. Bhagwati}

In 1970, the Gujarat Government appointed a committee to consider the legal aid to poor persons and the backward classes under the Chairmanship of Mr. Justice P.N. Bhagwati, the then Chief Justice of Gujarat High Court and other members.\footnote{Gujarat Report(1972). Official Synopsis of Parliamentary Debates, Aug.8, 1972} The Bhagwati Committee gave its Report in 1971 and studied the legal aid problem from Constitutional, philosophical and organizational angles. The Gujarat Committee recommended that the legal aid should be available in all Courts enabling the poor to have access to professional help. In the Report of the Committee Hon’ble Justice P.N.Bhagwati said: “that an effective legal assistance programme is not only essential to the maintenance of the democratic way of life and the rule of law but also in a poor country like ours a Socio-economy necessity.” He worked successfully to build up an elaborate legal aid programme. He is widely regarded as the originator of India’s legal aid programme, including setting up of legal aid camps in rural areas, working with NGOs, establishing legal aid clinics etc.
The focus of the committee was the indigent person seeking to access Justice. Answering to the question of inequality in the administration of Justice between the rich and the poor the Report clearly stated that there can be no rule of law unless the common man irrespective of the fact whether he is rich or poor is able to assert and vindicate to the rights given to him by the law. The machinery of law should be readily accessible to all. The poor must be placed in the same position as the rich by means of adequate legal service programme. It stated that the inequality between the rich and the poor in administration of the Justice can be removed by establishing and developing effective system of the legal aid programme. Legal aid and advice should be regarded not as a matter of charity or bounty but as a matter of right. It is a part of social security programme just as much as medical aid is.

There was unanimous decision of the Committee that the State should regard it as an obligation to provide legal assistance to the poor and indigent. It stated that this obligation of the State was not merely, socio-economic or political but is also Constitutional by reason of Articles 14 and 22(1). Further the Report stated that the legislation and rules so made by the government should not be another piece of legislation made with the reference of any foreign legislation as there is a marked difference between socio-economic conditions prevailing in advanced countries and those prevailing in developing countries like India. It also emphasized on having legal aid programmes and that the organization for effectuating the legal service programme must be responsive to the poor in giving legal service and must not be mechanical and wooden in its approach. Even after, such a programme is introduced there must be a continues examination of its utility and its responsiveness to the poor.70

70 http://1340.legalaid.in .India .html
The Report also in detail, dealt with the true scope and extent of the legal aid. It recommended that the question is what costs, charges and expenses to be incurred by a litigant in court should be provided from the legal aid fund as part of legal aid scheme. The court fees constitute one of the largest constituents of legal expenses involved in a proceeding in a court of law. Instead of providing necessary funds to the assisted person to make payment of court fees the State should by legislation remit court fees in case of an assisted person. The scheme of legal aid should not be based on class or status. The main test for determining whether the applicant seeking legal aid is eligible for it are 1. The means test: 2. The Prima-facie case test and 3. The reasonableness test.

The, means test must be applied to them as well and must be presumed to be satisfied in the case of members, belonging to Backward Classes. The Report stated that the administration of legal aid scheme was to be placed in the hands of Legal Aid Committees to be formed all over the State. Such Committees at all levels should be constituted into corporations with perpetual succession and common seal. As regards to the composition of Legal Aid Committee is concerned, it was suggested that there must be representation of Government officials, the presiding Judge or Magistrate should be ex-officio Chairman and member with the qualification that he should not participate in the determination of the question whether the applicant has a prima facie case or not. Lawyers should be strongly represented on such committee. But the Committees should not consist exclusively of lawyers. There should be representation from the social service field and from other civic and business interests; proportion of lawyers on one hand and social workers and public spirited persons on the other hand may be roughly equal. The lawyers who are to serve on the
legal aid committee should be drawn from the members of the bar practicing in the respective areas and as far as possible half of them should be senior members and half should be junior members. The selection of such lawyers must be entrusted to a responsible authority Viz. the chairman of the superior legal aid committee. The selection must be made in consultation with the Chairman of the concerned Legal Aid Committee and with the President of the respective Bar Association. The same procedure can be followed for the appointment of social workers and public spirited citizens on Legal Aid Committee. For clerical work as well as accounts work and to attend to the applicants for legal aid it would be necessary to have a full time Secretary for each Legal Aid Committee.71

The Report also in detail stated the Constitution and the working of different legal committees: (a) The Taluka Legal aid Committee.- It was recommended that there shall be a Taluka Legal Aid Committee in every Taluka having a court of Civil Judge (Junior Division) or Judicial magistrate, It shall have power to deal with the applications for legal aid in proceedings before the taluka court as also before the Tenancy Tribunal situated within the taluka.

