CHAPTER -III

CONSTITUTIONAL MECHANISM FOR PROVIDING LEGAL AID:

AN OVER VIEW

(A) INTRODUCTION

The Preamble to the Constitution of India reads, "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute into SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens; JUSTICE; social, economic and political LIBERTY of thought expression, belief, faith and worship; EQUALITY of status and of opportunity and to promote among the dignity of individual and the unity of the nation..."

The Preamble as we see outline the objectives of the Indian Republic. In fact, the Preamble is the manifestation of the true intentions of the founding fathers of our Constitution. They had visualised a society in which justice-social, economic and political shall inform all the institution of national life. The Fundamental Rights and Directive Principles of State Policy enshrined in Parts III and IV of the Constitution contain the aspiration of the people of India in ushering a new social order where equality before the law and equal protection of laws shall be the guiding principle in providing justice to both the have and the have-nots. In otherwords, the provisions contained in these
parts of the Constitution are intended to bring about the social revolution in the country and to establish an egalitarian social order. The state and its instrumentalities are bound by legal-oath and political pledge to fulfill the Constitutional obligations in letters and spirits. The experience of the Constitution during the past four decades have shown that even today a vast gap exists between those who possess everything and those who are dispossessed. A majority of the population of this country is living below the poverty line and life for them is day today struggle. In fact, the Constitution has not been able to take into account the Indian life's tearful realities. Justice remains as a distant cry for those who donot have means to pay for it. This mighty document is meaningless and purposeless to those deprived and handicapped section of our Indian population who have no guarantee of livelihood. To put it in a different perspective, poverty and hunger are living examples of injustice and inequality that exists today in this land of 84 crores of people. The idea of legal aid and the guarantee of equal justice has just remained on paper during the first three decades of the working of our Constitution. If the state is to secure a just social order for the welfare of the people and if legal justice is to be given a true shape and meaning, poverty jurisprudence must be developed so as to promote human justice through which may strengthen people's faith in the Constitutional order.
The present chapter seeks to examine the various Constitutional provisions which aim at providing legal aid and social justice to the people of India. Some of the questions which have arisen for considerations in this context are: What precisely are Constitutional provisions which ensure justice to all? What actually is the philosophy behind these provisions? Do fundamental rights mean deprivation? What are the obligation of the state towards the people? Equality before the law, Right to life and liberty, and right against arbitrary arrests are some of the fundamentals of the Constitution. What significance these provisions have to a person who has no food to eat, no house to live-in and no resources to enjoy these freedoms? What role the judiciary has played in interpreting these basic constitutional guarantees vis-a-vis the other obligations enshrined in the Directive Principles of State Policy? What actually is the sanctity of incorporating constitutional provisions for providing legal aid? Do we have any statute enacted in pursuance of the constitutional directive for providing free legal aid? Whether the various state governments have taken steps statutory or otherwise for implementing the constitutional mandate of providing free legal aid to the poor, and lastly, whether providing legal aid as per the constitutional directive is self-sufficient or does it require some further modifications or alterations so as to accomplish the desired goal? All these questions are proposed to be examined in this chapter.
FUNDAMENTAL RIGHTS: THE MANDATE FOR LEGAL AID:

Fundamental Rights are those conditions of life which are very essential for the overall development of human personality. Part III of the Constitution guarantees various rights to the citizens as well as non-citizens. The Constitution also provides for an inbuilt mechanism for the enforcement of these rights. However, the fundamental character of these Fundamental Rights is a debatable point because the so-called Fundamental Rights contemplate the creation of socio-economic conditions so as to make these meaningful and purposeful to the society as a whole. When we talk of the socio-economic conditions, the question of poverty jurisprudence acquires its relevance in the present socio-politico-structure of our society. In fact, the very concept of it becomes fallacious because without money one cannot exercise these rights. It is this phenomenon which has stood in the way of the poorer sections of our society. In other words, the Fundamental Rights are meaningless for the teeming millions who are groaning under poverty. If the democratic institutions established by the law cannot guarantee

1. Articles 14 to 30.
2. Article 32.
them bread, it becomes a futile exercise to talk of anything like Fundamental Rights. Unless the existing socio-economic disparities and inequalities are not removed by creating conditions, the promises or the ideals contained in the mighty document of 1950 may sound hollow for an Indian who is fighting for his day to day life.

