CHAPTER-II

LEGAL AID - RATIONALE, NATIONAL AND INTERNATIONAL DEVELOPMENT
The Concept of legal aid as we understand today can be said to be a recent phenomenon which is committed to the welfare of the poor and downtrodden in the society. The reason behind this aspect may be attributed to the fact that these group of people could not look after themselves as regards the enforcement of their rights in the law courts because of their poverty and illiteracy. It is also a fact that there was a time when the law was considered to be totally blind towards the poor and the constitutional philosophy that 'all are equal before the eye of law' remained only in paper and the judicial process was tilted against them. However, with the passage of time and change in the attitude the legal aid programme was taken as a challenge which provided the legal community an opportunity to serve those vulnerable sections which ultimately can afford the poor an opportunity to seek justice from the court with or without little cost. In this way, the legal aid became a movement which brought into its contours people from all walks of life who realized and tried to translate into action the obligation towards the poor to help them in securing the benefits of modern day legal provisions and provide them an easy access to justice.

Modern civilized States try to protect and promote democracy, rule of law and human rights. W. Ivor Jennings writes: "The fundamental principle
of democracy is that government shall be carried on for the benefit of the governed. The object of most constitutions is to set up machinery by which the wishes of the governed may determine the nature of the government. The principles of ‘rule of law’ and ‘equality before law’ are the fundamental pillars of a democratic society. In other words, democracy, rule of law and human rights are essential components of a civilized society. For the better protection and promotion of ‘equality before law’, ‘rule of law’ and ‘democracy’, right to legal aid should be made available to the weaker sections of the society.

The International Commission of Jurists includes the provisions of legal advice and representation in the courts to all those threatened as to their life, liberty, property or reputation, who are unable to pay for it.

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.”

In the opinion of Lord Denning, since the Post-Second World war, the greatest revolution in the law has been the evolution of the mechanizing

of the system for legal aid and it is a fundamental human right. It is a fact that in the last sixty years, the area and ambit of legal aid has been widened significantly in order to provide the poor people the benefits of modern welfare social legislations and other advantages. Taking into consideration the developments that took place in the last six decades the post-war era can very well be characterized as an era of legal services and period of growth of legal aid.

Legal aid in India has been immensely influenced by the contemporary legal developments in England and other European Countries. Although it is true that legal aid idea did exist in an embryonic form since the declaration of the Magna Carta, but in modern times it is well developed and reached its maturity. The concept of legal aid has been defined very clearly. Its objectives are universally acknowledged and appreciated, and a definite result oriented mechanism has been created for it. The modern welfare state including India has not lagged far behind in enacting and enforcing benevolent legal measures for ensuring justice to the most neglected sections of the community.

Concept of legal service, as a humanitarian aspect, is very old in the history of mankind. The idea of justice was born along with dawn of civilization and shall survive, as long as the poor exist. Jurisprudential history speaks, un-equivocally, that concept of equal justice came to be.

6. Ibid.
manifested in the earliest laws. The legal aid is an instrument to achieve equality before law. Every 'Welfare State' recognizes the right to legal aid. The Encyclopaedia Britannica defines legal aid as the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help.

The rule of law, which is necessary for an orderly society for that it is necessary to provide legal aid to the poor and weaker persons. The constitution of India provides remedies for the violation of the rights of the people. If the poor people fail to enforce their rights due to poverty, illiteracy they will lose faith in the administration of justice. They may use their muscle power or may create problems in the society for their rights which will go against the rule of law. Hence, free legal aid is essential for them not only to preserve the rule of law in the society, but also this will be very much helpful for them to settle their right through administration of justice. If a petition will be filed for providing free legal aid to poor persons those who are economically weak and unable to file petition which is a fundamental right guaranteed by the Constitution, the court may be in a position to do justice and may punish the persons those who have violated the constitutional provision. Hence there is need of Legal Aid to the weaker sections of the society including women.

