CHAPTER-1

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Legal aid is a modern phenomenon and is intended to provide the poor and vulnerable sections of the society the required assistance to look after themselves in regard to the exercise and enforcement of their legal right. Legal aid is considered to be an instrument to achieve equality before law as provided in our constitution. Although concept of legal aid or legal services, as a humanitarian aspect, is very old, this topic drew the attention world over in the recent past due to the complexities of society and social developments that took place immediately after the Second World War. It is, indeed, the Post Second World War period has witnessed the development of the concept of legal aid and the mechanism of legal aid developed as a fundamental human right. Subsequently the ambit and scope of legal aid was widened to bring into its contours those vulnerable section of the society - the poor, weak, illiterate and downtrodden who are coming to the court of law for seeking justice.

There was a time when it was considered that the court and the judicial process is beyond the reach of these group of people and it is not possible for them to seek justice from the courts because the very area of courts is anti poor which tends to give rise to their exploitation. In this context the philosophy and action programme of legal aid is a challenge and an opportunity to the legal community to discharge their social responsibility.
and debt to the poor by providing them the needed legal assistance and bringing them nearer to the justice delivery system. It has been rightly said that access to justice is not only a fundamental right but is also the key to defending other rights. Thus, unless the people can access justice, they would be deprived of the remedies for the violation of their rights and consequently also would be deprived of their rights.

1. LEGAL AID & ITS NECESSITY

Millions in this country are unable to access the system of administration of justice due to various factors. Infact, when the weaker sections of the society have been deprived of justice for long due to poverty, ignorance and illiteracy, the rights and benefits conferred by the constitution have no meaning for them. Due to their socially and economically disadvantaged position, they lack the capacity to assert their rights. Therefore, a movement took place among the enlightened mass of the legal community which enjoined upon the lawmen to rise above their professional and sectional interest to aid and assist the society-especially the poor litigants by way of free legal advice, counselling and appearance. Thus, legal aid can be said to be a voluntary resource mobilisation of lawmen of their legal talents, efforts and time in the service of the poor, which affords the poor an opportunity to seek justice from the court with or without little cost¹. Legal aid, therefore, involves the personalities from the legal fraternity committed to deliver the good in the interest of the poor for achieving justice.

Justice Y.K. Sabharwal is of the opinion that 'when we talk of justice in the broader sense, we have to bear in mind the definition given in Justinian Corpus Juris Civilis which states that "Justice is constant and perpetual will to render to every one that to which he is entitled". Similarly, Cicero described Justice as "the disposition of the human mind to render every one his due". Thus the right guaranteed to persons is inherent in the very notion of justice. The provision of legal services and access to justice is a problem with no single solution. Just as the problem varies with the socio-economic make-up of a society; the solution must be tailored to the individual needs of the society. Furthermore, there is seldom only one solution to a society's needs; often several methods must be tried and introduced into heterogenous social groups.

Representation, knowledge and preventive legal aid are the rights of every citizen. These can be generated from within rather than from outside the community. This is an attempt by the persons involved to make them conscious of their duty and obligation towards the poor. Legal aid, therefore, "is an attempt to give justice to the poor and its denial implies failure of the democratic and egalitarian values and of rules of law itself. Its motto is the same as that of Magna Carta which declared in 1215 AD that 'to no man shall we deny justice to no man shall we delay it". It is a device to cut the distance between indigence and justice, between poor commoners and progressive lawmen - the bench and the bar - the latter dedicating itself to

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3. Ibid.
the legal aid and service of the former with the sole consideration of social
duty and good of the community. In a democratic set up the needs and
concerns of the under-privileged and downtrodden is always at the top of
the policy priorities. Thus, rule of law can become a living reality for millions
of our people, only if the rights of law-abiding citizens are effectively
protected and safeguarded and justice is seen delivered and delivered in
time.

‘Justice’ in ancient days was regarded equivalent to virtue; in fact an
important social virtue deriving its sanctity in the valued principles of moral
philosophy. Later, when ‘rule of law’ was established justice came to be
identified with the observance and enforcement of the law. Subsequently
the principle of equality under the law came to be equated with justice. The
underlying principle of the provision of legal services to the underprivileged
and seek solution, in this context, is to make the promise of equality a
reality. Hence, the role of law as an instrumentality for fulfilling the basic
needs of the weaker sections and to protect them from all forms of
exploitation is enhanced.