It is undoubtedly true that the Constitution has conferred various Fundamental Rights and has also provided a forum for vindicating and assertion of these rights. But it is a hard fact that when any right is infringed or any action of the state encroaches upon our rights, the only forum for redressal of alleged wrong or violation is the court. In other words, the aggrieved have to move the courts for seeking justice. It has been experienced that coming to the court for seeking justice is a dangerous affair in every sense of the term which especially deters the poor from going to the court of law where justice is rather purchased at a very high costs involving men, money and time. For the poor, like the Five-star Hotels Supreme Court, the High Courts and other courts are inaccessible. It is also a hard fact that irrespective of the merits of administration of justice the courts have become oppressive to the poor because of innumerable legal complexities. Goldsmith appears to be right when he remarked, "Laws grind the poor and the rich men rule the law." This takes us to legal aid to the poor so as to help them in seeking justice. Here an attempt would be made to examine some of the fundamental rights which mandates the state to provide Free Legal Assistance to the poorer sections of our society.

(a) Equal Protection Guarantee and Legal Aid.

Equality before the law is one of the fundamental principle of a civilised and democratic form of Government. Article 14 of the Constitution embodies this principle and reads, "The state shall not deny to any person equality before law or the Equal protection of the laws within the territory of India." Examining the provision, Patanjali Sastri, J. observed, in State of West Bengal vs Anwar Ali Sarkar, "The first expression of the Article which appears to have been adopted from the Irish Constitution is a declaration of equality of the civil rights of the all persons within the territories of India and thus enshrines what American judges regarded as the basic principles of republicanism." He further observed, "The corollary of the first section is based on the last clause of 14th Amendment of the American Constitution, enjoins (that) the equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favoritism or so as an American judge put it, it is a pledge of the protection of equal laws. In the light of the principle enunciated above, our Constitution aims at equality of status and of opportunity for all citizens including those who are socially, economically and educationally backward. But this constitutional principle of

5. AIR 1952 SC 75, at 79.
6. Ibid.
equality may sound hollow to the poor little Indians who under abject poverty conditions, ignorance and helplessness find the doorsteps of justice like scaling of the Everest. It is not possible for them to seek justice from the courts because the very system of administration of justice is anti poor which tends to give rise to their exploitation by their adversaries, the lawyer and the legal system itself. Thus in India, the Bank of Justice is only for the rich and the haves, the slogan that 'all are equal before law' is a sham for the law. For law has been totally blind for the poor. The gap between the promise and performance is almost unbridgeable between the people and the courts of law where justice is a distant cry vitiated by inordinate delays heavy court fees, lawyers fee, transportation expenses of numerous types. Practically the court environment is like a market place where everything is weighed by money considerations of supply and demand and thus is biased against the poor. This really raises the problem of access to justice. Infact, our country with its appalling illiteracy and groaning poverty, can never really be free by simple enunciation of the principle of the Equality before the law unless there be revolution in access jurisprudence. The problem of access to

justice really promotes the principle of equal justice as well as an impartial administration of justice. If this principle is not maintained properly, then it might prove dangerous and explosive to the social order in which poor and rich live side by side with glaring disparities in the society. This envisages the need for the law to be loaded in favour of the weak and the exposed, to provide them with financial and other supports and with access to courts vis-a-vis other agencies where their rights can be enforced.

The guarantee of the equality before law gives no satisfaction to a poor man that he is equal to his strong opponent before the law if there is no one to inform him what the law is or that the courts are open to him on equal terms as to other persons, when he has no wherewithal to pay the admission fee. In fact the principle of the equality before law can really be made meaningful when the price of admission to opportunities for justice can be equally paid. If one litigant is rich and the other poor, there is no equal access to justice because the rich litigant may engage the best lawyer while the poor may not be able to engage any. This necessitates Free Legal Aid to poorer sections of our


society so that there is equity among the litigants in their struggle for justice.

The International Commission of Jurists also expounded this principle in the following words, "Equal access to the law for the rich and the poor alike is essential to the maintenance of the rule of law. It is, therefore, essential to provide adequate legal advice and representation of all those, threatened as to their life, liberty, property or reputation, who are not able to pay for it." This way Free Legal Advice may invest the law with a human face. If read in this perspective then, the principle of equality before law and equal protection of law implies equality in the attainment of equal justice which means that the parties to the case will have an equal opportunity to present his case in a court of law. This is a basic requirement for every democratic society governed by rule of law. Though Article 14 does not explicitly talk of legal aid but some of the recent judicial pronouncements have recognised this right more particularly in the criminal cases where the state has been mandated to provide Free Legal Aid to the

It is essential that the state must create conditions whereby the existing economic inequalities are removed and real social equality is established.

