6.1 Mechanism of Legal Aid System – Its Objectives

An equal and evenhanded justice has been a cherished ideal of administration of justice since the dawn of civilization. Inability to consult or to be represented by a lawyer may amount to the same thing as being deprived of the security of law. In order to ensure equality of justice, it is not only sufficient that law treats rich and poor equally, but it is also necessary that the poor must be in a position to get their rights enforced and should put up proper and adequate defence when they are sued for any liability. If this is not done, the law despite of its equality will become discriminatory against the poor. This brings into existence the question of legal aid to poor, the primary object of which is to make it possible for any man, woman or child to be denied equal protection of law simply because he or she is poor. According to John Rawls first principle of justice is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all.\footnote{Rawls, John, \textit{A Theory of Justice}, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2000.}

Legal aid is the method adopted to ensure that no one is debarred from professional advice and assistance because of lack of funds. The Encyclopedia Britannica defines legal aid as phrase which is acquired by usage and court decisions, a specific meaning giving to persons of limited means, grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters. The provisions of legal aid to the poor are based on humanitarian considerations and the main aim of these provisions is to help the poverty-stricken people who are socially and economically backward.\footnote{Scott, C.H., \textit{Legal Aid, Past and Present- A Brief Bleak Picture}, P.4.}

Lord Denning while observing that legal aid is a system of Government funding for those who can not afford to pay for advice, assistance and representation said:
“the greatest revolution in law since the post-second world war has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers’ fees and expenses are paid for by the State and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs – as it was – as such it is – and as it should be”

6.2 Historical Perspective of Legal Aid in India

The origin concept of legal aid can be traced back to the historic Magna Carta of 1215 in U.K. where it was directed that justice be done to rich and poor alike.

Though there is no evidence to show that this glorious declaration was immediately translated in reality, its importance lies in the recognition of the principle of equal justice and thereafter with the subsequent socio-economic developments, many welfare schemes were introduced.

In England, in 1944 a Committee under the Chairmanship of Lord Rushcliffe was appointed to inquire that what were the facilities in England and Wales for providing legal advice and assistance to the poor persons and to make such recommendations as regards to the disposal of their cases, whatever civil or criminal. The Committee submitted its report in 1945 with a handful of recommendations relating to legal aid and advice which were accepted by the British Parliament and as a result, the Legal Aid and Advice Act, 1948 was passed.

After the submission of the Report of Rushcliffe, The Bombay Legal Aid Society invited the attention of the Government of India to the said report and suggested for the appointment of a similar Committee in India too; to examine the question of legal aid to poor and needy. The Government of India wrote to the provincial Governments making inquiry whether they would be able to provide greater facilities for persons in both civil and criminal cases. The provincial Governments on account of financial stringency were unwilling to provide legal aid beyond what was statutorily granted. It found its concrete expression in the various Bills and Declarations of Rights enacted in the States of U.S.A.

Almost all the States in U.S.A. enacted this declaration in their Constitutions and thereby equal justice to all has been recognized as a basic right in the United States. A resolution was passed by the Human Rights Conference held in Tehran in

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4. *Magna Carta*, 1215, para 40; also known as *Charter of Liberties of Henry II*. 

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1968 under the auspices of the United Nations which emphasized the need for free legal aid and assistance to poor and indigent for the protection of their human rights and safeguarding their fundamental freedoms. The legislation for free legal aid and assistance to poor and indigent persons also existed in United Kingdom\(^5\) as early as 1948. The International Covenant on Civil & Political Rights\(^6\) provides that right to legal counsel is an integral part of guaranteed civil rights. Taking inspiration from these effects of the United Nations many western countries established Legal Aid Clinics to provide legal assistance to the needy and the poor. An International Legal Aid Association was also established for this purpose. Some countries set up Conciliation Board to mitigate the rigours of adversarial litigation.

### 6.3 Constitutional Mandates on Legal Aid

The Constitution of India, in its Preamble speaks of Justice – social, economic and political. The principles of equality before law and equal protection of law contained in Art. 14 impose an obligation on the State to provide for even-handed justice to all alike. Art. 39A\(^7\) provides for legal aid and assistance to poor and indigent litigants. The purpose of these constitutional mandates\(^8\) is to protect the neglected, downtrodden, poor and indigent against the onslaughts of the more powerful and elite section of the society and provide them an opportunity of getting justice through free legal aid cells. In other words, no one should be deprived of his right to move a court of law because of poverty or any other social disability.

