CHAPTER - IV

LEGAL AID IN OTHER COUNTRIES: A COMPARATIVE PERSPECTIVE

A. LEGAL AID IN UNITED STATES OF AMERICA

a) The Background

Legal Aid Programme has a long history in the United States. A Legal Aid Society was started in New York in 1876 and a public defender office in Los Angeles in 1914. It may be noted that though the legal aid programme is of great antiquity but legal aid in criminal cases started only in 1958. This is evident from the fact that by the mid 1960 there were 200 legal aid offices working in the United States but out of those only six took up criminal cases. But it was realised in the United States that it becomes the duty of state to provide legal aid in criminal cases on pattern that of public prosecutor. This system is accepted by many states by establishing Public Defender Bureaux, manned by full time advocates with a duty to provide defence to those who are not in a position to afford legal assistance.

1. There were 115 defender offices and over 125 Volunteer Service Committees of Bar Associations working by mid 1960s in U.S.A. For more details, see Encyclopaedia Britannica, Vol. 13 (1966), at 897.
In *Gideon vs. Wainwright*, the court settled the much debated controversy among the lawyers and non-lawyers, by reversing the twenty years old decision in *Betts vs Bradly*, in which it was held that the indigent persons charged with serious crimes are entitled to legal representation in state courts by virtue of 6th Amendment to the Constitution. Then in *Gideon case*, the court held that the counsel must be provided to the accused in all criminal cases in all state and Federal courts. Not only this, in *Escobedo Vs Illinois*, the court held that 6th Amendment to the Constitution made it binding on the state by the 14th Amendment—that the confession of an accused was inadmissible when the police did not allow him to take the help of his lawyer. So it is clear that the legal assistance is a constitutional necessity to person whose confession is to be recorded. Moreover, when such person wishes to have lawyer and he has no means to have it, he cannot be questioned unless provided by a lawyer by a court.

5. *Legal Aid Scheme*, (Government of Madhya Pradesh, 1973), at 75.
b) **Legal Aid in Criminal Proceedings**

The report of the Attorney General Committee on Poverty and the Administration of Criminal Justice of 1963 led to the passing of **Criminal Justice Act, 1964**. The Act provides for the appointment of an advocate for the poor person at every stage of the criminal proceedings in all the courts. The lawyers appointed for defending such cases are taken from a panel prepared by the Bar Association or from a Legal Aid Agency. The lawyers assigned the work of legal services are remunerated for their services. Some of the states like Columbia have given statutory sanction to this scheme where under public legal aid attorneys get the similar salaries as are given to other publically employed advocates. The Act as amended in 1970 provides for per hour payments to private attorneys also subject to a total maximum fee of $300 for a misdemeanor case and $500 for a felony case.

c) **Legal Aid in Civil Proceedings:**

Legal aid in civil cases is also operating on similar lines. Legal aid was provided by Federal, State, and a number of private legal aid agencies in **forma pauperis** proceedings before the office of **Economic Opportunity Act** of 1964. But these provisions were sparingly used, as the judges restricted it. The efforts of the Bar both on a local and a national level have doubled the existing legal aid societies providing assistance in civil cases between 1954 to 1964.
These societies were financed by private contribution and organised charitable foundations. It was only in 1964 that the Federal Government came into active support of legal aid through the newly created office above mentioned to remove remaining pockets of poverty in the United States. But now—in United States all major cities and small-town are served by some legal aid agencies or societies.

Presently in the United States the legal aid programme is run under the Legal Services Corporation Act, 1974. The earlier office of Economic Opportunity Poverty

6. G.O. Koppell, Legal Aid in India, 8 Journal of the Indian Law Institute, (1966), at 240. There were also opening of Neighbourhood Law Offices in various urban communities to provide free service to poor persons who cannot engage a counsel. These offices are manned by local committees of representatives of bar, charitable and social service organisations and other community groups. Federal Government provided finance.
Law Programme has been abolished. The Legal Services Corporation with its head office established at Washington D.C. is the main agency of administering legal aid. The Corporation is run by eleven member's Board of Directors elected by the President of U.S.A. with the approval of Senate. The American Congress is responsible for its finances. The Corporation is, however, free to work without any Government or partisan pressures. It is a private non-profit organisation which provides financial help to the poor in civil matters. In fact, its main goal is to provide all the poor of America minimum access to legal services. There are nine regional head-quarters in U.S.A. The Corporation provides grants to these headquarters. Each such quarter has its own Board of Directors. This Board consists of

7. But it is clear that there cannot be more than 6 members from one political party and at least two members must be eligible clients. Supra note 5. Also see Bhagwati Committee Report on Juridicar, (1977), at 8.
representatives of lawyers and also the clients seeking legal aid. The main function of the Corporation is to provide legal aid known as Staff Attorney system. The Corporation attorney is free to choose cases and in some projects clients may also have the option of selecting private attorneys of his choice from the panel. All practising attorneys in the area are invited to join the panel. There are some types of methods operating to provide legal aid.

1. First is one in which only the private attorneys are asked to provide services.

2. Second is that where staff attorney provide specific type of legal services. It included the training, advice and information to private attorneys.

3. Thirdly the private attorneys are employed to cover those areas in which the staff attorneys are not able to extend their services under the staff-attorney system.

4. Lastly, there are Legal Aid Clinics in which law students provide assistance to the poor and appear in Courts on their behalf.

There is also a system working known as 'Probano Project; under which the private attorneys provide legal services to eligible clients without fee.