To quote Dr. Ambedkar, "We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principles of graded inequality which means elevation of some and degradation of others. On the economic plane, we have some, who have immense wealth as against many who are living in abject poverty. On January 26, 1950, we are going to enter into a life of contradictions. In politics, we will have equality and in social and economic life we will have inequality. ... We must remove this contradictions or else or those who suffer from inequality will blow up the structure of political democracy which the Assembly has so

labouriously built up." These observations merit attention and highlight the need for giving special treatment to the weaker sections of the society by creating equal opportunities for them and protecting their interests as well. Legal Aid is one such opportunity which to a limited extent has been acknowledged by the state as well as the judicial institutions of this country.

In view of this accepted position both in fact and the law, it must now be acknowledged that the Constitutional guarantee of Free Legal Aid to the poor is implicit in Article 14. If this interpretation is not accepted then this very principle of equality before the law may be rendered non-fundamental and becomes meaningless to a majority of the population of this country.

(b) Guarantee Against Arbitrary Arrest or Detention vis-à-vis Legal Aid

Article 21 which has been characterised as the very soul of human liberties provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Swami Vivekananda acknowledged it many years back that liberty is the first condition of growth just as he must have liberty to think and speak, we must also have liberty in meeting out the basic

requirement of life like food or dress etc. The observations are in-complete consonance with the philosophy of fundamental rights as well as the directive principles of state policy contained in Part III and IV of the Constitution respectively. The term 'Personal Liberty' used in Article 21 is of widest amplitude and it covers a variety of rights, some of which have been raised to the status of distinct fundamental rights. The Supreme Court in A. K. Gopalan's case expressed for the first time the view that the term personal liberty is capable of both wide and narrow interpretations. In the wider sense it comprehended not only immunity from arrest and detention but also freedom of speech, freedom of association etc. In the narrower sense it meant immunity from arrest and detention."

15. See Maneka Gandhi Vs Union of India, AIR 1978 SC 597 at 598.
17. Id., at 53. For meanings/ Interpretation of the term Personal Liberty. See V.K. Bansal, Right to Life and Personal Liberty in India, (1987) at 6, 9, 12, 13, 44; Uma Gupta, Supreme Court and the Civil Liberties, Democracy and Ethics, (1979), at 14.
At this point of discussion, it would be relevant to reproduce some of the observation of Professor A.B. Dicey of what he thought of personal liberty. To quote him, "Personal Liberty as understand in England means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification." Suba Rao J. comes nearer to these observations when he observed in Kharak Singhs case that, "personal Liberty is a right of an individual to be free from restrictions or encroachment on his person whether these are directly imposed or indirectly brought about by calculated manner." This guarantee of Personal Liberty is reinforced by Article 22(1) and (2) of the Constitution. The relevant provision reads, "22(1) No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and be defended by, a legal practitioner of his choice. 22(2), "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within the period of 24 hours from such arrest. . . . and no such person shall be detained in custody

18. Quoted in V.K. Bansal, Supra Note 17.
19a Id., at 1306.
beyond the said period without the authority of a magistrate. Whatever methodology is adopted for the enforcement of the provision of Articles 21, 22(1) and (2), the basic question surrounds the procedure which as pointed out by the apex Court in Maneka Gandhi's case must be reasonable, fair and just. It is here that the court for the first time observed that this type of procedure mandated the state to provide Free Legal Aid to the poor accused in criminal cases. Thus the equal protection guarantee or the equal access to justice cannot be reached unless every poor is provided with Free Legal Services so as to enable him to protect the infringement of his life and liberty. In M.H. Hoskot vs State of Maharashtra, the Supreme Court made the following observation, "Judicial, legal submission and critical examination of evidence, leans upon professional expertise, and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature moulded by anglo american models and judicial process engineered by kindered legal technology compel to collaboration of lawyer power for steering the wheels of equal justice under the law."

In Hussainara Khatoon vs State of Bihar, Bhagwati, J. (as he then was) quoted from the observation of J. Doughlas in J. Richard Arger Singer vs Raymond Hamlin

22. AIR 1979 SC 1360.
"The Right to be heard would be in many cases of little avail if it did not comprehend the right to be heard by a counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. . . he requires the guiding hand of counsel at every step in the proceedings against him. If that be true of men of intelligence how much more true—would it be of the ignorant and illiterate or those of feeble intellect. . . "

Justice Bhagwati administered a note of caution and observed that if law is to speak justice and deliver it, legal aid is an absolute imperative. In fact, it is a equal justice in action. In Ranjan Diwedi vs Union of India, the Supreme Court again considered the question of right to have a lawyer of his choice under Article 22(1) and observed, "that it included the right to assign a lawyer also. Disagreeing with the earlier view taken in, Janardhan Reddy's case, the court pointed out that with the changing times everything has gone under change. The introduction of Directive Principles of State Policy and the enactment of section 304 (1) of Code

23.  Id, at 1369.
24.  Id, at 1381.
26.  AIR 1951 SC 22.
of the Criminal Procedure reinforces this assertion.

27. The relevant provision reads, "where in a trial before the sessions court, the accused is not represented by a pleader, and it appears to the court that the accused does not have sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expenses of the state.