### 6.4 Legal Aid Programmes in India

In fact, the strong move for legal aid in the recent years is an out-come of the emergence of the socio-economic philosophy and Welfare State and consequent struggle against poverty to encourage just human living to people at large.

In India, the legal aid movement has started from the appointment of Justice N.H. Bhagawati Committee in 1949 by the Government of Bombay to examine the feasibility of providing free legal aid to indigent and socially disabled persons and to make recommendations for making justice more easily accessible to them. The

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\(^5\) The Legal Aid and Advice Act, 1948.

\(^6\) Art.14, The International Covenant on Civil and Political Rights.

\(^7\) Art 39A, inserted by the Constitution (42nd Amendment) Act, 1976.

\(^8\) Art.41 of the Constitution of India also directs the State to make public assistance in case of unemployment, old age, sickness etc.
Committee made a very exhaustive examination of the question of legal aid and submitted its report in 1949 by pointing out that the provision relating to pauper suit contained in Order 33 Rule 1 of CPC, 1908 were inadequate to meet the requirements of the poor litigants as the provisions only provided for exemption from the current fees and not the other legal expenses in a suit. The Committee emphasized that legal aid is a service which the modern Welfare State owes to its citizens. It stated that the problem of legal aid under modern conception of the obligations of the State is to be treated on a par with other social insurance schemes and free medical relief and therefore the State must take upon itself the responsibility of providing legal aid to poor persons and persons of limited means. The Committee recommended that in the extended scheme of legal aid, persons belonging to Backward Classes and other Scheduled Tribes should be presumed to be prima facie entitled to legal aid at State’s cost. The presumption may, however, be resulted by the tangible evidence in which case the legal aid should be refused. In either case as far as means test is concerned a certificate from the Local Executive Officer of the rank of a Deputy Collector or Backward Classes Officer should be a sufficient proof on his eligibility to the grant of legal aid. The Committee also stated that legal aid should be given not only to the plaintiff or the petitioner or complainant, but also to the defendant, respondent or accused in all courts with respect to the tests i.e., means test and prima facie case test. In addition to these, certain other tests and safeguards were also prescribed by the Committee. It stated that the administration of the scheme of legal aid should be in the hands of Legal Aid Committees formed for specific areas all over the State.

A Committee to report on the matter of legal aid was appointed in West Bengal in 1950 under the Chairmanship of Sir Arthur Trevor Harries, a former High Court Judge. With some differences in details, programme of legal aid envisaged in this report is essentially as the same as was recommended by the Bombay Committee.

In 1952, the Government of India directed all the State Governments to provide legal aid and assistance to all those undertrials whose offences were

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punishable with imprisonment exceeding five years. In view of the apathy shown by the State Governments in this regard, the Centre issued similar directions in 1958.

The Law Commission of India in its Report of Judicial Administration published in 1958 devoted a chapter to legal aid. The Commission stated\textsuperscript{11}:

“The rendering of legal aid to poor litigants is not a minor problem of the procedural law, but a question of fundamental character”.

Reviewing the efforts made in that behalf in this country up-to-date and also the position with some respect to legal aid in foreign countries it stated that in India, facilities for legal aid are very meager. Apart from voluntary organizations in a few towns like Bombay, Calcutta and Bangalore there is not much organised effect either governmental or private to give to the poor the benefit of law\textsuperscript{12}.

The Commission strongly emphasised the need for rendering legal aid to poor litigants. However, it did not offer any proposal but simply suggested for the adoption of Bhagawati Committee Report of Bombay and the Trevor Harris Committee Report of West Bengal. It suggested certain measures of legal aid to be implemented immediately “without the need of setting up elaborate legal aid organizations by amending the law of the rules of the Courts”\textsuperscript{13}.

In 1959, a Committee on Judicial and Legal Profession under the Rule of Law at New Delhi Congress of International Commission of Jurists expressed the view that the States have an obligation to provide legal aid to those who are unable to pay for it, if the rights and remedies of the individual under the rule of law were to be given practical reality.

In 1960, the Central Government drew up an outline of scheme for legal aid and forwarded it to various existing Legal Aid Organizations and the States for their comment. The State Governments in a Conference of State Law Minister in 1962 again expressed their inability to bear the financial burden involved in it. The Central Government thereupon decided to clear up a scheme for Central support of legal aid activities. However, due to proclamation of emergency in 1962, on account of Chinese aggression, it suffered a setback.