2. LEGAL AID AND THE CONCEPT OF SOCIAL JUSTICE

Our Constitution provides justice-social, economic and political to
each citizen as enshrined in the preamble. In fact, mere assurance of
political justice is of no substance if the citizens are denied their social and
economic rights. Similarly, mere social justice is meaningless in the absence
of just distribution of economic resources alongwith equitable, access to

the opportunities. In the words of justice Sabharwal, "given that justice is defined in terms of rights, access to justice, most simply put would include the ability of any person to approach the appropriate authority and effectively claim the enforcement of rights. Thus, access to justice, in more real terms, would include the sum total of all those rights and remedies available to a person through which he can seek the enforcement of his or her rights".

In this context, it is pertinent to know what exactly the term 'social justice' means because this is a topic which is much debated today. We are in the nineth year of the new millenium with more than six decades of independence behind us. This topic has not lost its importance and conflicting claims as to what the term 'social justice' means still continues to dominate the academic discourses. In this expression, two concepts are involved, one, the concept of society and the other, the concept of justice. The meaning of social in the context of justice is far wider than mere having to do with the reciprocal relationships between interacting human beings, either as individual or groups. Here, social means something that pertains to the structure of society, more precisely to the arrangement of social and economic relations. Viewed in relation to justice, it is to be seen as an intelligent cooperation of people in producing an organically united society with every member having an equal and real opportunity to grow and learn to live as per his/her talents and abilities. David Hume

defines justice as "the bond of the society" and according to him, without no association of human individuals can subsist. We, orientalists, call this bond by the name dharma as something which holds us together. There is an altogether a different view from this holding that this may not be correct to arrive at such a conclusion. What holds us together and what can continue to hold us together are economic and moral factors, viz, "productivity and efficiency, equality and fellow-feeling". These virtues together with liberty constitute the cardinal principles on which a political society is based. However, the concept social justice has got varied meaning and each depends on the social and political context in which it is used. Whatever may be the case, there is a close nexus between equality and justice.

Thus, justice and equality are interconnected and the idea of equality plays an important part in the scheme of justice only in the sense that all individuals are entitled to an equality of consideration. In the present context the 'consideration' very well includes the concept of legal aid and the main thrust of such a programme is to see that the poor are not deprived of their rights, privileges and benefits and they have a right to receive reasonable aid and advice. The fundamental objective of legal aid programme, in short, may be said to be two fold: to sensitize the poor with basic legal know how and to make equal access to law and courts for the poor as is for the rich. Delhi Congress of International Commission of

jurists in the same sentiment states that "equal access to law for the rich and the poor alike is essential to the maintenance of rule of law. It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation, who are not able to pay for it"\(^\text{11}\). In fact, legal aid is a privilege as well as an opportunity to law men to rout legal ignorance of the poor and pragmatically help them in securing justice free of cost, without quid pro quo\(^\text{12}\). As such the legal aid programme plays a vital role in securing social justice ably supported by experts from the legal profession.

Legal aid becomes a legal service in real sense when it becomes accessible to the subjects of its objects and when they get benefits by taking advantage for impartiality and integrity of the system of administration of justice. Legal aid is no doubt an important element in ensuring that equal opportunities for access to justice are available to all persons irrespective of their social or economic position. The mere provision of legal aid facilities is however, insufficient to ensure access. As it has been rightly pointed out "true access to justice is achieved only when no person is deterred by financial, psychological or physical barriers from seeking a legal solution for the assertion of a right, for making a claim, or for defending a claim or criminal charge. While the ultimate realisation of this goal may indeed be utopian, it can be partially achieved by making the path to the court, the normal dispenser of justice, easier for the underprivileged, by ensuring

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\(^{11}\) Krishna Iyer in 'Law and the People' quoted by S.N.Dhyani in Law-Morality and Justice: Indian Development, Metropolitan Book Co. (P) Ltd., 1972 at p.94

equality before the court, or by creating new methods of dispute resolution that do not embody the inequalities inherent in the adversarial court structure\textsuperscript{13}.