With the previous approval of the State Government, the High Court may make rules providing for:

(a) the mode of selecting Pleaders for defence, as above;

(b) the facilities to be allowed to such pleaders by the courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the above purpose. The above provisions can also be extended to other courts if the State Government issues a notification to that effect. And Justice Sutherland in Powell vs Alabama, 287. U.S. 45 (1932) observed, "Right to be heard in many cases would be of little avail if did not comprehend the right to be heard by the counsel. Even the intelligent and educated laymen has small and sometimes no skill
The Fourteenth Amendment of the United States Constitution in the science of law. If charged with crime, he is incapable generally, of determining for himself whether the indicament is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defence, even though he may have a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him. Without it, though he may not be guilty, he faces a danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more is it of the ignorant and illiterate or those of feeble intellect." Also see, K. S. Chhabra, Legal Aid in Criminal Proceedings, 22, J.I.L.I, (1980), at 371.
enacted, as early as, in 1871 also underlined the same principle and issues a command that no fair trial can be conducted and justice accorded to a defendant who is not represented by a counsel and this representation included the right to have legal service of lawyer at the expenses of state where the accused cannot afford to engage the same. This fundamental principle of the equality of defence before the law can be reinforced if the poor man charged with crime is provided free legal services for his defence.

It is encouraging to note that the Indian courts have shown a positivistic approach in terms of not denying the right to consult and to be defended by a legal practitioner in order to give true meaning to Articles 22(1) and 14 of the Constitution. Further, it is also a matter of great satisfaction that the guarantee of Free Legal Aid has been found by the court by giving a liberal interpretation to the provisions of the Constitution contained in Articles 14, 21 and 22. It has now been fully accepted that the state must, as a guarantor of freedom, justice and rule of law, provide legal aid to those who do not have means to assert their rights.

C) DIRECTIVE PRINCIPLES OF STATE POLICY: CONSCIENCE CALL FOR LEGAL AID

When India attained freedom in 1947 the people of the country who had waged a war against the British imperialism held certain ideals and aspiration dear to
themselves. The framers of our Constitution who played a leading role in the struggle for freedom kept in mind these aspirations and ideals to give a proper shape to these objectives. The Preamble and the Directive Principles were incorporated in the Constitution so as to make the Constitution as a mighty document for the socio-economic development of the people. Thus the aim of the Constitution is to guarantee certain liberties not only to a few but to all the citizens of the country. For this it is essential that there should be an economic upliftment of the masses so as to eliminate inequalities in every sphere of life. The Directive Principles samples therefore, spell out the goal of economic democracy, the socio-economic content of political freedom and the concept of a "welfare State."

(a) Concept of Welfare State and Idea of Equal Justice

The Indian Constitution through its Preamble gives

28. The term 'Welfare State' is relatively of recent origin. It races the origin to early fifties concept of British Welfare State. However, there is a difference of opinion amongst the scholars about the time and place of origin of the term 'Welfare State.' See V.K. Malhotra, Welfare State and Supreme Court of India, (1986); Maurice Bruce; The Coming of the Welfare State (1961); G.R. Madan, Welfare State and Problems of Democratic Planning, (1972), at 1. Though the term welfare state was for
a message that the socialist, democratic, republic of India shall be a 'welfare state' committed to the ideal of socio-economic justice. This message has been translated into

the first time used in Britain by Arch Bishop temple in 1941 to distinguish the British State from European dictatorship and though the welfare state is believed to have been established in Britain by a resolution and policy of the Labour Party and Government during 1945-57, the seminal ideas had developed all through as an interaction to continuously modify the concepts such as New Torryism, New Liberalism and Labour Socialism, See M.M. Sankhadher, The Welfare State, (1985), at 17.
several articles dealing with its different facets in Part III and IV of the Constitution. Both these parts of the Constitution have a common grounding and have been rightly described as the 'Conscience of the Constitution.' Take for instance, Article 14 of the Constitution guarantees equality before the law and equal protection of law. But, how this valuable right can be exercised by those weaker section of our society who have been continuously oppressed and exploited for years together? Similarly, Article 21 as already discussed protects life and personal liberty. But, how a person who has no food to eat can take