\textsuperscript{11} \textit{Law Commission of India, Fourteenth Report (Reforms of Judicial Administration)}, vol. I, P.587.

\textsuperscript{12} \textit{Ibid}, P.692.

\textsuperscript{13} \textit{Ibid}, P.598.
The question of legal aid was again considered by the Committee on Legal Aid at the Third All India Law Conference in 1962. It accepted that the provision of legal aid was an obligation of the State and both Centre and States should make funds available for the same. The Committee made various recommendations to be adopted by the Bar Association of India and the Local Bar Associations for providing legal aid until such time as a comprehensive legal aid programme was established by the State. But nothing was done by any Bar Association in any substantial measures to implement these recommendations.

The growing realization of the need to provide legal aid to the poor caused some sound thinking on the subject. In 1970, a Conference\textsuperscript{14} was convened to consider the matter of legal aid. The Conference was unanimously of the view that there is an urgent need to provide legal aid in India. In this connection various schemes were discussed in the Conference.

On March 13, 1970, a Bill\textsuperscript{15} was introduced in the Lok Sabha by Madhu Limaye, M.P. As the Bill was neither sponsored by the Government, nor it had the governmental support, its fate was known beforehand. But, it manifested the serious attention that the subject had started receiving.

The Government of Gujarat felt that something was urgently required to be done in order to provide legal aid to poor persons and persons of limited means and it was necessary to establish a legal aid programme with a view to assist the indigent persons in the State. They appointed a Committee under the Chairmanship of Justice P.N. Bhagawati, Chief Justice of Gujrat High Court to consider the question of the grant of legal aid in civil, criminal, revenue, labour and other proceedings to the Backward Classes and to make justice more easily accessible to such persons including recommendations on the question of encouragement and financial assistance to institutions engaged in the work of such legal aid\textsuperscript{16}. The Committee submitted a very exhaustive and instructive report whereby advocated very strongly for providing legal aid to poor litigants and put forward very forceful arguments in this respect\textsuperscript{17}.

\textsuperscript{14} National Conference on Legal Aid, 1970.
\textsuperscript{15} The Free Legal Aid Bill, 1970.
\textsuperscript{17} State of Gujarat, Report of the Legal Aid Committee, 1971, Pp. 5-6.
The Gujarat Committee observed that the State should regard it as an obligation to provide legal assistance to the poor and indigent. This obligation of the State is not merely socio-economic or political, but also constitutional by reason of Articles 14 and 22 (1). Moreover, in a poor country like India, a legal aid scheme cannot function successfully unless it is aided substantially by the State. About the persons to whom legal aid should be given, the Committee recommended that through the members of Backward Classes needed social attention so far as the provision of legal aid is concerned, they shall not be treated as separate category of persons, entitled to such aid irrespective of whether they are poor persons or not.

The scheme of legal aid should not be based on class or status. The means test must be applied to them as well. But, unless there is evidence to the contrary, the means test must be presumed to be satisfied in case of members belonging to Backward Classes. The four main divisions of such Backward Classes are - (i) Scheduled Castes, (ii) Scheduled Tribes, (iii) Nomadic Tribes and (iv) Denotified Tribes. The Committee recommended that the main test for determining whether the applicant seeking legal aid is eligible for it are - (i) the means test, (ii) the *Prima facie* case test and (iii) reasonableness test with respect to cases in which legal aid should be given. The Committee recommended that as a general rule legal aid should be made available for all kinds of cases in civil courts except some specified categories like proceeding in respect of defamation, malicious persecution etc. and if it appears to the Legal Aid Committee that the applicant should not be granted aid for certain other specific reasons. Proceedings before Administrative Tribunals should be included within the scope of legal Aid programme.

It is necessary that legal aid should be extended to those who are accused of offences before the criminal courts. But, as it would not be possible to extend such aid to the accused in all proceedings before criminal courts, it may not be granted in cases in respect of offences which are punishable only with fine. While granting legal aid in criminal matters, care must be taken to see that the provision of legal aid is not abused. The Committee recommended that the administration of legal aid scheme should be placed in the hands of the Legal Aid Committee to be formed all over the State. It recommended for the Constitution of Legal Aid Committees at Taluka and District Level, Legal Aid Committee in the City of Ahmedabad and the State Legal Aid Committee.
The Committee suggested that proper and effective legal service programme should cover three distinct items of legal services – (i) Legal Aid, (ii) Legal Advice and (iii) Preventive Services. Legal aid may be described as remedial legal services. Legal advice and preventive service may be collectively labelled ‘Preventive Legal Service’. It stated that successful implementation of preventive legal service programme to a large extent depends on the degree and extend to which proper education can be given to the poor and the disadvantaged, social workers and advocates. Research experiment and innovation in those areas of the poor should form another important part of the preventive legal service programme.