The presiding Judge or Magistrate should be the ex-officio member and Chairman and the other members of the Committee shall be (i) the President of the Taluka Bar Association ex-officio or a senior lawyer practicing in the Taluka court, (ii) one other lawyer practicing in the Taluka Court (iii) one retired Judge or Magistrate, if available, and (iv) one and if no retired Judge of or Magistrate is available, two social workers or public spirited citizens. The members of the Taluka Legal Aid Committee would work in honorary capacity and they would ordinarily hold office for a period of three years. Its accounts were also to be audited annually by the Government auditor along with the audit of the accounts of the Taluka Court.

71 http://1340.legalaid.in .India ,html
The Secretary of the Taluka Legal aid Committee was to be appointed with the prior approval of the District Legal Aid Committee. (d) The District Legal Aid Committee: - The same provision was applicable mutatis mutandis in respect of the District Legal Committee. Apart from the District Judge and the president of the District Bar Association, one more lawyer, a retired Judge or Magistrate or two social workers, the other members of the Committee was to be the Government Pleader of the District Court ex-officio, the President of the District Panchayat ex-officio and the Principal or a teacher of law college selected by the district judge. (c) The State Legal Aid Committee :- It was to be at the apex of the entire Legal Aid Organization and was suggested to be a High power Body composed of different social interests dedicated to the cause of administration of legal aid. It was to have as its Chairman the Chief Justice or a High Court Judge nominated by him. The other members of the Committee constituted of the Advocate General, President of the High Court Bar Association or the Vice-President, Chairman of State Bar Councilor the Vice-Chairman, one senior member of the High Court Bar, three members of the mofussil Bar, one District Government Pleader, District Judges of Rajkot, Baroda and Surratt, Secretary, Legal Department and Finance Secretary of the State Government, two members of the State Legislative Assembly, Director of Backward Classes, four social workers and a teacher of law. This Committee was to have mainly supervisory functions and lay down policies and principles for the administration of the Legal Aid Scheme. There was to be a State Director of Legal Aid responsible for the actual administration of the Legal Aid Programme within the State and was to be the Chief Executive Officer of the State Legal Aid Committee. The Committee was to exercise control over all the Legal Aid Committee in the State, and similarly the Taluka Legal Aid Committees shall be under the control and supervision of the District Legal Aid Committee.

A special mention and recommendation was given regarding the Bail System. The bail system caused discrimination against the poor since the poor would not be
able to furnish bail, while wealthier persons otherwise similarly situate would be able to furnish bail. The poor accused had often to fall back on touts and professional sureties for providing bail to suffer pre-trial detention the committee stated that the bail system was extremely unsatisfactory as and required reform so that it should be possible for the poor, as easily as for the rich, to obtain pre-trial release without jeopardizing the interests of Justice.

The committee knowing that a large amount of finance would be required for an adequate legal service programme, suggested that there should be a Legal Aid Fund created by statute which would consist of moneys received from different sources such as donations from individuals, associations of merchants, traders or manufacturers, charitable organizations and Public Charitable Trusts. Tax exemption should be granted in respect of such donations; Legal Aid Stamp of the denomination of Re. 1, amount of costs awarded to a legally assisted person; amount of legal aid granted to a legally assisted person when recovered from him or from the property or money decreed in his favor; contributions made by partially assisted persons; fees paid by applicant legal advice; grant made by the Central Government to State Government to meet expenses of providing legal service to members of Scheduled Caste and Scheduled Tribes. Annual celebrations made by municipal corporations, municipalities, and many such sources.

The Report stated that we as a nation really want to eradicate poverty and establish a truly free, just and egalitarian society; the legal service programme recommended by the Committee should be implemented wholly and in its entirety. But recognizing the difficulties that the state government may face, it may not be possible for the State Government to implement the whole of the legal service programme immediately in one single stage. It was, therefore, suggested that the legal service programme may be implemented in stages according to a phased plan.
The committee recommended that the state government may implement the legal service programme immediately in so far as it relates to the provisions of legal aid in civil cases and cases before the administrative tribunals and also in regard to criminal cases other than committal proceedings and cases under the Bombay prohibition act, Bombay prevention of gambling act prevention of food adulteration act and suppression of immoral traffic in women and girls act. The provisions of legal aid in committal proceedings may be left over for the second stage and the provisions of legal aid in regard to offences under the enactment referred to above may be taken up at the final stage. The implementation of the preventive legal services programme should not be delayed. But if the state government thinks that it is not possible to implement the preventive service programme immediately, it may postpone implementation so far as the items of representation, legal research and innovation, institutional changes and organization of the poor are concerned. So far as the items of the legal service and education are concerned, there should be no delay in implementation.