29. See Granville Austin, Indian Constitution: Cornerstone of Nation (1966), at 50.
benefit of this provision? Article 23 prohibits traffic in human beings and forced labour. But, how a poor person suffering from starvation can enforce this right? The answer to these questions can be found by having recourse to the provision of Part IV of the Constitution dealing with the Directive Principles of State Policy which have been made fundamental in the governance of the Country. The state has been mandated to apply these principles in making laws for achieving social and economic justice. Article 38 defines the duty of the State in the following words, "The state shall strive to promote the Welfare of the people by securing and protecting, as effectively as, it may a social order in which justice-social, economic and political shall inform all the institutions of national life." Article 39 spells out in very clear terms this mandate and provides for the principles of policy which the state must follow. The provision lays down that the citizens, men and women, equally have the right to an adequate means of livelihood; that the ownership and control of material

resources of the community should be so distributed as best to subserve the common good; that the operation of economic system should be such as not to result in the concentration of wealth and means of production to the common detriment; that the health and strength of the workers, men and women and the tender age of children is not abused; that the citizens are not forced by economic necessity to enter evocations unsuited to their age or strength and that the children and youth should be protected against exploitation and against moral and material abandonment. Article 41 directs the state to make provisions for securing right to work and Article 43 imposes a similar obligation on the state to provide all workers a living wage. Article 43-A also talks of welfare of workers and enjoins upon the state to take steps for participation of workers in the management of industries. Article 46 is another provision which casts a duty on the state to take special care of the education and economic interests of weaker sections of our society including the scheduled castes and scheduled tribes, etc. Infact, these provisions are the brain centre of the Constitution which gives the direction for working the mechanism contained in other part of the Constitution. Thus the responsibilities of the welfare state are in a way commands of the people to the government in power.

Whether the state has been able to create conditions for translating the goal of welfare state or not, is a debatable point and no conclusive observation can be made in
the absence of an empirical study touching all facets of the concept. One thing which seems to be very clear is that the concept of 'Welfare State' is closely linked to the concept of social and economic justice and gives sustenance to the rule of law. In fact, law and justice are co-related, it is for the realisation of justice that the law is enacted. The objective can be realised only if we are able to push the law towards the realisation of equal justice. Article 39-A, (inserted by 42nd Amendment Act, 1976) provides,

"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular provide 'Free Legal Aid' by suitable legislation schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

This is indeed a Constitutional obligation which enjoins the state to take positive steps in the direction. In other words, legal aid is both a means and an end to equal justice. In fact justice should be equally available to all without distinction of rich and poor. In the words of Patanjali Sastri, J, "It should be the aim of welfare state to provide for the administration of justice to citizens without charging for it and in any case the charge levied should not exceed the actual costs of litigation. Our Constitution guarantees equality to all, there can be no equality unless there is legal aid available equally to all the sections of
our society and particularly to the poor. Thus the message contained in the above observation reflects on the concept of equal justice through legal aid. It is also an admitted fact that whatever assertions or counter assertions or the philosophy is propagated by the State regarding its welfare activities, the programme remains incomplete unless the state does something concrete for translating its ideal of equal justice. Article 39 is only a key to open the doors of justice to the have-nots. The provision is just like a banner which may help to carry the movement for legal aid throughout the nook and corner of the country and thereby help in improving the system of administration of justice. Unless this is done, the idea of equal justice will only be an illusion to the teeming millions.

b) **Concept of Social Justice And Legal Aid:**

The term 'Social Justice' has been used in various senses and the scholars have so far not been able to provide a universally acceptable definition of the term. It is an admitted fact that it is almost impossible to draw a

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32. Allen has pithily observed, "I am not sure that those who use the term most glibly know very clearly what they mean by it" and that, "Many I suspect mean simply, "that it is unjust that anybody should be more fortunate than themselves," C.K. Allen, *Aspects of Justice.* (1978), at 31.
demarcation between social justice, Economic justice and political justice as they all intend to benefit men in society. Hence the term 'Social justice' is a comprehensive concept and includes all its facets. The Supreme Court has also observed that the term social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations and that "the concept of social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the idea of welfare state." Expressing its views on the theory of social justice, the Planning Commission of India has observed that the objective of Indian society must be, "to provide the masses of the Indian people the opportunities to lead a good life" and to offer an, "equal opportunity to every citizen." It will be relevant to recall what Nehru said

35. The Five Year Plan, (1962), at I.
36. Id, at 4.
while explaining the contents of Social Justice, at the dawn of our Independence, "The service of India means the service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. They may be beyond us, but as long as there are tears and sufferings, so long our work will not be over."