The Corporation studied the legal services delivery system and investigated every aspect and submitted an exhaustive report to American Congress in 1980. Again in 1981, a detailed report was prepared and it was concluded that the staff attorney method was the most efficient and useful. The Corporation's main goal is to provide the weaker section of America, a minimum access to legal services. According to an estimate in America 7 million poor out of total 29 million, face a civil litigation every year. Despite the best efforts of legal service lawyers and paralegals. Only 1.4 million are represented which results into denial of legal services to 80 percent people. According to a published information the Corporation provides financial help to 335 projects in about 900 offices in 50 states and about 5080 lawyers and 2377 paralegals work in these offices. The Corporation has also set up a research institute on legal assistance which carries on research on

9. Such attorneys may however receive payment for the out of pocket expenses. Ibid.
10 legal problems faced by the poor. There are various types of agencies providing legal aid to the poor in America. Some of these are Law Firms supported by lawyers, local Bar Associations, Community Legal Organisations of New York, Chicago Volunteer Legal Services, Chicago Council of lawyers and the Council of New York Law Associates. Other such councils also exist in Washington and Francisco.

The above discussion shows that in the United States of America the legal aid programme is primarily run by Societies or Firms or other organisation funded by the state. Though all poor persons are entitled to receive legal aid but all of them have not been able to avail of this facility due to non-ability of sufficient funds from the state.

10. Some of such problems relate to Income security, health benefit programme, rural issues and studies of agencies which provide benefits to the poor, such as Welfare agencies and hospitals, to avoid legal controversies and create new procedures for resolving disputes and evaluate the effects on poor of such special legal institutions. Supra note 5, at 78.
B. LEGAL AID IN UNITED KINGDOM

(a) The Background

There was no organised system of providing legal aid in England in early period except some glimpses of legal aid which was available to poor population during the reign of Henry I. A poor litigant was exempted to give essential security and Ecclesiastical lawyers in temporal courts also provided legal aid to poor persons. During the reign of Henry VII, there were changes in Chancery courts to provide speedy and cheap justice to poor people. The common law courts were empowered to issue writs and entertain cases of poor people without court fees. A special statute dealing with *forma pauperis* in 1495 was also passed. This statute of Henry VII was repealed in 1883 and Rules of Court were enacted to deal the 'procedure of *forma pauperis* in the High Court. With the passage of time, there was a mushroom growth of various parasitical groups providing legal aid. So the new Rules were enacted in 1914, dealing the procedure for grant of legal aid. These rules laid down that a person would be entitled to legal aid provided that his income from all resources did not exceed 50 pound excluding the subject

11. *Id*, at 43
matter of the action. In 1925, the Lawrence Commission examined the question of legal aid. In 1928, there were many non-political centres working in London which provided legal aid to the deserving person. But these centres worked without any co-ordination as an organisation. In 1931 another organisation named as Bentham Committee was formed. The Committee was to organise the efforts of those legal aid centres which were affiliated to it and manage the services of legal advisers.

In 1944, Viscount Simon, Lord Chancellor of Wartime coalition Government appointed a Commission headed by Lord Rushcliffe, to examine the existing provisions of legal aid in civil matters. The one of the recommendations of the Commission was that free legal aid should be available to the poor in all courts. It also recommended that legal aid should be provided to the person who could pay it fully but could meet partial expenses of it. It further recommended that the scheme of legal aid should be financed by the State but it should not be run by any Government Department. Legal Profession should run it and should be accountable to the Lord Chancellor. It favoured the scrutiny of the application by an independent body, i.e., National Assistance Board should scrutinize the means and for merits there should be a committee of lawyers. Lawyers should receive remuneration for their services.

12. Id. at 44.
The recommendations of the Rushcliffe Commission were submitted to British Parliament, which resulted in the enactment of *Legal Aid and Advice Act*, 1949. The Act of 1949, was divided into two parts. Part I provided for legal aid and advice in civil matters, and Part II provided for legal aid in criminal matters. The Act authorised the Lord Chancellor to frame regulations for giving effect to the grant of legal aid in special cases and to modify the statutory provisions, and also to make regulations governing the financial status of a legal aid application, payment of barristers and solicitors in different local courts. The Act stipulated penalties for persons giving false information for

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the grant of legal aid which was available in all the courts.

The Act provided that legal aid is available in all the cases except in defamation, breach of promise of marriage, loss of services of a woman or girl in consequence of her rape or seduction and the inducement of one spouse to leave or remain apart from the other, relater actions, recovery of penalty proceedings, election and in the country court, the proceedings of judgement summons and any proceedings incidental to any of the above mentioned. Subsequent to the enactment of 1949 two more laws, namely Legal Aid Act, 1960 and Legal Aid Act 1964 were enacted. Under these and some of the earlier enactments the government

15. It is available in respect of proceedings in the Supreme Court of Judicature, any county court, the chancery courts of counties Palatine of Sancaster and Durham, the Mayor's and city of London court, the Liverpool court of passage, the court of Record for the Hundred of Salford, the Tolzey Court of Bristol and the Norwich Guildhall Court and in proceedings before any person to whom a case has been referred by these Courts. Id., at 485.
framed many regulations for the smooth and systematic running of the legal aid scheme throughout the country.

To improve upon the nature of legal advice and assistance in the country, the British Parliament enacted the Legal Advice and Assistance Act, 1972 so as to renovate and restructure the entire scheme for the giving of legal advice and assistance both in civil and criminal proceedings. One of the main objectives of the scheme under this legislation was to make free legal services more easily accessible to the public. The scheme envisaged under the Act, is generally known as (The 25 Pound Scheme) or the "Green Form Scheme". This scheme now finds a place in the sections 1 to 5 of the subsequently enacted Legal Aid Act of 1974 and the regulations framed thereunder.