The Committee realised that a large amount of finance would be required for an adequate legal service programme. Therefore, it recommended for creation of a Legal Aid Fund by statute and suggested the various sources from which money may be collected for the Fund.

The Committee recommended for the constitution of Nyaya Panchayats in villages on new lines for speedy, effective and cheap administration of justice and gradually to extend its jurisdiction. The Committee also recommended that legal service programme recommended by it should be implemented wholly and in its entirety. However, on account of difficulties in implementing the whole of the legal services programme immediately, it suggested that the legal services programme may be implemented in stages according to a phased plane. The Committee devised a plan according to which it suggested, the Government should implement this scheme. But, unfortunately it has not become possible for State Government to pass any statute to implement the recommendations of the Committee.

After that, the Tamil Nadu Government appointed a one man Committee constituted by J.P. Ramakrishnan, a Judge of the Madras High Court to formulate a scheme for legal aid. The scheme formulated by him is more or less on the same lines as recommended in the Reports of the Bombay and Gujarat Committees.

The National Legal Aid Conference held in March, 1970 drew attention towards the pressing need for implementation of a comprehensive scheme of legal aid in India. It was realized that to provide legal aid to poor is a State obligation. The Government of India appointed a Legal Aid Committee\(^{18}\) under the Chairmanship of Justice V.R. Krishna Iyer on 27\(^{th}\) October, 1972. The Committee prepared a blue print

\(^{18}\) Also known as Expert Committee on Legal Aid.
of the scheme putting forth the philosophy underlying this social welfare measures to ensure effective and cheaper justice to the Indian masses. The Committee submitted its Report in May, 1973 with a handful of recommendations in the matter of legal aid in India as follows:

(i) to consider the question of making available to the weaker sections of the community and persons of limited means in general and citizens belonging to the socially and educationally backward classes in particular, facilities for –

(a) legal advice so as to bring among them an awareness of their constitutional and legal rights and just obligations and for the avoidance of vexations and unnecessary litigation and

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

(ii) to formulate having regard to the resources available, a scheme for legal advice and aid for the purposes aforesaid and

(iii) to recommend the time and manner in which the scheme may be implemented\(^\text{19}\).

It is a very valuable document, which very forcefully pleads for providing legal aid to the poor and needy. It underlined the principles that legal aid as a means of justice is a social necessity\(^\text{20}\).

The subject of legal aid belongs to a much larger sphere than mere administration of justice through the courts. It involves the promotion of equality, social welfare and social justice and assistance in the ascertainment, assertion and enforcement of fundamental as well as other legal rights. The Committee said that legal aid and legal assistance is a part of the administration of justice and consequently, it is the responsibility of the State Governments to take the necessary initiative in this regard\(^\text{21}\).

The Committee has stated that legal aid in India has comprehensive constitutional status and ambit being found in numerous Articles of the Constitution, referring to Articles 14, 15, 17, 19, 22, 29, 30, 31A, 31B, 31C, 41, 42, 43, 46 and part XVI. It also stated that distributive justice to be effectuated by the State through law is


\(^{20}\) Ibid, P.9.

writ-large in the Articles of the Constitution. All these solemn undertakings can not be
honoured without the activist technology and task force of large scale and multiform
legal aid. The Committee has recommended that state funding and statutory
incorporation should be the back-bone of the project of legal aid. The statute should
provide for the creation of a National Legal Aid Body to stimulate, guide, perpetuate
and organise free legal service. Legal aid groups centered in the Court Houses, Bar
Associations, Law Schools, Community Organisations, a variety of rural, private and
public agencies, organs of local government and ad hoc panel of private lawyers
should be created. Moreover, the Committee has emphasized the need to reform and
revise the laws and procedures, courts and prisons, the Bar and Bench, police and
public servants, to make them more responsive to all citizens. The Report demands a
radical reform of the administration of justice.