Having decided to secure social justice to the people of India, the framers of the Constitution devised a method to achieve this objective. The method ultimately devised was the Directive Principles of State Policy which are contained in Part IV of the Constitution. Thus the most important aspect of social justice in view of eradicating poverty, ignorance, disease and inequality of every type are contained in the Directive Principles of State Policy. The Government is fully competent to implement these commands of social justice even if they conflict with Fundamental Rights. Though these directives are unenforceable by any court, but the principles laid down therein are fundamental in the governance of the country." These directives have

38. See, *Constitution of India*, Article 31-C.
infact led one commentator to describe the Indian Constitution as "first and foremost a social document." In fact they lay down for the future, social and economic policy of the State. But a very important fact which we all must acknowledge is that the emancipation and liberation of the poor as contemplated in the objectives laid down in Part IV of the Constitution can be brought through the instrumentality of legal aid. This appears to be the only way to deliver social justice to the vast unfortunate humanity of the poor. Therefore, the principal task of the legal aid is to make the rule of law and social justice a dependable alley of the weak. Legal Aid, if properly administered will surely strengthen our present legal system. In nut shell, this will make law as an instrument of social justice for those who are in need. Article 39-A as already submitted is just a drop in the ocean and social justice mission must go on and the community as a whole must recognise its collective responsibility towards the weaker sections of the society and take definite actions to assist those persons. This will make the law a medium to secure social justice and legal aid a key to provide the poor free access to law. In our submission, Free Legal Aid to the poor should be regarded as cornerstone of social justice and its denial as failure of the rule of law.

40. G. Austin, Supra note 29.
c) **Legal Aid: A Constitutional Imperative**

Besides the constitutional philosophy of legal aid, it is now recognised as a constitutional imperative arising from the provisions of Article 14, 21, 22(1) and 39-A. The Constitution of India through these provisions visualises an attempt to provide for a society in which justice is equally and even handedly provided for all. This is indeed a basic requirement for every democratic society governed by rule of law. The incorporation of Article 39-A has removed all doubts about the competency of the Parliament to legislate on matters concerning legal aid. It may however be pointed out that a close examination of the Seventh Schedule to the Constitution of India would show that there are several entries in the Union List and Concurrent List which are in one way or the other

41. See Entries 77 and 78 which deal with persons who have a right to practice before the Supreme Court and High Courts respectively.

42. Entries 2 and 13 deal civil and criminal procedure, Entry 11-A provides for administration of justice; Entry 20 provides for socio-economic planning; Entry 23 deals with social security, social insurance etc.; Entry 24 deals with the welfare of Labour and Entry 26 pertains to legal profession.
connected with the legal aid. The entry which has generated some debate on the issue relates to, 'Administration of Justice.' It occurred in Entry 11 of the State List. The inclusion of administration of Justice in the State list made the Union Government to believe that Legal aid to the poor was a part of administration of justice and therefore it was the primary duty of the State Governments to initiate the measures for providing legal aid. In view of the latest position both the Union and State Governments are competent to legislate on matters pertaining to Legal Aid. Similarly the provisions of Article 282 mandates the Governments to make grants for public purposes including the Legal Aid to the poor. As already submitted Article 39-A

43. The Constitution (42nd Amendment) Act, 1976 has deleted the Entry and 'administration of justice' has been included and put in Entry 11-A of the Concurrent List.

44. Article 282 reads, "The Union or a State may make any grants for any public purpose not withstanding that the purpose is not one with respect to which Parliament or the Legislature of a State, as the case may be, may make laws."
has further strengthened the view that there is an imperative duty on the state to provide Free Legal aid to the poor and until and unless this is done the ideals of distributive justice will only be a slogan to the downtrodden sections of our society. It may also be added here that some of the clauses of Article 51 dealing with fundamental duties of the citizen also expound the philosophy of practice of legal aid.

All these provisions vis-a-vis the philosophy behind them also helped to bring about a substantial change in the interpretative role of our courts. For example, in. M.H. Hoskot vs. State of Marharashtra, the Court observed, "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance there is implicit in the court under Article 142 read with Article 21 and Article 39-A of the Constitution power to assign counsel for doing complete justice... the inference is inevitable that this is a state duty and not government's charity... Naturally the state concerned must pay a reasonable sum that the court may fix when assigning counsel to the petitioner.'

45. See Clause (b), (e), (f), (h) and (j).
The subsequent decisions of the apex court have merely reiterated the interpretation adopted by the court in Hoskot case and established a fundamental right to legal aid and have emphatically laid down that the State is bound to provide legal aid to those who by virtue of their economic or other disabilities are not in a position to secure legal services on their own.