16. See e.g., Legal Aid (General) Regulations, 1962; The Legal Aid (Various courts) Regulations, 1955; The Legal Advice Regulations, 1959; The Legal Aid (Assessment of Resources) Regulations, 1960; The Legal Aid (Panel Complaints Tribunals) Rules 1951. Quoted in Supra note 5 at 45.

To provide the legal aid on an uniform basis to parsons of meagre resources, the Parliament enacted the Legal Aid Act, 1974. Part I of this Act deals with legal and in civil proceedings, legal aid in matters not involving litigation and legal advice. This all is dealt by the Law Society which functions in consultation with the Bar Council and under the general supervision of the Lord Chancellor. The Act provides for legal aid in all the courts dealing with civil and criminal matters in England and Wales. However, it may be noted that the legal aid in criminal matters, is provided by the court of trial by looking into the means of the accused.

In 1981, a Joint Working Party of Law society and the Bar on Criminal Legal Aid submitted its report, titled "The Profession's Proposals for Change" to the Lord Chancellors department. The basic or the guiding principles

18. The Law Society administers the whole scheme under the guidance of Lord Chancellor, The Society consists of the professional body of the solicitors branch. In England, the Law Society has also established a voluntary legal service scheme which provides for legal assistance to all the persons irrespective of his or her financial resources. The applicants are required to pay nominal charges for the services rendered by the voluntary agency.
were that legal aid in criminal proceedings should be brought under a systematic control and discipline similar to the one obtaining in civil proceedings. The other objectives concentrated on payment for preparation work by solicitors and counsels. In other words the public should not be taxed for the work for obtaining justice and the work done in this regard should be properly remunerated from the public fund. All these concerted efforts have resulted into the passing of the **Legal Aid Act, 1982.** Thus, the law of 1982 instead of repeating the Act of 1974 makes some further provisions with respect to the living of legal aid and the provisions of advice and representation, in criminal cases and allied matters. This has been done by introducing consequential amendments, modifications or repeats of some of the provisions of the Act of 1974. Thus like basic scheme of Act of 1974 for providing legal aid and advice remains unaffected by the Act of 1982.

(b) **Administrative Setup of the Legal Aid Scheme**

For the efficient administration of legal aid, the envisioned scheme divides England and Wales into twelve areas. Each area has an Area Committee consisting of practising solicitors and Barristers. Under the Area Committee, there are a number of Local Committee comprising solicitors and Barristers. The main function of the Local Committees is to receive and consider the application for grant of legal aid certificates in the court of first instance. After looking into the merits of each application
vis-a-vis the means of the applicant, the committees issues certificates to the deserving applicants. So far as the funds vis-a-vis remuneration of Barristers and solicitors are concerned, the Area Committee is fully responsible for the purpose. The function of preparing panels of solicitors and Barristers for carrying out the work of legal aid is also the responsibility of the Area Committee. All disciplinary matters concerning the counsels are also dealt with by the Committee. However, the task of determining the means of an applicant for legal aid have been assigned to the Supplementary Benefits Commission. It may also be pointed out that once the applicant is issued a legal aid certificate, he can take the services of solicitor or barrister of his choice out of the approved panel. The Legal aid certificate may be refused if the Committee finds the

19. For a detailed account of the financial aspect relating to eligibility for obtaining legal aid, See Legal Advice and Assistance (Financial Conditions) Regulations 1975, see Supra Note 17. Footnote 5.

20. R.J. Walker, Supra note 17.

21. This commission has been established under the Social Security Act of 1966.

21a. In civil cases from 1971 to 1976, 9,64,118 legal aid certificates have been issued. Similarly in criminal cases 12,777,697 number of certificates have been issued. See for more details AIR 1977 Journal at 73-74.
application without any merit. However, the provision for reconsideration of his application for legal aid has been made both in civil and criminal cases by the Act of 1982.

(c) Legal Aid in Civil Proceedings

In the United Kingdom, legal aid is available in all civil proceedings in the House of Lords, the Judicial Committee of the Privy Council, the Supreme Court of Judicature, the Employment Appeal Tribunal, any country court and in the proceedings in Land Tribunal. In addition to this, the legal aid is also available in a select number of proceedings in Magistrate's courts, especially proceedings under the Affiliation Proceedings Act, 1957, the Matrimonial Proceedings (Magistrate Courts) Act, 1966, the Guardianship of Minors Acts, 1971 and 1973, and in some of the proceedings under the Children and Young Persons Act, 1933, 1963 and 1969, the Adoption Act, 1958, the Children Act, 1948 and the Maintenance Orders (Reciprocal Enforcement) Act, 1972. It may be added even at the cost of repetition that before legal aid is permitted to an applicant, he must show that he has a prima facie case for taking such advice or defending it or being a party to the proceedings. One of the merits of this scheme of legal aid is that the solicitors has no right to receive any payment including costs directly from the client. In other words, it is the Area Committee alone who can entertain such questions regarding payments and make the same from the legal aid fund. Regarding award of costs to legally
assisted person Section 13 of the Act of 1982 is explicit on the point. Subsection 3 mandates that if an assisted litigant is awarded costs in respect of proceedings for the purpose of which he has been given legal aid, such costs shall be paid into the Legal Aid Fund or to the Lord Chancellor, as, he may direct in this regard. However, the Act of 1982 takes care of all expenses in providing legal aid to the eligible persons, the funding by which is to be made by the Parliament.

d) **Legal Aid in Criminal Proceedings**

Formerly criminal proceedings fell outside the scheme of legal aid. Though the **Legal Aid Act** of 1949 and the Regulations framed thereunder extended such legal aid to criminal matters also but it was the Legal Act of 1974 which gave it permanent statutory shape with the noted difference that the order for the grant of legal aid in criminal proceedings is made by the court rather than the Committee. In this context, the application is required to be made to the court of Trial and any assessment of resources or contribution by the accused may take place after an order has been made. The Magistrate can refuse legal aid or require the accused to make contribution, if he fails to furnish a satisfying written statement of his means. Another interesting aspect in this regard is in civil proceedings there is an element of discretion involved in the matter of granting certificates. But in criminal proceedings legal aid cannot be refused more particularly in cases, where
the accused is charged with serious crime, even if, he pleads guilty. The legal aid may be granted for the purposes of the appeal and any proceedings incidental thereto.