On 4th October, 1974, a Seminar on Legal Aid and Advice was held in New
Delhi. In the Seminar it was very forcefully pleaded that to provide legal aid to poor is
an obligation of the State and it should be expeditiously enforced. The Prime Minister
inaugurating the Seminar said:

“In Indian context, equal justice under the law definitely implies
legal service to those who can not afford it, especially those live
below the poverty line. But there is a feeling that our law has
favoured the poor and deprived. If we allow this impression to grow
that legal pronouncements tend to frustrate the aspiration of the
weaker sections, who form the vast majority, then faith in our entire
system will be eroded”.

In 1976, the Central Government with a view to establish an adequate and
vigorous legal service programme in all the States of the country on uniform basis
appointed a Committee consisting of Justice P.N. Bhagawati and Justice V.R. Krishna
Iyer of the Supreme Court of India with the former as its Chairman. The terms of
reference of the Committee as follows:

(i) to consider the question of making legal aid and advice available to the
weaker sections of the country;

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Pp. 6-7.
(ii) to assess the extent and measure out unmet legal need for such economically under-privileged persons and determine the most effective method of providing legal services to term;

(iii) to assess the value and effectiveness of legal aid schemes presently functioning in the country;

(iv) to make recommendations for establishing and operating a comprehensive and dynamic legal service programme for effective implementation of the socio-economic measures taken or not to be taken by Government including formulation of schemes for legal services;

(v) to draw legal service programme in all the states on a uniform basis;

(vi) to draw on the guidelines outlining the ways in which non-professional or professionals in the fields other than law could be utilized for the implementation of socio-economic programme and

(vii) to make recommendation on such other connected question as may be referred to it by the Central Government.

The Bhagawati Committee after making various recommendations felt that many studies would be undertaken for formulating comprehensive legal aid programme and that many departments of knowledge would have to be co-ordinated for drawing up a suitable picture of legal aid programmes. The Committee submitted a Draft Bill also for the enactment of a National Programme of Legal Aid and Advice. With some modifications this has been enacted into the Legal Services Authority Act, 1987.

These successive Reports, Seminars, Conferences, Writings and over and above all the rapid studies of the country towards the achievement of its socio-economic goal brought about a strong awareness of the necessity and urgency of providing legal aid in India. As a result the term ‘socialist’ and Art.39A have been inserted in the Preamble and Directive Principles of the State Policy respectively by the Constitution (42nd Amendment) Act, 1976.

6.5 Statutory Provisions for Legal Aid in India

There are some statutory provisions for legal aid in India. As for instance, Section 304 of the Criminal Procedure Code, 1973 provides for legal aid to the accused at the State expenses in certain cases. It states:
(i) Where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader; the court shall assign a pleader for his defence at the expense of the State.

(ii) The High Court may with the previous approval of the State Government make rules providing for -
   
   (a) the mode of selecting pleaders for the defence under sub-section (1);
   
   (b) the facilities to be allowed to such pleaders by courts;
   
   (c) the fees payable to such pleaders by the Government and generally for carrying out the purpose of sub-section (1).

Moreover, Order XXXIII of the Civil Procedure Code, 1908 as amended by the Amendment Act, 1976 provides for suits by the indigent persons. If application to sue as an indigent person is granted, the plaintiff shall not be liable to pay any court fee or fees payable for the service of process in respect of any petition, appointment of a pleader or other proceedings connected with a suit. Where a person who is permitted to sue as an indigent person is not represented by a pleader the court may, if the circumstances of the case so require, assign a pleader to him. This benefit is now available to a defendant also which has been inserted by the Amendment Act, 1976 to the Code\(^24\). The Code also provides that subject to the provisions of Order XXXIII, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to indigent persons and such rules may include the nature and extent of legal services, the conditions under which they may be made available, the matters in respect of goods and the agencies through which services may be rendered\(^25\). Besides these, Order XLIV of the Code deals with appeals by indigent persons. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal may present an application accompanied by a memorandum of appeal and may be allowed to appeal as an indigent person and after inquiry, if the court satisfies that the applicant is an indigent person, then, the provisions of the Code relating to suit by indigent person are applicable.

In addition to those constitutional and statutory general provisions for legal aid, almost all the States of the country have, either by Statute or by Rules, provided

\(^24\) Order XXXIII, Rule 17, \textit{CPC}, 1908, inserted by the \textit{Amendment Act}, 1976.
\(^25\) Order XXXIII, Rule 18, \textit{CPC}, 1908, inserted by the \textit{Amendment Act}, 1976.
for the grant of legal aid to certain category of the litigants. In Andhra Pradesh, Bihar, Madhya Pradesh, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and Union territories – Dadar and Nagar Haveli, Goa, Daman and Diu, Pondicherry, provisions for legal aid and advice have been made by Rules or Executive orders²⁶.