Thus it can now be stated with certainty that the equal justice guarantee or the legal aid as we may call it has acquired a place of permanence in the Indian Constitution law.

d) Legal Aid and Public Interest Litigation

There is a wide spread feeling amongst the Indian people that only 'wealth will pay you justice'. To undo this


pervasive pessimism, we require Public Interest Litigation (Social Action Litigation) for redressal of wrongs and assertions of rights. In our expensive court system it is almost impossible for the lower income groups and poor sections to enforce their rights. The poor people of a village may be prevented from walking along a public pathway by a feudal chief, harijan workers may be denied fair wages, women workers as a class may in breach of the equal wages statutes be refused equal wages, prison inmates may be denied equal access to justice. Collective wrongs like this call for class action.

Since our administration of justice is based on adversary system, legal representation plays a vital role in the machinery for administration of justice. Accordingly, if the rich can engage the services of the best available lawyer while such legal representation is denied to the poor, it is likely to produce inequality in law and results in denial of justice. Legal Aid system is a device to break the monopoly of big lawyers when some public spirited men come forward to help the poor for protecting their legal

49. Mr. Justice Hegde once said at a Lawyer's Conference, "There is no gainsaying the fact that we are saddled with a legal system which is out of the reach of the vast bulk of the population. . . ." See Krishna Iyer, Justice and Beyond, (1982), at 22.
rights and securing justice to them. It is because of this reason that in India social action litigation or public interest litigation as we may call it, is assuming a great significance in tackling the problems of the poor.

In the United States a Public Interest Law assumed importance in the sixties as a means to deliver legal services to groups whose rights were effected by administrative decisions. Such groups included the consumers, environmentalists, minorities, the handicapped, the elderly etc. who may all not be poor but have common interest and lack organisation and ability to fight above decisions. With the passage of time this idea emerged as a part of the Legal aid movement.

In India the social action litigation or Public Interest Litigation has emerged as a new type of litigation to service the cause of equal justice for the poor during the eighties. In Asiad Workers case, the Supreme Court itself highlighted the significance of

51. Ibid.
52. People's Union for Democratic Rights and Others Vs Union of India and Others, AIR 1982 SC 1473.
Public Interest Litigation in the following words, "... Public Interest Litigation (Social Action Litigation) is a strategic arm of the Legal Aid movement and is intended to bring justice within the reach of the poor masses. It is a totally different kind of litigation from the ordinary adversary litigation. ... Public Interest Litigation is brought before the court not for the purpose of enforcing the right of one individual against another, as happens in the case of ordinary litigation; but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor should not go unnoticed or unredressed. That would be destructive of Rule of Law which forms one of the essential element of Public Interest in any democratic form of Government. ... Public Interest Litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner the state, the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the the vulnerable sections of the community and to reach social justice to them. The state or the public authority which arrayed as a respondent in Public Interest Litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress
an injustice done to the poor and weaker sections of the community, whose welfare is and must be the prime concern of the state or public authority."

However, it was in Fertilizer’s Corporation case and the Judges Transfer’s case, that the Supreme Court expounded the nature and content of Public Interest Litigation and the 'Locus Standi'. The court expressed the view that the courts are not only meant for the rich and it cannot tell the poor that since courts are congested it can give justice to the rich and not to them. Since, then a large number of cases have come before the courts wherein the cause of the sufferers have been taken and pleaded in the nature of class action. In the Asiad Workers case, the

53. Fertilizer Corporation Kamagar Union Vs Union of India, AIR 1981 SC 344.
54. S.P. Gupta Vs President of India, AIR 1982, SC 152.
55. The doctrine of the 'locus standi' is that only a person to whom a specific legal injury is caused by violations of his legal right or legally protected interests can come to the court for judicial redress.
56. See. Upendra Baxi, Taking suffering seriously Social Action Litigation in the Supreme Court of India, Supra Note 51, at 387-415.
Supreme Court had observed that the state is under a constitutional obligation to see that there is no violation of fundamental rights of any person particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.  

57. In the above mentioned case, the petitioners had complained of the violation of provisions of the Constitution and the statutes dealing with labour laws in relation to workmen employed in the construction work of different projects connected with Asian Games 1982,

58. AIR 1984 SC 802.

59. Id, at 803.
In the present case the petitioner is an organisation dedicated to the case of release of bonded labourers in the country. They had made a survey of some of the stone quarries in Faridabad district near the city of Delhi and found that there were a large number of labourers from different states of the country who were working in those stone quarries under inhuman and 'intolerable conditions' and many of whom were bonded labourers. After making a thorough survey, the petitioner addressed a letter to the Supreme Court highlighting the pitiable conditions of the labourers due to non-implementation of the rules framed by the government. The Court ordered a detailed socio-legal investigation of the problem by appointing a Special Commission and found the allegations to be true. In the course of its judgement the court acknowledged the significance of Public Interest Litigation and observed that Public Interest Litigation is not in the nature of adversary litigation but it is a challenge and opportunity to the Government and its officers to make basic human right meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our constitution.