The *Legal Aid Act* of 1982 has made some significance changes with respect to the giving of legal aid and the provision of advice and representation in criminal case. The Section I of the Act provides for the constitution of a committee for administering legal aid whereby advice and representation is provided by solicitors at magistrate's courts. These solicitors are to be paid remuneration for their work out of the legal aid fund. This advice and representation relates to the criminal proceedings before Magistrate's courts in respect of persons not availing of the benefit of legal aid order of the court. The Committee of the Council of the Law Society shall include two additional members nominated by the Lord Chancellor being respectively a Justice of the Peace and a Justice's Clerks and such number of other additional members nominated by him, as he may direct. The Magistrate shall comply with all directions which may be given to him by the Lord Chancellor for giving effect to the provisions of the Act providing for legal aid. The Act now makes specific provision for payment of remuneration to solicitors appointed specifically for the purpose.

Section 2 of the Act of 1982 provides for giving of legal aid to persons who have been convicted by the Crown court. In other words the provision extends the affect of single legal aid order to cover the appeal matters also.

The above discussion shows that in the United Kingdom, legal aid scheme is being run as a uniform basis throughout the country. Expenses in this context are primarily drawn from a public fund known as the Legal Aid Fund. The Law Society as well as the other committee constituted under the Act of 1974 and 1982 are playing a significant role in carrying out the purpose of providing legal aid.

LEGAL AID IN RUSSIA

a) The Background

Wherever, there are attempts to understand and discuss the socialist abject is the field of legal aid, it will be essential to make a precise reference about Marxist ideology. Marxist theory examines social and political inequality and injustice to various classes of society into economic classes. Article 39 of the Russian constitution of 1977, provides that, "the socialist system ensures enlargement of the rights and freedom of citizens and continuous improvement of their living standards as social, economic and cultural development programmes are fulfilled," and on the other hand, that "the enjoyment by citizens of
their rights and freedoms must not be to the rights of other citizens." And Article 34 provides for equality extended to all fields-economic, political, social and cultural to all citizens in real sense of the term. So according to the information available it is clear that the Soviets are not badly in need of free legal aid. So far as the Bar of Russia is concerned it is well organised on national base known as COLLEGIUM' which is collective association of lawyers. The Presidium is elected from a general meeting of lawyers collegium. The Presidium sets up legal consultation offices. According to the requirement of population lawyers are appointed experts in various branches of law. A senior counsel cum manager is appointed to supervise the office whose main duty is to see that the lawyers work sincerely and


24. For details, see Id., at 127-130.
donot charge less or more than the officially permitted fee. Normally, all the legal services are paid for in Russia. But there are cases which are done free of charge. Lawyers

25. These are suits for Alimony, the drawing up of applications for pensions or for other social benefits and of legal documents for soldiers and sailors in Soviet Armed Forces. In addition to these oral advice of informal nature, when no special legislation is consulted or documents gone into, is also assisted free of charge. In compensation cases lawyer does not charge any money except the court award such claim and fee specified by the Ministry of Justice the sole authority to fix the fees, which the Advocate charge from private individual. For this there is a differentiation made between simple and complex criminal cases.
also contribute a lot by providing free legal consultation through special desks maintained for this purpose in Legal Consultation Offices. The Lawyers also deliver lectures on various problems of criminal law, labour laws, collective 26 farm law, family law etc.

There is no comprehensive legal aid programme in the Soviet Union in the Western sense. But there are some provisions under the Soviet law which enables the citizens to get legal aid. The Soviet Code of Civil Procedure, 1964 provides exemption of Court-fees in certain

26. **Id at 137.** According to an information available in 1956, as many as 62000 lectures were delivered in the Russian Federation alone. Moscow Bar members delivered 53 per cent such lectures in 1957 and 1958.
cases. But it is worth mentioning here that the Government have an interest involved in providing legal aid to the poor. So we cannot consider these cases as part of scheme.

b) Financial conditions:

In particular sense, the legal aid system forms a part of Soviet Legal System as there is no bar of financial position for an indigent litigant to get legal aid. Lawyers are to work on low fees so that legal services are not

27. These are wages-claims, copyright action, maintenance action, some kind of personal injury claims, social security claims arising out of acts which are also crimes and actions arising out of administrative relations. The legal aid programme in Soviet Union relates to two short additional provisions to the Code mentioned above. The court of a judge is empowered to exempt a part from court cost as to defer his liability for such cost depending upon financial position of the party. See Legal Aid Scheme, Government of Madhya Pradesh, (1973), at 67-68.
denied to any one, whatever his financial position is in Soviet Society.

The Soviet legal system lays stress on popular justice to professionalisation of the bar, justification for the change and the role of lawyers to aid to the court in the struggle with social legality and also to give legal aid to the broad masses of tailors. The Soviet lawyers are treated more responsible than those of western lawyers. They are treated as the officers of the Russian Courts. And Soviet judge is supposed to determine the objective truth.