It has been mentioned earlier that the concept of social justice is much debated now-a-days and ordinarily by social justice we mean giving benefit to the underprivileged. Hence, it becomes pertinent here to know those people who make up the underprivileged class and what is involved in giving them access to justice, while we are discussing the provision of legal services or access to justice to these group of people. It is obvious that the poor and the downtrodden are among the underprivileged. But the concept is not confined only to the poor. If we take a broader look and take into consideration the national perspective, it can very well be said that the underprivileged are those people who experience physical, psychological or financial difficulties in attempting to assert a right, make a claim or present a defence. Thus, the concept is wide open and includes a variety of people who need legal assistance and access to justice. Physical barriers to access to justice are the most noticeable for they can be readily seen and identified and are capable of being eradicated. Psychological obstacles to access to legal services include a feeling that prevents a person from seeking legal services a sense of fear, hopelessness, lack of information, ignorance and illiteracy. Financial barriers relates to the poor persons when his disposable income, that portion of income that is not spent for purchasing the necessities of physical life, is very small, he is incapable of paying for legal

service of any kind. These group of people who are characterized as underprivileged are victims of easy access to legal representation because the profession is becoming increasingly materialistic and self-centred. But it is also a fact that one obvious method of giving such people access to the law is through lawyers because their services are essential.

In the National Conference on Law and Poverty held in Ottawa in 1971 it was observed by one of the participants:

"We have amongst us some social workers and some lawyers. They have the tools of the trade—their education—from which they get information. Most poor people do not have the education, therefore they do not have the information. They are the living problem"14.

It is a fact that due to lack of money and material possession millions in our country are not able to enjoy their fundamental rights and for them legal aid is absolutely essential to enjoy these rights as enshrined in our Constitution. Poverty creates lack of opportunity and develops a sense of hopelessness to cope with hostile forces and exploitation. It is also a fact that poverty is vulnerable to injustice. In such depressing condition the poor are made to feel that equality and freedom are for the privileged only and is beyond their reach. Thus, a person who is unaware of his legal rights and has no knowledge of the services available to him is in no better position than he would be if there were no such rights and services.

3. IMPORTANCE OF LEGAL AID

The necessity of legal-aid has arisen because the agonising gap

14. Ibid, at p.6
between the ideal of equal access and availability of legal justice has reached almost break down point in our country. The long arms of the law has failed to reach them. The reality is that law in our country is in the hands of rich people and has gone beyond the reach of poor. They have failed badly to enjoy the fruits of law, may be because they are poor, illiterate or ignorant about the law.  

Free legal aid at State cost is a fundamental feature in all democratic systems. It may slightly differ in form and practice. The difference in quality and manner is basically based on social set up. The prevailing circumstances - economic, political and others, of a particular society and its standard of civilization play an important role in this regard.

Struggle for equality and gender justice has to be mounted on several fronts - social, cultural, legal, economic and political. The priorities and strategies in this regard have varied according to popular perceptions and dispositions. The legal system has always been the handmade of dominant social structures and policies differently rationalised in terms of contemporary needs and ideologies. The absence of the female viewpoint in sufficient strength at the political process, legislative process, administrative and enforcement processes as well as the adjudicative process did tend to tilt the balance unmistakably in favour of the male interests and male perceptions of female good. This is largely true in both developing and developed societies.

15. Dr. Srikanta Mishra, Legal Aid to poor and Social Justice - SCJ. 1995 Vol.1 at p.25  
16. Mool Singh, Free Legal Aid - A Right of Accused and not State's Charity - CrLJ 1987 Jour. p.89  
The World conference on Human Rights affirmed that extreme poverty and social exclusion constitute a violation of human dignity. The Vienna Declaration requires States to foster participation by the poorest people in the decision-making process by the community in which they live and the promotion of human rights and efforts to combat extreme poverty. Facing poverty needs a combination of strategies by international agencies, governments, non-governmental organisations, women and peoples organisations and multinational corporations. Governments have a fundamental responsibility to ensure that basic needs of the poor are met.

Unequal status of women being offensive to human dignity violates women rights and has emerged today as a fundamental crisis in human development in the world. India has no exception, despite social reforms movement, constitutional and legal provisions aimed at securing equal status for women and removing discrimination against women. Positive judicial trends, various welfare schemes of the Government and contribution of voluntary organisation to the welfare of women, continue to suffer from inequalities and are victims of increasing tide of violence. It is true that in spite of number of legislation the fate of weaker sections has not improved. The poor are the silent victims of injustice.  