2.3.3 ‘Processual Justice To Poor’- Expert committee Report

Keeping close touch with the progress in legal aid the Government of India on the 22nd day of October 1972 appointed an Expert committee on legal aid under the Chairmanship of Mr. Justice V.R. Krishna Iyer, the then member of Law Commission (later became the Judge of Supreme Court and now retired) to consider the question of making available legal aid and advice to the weaker sections of the community and persons with limited means in general and citizens belonging to socially and educationally backward classes in particular. The Committee after conducting sample surveys of large part of the country submitted a 275 page Report

to the Government on the 27th day of May, 1973. The Committee considered the Constitutional position of legal Aid, emphasized the need for legal aid to rural poor and Panchayat Justice. And stressed the importance of legal aid scheme as under: “(that) the vital need for a comprehensive scheme on legal aid as it is an indispensable instrument on social transformation of our country in the direction indicated by the Constitution. A properly organized and implemented Scheme of Legal Aid would serve to spread among the people at large a consciousness of their rights and duties and act as a shield against exploitation and as a means of spreading Justice by making available Justice within the framework of law. It would, besides, obtaining redress tend to enhance regard for the rule of law 23.

The contribution of Justice Krishna Iyer towards the development and incorporation of the concept of legal aid in the Indian legal system has been tremendous. His Report titled Processionals Justice to poor’ has gone a step further in enabling the recognition of the poor for the purpose of giving legal aid., dealt with the nexus between law and poverty, and spoke of PIL in this context. It emphasized the need for active and widespread legal aid system that enabled law to reach the people, rather than requiring people to reach the law.

This Report came to mark the cornerstone of Legal Aid development in India. The Report clearly laid down that it is a democratic obligation of the State towards its subject to ensure that the legal system becomes an effective tool in helping secure the ends of social Justice. The Report clearly suggests the colonial hangover of the Indian legal system which has prevented it from realizing its true potential and extent. It also recognizes the fact that much of our law was created by the British to suit their convenience and as a result of this it is mostly insensitive to the socio-economic problems of the masses it set out to govern and regulate.
The Report also made an effort to classify those categories of persons who are most in need of Legal Aid, they are as follows:

- The poor in general;
- Those persons belonging to the Scheduled Castes or Scheduled Tribes, i.e. that category of persons who have been both economically as well as socially exploited by the cultural elitists since time immemorial.
- Those persons who either by reason of being inhabitants of backward areas or who are so geographically placed that their voice cannot reach the Courts of Justice, e.g. People who are inhabitants of Scheduled Areas, Mountainous terrain’s, landlocked regions etc.
- The workman and the peasantry class who toil and labour to earn rewards for their hard work of which they are often deprived.
- Those soldiers and armed forces personnel who in order to protect the boarders are stationed at the edge of the land for long periods of time.
- Women and children who are deprived social Justice on grounds of biological infirmity.
- Untouchables or those who are referred to as Harijans and who even after abolition of Administrative class on the ground of their unacceptance in the community.

The 14th Law Commission Report stated the fact that if laws do not provide for an equality of opportunity to seek Justice to all segments of society they have no protective value and unless some arrangement is made for providing a poor man the means to pay Court fee’s, advocates fees and other incidental costs of litigation, he is denied an opportunity to seek Justice. Justice Krishna Iyer rightly observed that, "Such a consummation, a proposition to which we are Constitutionally dedicated is possible only through an activist scheme of legal aid, conceived wisely and executed

73 Ibid at 241.
He went on to state that Law and Justice cannot be regarded as two separate wings any longer and that it had become necessary that they in unison work towards resurrecting the faith of the poor man in the legal system by providing him with adequate non-Governmental as well as Governmental assistance. Justice Krishna Iyer regarded the Legal Aid program as a catalyst which would enable the aggrieved masses to re-assert State responsibility under Part IV of the Constitution.