Unfortunately our society is still a status-oriented caste-ridden society with marked inequalities among the different strata of society. It is now acknowledged on all hands that a comprehensive and dynamic programme

of legal aid is absolutely essential if access to Justice is to be made easily available to everyone, irrespective of his position, power or wealth⁹.

The law-through legislative or administrative responses to new social conditions and ideas, as well as through judicial re-interpretations of constitutions, statutes or precedents - increasingly not only articulates but sets the course for major social changes. Nevertheless, we are still apt to consider the law, in all its branches, as a separate function and discipline, as a way in which a great variety of social relations are formulated and systematized¹⁰.

It is now acknowledged on all hands that legal service programme constitutes one of the major imperatives of democracy wedded to the rule of law. Its necessity and importance have been recognised by countries all over the world and even in our own country. There is an increasing awareness that an effective legal service programme is essential if we want to bring about socio-economic transformation and build up a new socio-economic order¹¹. The object of legal aid is to provide legal justice to the weaker sections of the society. The slogans of democracy, rule of law and human rights have no meaning unless society provides legal justice and legal aid to the poor, illiterate and weaker sections of the society.

Even before the First World War the growing pressure of new industrial and technical developments, of new social and political philosophies, had led jurists of many countries, independently of each other,

¹¹. Justice P.N. Bhagwati, Law as Instrument of Change, Society for Community Organisation Trust, Madurai, 1985 at pp.73-74
to think about law in new terms: to see it primarily as an instrument of social evolution. Legal logic and techniques came to be seen as elements, but by no means the sole, or even the predominant factor, in the unending race between law and new social problems.12

Today even when they secured any favourable legislation, they could not get the benefits of such legislation because of various factors to their effective implementation. Further, the existing legal system, which means the courts, police, lawyers and even the bureaucracy, continues to be male dominated and thus the laws have functioned contrary to their declared objectives. The beneficiaries of many social welfare laws i.e., the women, are mostly ignorant about them due to their poor conditions and illiteracy and tend to accept the inherited lot.13

In order to ensure equality of justice, it is not only sufficient that law treats rich and poor equally, but it is also necessary that the poor must be in a position to get their rights enforced and should put up proper and adequate defence when they are sued for any liability. If this is not done, the law despite its equality will become discriminatory against the poor. Thus brings into existence the question of legal aid to poor. Legal aid means giving to persons of limited means gratis, or for nominal fees, legal advice and legal assistance in courts in civil and criminal matters. Its primary object is to make it impossible for any man, woman or child to be denied equal protection of the law simply because he or she is poor. Legal advice is

correlated with legal aid. But legal advice is quite independent of any legal proceeding in any court of law or tribunal. Its nature is not only remedial but has preventive potential also.\textsuperscript{14}

The general meaning of the term legal aid, therefore, is a social arrangement extending and providing special assistance or help to the poorer and weaker members to enable them enforce their legal rights, facing on an equal platform the powerful and the rich members, through the legal process.\textsuperscript{15}

1. DEVELOPMENT OF LEGAL AID THROUGH THE AGES

The Legal Aid has come through gradual process to reach its level at the present time and can be well appreciated by an introspection into the past by tracing the evolution of legal aid. For our convenience, the developments may be discussed under the following four broad categories i.e. the Ancient period, the Medieval period, the Moghul Era and the situation during the British rule.

I. Ancient period

During the ancient days taking in to consideration efforts of the Indian society to deliver justice, the development of legal aid which we know today can be found in the four Vedas. All the four Vedas insist on equality and respect for human dignity. Along with these vedas, the puranas also played vital roles in protecting the Dharma by portraying magnificently the moral supremacy and victory of good over evil, of justice over injustice and of Dharma over adharma. Valmiki in Ramayana said “In this universe truth...
alone is God. Dharma lies in truth. Truth is root of all Virtues. There is, nothing greater than truth"\textsuperscript{16}. The same was also the case in Mahabharat where in the ultimate end the truth and righteousness prevailed. Indeed, both these epics along with the Vedas demonstrate the deep commitment and faith of our sages towards justice\textsuperscript{17}.