However, there are inherent defects in the system of justice operating in the Soviet Union. For example, the low fee fixed for lawyers may be beyond the capacity of some poor to fight their cases in Russian Court. And the poor man may not be in a position to secure justice and he will have to seek help for legal aid other than administered by the state.

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28. The low cost of advice or the legal aid in the court is not a part of the legal aid programme in the western sense but the low fee fixed for the clients are not special rates for the poor but are the normal rates which are charged from everyone irrespective of the position an individual holds in the Russian Society, Ibid.
Whatever be the merits and demerits of this system, the fact remains that in the Soviet socio-legal set up there does not seem to be a very big gap between people belonging to different social stratas. The Governmental system established in Russia appears to have taken care of the legal problems of people belonging to all sections of the society. Though of recent, the Russia as such has disintegrated because of people's revolution against the existing system, hence, the latest information regarding the changes in the constitutional framework vis-a-vis the justice delivery system is not available. Hence, reliance has been placed on the old systems which has been prevailing there in the pre-disintegrated era.

D. LEGAL AID IN AUSTRALIA

a) The Background

The system of providing legal aid to the poor is relatively a recent development in Australia. Various State Governments of Australia and lawyers professional bodies have been providing legal aid on reduced rate to the poor since the last decade. The State Governments of Australia is following the Poor Persons Legal Assistance Act, 1936 in this regard. Not only this, in Australia each state runs the legal aid programmes under the various legislations enacted
from time to time. In addition to the Governmental efforts legal aid programme is run by several bodies including trade unions, motoring organisations, social welfare agencies, citizens advice bureaux, bank migrant services, credit unions, trade associations. The effective modes of legal aid are Radio media, talk-back programme and newspapers columns. Some members of the bar also provide free legal assistance on an informal basis. There is also a privately run legal aid scheme of insurance against the inability for motor car owner's negligence. There are also some government sponsored agencies and voluntary agencies working the this field. The overall legal aid scheme is administered by authorised law Societies in each state of

Australia. In March 1975, the Australian Legal Aid Review Committee, headed by Mr. Roy Turner submitted its second report to the Attorney General. It recommended for establishment of a Legal Service Commission for the provision of legal services on national basis. Prof R. Sackville also suggested such scheme to establish, administer and finance a major new legal aid system of local legal centres and other schemes and services throughout Australia to conduct research and to plan and co-ordinate the overall development of legal aid in Australia and finally to make grants to schemes or agencies that seek assistance.

30. Legal Aid Scheme, (Govt. of MP 1973) at 70-71.

31. Prof. R. Sackville submitted a paper, 'Legal Aid in Australia' to Australian Legal Aid Review Committee in which he contemplated that the Legal Services Commission should become a vehicle for social change in the field of poverty and it should perform functions beyond those of traditional legal aid extending to law reform, legal education, use of non-lawyers and community involvement. Quoted in Bhagwati Committee Report (1977), at 8.
b) **Administrative Setup for Legal Aid**

In Australia, there is no uniform pattern of legal aid scheme because the political factors play an important role in determining the legal aid schemes in the States. In each state the Law Society schemes are run by either an independent statutory Committee or a subcommittee of the State Law Society. These Committees run the scheme fully as it controls the receipt of applications, conduct of interviews, approval or rejection of applications, and assignment of lawyers to the legal aid recipient. Some subcommittees are entrusted to screen the applications in regional places/areas. As the above discussion shows the state governments differ on provision of legal aid to the poor. But the Federal Government provides legal aid through Australian Legal Aid office which is a salaried service.

*The Commonwealth Legal Aid Commission Act, 1977* was enacted with two purposes. Firstly, a Legal Aid Commission was created under it to keep under check the activities of the proposed State and Territory Legal Aid Commission and suggest additional methods of delivery of legal aid to the poor. Secondly, the Act seeks to preserve the rights of the
ALAO staff, working in state or territorial commission.

1) **Australian Legal Aid Office (ALAO)**

   There is no salaried service in Australia except the services by Australian Legal Aid office funded by the Commonwealth Government. ALAO was conceived in 1973 and by 1974 there were 30 such offices working throughout Australia. This office works as a branch of the Attorney General Department and with no statutory status. It provides services to all persons who feel aggrieved by Federal Laws and to the persons for whom the Australian Government has a constitutional responsibility irrespective of the nature of legal problem.

32. The Commonwealth Commission consists of a Chairman, Deputy Chairman, two Commissioners nominated by the Attorney General, two Commissioners nominated by the Attorney General of the States in which legal aid Commissions have been established, a Commissioner nominated by the Law Council of Australia and Commissioner nominated by the Australian Council of Social Services, *Supra* note 30, at 24.
Aboriginal legal Services:

This is second one of the salaried service in Australia. Australia has 1,30,000 full blood and part aboriginals. According to an information available, 90 percent people of that decent are living under the state of poverty and some of them are in such a state of backwardness as exist in Asia, Africa and Latin America. Aboriginal legal services provides legal aid in social, political and legal matters. The scheme is run by Aboriginal Community itself. Any aboriginal is entitled to free legal assistance.

Chamber Magistrates:

An important feature of Australian legal aid scheme is chamber Magistrates in New South Wales but now are working in other states too. Legal Aid by the chamber magistrates to the needy parsons is quite common for preparing applications, and advising people to go to appropriate bodies in traffic-matters, matrimonial and custody issues and debt matters.