Legal aid, the professional legal assistance is given either at no charge or for a nominal sum, to indigent persons in need of such help. In criminal cases most countries-especially those in which a person accused of a crime enjoys a presumption of innocence provide the services of a

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lawyer for those who have insufficient means of their own. In some countries defender offices with salaried personnel, either publicly or privately supported, have been found to be the most economical solution. In other countries where there is no shortage of lawyers skilled in criminal law and trial practice, private lawyers undertake this duty, being assigned by the court or being chosen by the accused person himself. In many countries these private lawyers receive no remuneration or only a nominal fee paid either by the state or from charitable funds. In an increasing number of countries, the provision by the state of a fund sufficient to pay an adequate fee and to cover all allied expenses is considered to be necessary to ensure that the person receiving this aid gets proper service. Traditionally, in many countries as one of the public-service responsibilities attached to the practice of law, lawyers also undertake to give legal aid in civil cases.

It is to such millions of people poor and downtrodden ignorant and illiterate, destitute and needy, that our system of administration of justice constantly and continually denies justice to poor woman\(^1^9\).

There would also be psychological and socio-logical barrier between the poor who belong to the weaker section of the community and the lawyers who generally come from the upper stratas of society or whose minds are at any rate conditioned by their wealthy and middle class clients and who have a middle class image and hence the poor would hesitate to go to a lawyer and the lawyer would also prefer to avoid a poor client. And

then, in addition, there would also be fear of social, economic and sometimes even physical reprisals from socially higher and economically stronger sections of community. These are the three main reasons why the traditional legal service programme, which is essentially court or litigation oriented, cannot meet the specific needs and the peculiar problems of the poor in our country. We must, therefore, devise a legal service programme which is much more dynamic and comprehensive than the traditional legal service programme and which has a positive thrust and approach, if we want the benefits of the legal process to be made available to the underprivileged segments of our society and to improve their socio-economic conditions with a view to establishing really egalitarian society.20

Legal aid symbolises the constitutional assurance of equality before law. It has assumed great importance in the administration of justice. In a democratic set up, assurance to every citizen of easy access to justice is a must. It is a boon to the deprived and down trodden to taste the benefits of freedoms, liberties and rights protected and guaranteed under the Constitution. The poor and illiterate are assured that their poverty and ignorance do not stand in their way to get justice from Courts. Provision of equal legal service is dispensation of social justice through legal order.

Mahatma Gandhi states 'I realised that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt into me that the large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds

20. Ibid. at p.79.
of cases. I lost nothing thereby, not even money, certainly not my soul\textsuperscript{21}. The Constitution of India mandates the state to accord justice to all members of the society in all facets of human activity. Our national goal is to achieve justice - social, economic and political through the process of Rule of Law. Equal access to law for the rich and the poor alike is essential for the maintenance of Rule of Law. Thus, it is necessary to provide effective legal aid to poor and underprivileged so as to enable them for access to justice and to use effectively the judicial system for enforcement of rights given to them by law.

4. MEANING

Legal Aid, in its common sense, conveys the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, bestowed upon them by the laws, and to make them get such benefits and rights back if these are snatched from them by the mighty and muscled members of the society\textsuperscript{22}.

Legal aid may be taken to mean free legal assistance to the poor persons in any Judicial proceedings before the courts or Tribunals. Actually it intends to provide free legal assistance to the poor persons who are not able to enforce the rights given to them by law\textsuperscript{23}.

In the words of Justice P.N.Bhagwati, "the legal aid means providing an arrangement in the society so that the machinery of administration of

\textsuperscript{21} Justice P.S.Narayan, Law Relating to Lok Adalats, Asia Law House, 2nd Edn.2001 at p.7
\textsuperscript{22} Sujan Singh, Legal Aid Human Right to Equality, Deep & Deep Publication, 1998 at p.2
\textsuperscript{23} Prof. Kailash Rai, Public Interest Lawyering, Legal Aid & Para Legal Services ,Central Law Publication, 2001 at p.155
justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law." In such an arrangement, Justice Bhagwati emphatically observes, "the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts." According to Justice V.R. Krishna Iyer, "the spiritual essence of a legal aid movement consists in inviting law with a human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order." Prof. Madhav Menon says, "legal aid means not only a representation through lawyer at state expense in a court proceedings but also includes legal advice, legal awareness, legal mobilisation, public interest litigation, law reform and variety of strategic and preventive services which instead of assisting such individuals on a case by case basis help them as a class to avoid helplessness arising from poverty and promote equal access to justice." 