The expert has made significant contribution toward the development of the concept of legal aid in India. The various suggestions made by the committee are: A national legal service authority accountable to the parliament but protected from official control was recommended. Simplification of the legal procedure and an emphasis on conciliated settlement outside court has to be the policy of legal aid schemes. The Report adopted the three fold test laid down for determining eligibility: Means test- to determine people entitled to legal aid Prima facie test- to determine whether there was a prima facie case to give legal aid or not Reasonableness test- to see whether the defence sought by a person is ethical and moral.

In criminal proceedings the committee is not in favour of guaranteeing legal aid to habitual offenders and in cases, which essentially involve private claims. Regular arrangement for aid and advice to the under trials was to be provided. A liberalized bail policy which was not to be dependent on financial consideration Legal services were to be extended to investigation as well as post conviction stage. Legal services should also include rehabilitative services. In criminal legal aid, the committee was in favour of salaried lawyers. The Report also encourages payment of compensation to victims in criminal cases. Family courts should be established for women and children with women judges this is specially required in slum areas and rural villages. Public defence council should be appointed in children’s court. In backward areas; legal advice bureau should be established in each development
block. The Report encourages the involvement of law students in legal aid schemes particularly for preventive legal services. Public law service should be an alternative available as against the private bar and legal services authority should fix the fees payable to the lawyer. This Report was followed by the Expert committee on Legal Aid, 1973 headed by Mr. Krishna Iyer.

In 1973 the Government of Madhya Pradesh appointed a Preparatory Committee on Legal Aid and Advice under the Chairmanship of Rajendra Kumar Nayak which gave its Report in March 1975, recommended a three-tier system with a state legal Aid Board at the apex and District and Teshils Legal Aid Committee. The state Board headed by the Law Minister is to supervise and control the work of the committees through the state and frame policies in respect of legal aid implementation. There is to be a High court Legal Aid committee and a Supreme Court Legal Aid Committee. In response to the recommendation of the Committee, the Government of Madhya Pradesh passed an act to be known as “Legal Aid and Advice Act, 1976”. Madhya Pradesh is thus the first state in India having a state wide legal aid scheme based on an Act.

In May 1975, the Rajasthan Law Reforms Legal Services Committee under Chairman-ship of Dr. L.M. Singhvi, Advocate General of Rajasthan, submitted its Report in 1975. Rajasthan Report deserve particular attention. Firstly it recommended a special Committee to indentify issues of public interest and to undertake public interest litigation by instituting or defending test cases. Public interest litigation, the Report said “can proved to be the glory of our legal and judicial system……. public interest litigation must strive to demonstrate that law is not necessarily a class weapon used by the rich to oppress the poor through the simple device of making Justice too expensive and that lawyers are not simply the mercenaries of the propertied class”. Secondly, the Report recommended an
institution called Nagrik Salah Kendra or citizen ‘s Advice Beaurex to alleviate ‘personal distress and confusion in any of life by providing free ,confidential ,impartial or independent advice or opinion on any subject to any one who ask and to exert responsible influence on the content of social policy’ on the resolution of conflicts and on the solution of individual problems and practical difficulties. The State of Tamil Nadu also appointed a Committee under the Chairmanship of Justice P.Ramakishna (Retired Judge of Madras High Court) on Legal Aid to the Poor and its Report was submitted in 1973.

The code of Civil Procedure of 1908 was amended by Act 104 of 1976 in which Order XXXIII, providing legal aid to indigent persons in civil matters has been improved and enlarged. In case a assisted person succeeds in his litigation, the awarded cost should go to the "Legal Aid Fund" rather than to the legally aided person. The unsuccessful litigant should pay the cost so that it would be a contribution towards the Legal Aid Fund in assisting cases of poor and helpless litigants in the state. The Code of Criminal Procedure was also amended in 1973 and legal aid was provided to an unrepresented accused at the State expenses under section 304.

In Maharastra Lawyer’s Conference (1975) 74 the doctrine of legal aid gained proper perspectives and constructive shape. On this occasion the Late Prime Minister, Mrs. Gandhi sent message which emphasized the need for legal aid to the poor: “Our legal system has proved to be somewhat slow moving. There is also a feeling that it neglects those who are in greatest need of its help. True Justice should not depend upon the capacity to pay. Innovations are necessary to expedite the administration of Justice and to provide legal assistance to the poor”.