33. It includes conduct of interview in daily in the morning and afternoon sessions for two hours by Chamber Magistrates, Clerks of petty session and court officials with some legal training. Ibid.
iv) **Flying Lawyer:**

To make the legal services reach the poor and downtrodden, it is essential to have mobile legal units. Australia, which is a land of long distance, has developed this idea to a remarkable extent. In places like, Queensland, Western Australia and North-West Tasmania where there are no lawyers to assist the poor people, the Australian Legal Aid office has introduced the concept of service through a "Flying Lawyer" who flies by plane from the nearest legal aid office for assisting the needy poor people in solving their legal problems.

34. For details, see *Supra* note 31, at 28.

c) **Eligibility Conditions:**

In Australia, an applicant has to satisfy three conditions before he is provided legal aid.

(i) He must fall in the category of cases in which legal aid is granted,

(ii) He must satisfy the Means Test, and

(iii) His case must be deserving one for grants of legal assistance.

There are two types of Means Tests applied in Australia. First one relates to the limit on the available resources of legal aid applicant, and the second one is his
Regarding the finances, it is clear that the legal aid availability will depend on the funds. There are five main sources of legal aid funds. They are, Solicitors general trust accounts, costs, contribution, profession and Governments.

d) Areas excluded from Legal Aid

There are no specific guidelines or lists of cases in which legal aid will not be granted. But, the New South Wales, Queensland and Australian Capital Territory Scheme exclude certain cases in which legal aid will not be granted under section 6(4) of the Legal Assistance Act, 1943-70. In South Wales public prosecutor provides legal aid in Civil matters before Supreme Court and district courts. Whereas it is available for a limited number of cases before the courts of Petty Sessions. In Queensland, the divorce proceedings have been excluded because of heavy demand in this area.

The discussion shows that in Australia legal aid is receiving adequate attention of the State though its implementation and administration is not uniform throughout the country.

E. LEGAL AID IN CANADA

(a) The Background

Legal aid programme in Canada is run by the Bar. It administered it fully in early stages on voluntary basis by
capacity to pay the normal cost of legal service required. The applicant is required to give details of his income and resources on application forms of Stated. Under the Scheme, legal aid will not be granted to an applicant who is having property of Value 1000 dollars excluding the exempted property. The application of Means Test varies from state to state. The committee enjoy the discretionary powers in certain jurisdictions.

Regarding the second test, the applicant is required to pay some amount of legal services according to his financial ability. On this test again various states differ.

35. The exempt property includes a dwelling house upto 10,000 dollars, a motor car upto certain value, wearing apparel, tools of trade, household furniture or monthly or annual income to some limit after calculating certain allowed deductions Supra note 30, at 22.

36. The Victorian Scheme provides legal assistance to persons of limited means. The South Australian Legislation forbids the granting of legal aid unless the applicant is able to pay in full for aid or he shows that such payment will prove hardship to him. The Tasmanian Scheme provides for such aid to person who is unable to pay legal costs etc. Id. at 23.
providing human as well as the financial resources. The idea was just in the form of charity towards the poor. But during 1972-1975, there were major changes introduced in the provinces of Quebec, Manitoba, Saskatchewan and British Columbia regarding legal aid programmes. Ontario was first of the provinces which started legal aid schemes for the poor in civil and criminal cases with the active support of the profession. In early stages the role of Federal Government in Canada was no other than to issue grants by Federal Department of National Health and Welfare to establish community clinics in four provinces of Canada. In 1971 the above-mentioned department issued grant to Osgoode Hall Law School to start a community legal aid clinic in Toronto.

The sub-committee of the Law Society of Upper Canada prepared a Community Legal Service Report in 1972 and it criticised the idea of establishing community Legal Aid clinics because the Report recommended for the more active help from the Bar with duty counsel on a part time basis in any clinic.

37. According to an information available in 1971, there was about 12 million dollars expenditure provided for legal aid funds in Ontario, whereas such expenditure in Canada was near One million dollar. See Legal Aid Scheme (Government of M.P.) (1973), at 26.

38. They were Halifax, Nova Scotia, Montreal Quebec,
As there was no satisfactory system of legal aid working in Canada, the Lord Chancellor's Advisory Committee on Legal Aid commented in 1974 as follows:

(i) Many people's rights are going wholly by default.

(ii) Some are unaware of their rights but some known them but do not know how to obtain help in enforcing them or have no financial resources or the ability or both to do so.

(iii) There is shortage of solicitor in the country and mainly for economic reasons their geographical distribution is ill-suited to serve many of the poor and disadvantaged sections of the community.

(iv) In many areas of law particularly those relating to housing, landlord, tenant matters and welfare benefits where expert advice or assistance is urgently needed but is difficult to get.

To have the clear picture of legal aid system of Canada, one has to see what provinces are doing in this regard.

39. Report of the Lord Chancellor's Advisory Committee, 36 as quoted in [Id], at 27.
b) Legal Aid in Ontario:

The Ontario scheme of legal aid is known as "ONTARIO PLAN" which was rated best of other Canadian Programmes. It was an English Legal Aid Model in which both the members of the public, members of law society provide legal aid in civil and criminal cases. Later the Ontario plan turned into Canadian National Model. There was no legal aid programme operating in Ontario on statutory base till 1951.

40. Before 1951 legal aid was available on an ad hoc basis by members of the legal profession. The Attorney General provide finances for legal aid services in a limited number of criminal cases. In capital offences indigent accused were assisted by the Attorney General's Department through payment of nominal per diem fees to legal aid lawyer. The Ontario plan could not cope up the needs of the poor due to several difficulties during 1950's. Legal Aid Scheme, (Government of Madhya Pradesh), Supra note 37, at 28.
In 1963, a Joint Committee on Legal Aid was set up to review the existing provisions and suggest methods for future on these recommendations, the Legal Aid Act was passed by the Legislature on June 28, 1967. In pursuance of the provisions of the Act of 1967, Legal Aid Offices were opened in each county of the Ontario province. This turned up with legal aid duty counsel appearing for the first time in Criminal Courts. Legal Aid Act, 1967 provides for an independent Advisory Committee which attempted to make legal aid programme, a public-oriented one by the representation of the bench, bar and the public.