Certain values of universal validity like Dharma \textit{(righteousness)}, Artha \textit{(wealth)}, Kama \textit{(desires)} and Moksha \textit{(salvation)} were expounded by ancient Indian philosophers and thinkers 5000 years ago with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspects of life. The quest for equilibrium, harmony, knowledge and truth inspired the Indian minds more than their counter-parts the Greeks and the Romans. The major goals of life were to be attained, controlled and regulated according to the dictate and direction of Dharma. It is this Law of Dharma - the Hindu's natural law was neither a cult or creed nor a code in the western sense but the right law of life and true ideal of living and social ordering. It is this law of dharma which is neither static nor rigid nor absolute but relative, dynamic and evolving-always changing according to the needs and development of society\textsuperscript{18}.

There are Four Vedas viz. Rig Veda, Yajur Veda, Shama Veda and Atharva Veda. For Indian's these Vedas are the important source of knowledge. Prior to Vedas there were no source of knowledge. During the

\textsuperscript{16} Dr. S.N. Dhyani, Law-Morality and justice, Indian Developments, Metropolitan Book Co. (P) Ltd., 1984 at p. 87.
\textsuperscript{17} Ibid.
Vedic period Dharma was important for the people and for the society. People believe that Dharma is in conformity with truth and Adharma is opposite to it. The life was simple and people were living with dignified status in the society. There was no exploitation. The caste system was not developed too much. Rig Veda the earliest of the four contained such element of Legal Aid or social Aid as we name it.

In Rig Veda there is a reference to what we call to-day-the civil liberties of *tana* (body), *Skridhi* (dwelling house), *Jibasi* (life). Long before Dicey’s concept of rule of law the Indian jurists had expounded the theory of rule of law and justice according to law19.

In fact ancient Indian jurists created many safeguards against the abuse of political authority by the king. In the first place the king was supposed to act and follow dharma. Second, the law (*dharma*) was to be interpreted by the sages and thus their authority was higher to that of king in spiritual matters. *Dharma* has been the king of kings. Third, King was to be intelligent and a man of integrity and self-control. Finally, a strong public opinion was a strong deterrent which the king was not supposed to flout e.g. the Rama did not dare to disregard the public opinion. Kautilya also disapproved the theory of absolutism of king and subordinated him to the law of duties20.

All good habits like speaking the truth, self-restraint, benevolence to neighbours, charity, kindness, etc. are considered virtues. All malpractices like adultery, seduction, sorcery, witchcraft, etc. are considered as evils. Even

19. Ibid. at p.86
gambling is denounced. Panini, the great Sanskrit grammarian of the 5th Century B.C. interprets dharma as an act of religious merit, custom and usage. Thus, dharma came to mean 'morally proper, ethical duty, religious virtue, ideal, absolute truth, universal law or principle, divine justice, conventional code of customs and traditions. Thus, dharma has been regulator of all human activities where social or individual, moral or metaphysical, rational or mystical, mundane or spiritual. It is dharma that great men like Dilip, Bharat, Rama, Yudhisthira, Ashoka, Harsh and Gandhiji sought inspiration for establishing justice and moral order. Its principles are eternal, immutable based on reason, truth and morality to sustain the moral order on which social structure was based on21.

In substance the basis of ancient Indian legal theory was Dharma Dharanat dharmamityahu Dharmodharayati Praja which means that power which brings individuals together and sustains them as a society and wherein, each has realised his oneness with others in society. Indeed such a law of dharma could be a model for a universal legal order neither tinged by bigotry nor coloured by political or racial prejudices. It is like Stammler's natural law with a changing content i.e. Sadabhab Sanatana. The ideal of ancient Indian legal theory was the establishment of socio-legal order free from traces of conflicts, exploitations and miseries22.