74 Sea Souvenir Maharastra Lawyer’s Conference (1975)6 Mrs. Indira Gandhi
The conference was attended by a galaxy of people not only from the State of Maharashtra but from all over India. The State Conference created considerable impact over legal aid movement in the country. A country-wide organization – National Forum, under the joint auspices of All India Congress Committee, Indian National Trade Union Congress and Indian National Rural Labour Federation was established in 1975 with its headquarters in the office of All India Congress Committee in New Delhi. It had its branches all over India, i.e. 22 States and in some of the Union Territories. The organization was created to formulate, implement and co-ordinate nation-wide legal aid programme primarily for the benefit of agriculturists, landless labourer, village artisans etc., The National Forum was also designed to implement first five points of the Prime Minister Mrs. Indira Gandhi’s 20 Point Economic Programme.

The National Forum had urged the Union Government to appoint a committee at the national level to suggest feasible scheme on legal aid and advise. In pursuance of the active role played by National Forum On 19 May, 1976, the government of India appointed a two member committee, known as Juridicare Committee, of Justice P N Bhagwati as chairman and Justice V.R.Krishna Iyer as member .to consider the matter of legal aid to weaker section of the community, to access the extent and nature of unmet legal needs for economically under privileged persons, to assess the value and effectiveness of the legal aid scheme in operation in the country, to make recommendations for establishing and operating comprehensive and dynamic legal service programme for effective implementation of socio-economic measures . He coined the word "Juridicare" to cover a scheme of legal aid which brought Justice to the doorstep of the lowly and which was comprehensive in its coverage. One of the purpose for setting up the committee was that ‘the central government is of the view that an adequate and vigorous legal service program is necessary to be establish in all the states in the country on a uniform basis’. The
terms of reference of the Juridicare committee included making ‘recommendations for the establishing and operating taken or to be taken by the government including formulation of scheme(s) for legal services.’


The juridicare Committee’s Report was titled Report on National Juridicare: equal Justice – social Justice (hereinafter referred to as the 1977 Report). The introduction of the 1977 Report made it clear that it was in continuation of the 1973 Report. It said that ‘In a sense, the present Report is an extensive revision, updating, revaluing and adding to the previous one. ’

In an attempt to overcome the criticism of the 1973 Report the Juridicare Committee submitted an interim Report furnishing a draft of the national legal services bill, 1977, which comprehensively drew up the institutional setup for the delivery of legal services.

The 1977 Report first focused on the infrastructure of the legal services of the organization and clearly stated that it was not to be a department of the government but an autonomous institution headed by the Judge of the Supreme Court. The body would have representations from Bar Associations, the Government, the Parliament and the judiciary as well as voluntary associations and social workers and that there would be a multi-tier set up for the legal aid organization.75

The 1977 Report was an amalgamation of the 1971 Gujarat Report and the 1973 Report but absence of certain aspects of the legal services was conspicuous. For instance, both the 1971 Report and the 1973 Report dealt with the issues arising from the criminal Justice separately. Hence it may be stated that except saying that it was

continuation of the earlier Reports, the 1977 Report made no reference to these aspects.

The continuation with the earlier Reports was also evident in the reiteration by the 1977 Report of the failures of the traditional legal services programme. The goals of the preventive legal services programme, advocated forcefully by the 1971 Report were recapitulated in this Report, it stated that while the endeavor would be to launch a frontal attack on the problem of the poverty, the legal service programme would have to be directed towards providing representation to ‘groups of social and economic protest’ and ‘must encourage group oriented and institution directed approach to the problem of poverty’.

The content of the legal services programme was to include spreading of awareness amongst the poor about their rights, tackling the class problems of the poor, initiating socio-legal research into the problems with a view to bringing about reform in law and administration and helping different groups of the poor to organize themselves.

The 1977 Report envisaged several modes of delivery of legal services. The primary mode would be the providing of legal advice through various legal aid offices having both salaried lawyers and assigned lawyers. The Report favored the setting up of Nagrik Salah Kendra at each legal aid office to provide counseling service and also act as a referral body for all kinds of problems for which assistance may be needed. A central concern in the 1977 Report was the de-centralization of the Justice. The Report recommended on Naya Panchayat and Lok Nyalayayas on conciliation instead of litigation and on the inclusion of legal services as a component of the development plans. In a chapter entitled “conciliation-not litigation the Report stressed on the Constitution of conciliation cell to consisting of 9 to 12 respectable
person commanding the confidence of the people and to strive to arrive at an amicable settlement. A whole Chapter was devoted to PIL: and legal aid. The 1977 Report envisioned class action as an essential form of redressing collective wrongs further the legal aid organization would be the initiators of such class action There was also an emphasis on the university law clinics and their functions included preventive and positive service at pre-litigation stage by negotiation and conciliation disputes outside the courts, giving postal advice in respect of legal problems of individuals, seeking administrative and legislative remedies against wrongs done and so on.