Legal Aid, in its modern sense, is a recent concept, having taken its shape in the twentieth century. But unlike many other social-legal concepts, legal aid has attracted a world-wide attention. The basic reason for such a broad approval and that too more or less at the same point of time is that

25. Ibid.
26. Processual Justice to the Poor, Report of the Expert Committee on Legal Aid, Ministry of Justice & Company Affairs, Govt. of India, May 1973 at p.10
the concept of legal aid is firmly fastened to the concept of ‘rule of law’, which has the principle of ‘equality before law’ as its concomitant. And the ‘rule of law’ and ‘equality before law’ are the fundamental pillars of a democracy. Since, the democracies are well scattered over the entire globe and their preservation and perpetuation is the interest of all states and their international combinations, the contemporaneous acclaim of legal aid, as an integral part of administration of justice, practically throughout the world is natural. It was incorporated in the Charter of Liberties of Henry II. It found its place in the great historical document Magna Carta. In the fortieth paragraph of it, it has been inscribed:- “To no man will we deny, to no man will we sell, or delay justice or right”. “So the origin of the concept of legal aid can be traced back to the historic Magna Carta of 1215. Thereafter, with the subsequent socio-economic developments, many welfare schemes were introduced. Free legal aid to poor and down-trodden to provide them access to justice was also one of the social-service oriented schemes which received attention of legal luminaries.”

The democracy, as a system of governance, is placed on the bedrock of equality of all citizens bequeathed with certain liberties and freedoms which can be enjoyed by the citizens only in a proper socio-economic climate, nurturing the legal provisions aimed at restoring the deprived rights, if any. And when all

29. CHARTER OF LIBERTIES:- Magna Carta - The great charter obtained from King John, 1215. The basis of English political and personal liberty and document establishing rights.
the citizens, rich and poor, mighty and the meek, privileged and the prevented are to equally enjoy such rights and freedoms, it becomes essential that those socially and economically lagging or lacking are afforded some leverage to make them face the 'lucky-ones' on an equal pedestal. And if this is not done, equality before law and the rule of law or, in other words, the democratic functioning of the society carries practically no meaning or mechanics. It is, therefore, important that the benefit of legal aid should have an adequate content and potency to make the deprived and downtrodden in the democracy enjoy the benefits of freedoms, liberties and other rights made available to them as the citizens, without any fear of their extortion or extinction.30

5. LEGAL AID AND THE PRESENT SCENARIO

Democracy has no meaning for the citizens if they are not able to secure the basic human rights which includes the right to get justice or the legal assistance. Equal access to the law for the rich and the poor alike is essential to the maintenance of rule of law. It is pertinent to quote justice N.C. Jain who is of the opinion that:

"Legal aid is a movement because it intends to provide equal protection of law and equal access to justice to all people, particularly the poor who lack means to knock at the door of justice. Poor should not be marched upon by the rich because they lack means to seek justice. Equality before law is meaningless unless unequals are made equal. Equal access to justice is a constitutional mandate. It is an important fact of legal aid programme that those who cannot afford

are provided means to have access to justice. It is evident that the
guarantee of equal protection of laws as well as equal access to
justice would be no more than an empty platitude, a teaching illusion
if those who lack means, the socially and economically weaker
sections of society, are not provided means to access justice.\textsuperscript{31}

In such a situation it is necessary that every person shall have a right
to legal representation. In order to fulfill this object of providing legal aid for
speedy and inexpensive justice the Constitution through 42nd Amendment
incorporated Article 39-A thereby imposing a constitutional obligation and
responsibility upon all the states to provide equal and free aid to poor. This
Article explicitly proclaims the need of legal aid in the following words:

"Equal justice and Free Legal Aid - 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 or 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".

The reasons for introducing Article 39-A in the constitution was to
secure equal justice for all which is a cardinal objective of the constitution.
The principles contained in Article 39 A are fundamental and cast a duty on
the state to secure that the operation of the legal system promotes justice,
on the basis of equal opportunities and further mandates to provide free

\textsuperscript{31} Justice N.C. Jain, Legal Aid, Its Scope and Effectiveness of the Legal-Aid Rules in this
regard, AIR 1996 (Journal), p.184
legal aid in any way by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. As observed earlier the right to legal aid is essentially a fundamental right which draws its inspiration from Article 21 which categorically says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". Here one question comes to the forefront i.e. how a poor man can defend his liberty? Article 39 A is the answer as it tries to promote justice on the basis of equal opportunity. To enjoy equal opportunity access to justice becomes necessary. Prof. Upendra Baxi has put it rightly in the following words:

"Access to justice is the foremost human right but the problem of access to justice has many dimensions. In its broader concept, "access to justice" has to cover more than bare court entry and is to include reaching law makers, lawyers, police, enforcement agencies, capability to pay court fees, capacity to bear the costs and expenses, time consuming factor, as also access to legal information. The information concerning the norms of law, is not accessible easily, even to those who are affected by law."