In 1980, the Central Government constituted a Committee known as Committee for Implementing Legal Aid schemes²⁷. The Committee has taken up the programmes such as promoting legal literacy and creating legal awareness amongst the poor, carrying legal services to the door steps of the deprived and exploited sections of the community by organising legal aid camps in the rural areas, training para legals in basic elements of social legislations so that they can help in identifying the legal problems of the poor, protect them from oppression and exploitation and provide them first aid in law, indentifying the problems affecting special categories of weaker sections of the community such as Scheduled Caste, Scheduled Tribes, Agricultural labour, women and children though the special cells set up for this purpose, setting up the projects for socio-legal survey and research in the areas of law affecting the lives of the poor with a view to increase our knowledge about poverty and its problems in the country, promoting public interest litigation for bringing the problems of the poor before the court to find solution through the process of law, organising movements for community rights, mobilizations and supporting institution and organization working in the area of rural development in order that legal process may be increasingly utilized for the purpose of bringing about socio-economic changes and eliminating the institutional causes of poverty and setting up legal aid clinics in Universities and Law Colleges for diverting the vast but unstopped energy of the students in constructive channels in the cause of service to the poor²⁸.

In pursuance of the Constitutional and statutory provisions for legal aid and services and the suggestions of the Central Government Committee for implementing Legal Aid schemes, the Central Government passed The Legal Services Authority Act, 1987. The said Act has been amended by The Legal Services Authority (Amendment) Act, 1994 which has come into force from November 9, 1995. Under the Act, the Central Government shall constitute a body called the National Legal

²⁶ Law and poverty, 1973; P.289.
²⁷ Govt. of India’s Resolution No. F 6(19)-80-IC, dated 26th Sept., 1980.
The National Legal Services Authority has constituted the Central Committee which is functioning in the Supreme Court of India. Recently, Hon’ble Mr. Justice Rajendra Mal Lodha, Chief Justice of India has taken the charge of the present Patron-in-Chief, *ex-officio*, of the National Legal Service Authority. The State Legal Services Authority and the District Legal Services Authority are to be constituted to exercise the powers and perform the functions conferred on or assigned to them respectively under the Act. Hon’ble Mr. Justice Abhay Monohar Spare, the Chief Justice of the Gauhati High Court has been exercising his function as present Patron-in-Chief, *ex-officio*, of the Assam State Legal Services Authority.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a *prima facie* case in his favour provide him counsel at the State expense and pay the required court fee in the matter and bear incidental expenses in connection with the case. The person to whom legal aid is provided, is not called upon to spend anything on the litigation once it is supported by a Legal Service Authority.

Every citizen whose annual income does not exceed Rs. 9000/- is eligible for free legal aid in cases before the subordinate courts and the high courts. In cases before the Supreme Court the limit is Rs. 12000/-. However, the limits may be increased by the State Governments and the Central Government, as the case may be. But this limitation does not apply in case of persons belonging to the Scheduled Castes, Scheduled Tribes, women, children, handicapped etc. Thus, by this enactment the Indian parliament took a step forward to secure social justice in terms of legal aid.

It is gratifying to note that the Bar Council of India has made a rule relating to legal aid which provides that every advocate shall in the practice of the profession of law, bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he can not pay for it fully or adequately and that within the limits of an advocate’s economic condition, free legal assistance to the indigent and oppressed is one of the highest obligation an advocate owes to the society.

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29. *Legal Services Authority Act*, 1987, Sec.3.
33. supra note 30.
34. *Bar Council of India Rules*, Part VI, Section VI, Rule 46.
6.6 Role of Judiciary in Ensuring Legal Aid

Many High Courts have in their rules provided for giving legal aid in defined categories of cases. Presently, for rendering extensive and widespread legal aid and advice most of the legal education centers have introduced the clinical legal education system which will help in transforming the legal system to uphold the underlying socio-economic philosophy.

The Supreme Court of India has played a commendable role in ensuring legal aid and assistance to the indigent and resourceless people. The rules of the Supreme Court make it mandatory for the State to provide the services of a competent lawyer to an undefended accused who is being tried even for an offence punishable with the sentence of death.