It was suggested that the Advocates Act, 1961 be amended to recognize and permit provision of legal aid by law teachers and students. The Report clearly stated that the funding of the legal aid programme was the state responsibility and for this identified sources such as court fees collected from the litigants, legal aid steps, levy of special cess, donations and many more for the purpose of funding the legal aid programme and so on.

Though the ideas as laid down by the Report was revolutionary but not much that was mentioned in the Report was implemented as the government that had appointed the Juridicare committee was not in power when the 1977 Report was submitted. The 1977 Report remained on the shelf along with it the National legal Services Bill. Though the congress was voted back to power in 1980, it was too enthusiastic about the 1977 Report. Instead the government constituted the Center for Implementation of legal Aid Scheme (CILAS) under Justice Bhagwati. The 1977 Report was the latest attempt by the Central government to comprehensively determine the issue of providing legal services to the poor. It is further submitted that there were certain common lacunae in all the Reports, which need to be noticed: Each of the Reports though suggested of setting up of setting legal aid through a
network of autonomous legal aid bodies, there was no clarity on how that could be achieved with the state being the major contributor of funds to the programme.

The 1977 Report of the committee of Justices Krishna Iyer and P.N. Bhagwati, both of the Supreme Court, drew up a detailed scheme which envisaged public interest litigation (PIL) as a major tool in bringing about both institutional and law reform even while it enabled easy access to the judicial system for the poor. Their Report, as those of the previous committees, was ignored. This explained partly the impatience of these two judges, in the post-emergency phase, in making the institution appear responsive to the needs of the population that had stood distanced from it. The two judges played a major role in spearheading the PIL jurisdiction.

The Committee in its conclusion remarked.; “The Union Parliament and the Union Government and their counterparts at the State level accept, as a Paramount State Policy, free legal service to the indigent and the unequal. Indeed, in a country like ours, with the majority living on low or no necessities of life, with the minorities living in subjective apprehension of the erosion of their identity and equality and with the socially suppressed categories looking upon the law as a vampire or, at any rate, untouchable and unapproachable, supreme importance, and acute urgency of comprehensive juridicare programme, as a high priority on the national agenda, can be dismissed by the national leadership only at the peril of lawless outbursts and myopic vision 76.

Indeed, the Committee on Juridicare has encouraged the holding of legal aid camps and Lok Nyayalayas in rural areas. The functioning of committee has

76 Ibid. at 85
generated tremendous enthusiasm amongst the State Governments, Lawyers, Judges, Social and Public workers and amongst the people in general.

A committee on Constitutional Amendments was appointed by the All India Congress Committee under the Chairmanship of Mr. Swaran Singh, former Union Minister in 1975. Some of the office-bearers of the National Forum were the members of the Swaran Singh Committee who accepted the idea of making legal aid a Constitutional imperative. The Committee submitted its comprehensive Report in 1976 and recommended the inclusion of legal aid through a new article in the directive principles of the State Policy. By Forty-Second amendment (1976) of the Constitution a new Article 39A was added to Directive Principles of State Policy”. This was a significant land mark and outcome of the persistent efforts made by the National Form, many lawyers, members of Parliament and outcome of legal aid conference held in various parts of the country in the direction Constitutionalism of Legal Aid. It is equally the outcome of the resolutions, statements, debates and active participation of Judges, jurists and public men who devoted their energy and best of their talents to the cause of poor people.

2.3.5 The Committee for Implementing Legal Aid Scheme:

With a view to fulfill the objectives set out in the Constitution. The Government of India constituted a committee known as “The Committee for Implementing Legal Aid Scheme (CILAS)77 for implementing Legal Aid Scheme in India under the Chairmanship of Hon’ble Justice P.N. Bhagwati. As the name indicates it is a Committee for implementation and not merely to advise the Government on policies or programmes.