It is now settled that the concept of legal aid and advice has now been evolved and recognised as a statutorily guaranteed right to 'legal service'. This right created by the inclusion of Article 39A of the constitution binds the state with an obligation. It may be submitted here that Article 21

is a fundamental right conferred under Part III of the Constitution while Article 39A is one of the Directive Principles of the State Policy under Part IV of the Constitution. The rights conferred under Part-III are fundamental and the directives given under Part IV are fundamental in the governance of the country. There is no conflict between the two, rather they are complimentary and supplementary to each other and that fundamental rights are but a means to achieve the objectives indicated in Part IV. Thus, fundamental rights must be construed in the light of the Directive Principles.

Coping with all these the Indian Judiciary also came forward deviating from its traditional adversarial litigation procedure in creating and giving a new dimension to the jurisprudence of social service. Particularly by giving a liberal interpretation to Article 21 the Supreme Court of India and the High Courts gave a new thrust to the legal aid movement and thereby generated a ray of hope among the underprivileged and downtrodden people and particularly the poor and illiterate mass who were left and forced to reap the evil consequences of the then prevailing legal procedure which was considered to be anti poor. Thus, the theory of adversary system and locus standi have been liberalised to a great extent in our country to give justice to the poor who have so far not been able to reach the courts of justice. The Supreme Court thus adopted a pro active approach by entertaining public interest litigation and infused courage and a new vision among the general people by pronouncing right to legal aid a basic fundamental right. With an aim to provide access to justice and legal aid
and advice, the courts evolved new strategies of legal services management thereby giving a new thrust to the legal aid movement.

Public interest litigations are said to be a mechanism which have been evolved and applied by the judiciary in our country to ensure access to justice to those sections that had hitherto, due to illiteracy, ignorance or their socially or economically backward position been deprived of justice for years. In this connection, the observation made by Justice A.S. Anand is noteworthy. In his words:

"The history of public interest litigation is in a way the history of development of human rights jurisprudence in India during the last two decades. It represents a sustained effort on the part of the judiciary to provide access to justice for the deprived sections of Indian humanity with a view to protect their human rights."

Thus, the Supreme Court has shown concern and sensitivity to the cause of the poor and has been indignant to the apathy, injustice and suffering caused to them and exhorted the state and other appropriate authorities of their legal and constitutional duty towards the poor. All these measures inspired by constitutional values and social needs certainly engineered to develop new goals of social justice thereby heightening the human dignity and right to life.

In order to fulfil the constitutional obligations the state has enacted legislations and formulated various schemes of legal aid. The Legal Services

Authority Act, 1987 is considered to be the foremost statute on legal aid enacted by the Parliament. The main aim of this legislation is to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for getting justice are not denied to any one in the country by reason of economic or other disabilities. The Act also provides to organise Lok Adalats to secure justice on the basis of equal opportunity.

6. THE RISING CONCERN

It is clear from the above discussion that although the concept of legal aid is very old, but the sense we understand it today is a recent phenomenon. It was only in the year 1976, provision for legal aid to the poor was incorporated in the constitution and made a part of the Directive Principles of State Policy. This directive makes it obligatory for the state to provide free legal aid to needy and indigent people so that justice is not denied to them merely because of poverty. Prior to 1976, the Criminal Procedure Code through Section 304 and Order XXXIII of Civil Procedure Code had some provision so far as legal aid is concerned. Subsequently to give a mandate to the Constitutional philosophy, The Legal Services Authorities Act was enacted in the year 1987 for providing legal services to the weaker section. The judiciary also played a dominant role in giving the weaker sections an opportunity to get the benefits of the welfare society. Thus, all round effort was made for these vulnerable and under privileged people to bring them in to the mainstream of the society by providing equality of opportunity and justice. For the purpose, planning has been made and
authorities are there to see their implementation. Crores have been spent for the purpose. Intellectual discourses are being held both at national and international level at regular intervals. But nothing satisfactory could be achieved. We are in a position where we were before, rather, the situation has further deteriorated and still deteriorating. It seems there is no satisfactory answer to it.