41. This Act came into force on March 19, 1967. Prior to 1967, the Ontario Plan only dealt with Civil cases and some criminal cases with imprisonment or cases where the accused was previously convicted for an affiance punishable with imprisonment. The plan was run by local counties and district law associations. There was no legal aid available in civil and criminal cases except where Provincial Director felt injustice was done. Ibid.
In 1974, the task force on legal aid headed by Justice John Osler in its report submitted to the Ministry of the Attorney General in 1974. It recommended that the legal aid plan should be administered by a statutory, non-profit corporation, known as legal aid Ontario, in which the legal aid recipient and the members of the Bar will play an important role. The legal aid plan is administered by the Secretary of the Law Society of Upper Canada and an Assistant Provincial Director Country Committee. Legal Aid Centres are established in suitable places in the Ontario province. These legal aid centres are to perform the following functions:

1. to determine the eligibility conditions of the legal aid applicant,
2. to determine the work required to be done,
3. to dispose of the application by
   (i) refusing those who have no merit,
   (ii) giving advice to those who require no more than that, and report to the local director all cases which require the services of the profession.

42. Bhagwati Committee Report at 8. But these recommendations were never accepted.
4. to ascertain the capability of the accepted person to contribute any sum towards the cost of the legal services.

Legal aid applicant is given lawyers from the Voluntary panel of lawyers on the recommendations of the legal aid clinic of the county or local director. If the applicant is ready to pay some of the amount of legal service costs he may chose lawyer of his own choice. Legal aid in appeal cases allowed subject to the satisfaction of Area Legal Aid Committee.

Under this Programme the Government pays the fees of a lawyer through Law Society. Area Directors have a lot of services at their discretion.

Means test is an essential requirement for a person who seeks legal aid under Ontario Plan. A Person whose annual income is more than 1200 dollars or a married person having more 1800 dollars of income with a further adjustment of 200 dollars for each dependent are not eligible for seeking legal assistance.

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43. Supra note 40, A Certificate can be granted to a person in an appeal to the Supreme Court of Canada, the Exchequer Court of Canada and Court of Appeal for Ontario, if sitting judge in a Court or Chamber and other Courts in Ontario & Canada refuses to do so.
Legal Aid clinics are also run as a compulsory part of legal education in Ontario like other provinces of Canada. Government provides grants to these clinics run by students of law schools.

(c) **Legal Aid in Manitoba**

The legal aid programme was started in Manitoba in 1937 with the establishment of a Civil legal Aid Committee. The Committee reviews the eligibility conditions of legal aid applicants. The Committee applies the Means Test at its discretion. Legal aid cases are referred by welfare agencies. In some cases like in application for recovery for damages the applicant are advised to engage the solicitors at his own expenses because lawyers are allowed to work for clients on a contingency basis. In criminal cases, there is a roster of members of the bar who provide legal aid.

According to an information, in Manitoba, there has been introduction of one large experimental Neighbourhood Law office in Winnipeg's North End. In this scheme, four lawyers and four law students are working for future directions.

44. But this voluntary scheme restricted to the police court and Attorney General's department pays a counsel fee and travelling expenses for trials in the county courts, Assize Courts and courts of Appeal, *Id.* at 29.
Manitoba has also rejected the system of law Society as the administrative agency for providing legal aid.

A certificate is issued to the needy persons by the Law Society which exempts the court fees. In criminal case, the Attorney General can pay upto 25 dollars or more to counsel according to the gravity of offence. Sometimes law students and junior members of the bar also appear in appellate court without any court fee.

d) **Legal Aid in Alberta**

Alberta province has been divided into judicial districts for the purpose legal aid. In every judicial district, there is a Needy Litigants' Committee' which determines the deserving cases and provides the solicitor who acts without any fee. The clients are to pay the pocket expenses whereas the court fees are waived. This procedure is applicable to civil cases only. In Criminal cases the Attorney General's office provides the lawyers free who deals such cases.

e) **Legal Aid in British Columbia**

Initially, the Victoria Bar Association established a legal Aid Clinic in 1949 in the State of British Columbia. This clinic was run by a voluntary Panel of lawyers and the cases to this clinic were referred by welfare agencies. According to an information, a committee is

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45. *Id.*, at 30.
established to administer the scheme. The permanent Secretary of the Association hears the application for legal aid and refers the deserving cases to the local members of bar. In Vancouver, New Westminster and Victoria weekly clinics are held to provide legal advice for immediate relief to clients and if legal aid is required the application is forwarded to a solicitor to whom no fees is paid by the client. Law society pays fully to lawyers in the legal aid cases in civil cases.

f) Legal Aid in Quebec:

Quebec did not have any organised legal aid plan outside the Montereal city till 1972. To make this programme a success the Bar of the Quebec and the provincial Government entered into an agreement in 1971, according to which the Bar agreed to provide legal assistance in criminal matters at the rate of 60% of the established fee scheduled and without any fee in civil cases. Legal Aid Act of the province of Quebec was also passed in July, 1972.