The treatises of Manu Kautilya and Yajnavalkya are mainly legal and political which amply describe the civil, legal, political, social and economic rights and duties of the kings, officials, groups and individuals thereby

22 Ibid. at p.30
recognising the freedom of individuals, right to private property and personal wealth. It is an unparallel example in history that makers of dharmashastrakara legalised the right to revolt against an arbitrary and unjust king or unrighteous government. Manusmriti of the Code of Manu is considered to be the authoritative work of law of the Hindus and the 'Arthashastra' by Kautilya insist on protection and preservation of value system and justice for the better functioning of the society. Thus, the dominant feature of the ancient period was the attainment of Dharma i.e. the maintenance of justice.

II. Medieval Period

This period was under the influence of Vedic period. Development of Buddhist period continued to play an important role. During the king Ashok's era the society experienced a secular look. This period is treated to be a golden period in the ancient Indian History of Jurisprudence.

The natural law so revealed in Vedas, Puranas, Mahabharata, Bhagwad Gita, etc. was extolled by the mystics, saints, poets and philosophers during the medieval and British period. Natural law acquired religious character to enable men to fight injustice and unrighteousness with faith, courage and devotion. The inalienable, immutable and everlasting natural law (Sanatan dharma) found its exponent in the great saints like Sankara, Ramanuja, Madhava, Tulsidas, Kabir, Nanak, Swami Ramkrishna, Swami Dayananda Saraswati, Raja Ram Mohan Roy, and others who

reinterpreted the Vedic dharma to re-establish the supremacy of Indian Vedic values over alien ideals and philosophy\textsuperscript{24}. The Vedic percepts clearly declare that a just law protects and preserves the order in the society thereby establishing justice. Promotion of justice was the sole substance which was based on the consideration of righteousness.

Justice Rama Jois has rightly said that 'Dharma' as an ancient concept of social guidance and governance, had no parallel in the world. It contained the religious element, the ethical essence, social force and an ingredient of political governance, it was more than simple social and economic justice, as we mean by them today\textsuperscript{25}.

III. Moghul Era

Towards the end of eleventh century and the beginning of 12 century there began a down fall of Hindu period. For about 600 years between the 11th century and the early 18th century, the Muslim and Moghal rule prevailed in India. Initially, the Muslim rule was in parts of the country and gradually the Moghul empire spread over the bulk of it.

During the Moghul rule, the contemporary society witnessed a service of cultural, social and political stresses and strains on the style and way of life of Hindus. The Fundamentalist Muslim rulers imposed upon the Hindus their own laws, Customs and religious practices. From the literature available, it was clear that the Muslim rule in India was not founded on the basic principles of human dignity, equality and justice and there was a major shift

\textsuperscript{24} Dr.S.N.Dhyani, Fundamentals of Jurisprudence, The Indian Approach, Central Law Agency, 1992 at p.84
\textsuperscript{25} Justice Rama Jois, Defining True Dharma, Indian Express, Chandigarh, September 12,1993 at p.6
in the socio-political administration. The administration of justice was carried on in the name of rulers. However, during the latter part of their rule a separate department of Justice (Muhukma-e-Adalat) was created to see the proper administration of justice.

Due to development in the system of courts, Administration of justice became complex due to formal procedures and Rules of evidence. The necessity of lawyers was felt and it became necessary to provide fees to lawyers. It was found that all persons in need were unable to afford the fees. The legal experts, appearing before the courts, were called Vakils. Two Muslim Indian Codes, *Figh-e-Firoz Shahi* and *Fatwa-e-Alamgiri*, stated the duties of a *vakil*. A specialised knowledge of law was necessary for a *Qazi* and one practising law. Therefore, the lawyers played an important role in the administration of justice during the medieval period of Indian history though there was no institution of lawyers.

IV. During the British Rule

The Britishers who ruled India after the Moghul rule almost followed the prevailing laws of administration governing the Hindus and Muslims. But subsequently when they consolidated their positions expanded the complicated process of administration of justice and the Indians could feel the far reaching impact of their legal system. Slowly the democratic institutions developed with the development of a responsible government and modernisation of the State instrumentalities including the justice delivery system.