When we think of the concept of legal and certain major issues appear to have remained unresolved. Whether legal aid should effect changes in the economic, social and political status of the poor, educate the public in the use of law and assist the poor to organise themselves to assert their claims, are certain issues which are wide open. It is in this context the present research has been undertaken by the researcher. The aim of the present work is to study the relevant legal provisions, find out the ways and means and suggest some remedial measures for the same.

7. THE PROBLEM

The long cherished goal of preserving the equality of status and opportunity could not become a reality. The desire to have an society based on equality of opportunity and justice still eludes us. The right to legal aid and access to justice still is beyond the reach of millions of people in our country. The notion of right derives sustenance from the law and regards right as the fruits of the law and the law alone. But unfortunately, a big segment of the society could not enjoy the fruits of such rights. At the time the law was enacted it was hailed as one of the best laws to serve the cause of the poor and downtrodden. But it took eight years for its
implementation and since then one decade has passed. But no remarkable change is noticed in the condition of the underprivileged and the women. During these years tall promises were made, hectic activities could be noticed at the executive level and yet these group of people continue to suffer. The gap between the rich or the so-called haves and the poor or the have not has widened further thereby posing a challenge to the concept of equality and social justice. This clearly proves that the law has not been able to serve its ultimate purpose and still has to walk a long distance.

The dismal position leads one to pin point categorically the problems for the unfortunate state of affairs which presumably got reflected in the voice of the millions of affected people like women who are continuously neglected from free legal aid services. Therefore, it is high time that their cases should be treated with utmost care and immediate steps be taken in this direction.

Thus, the critical study furnished here leads to the identification of some predominant problems, that have been responsible to impede the legislative action and constitutional provisions in the most vicious forms and its final objective being distanced beyond the horizon.

8. OBJECTIVE

Legal work, assesment, evaluation and literature created so far in the State to assess the efficacy of the legislation to provide free Legal Aid service in Orissa in relation to the poor and destitute for whom the law was actually enacted and its ultimate achievement and pointed reasons for failure and consistent delays depicted sordid and dismal efforts and hence
the justification for the present study. Attempts were also made at the national level to study the legal provisions relating to Legal Aid in general, but these could not reflect the state of affair of the State of Orissa. In the present work, an attempt has been made for a critical study and analysis of the legislation from the historical, constitutional, Judicial, planning and implementational point of view. Special focus has also been made on creating awareness among the general masses through encouraging public participation and providing proper access to information. Focus also centered around the law as the initiator of progressive change and its impact on social, political, economic and administrative set up. An evaluation has also been made to assess whether the government has succeeded in its endeavour to preserve and protect the right to Legal Aid of the poor, the under privileged and specially the women in the State.

Apart from the assessment of sociological achievements of the Law relating to Free Legal Aid passed by the Parliament and the Rules made there under by the State Legislature and Regulation made by the State Legal Services Authority, the study also embraces the concept of Legal Aid that existed in the past and the commitments of a society based on equality of opportunity and justice that developed during the post-independence period particularly after the 42nd Amendment of the Constitution. A critical study of the existing law on Legal Aid forms the major thrust of the study.
9. METHODOLOGY

The thesis ambit is confined to micro-level study in respect to the State of Orissa, a federating unit in the Indian Union.

The study is empirical and analytical, coverage being predominantly socio-legal in approach.

For identifying emerging trends, the study took the help of both primary and secondary sources.

10. HYPOTHESIS

In the wake of the developments highlighted the hypothesis has been deduced to have a critical study of the reasons and stumblings that has effected a chasm between the socio-legal mechanism and canons of the legislation visualised in the laws which intends to provide free legal aid services. Following hypothesis are proposed to be empirically verified from the data collected personally from the Sample Units.

(a) That there is no iota of adequate preparation for confronting the society with the law.

(b) That the legislative policy goal has succeeded in fulfilling its object.

(c) That the law received an half-hearted approach from all those who are there to see its implementation for achieving the desired result.

(d) That the people for whom the law is meant understood very little or nothing of the law.

(e) That the concept of Legal Aid has not yet taken off as a social movement.
11. CHAPTER OUTLAYS

It is worthwhile now to indicate specifically the contents of the chapters discussed herein. In the First Chapter itself the subject of Legal Aid, the general meaning and difficulties of legal aid is introduced and explained. The importance of Free Legal Aid and its necessity for human life and the unequal status of under privileged specially the women professional legal assistance and the situations that need special attention in view of the legal services are discussed. The subsequent development of Legal Aid and the concern raised also finds place in this chapter.