Under the Act, Legal Services Commission is to establish legal aid corporations for providing legal aid. The commission also conducts research and collects relevant information relating to the poor. The Act provides for the establishment of community based clinics as the regional corporations recommend local Bureau office to dispose of the

46 Ibid.

47 Id., at 31.
the legal aid applications. After scrutinising these applications, the certificate is issued to help the economically disadvantaged persons. Any person who falls under this class can claim legal aid as a right in Quebec. The legal aid applicant may also have the opportunity of choosing lawyer of his choice under Compromise Judicare-Staff Lawyer scheme. The Commission also provides funds to various community Education projects to deal the problems of the low income people in larger socio-economic perspectives. Legal Service Commission has also established a research and information department in Montreal offices to hold seminars on the problems of poor and to arrange the services of lawyer

Economically underprivileged under the Quebec Act is defined "any person who in the opinion of the commission or, as the case may be of a legal aid corporation, lacks sufficient finances means to assert a right, obtain legal consent or retain the services of an advocate or notary without depriving himself of subsistence according to the criteria laid down by the regulations."Ibid.
for poor.

Regarding the financial eligibility a couple with two dependent having $180 per week is still eligible to legal aid. According to an information the earlier limit was $155 per week. About the expenditure, the 90 per cent of women got the help in civil matters and 43 per cent men in criminal matters.'

**g) Legal Aid in Saskatchewan**

Legal aid scheme was working on voluntary basis in the province of Saskatchewan till 1967. To make it more practical and broad based the Saskatchewan legal Aid Plan (Criminal Matters) was passed in 1967 and the Law Society was administering the scheme in which local legal aid committees

49. In this regard 'Minute Juridique' was legal information campaign in which 101 minutes texts on topical legal problems were prepared by legal experts. The texts were meant for the education of average citizen in Quebec. These texts were relayed over T.V. and radio networks. They were also printed and 500,000 copies of booklets containing the 'Minute Juridique' scripts were distributed without any change in legal aid bureaux and credit Unions. *Id*, at 32.

executed it. Provincial Governments paid small fees to legal aid lawyers. Due to low fees paid to lawyers in criminal cases the scheme did not work successfully. In civil matters, there was the Needy Persons' certificate under the Queen Bench Rules of Court. The needy persons were exempted from Court costs. In 1972, a committee was appointed by the Attorney General, under the Presidentship of Roger Carter, Law Dean of the University of Saskatchewan. The Committee was to review the whole legal aid system of 1970s. The Committee made a number of recommendations.

In pursuance of the recommendations of this Committee the Community Legal Services (Saskatchewan) Act, 1974 was enacted. The Act provided for establishment of independent Community Legal Services Commission for development of legal aid, technical back up facilities and beginning of district legal aid services where needed. The

51. These are (a) That Legal Aid Scheme must, in its administrative operation, be divorced as completely as possible from any government department or agency, (b) Legal aid should be regarded as a matter of right, not charity, (c) A legal aid scheme should be capable of acting as a vehicle for social change, (d) A legal aid scheme must be comprehensive. Id., at 33.
Commission is neither government controlled nor by the Bar. The Act further provides that legal aid services will be provided primarily by community law offices with full-time staff lawyers. These Area boards are empowered to advise to area staff on legal aid requirement of the area natives. There are lawyers working in legal aid clinics on salary basis to deal the civil cases.

Thus, we find that in Canada the states have taken various initiatives for providing legal aid to the deserving applicants on a much broader perspective. The voluntary organisations as well as the Government Agencies are playing a dominant part in providing legal aid in Canada. The appointment of a permanent lawyers for the purpose is a noble device highlighting the concern of the states for dispensation of quick and cheap justice to the needy sections of the society.

F. CONCLUSION

In the United States of America the Legal Aid Programme has a long history behind. However, legal aid in criminal cases started only in 1958. The Criminal Justice Act, 1964 provided for the legal assistance to all the unrepresented persons at every stage of the proceedings. But the overall scheme is run by legal aid agencies or societies in whole of the United States. A Legal Service Corporation is also working under the Legal Services Corporation Act, 1974. But despite the best efforts of the
Government 80 percent of the people are denied legal aid services. Another drawback of the scheme is that there is no financial limit prescribed for poor persons to be eligible for legal aid.

In the United Kingdom, there was no comprehensive or organised system of providing legal aid to the poor in the beginning. Attempts of this kind started only during the reign of Henry I and Henry-II. A statute dealing with *forma pauperis cases* was passed in 1495, which was revised in 1883. Income limit was also prescribed as an eligibility condition which was raised from time to time. With the passage of time various Acts were passed dealing with the legal aid schemes. The act of 1949, 1962, 1972, 1974 and the latest law of 1982 have further consolidated the entire scheme of legal aid in the United Kingdom. The entire administration of legal aid runs under the overall supervision of the Lord Chancellor.

In Russia, all the indigents are provided the legal aid irrespective of their financial resources. Lawyers work on low fees specified by the Ministry of Justice which lessen the chances of exploitation of clients by the legal profession. The Government has very well taken care of the problems of the poor litigants.

In Australia, though the legal aid programme is not of great antiquity but the same is not being run on uniform basis throughout the country. The state pattern of providing legal aid varies on the eligibility conditions and the cases
in which legal aid may or may not be granted. One thing, that requires special attention is the concept of 'Flying Lawyer' to serve the unrepresented and unattended at their door steps. This is a unique feature of this scheme.

In Canada, each of the province has developed its own scheme of providing legal aid to the poor. Ontario Plan is one of the best, which is also accepted as a 'Canadian National Model.' Provinces vary with each other regarding the expenditure, financial eligibility and functioning of the scheme. To conclude it becomes evident from the above discussion that legal aid programme is run by Legal Profession, Law-Society, Government employed law professionals and the Public Defender Office.