---

77 Upendra Baxi: Law & Poverty Critical Essay, N.R. Madhava Menon, Legal Aid and Justice for the poor, P 367
Model Scheme for Legal Aid

The concept of legal aid adopted by CILAS for implementation throughout the country is the dynamic, social-Justice oriented scheme as recommended by the Expert Committee (1973) and the Juridicare Committee (1978). Equal Justice for the poor is taken to comprehend social Justice – Justice which takes within its compass not only a fortunate few belonging to the privileged classes, but large masses belonging to the under-privileged segments of society, Justice which penetrates and destroys inequalities of caste, community, sex, race or wealth and brings about equitable distribution of the social, material and political resources of the Community. The object is to inject equal Justice into legality through a dynamic scheme of legal aid.

The legal aid programme being implemented by the Committee includes two major approaches, namely (a) Litigative legal aid, and (b) preventive or Strategic legal aid. The former mode of legal services, which is the traditional mode, can be availed of only by those who can afford to approach the office of the Legal Aid and Advice Committee for assistance. These dispensation of legal service in this area is the sole responsibility of the Stage Legal Aid and Advice Boards which have been set up in the different states of the country. CILAS does not give such legal aid and advice directly to any person. It may be that the traditional legal aid programme may fail to achieve the desired goals because in a country like India where ignorance and illiteracy is prevalent in rural areas, the people may lack awareness about their rights and benefits. Therefore, the second aspect of legal aid, i.e. preventive or strategic legal aid has been devised to accomplish the desired goal. This aspect of legal aid which includes promotion of legal literacy is also implemented by the State Boards with financial assistance provided by CILAS.
STATE LEGAL AND ADVICE BOARD AND ITS FUNCTIONS

CILAS attempts to implement the above two-fold programme of legal aid firstly through broad-based Legal Aid Boards set up in each State and Union Territory and secondly through encouraging grass-root level social action groups and non-political peoples organizations to adopt preventive, activist legal services in rural and urban areas. Every States is to have a State Board of Legal Aid composing persons representing the bar, the judiciary, the legislature, the government and the consumers of legal aid. The Executive Chairman of the Board is to be a sitting or retired High Court Judge and its Secretary to be drawn from the State higher judicial service. The Board constitutes District and Taluka Legal Aid Committees with similar composition with the District Judge or the Taluka Magistrate presiding over the respective committees in their jurisdiction.

The Committee determines eligibility of applicants for legal aid, prepares panels of lawyers to whom cases are assigned, disburses payments and maintains accounts, and co-ordinates legal aid programme including preventive service in the area. Legal advice, however is to be given free to all. The maintain several legal aid centers in court premises and outside where at pre-determined hours duty counsels or paid lawyers will visit to give legal advice and interview and process applications for litigative assistance. In some states legal aid lawyers regularly visit jails and other custodial institutions for giving legal advice and to receive appropriate cases for further legal aid. The State Board gives publicity on the availability of legal aid. Legal Aid schemes more or less on the above model have been instituted in fourteen States and Union Territories of which three (Madhya Pradesh, Bihar and Karnataka)

78 Ibid, P 368.
have put it on a statutory basis, nine through executive orders or resolutions (Andhra Pradesh, Gujarat, Maharashtra, Meghalaya, Orissa, Himachal Pradesh, Rajasthan, Uttar Pradesh, Delhi and Pondicherry) and one through a registered Society (Tamil Nadu).

**IMPLEMENTATION OF LEGAL AID PROGRAMMES**

To ensure equal access to Law and Justice institutions to poor CILAS framed a model scheme to provide Legal Aid in the following modes

a) Payment of Court fee, process fee and all other charges payable or incurred in connection with any legal proceeding;

b) Representation by professional lawyer;

c) Obtaining and supply of certified copies of judgments, order and other documents in legal proceeding and;

d) Preparation of appeal, paper book including printing and translation of documents, in legal proceeding etc.

CILAS recommended legal assistance is not permissible in certain areas Viz;

a) Proceedings wholly or partly in respect of
   i) Defamation or
   ii) Malicious prosecution;

b) Proceedings relating to any election;

c) Proceedings incidental to any Proceedings referred to above;

d) Proceedings in respect of offences where the fine imposed is not more than Rs 50 and;

e) Proceedings in respect of economic offences and offences against social Laws such as the Suppression of immoral traffic in Women and Girls Act 1956.
The responsibility of providing Legal Aid is on state this traditional form of legal Aid can be availed of only by those who come to the office of the Legal Aid and advice committees for seeking such assistance.