A study of the above mentioned cases would show

60. Ibid.
that Public Interest Litigation (SAL) is not initiated for the benefit of one individual but for the benefit of a group of persons who suffer exploitation or oppression or who are denied their basic rights. Most of the persons who have come under this categorisation have been thousands of under trials of Bihar-Jails, persons blinded in Bhagalpur, the pavement dwellers of Bombay, Girls of Agra Protective Home, or Delhi Nari Niketans. Projects, scheduled castes and scheduled tribes, women of Ajmer engaged in construction works, Draught or scarcity affected areas in Rajasthan, child labour employed in fire-works in Siwa Kashi, Tamil Nadu. The Social Action Groups who have came up for taking the cause of such suffers include People Union for Civil Liberties. People Union for Democratic Rights, The is a body having wide enrolment from cross section of intelligentsia throughout the country. Its leadership is done by many leading lawyers, journalists and opposition leaders. This body has investigated and emerged as a strong champion of public cause.

This is a break away group of the PUCL, attracting a more radical social activists investigating the conditions of landless and bonded labourers, police and Jail-atrocities etc.
Citizen For Democracy, and other public spirited men like V.M. Tarkunday, President PUCL, Govind Mahtay, President PUDR, Mrs. Kapila Hingorani all Supreme Court advocates, Prof. Upendra Baxi, Prof. Lotika Sarkar, Law Faculty, Delhi University and Sanjit Roy, Director, Social Work and Social Research Centre, Tilionia, Ajmer district of Rajasthan. The Committee for Implementing Legal Aid Schemes, which has been on the Indian scene since 1981 has been making constant efforts for institutionalising PIL as a major strategy to Legal Aid to the poor. The Legal aid movement going on in the country has adopted this strategy as a major tool for delivery of justice to the poor. The committee has taken many steps to disseminate the technology of Public Interest Litigation and convened a series of workshops in collaboration with the Bar Council of India. There is an urgent need to expand Legal Aid Programme for covering more aspects of Public Interest Litigation. For this socio-legal mobilisation is necessary and it must, primarily stem from voluntary groups. This way, we find that this devise of PIL

This group is led by Sh. Tarkundey, retired judge of the Bombay High Court and a senior advocate in the Supreme Court. This group has intervened many cases including the Bihar undertrial cases. For details, see Baxi, Supra Note 51, at 397, Footnotes 57 to 60.
is certainly a strategic arm of the Legal Aid movement to enable the justice to reach the doorsteps of the poor.

(D) CONCLUSION

The conclusion emerges that the Constitution of India in its Preamble, read together with the provisions of Fundamental Rights and Directive Principles of State Policy has provided for an inbuilt mechanism for taking justice to the people by the new emerging concept of legal aid to the poor. The Constitution in articles 14, 21, 22(1) read with 39-A gives an extensive recognition to the concept of processual justice wherein the rich and the poor have been given equal access to justice. These are injunctions but what in practically happening is this that the right to access to justice in the context of poverty, ignorance and illiteracy of the masses has only remained confined to the rich, the mighty and influential section of the society. Access to justice is not available to those who are poor which include the tiller of the land, landless labourers the bonded labour, the Scheduled Castes and Tribes, the indigent women, widows, children, orphans, old and the disabled who constitute the vast safeguards of our downtrodden sections.

It is undoubtedly true that the Government of India and the State Governments have appointed various committees for strengthening the justice delivery system vis-a-vis making justice accessible to the have-nots by providing for
legal assistance. The Constitutional mandate has certainly helped in the realisation of ideals of distributive justice through the instrumentalities of legal aid. Legal aid has thus been considered both means and an end to distributive justice. It is gratifying to note that our judiciary has through its various pronouncement like Hussainara, Hoskot, Khatri, Bandhawa Mukti Morcha and many more other cases recognised the significance of the legal aid and has also raised it to the status of distinct fundamental right. It may be submitted that administration of law and protection of its citizen is the primary duty of the State. Since law is for the protection of all the citizens including the poor it becomes the duty of the state to make its machinery work alike for the rich and the poor. The constitutional directions are imperative; it is for the State to create conditions and infuse new life into these imperatives.