In Chapter II, an attempt has been made to discuss the rationale behind the movement of Legal Aid. The development of legal aid starting from the ancient days till the British Period has been discussed. Legal and constitutional development concerning legal aid in India prior to the 42nd Amendment of the Constitution and the post 1976 scenario has been discussed in the full length. The report of various Committees constituted for the purpose also finds a place in this chapter. Besides the development that took place in India, the international developments and concerns raised in various international declarations have also been discussed. The development and working of the law in the state of Orissa also finds a special mention in this chapter.

Chapter III focuses on the legal setting particularly the socio-legal philosophy behind the constitutional provision in relation to the legal aid
movement in India. The social reality which we are witnessing has been discussed. The Constitution of India, the basic law of the land which governs all other subordinate laws finds specific mention here in this Chapter. Various parts of the Constitution starting from the Preamble which speaks of the social, economic and political justice have been discussed in full length. The provisions as contained in Part III and Part IV of the Constitution dealing with Fundamental Right and Directive Principles have also been discussed along with the provisions as contained in the 7th Schedule of the Constitution. The right to legal aid as a part of the social justice also finds a specific mention and the socio-economic dimension to the concept of legal aid also forms a part of the discussion in this Chapter.

Under Chapter - IV the Legal Services Authorities Act 1987 and the Rules made there under including the Rules and Regulations of the State of Orissa are discussed. The Act, objective, scheme and approach to the problem are also dealt with in detail. And the most important aspect of the Act i.e. responsibility of the Administrative and the Enforcement Machinery in carrying out the objective of the Act and the problems which the enforcement machinery actually face are discussed in detail. While dealing with the effectiveness of the enforcement machinery of our country the working and functioning of the enforcement machinery of some of the developed countries are also discussed to draw a comparison and to see where our system fails and is not able to produce the good result.

Chapter V deals with the new emerging socio-legal realities relating to Legal Aid. In this connection the important aspects namely the new role
adopted by the judiciary, the concept of public interest litigation, liberalizing the concept of locus standi in order to provide free access to justice and make the concept of social justice a reality has been discussed. In the first place, the role played by the judiciary deviating from the traditional doctrine of locus standi evolving new methods and techniques for liberal interpretation of the law in the changed context particularly while analysing matters relating to Legal Aid is worth mention here. In this way emerged the concept of public interest litigation which subsequently became a weapon of the people particularly the oppressed class to use it against the offenders. The traditional view of locus standi was that only an 'aggrieved person' who has personally suffered a legal injury by reason of violation of his right or legally protected interest can file a suit for the redress of his grievance. This was the highly restrictive and individualistic view of Anglo-Indian mould which did not suit to the needs of the present day society and therefore, the phrase has been liberally interpreted in the field of PIL to allow standing to any pro bono publico. Thus interpreted the rule of locus standi has been made broad-based and people-oriented to allow access to justice through 'class actions'; 'representative actions' and 'public or social action litigation' so that justice may easily be available to the poor, under privileged and downtrodden. Another aspect that Legal Aid, to be effective and meaningful, needs to be well-spread and sprouted in the rural areas of the state forms the core of the analysis of the chapter.

Special focus is being given on the State of Orissa which is conveyed through the Chapter VI. The causes and the problem of Legal Aid affecting
this State are also dealt with. The organisational Structure of Legal Aid Authority, the Legal Aid Scheme, Real functionaries of Legal Aid in Orissa, Functioning of the State Authority, Statistical return of State Authority are also dealt with in addition to the Role of Executives, the lawyers, Law Teachers and the Activities of the Legal Aid Clinics, in connection with the administration of justice to the vulnerable section of the society particularly the women in the State of Orissa. Considering the problem of Legal Aid a special study has been taken up to make the people cautious and aware and enable them to participate and take active part in encouraging Legal Aid programme through Lok Adalat, Para-legal Literacy Camps, Legal Aid Workshops in the State.

Lastly, the Chapter-VII of the study comes out with conclusion and suggestions. Although there were few suggestions given at appropriate places, some suggestions are also made here in this chapter while drawing final analysis from the foregoing chapters.

Citations have been appended at the every page of the individual chapter and numerals of citation have been placed at appropriate places in the text. The work is critically analysed in the thesis regarding working of the legislation as an instrument of social change and the ways and means to achieve the results on the basis of a social audit.