The CILAS has never organized Litigation Oriented Legal Aid Programmes because it was felt proper to leave the work to the State Legal Aid and Advice Boards of various States. But for organizing the preventive legal aid programmes, it has formulated the following schemes: (1) Promotion of legal literacy including publication of legal aid newsletter, booklets, documentary films, video films, etc.; (2) Establishment of a National Legal Literacy Cell within the CILAS; (3) Legal Aid Camps / LokAdalats; (4) Urban and Rural Entitlement and Legal Support Centers for co-ordination of the activities of the various non-political social action groups working at the grass-root level in rural areas; (5) Training of Para-Legals, in which rudimentary knowledge of social welfare laws and procedure is imparted to social workers; (6) Public Interest Litigation in a collaborative efforts to see that basic human rights become meaningful for the large masses of people.

**Preventive or Strategic legal Aid**

CILAS has realized that the present legal Aid programme is wholly inadequate and needs to invigorate it with new devices so that the poor are not praised out of the judicial marked and the law becomes a vehicle of social change in combating deprivation to provide Legal services to the rural have-nots and handicapped CILAS laid down various aspects of preventive legal aid programmes with the assistance of educational institutions and social action groups.

i) **Promotion of Legal literacy**
To achieve this objective the agenda of the CILAS is to spread awareness and concisions among the poor about the rights, benefits and privilege conferred on them, not merely legal, but also social political and economic. CILAS published “Legal Aid newsletter” since 1981 separately in Hindi and English. CILAS prepared documentary film on “Legal aid” in collaboration with the film division which was exhibited in August 1983 in various parts of the country. The use of media for the publicity of the Legal Aid and Legal literacy are also being made to generate awareness among the people.

ii) Organizing LokAdalat:-

The term “Lok Adalat” refers to people’s court the basic principle for resolving the dispute is “Give and Take”. It is the responsibility of the state legal and advice boards to organize Lok Adalats. CILAS directed Legal Aid boards to take up the civil and compoundable criminal cases and the motor vehicle accident compensation claims.

iii) Legal Aid Clinics in Law Colleges:-

Legal services included not only Legal representation and assistance in litigation but also Legal advice, conciliation creation of Legal awareness and assertiveness in masses. CILAS encouraged Universities and Law colleges to set up Legal Aid clinics involving Law students.

iv) Training of Para Legal’s:- Due to paucity of Lawyers in the country, the Legal Aid programme must include a special programme of training social workers in the Legal problems of the poor. CILAS encouraged for training of the Para Legal’s in elementary knowledge of Law including social welfare Laws and procedures.

iv) Public Interest Litigation:-
Public Interest or social action Litigation is designed to bring problems of the oppressed before the courts. Due to the untiring efforts of the CILAS as well as the lead taken by the Supreme Court in broadening the rule of the locus-standi the problems of the poor are coming before the Courts by the way of social action Litigation. To protect the basic human rights of the poor.

On the basis of the recommendation of committees, commissions, conferences and model scheme of the CILAS Legal Aid was given statutory recognition through legislative enactment. The Legal Service Authority Act, 1987 was passed.

2.4 Conclusion.

Due to poverty and illiteracy the poor and needy are deprived of access to justice. The responsibility of the state is undoubtedly to protect human rights and to preserve rule of law. To achieve the goal of socio-economic Justice, the States have constituted committees,( Bombay, Gujarat, Bengal and Tamilnadu governments ) and some states enacted Acts(M.P. Legal Aid and Advice Act, Kerala Legal Aid Rules, Rajasthan Law Reforms aims to render legal aid) Bagawati and Iyer are pioneers of the legal aid movement analyzed the concept of legal service program including legal aid and literacy, emphasized on the preventive aspect of legal service provisions, giving proper advice, awareness as to rights and favored for settling disputes at pre-litigation stage.“National Juridicare” Report in 1977 recommends for de centralization of Justice establishing Nyaya Panchayat at rural areas. The Expert committee Report aims to inject equal Justice into legality through a dynamic scheme of legal aid. Due to paucity of funds the states failed to implement the schemes effectively. To have uniform application of legal service in all States the Government of India appointed CILAS to prepare model scheme for implementation of the legal aid schemes. CILAS with assistance of educational institutions and social action groups promoted legal literacy; encouraged universities to setup legal aid clinic
involving law students to give proper advice. Judiciary by relaxing the rule of locus-standi opened a new way for the protection of rights. Legal aid services has proved to be boon to the deprived and marginalized people for whom Justice was unthinkable a couple of days ago.