In *Darshana Devi*\(^{35}\) Justice Krishna Iyer had to reprimand State of Haryana for not providing legal aid to the victims of motor accidents on highways.

The Supreme Court in its historic decision in *Hussainara Khatoon v. State of Bihar*\(^{36}\) which was followed by a subsequent decision in *Kadra Phadia v. State of Bihar*\(^{37}\) observed that free legal aid and assistance is a right implicit in the mandate contained in Art. 21 of the Constitution of India relating to life and liberty of persons. Section 110 of the Code of Criminal Procedure, 1973 provides that a Magistrate or a Judge is under an obligation to provide a defence counsel to the accused in pursuance of the mandate contained in Art.21 of the Constitution. *Hussainara Khatoon* secured the release of more than 22,000 undertrial prisoner who had been languishing for many years in Bihar jails for being too poor to furnish bail. Both Justice Krishna Iyer and Justice P.N. Bhagawati have been jerking and jotting the judges reminding them of their role and mission in helping to secure real, immediate and effective justice to poor. Justice Krishna Iyer said that social justice is the signature tune of the Constitution\(^{38}\) or law is meant to serve the living and does not beat its abstract wings in the jural void\(^{39}\). Its functional fulfilment as social engineering depends on its sensitized response to situation.

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In Asiad workers\textsuperscript{40}, cautioning the judges he remarks, “The time has come now when the courts must become the court of the poor and struggling masses of this country. They must shed their character as upholders of the established order and status quo. They must be sensitized to the need of doing justice to the large masses of people whom justice has been denied by a cruel and heartless society for generations”.

In the landmark judgment of \textit{M. H. Haskot v. State of Maharashtra}\textsuperscript{41} the Supreme Court interpreted the constitutional provisions contained in Articles 14, 19(g), 21 and 22 in such a way that they may create urgency of legal aid to poor and indigent persons.

In \textit{Khatri v. State of Bihar}\textsuperscript{42} the Supreme Court clarified that the right of an accused to get legal aid and assistance begins from the time he is produced before the Magistrate for the first time. It is mandatory for the Magistrate or the Judge to appraise the indigent accused about his right to legal assistance in case he is unable to defend himself due to paucity of financial resources.

In \textit{Centre for Legal Research v. State of Kerela}\textsuperscript{43} the Apex Court observed that in order to accomplish the object of social justice contemplated by Art. 39A of the Constitution of India the State should encourage voluntary social service organizations to come forward and actively participate in the legal aid programmes so that benefits of the object reach the common man.

Free legal aid has been held to be necessary adjunct of the rule of law\textsuperscript{44}. But, the legal aid movement has yet to achieve its goal. There is a gap between the goals set and met. As to the role of voluntary organizations and social action groups involved in legal aid programme the Apex Court felt the need of governmental support to make it more effective and meaningful. In \textit{Khatri}\textsuperscript{45} J., Bhagawati observed that legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional or litigation oriented legal aid programme but it must, taking into account the socio-economic conditions prevailing, adopt a more dynamic posture.

\textsuperscript{40} People’s Union for Democratic Rights \textit{v. Union of India}, AIR 1982 SC 1473.
\textsuperscript{41} AIR 1978 SC 1548.
\textsuperscript{42} AIR 1981 SC 928.
\textsuperscript{43} \textit{Also known as Gopalanchari v. State of Kerala}, AIR 1986, SC 1322.
\textsuperscript{44} Mathews and Outton: \textit{Legal Aid and Advice}, Butterworths, London, 1971.
\textsuperscript{45} \textit{supra note} 42.
Likewise, the Court has been equally concerned with malfunctioning of tribunals in so far as dispensation of justice is concerned. The Supreme Court has suggested for ensuring their independence and the restoration of public confidence in the said tribunals in the interest of justice and rule of law\textsuperscript{46}.

In \textit{Nilabati Behra}\textsuperscript{47} the Court emphasized the need to blaze the trail and woven poverty jurisprudence to suit the socio-economic realities of India. In a landmark judgement\textsuperscript{48} the Supreme Court envisaged the need of law schools with proper infrastructure including law teachers of proven quality and expertise in the interest of promoting free legal aid. In this context Justice Paripoornan focuses on the social imperatives of legal aid to meet ever-increasing complex situations.

\textsuperscript{46} \textit{R.K. Jain v. Union of India}, AIR 1993 SC 1769.