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The British rule of almost two hundred years, particularly the English model of adjudicatory process, had the effect of formalising the procedure. Technicalities were introduced into the justice system. Litigation soon turned out to be costly on account of the lawyers and court fees. It also became time-consuming. The net effect was that the poor man found it difficult to enter the portals of the courts and the rich man was able to use the legal process as an instrument of harassment of his poor adversary. British legal practices grappled with the traditions of Indian society.

British rulers adopted two devices to remove the defects in Indian Law. Where there were no laws—they adopted the device of justice, equity and good conscience in order to import the principles of Western justice and natural law in Indian soil. Secondly, through the device of codification there was a general imposition of English law and jurisprudence throughout the country. Thus, in matters for which neither the authority of Hindu or Mohammedan text books or advisers, nor regulations and other enactments of government supplied sufficient guidance the judges of the civil courts were usually directed to act in accordance with 'justice, equity and good conscience'.

While Britishers no doubt introduced the concept of rule of law, political democracy with personal liberty and equality and independence of the judiciary but the spirit of British rule in India was in the nature of Austinian legal and political culture wherein the rulers were indifferent to the interests of the ruled and laws were simply in the form of command, coercion and

sanction devoid of the principles of morality, justice and ethical content\textsuperscript{30}.

The East India Company carried with it the concept of common law. The colonies which they established in and around modern Bombay, Calcutta and Madras and their gradual acquisition of other parts of the country came to be subjected to an admixture of common law and the local system of adjudication. They did not immediately dislocate the system of the Kazi nor did they interfere with the panchas. But the establishment of the adjudicatory court, in course of time, brought about formalisation of the justice system\textsuperscript{31}.

There are three predominant trends of Indian way of life. First, the Indian social tendency from times immemorial has been to sub-ordinate the individual to the claims of society. Second, the Indian religious and spiritual thought and traditions have always been individualistic—the individual’s claim to inquiry, to discover and exercise his spiritual freedom and greatness and moral splendour—the first great charter of the ideal of humanity promulgated by Vedic seers. Third, it is in India that religion and morality have always been the sheet anchor of polity, economy and administration. At no time, in the history of India the ruler could be a dictator or despot unmindful of traditions, dharmashastras and majority public opinion (lokmat). In the ultimate reality it is the Indian tradition of dharma which alone is the path breaker to discover for individual his righteous goals and rebel against such adharmic law (unjust law) and to re-assert the natural law of his Maker. At no time of history of man is discovery and


\textsuperscript{31} Sujan Singh, Legal Aid Human Right to Equality, Deep & Deep Publication, 1998 at p. 84
reinstatement of ancient Indian natural law more urgent than it is to-day\(^\text{32}\).

In England in 1944 a Committee under the Chairmanship of Lord Rushcliffe was appointed to enquire what facilities at present exist in England and Wales for giving Legal Advice and assistance to the poor persons and to make such recommendations as appear to be desirable for the purpose of securing that poor persons in need of legal advice may have such facilities at their disposal and for modifying and improving, so far as it seems expedient the existing system whereby legal aid is available to poor persons in the conduct of litigation in which they are concerned whether in civil or criminal courts. The Committee submitted its report in 1945. Its main recommendations were\(^\text{33}\) :-

1. Legal aid should be available in all the Courts and in such manner as will enable persons in need to have access to the professional help they require;

2. This provision should not be limited to those who are normally classed as poor but include a wider income group;

3. Those who cannot afford to pay anything for legal aid should receive this free of cost. There should be a scale of contributions for those who can pay something towards costs;

4. The cost of the scheme should be borne by the State, but the scheme should not be administered either as a department of State or by local authorities;


(5) The legal profession should be responsible for the administration of the scheme, except that part of it dealt with under the Poor Prisoners' Defence Act;

(6) Barristers and solicitors should receive adequate remuneration for their services.

(7) The term 'poor person' should be discarded and the term 'assisted person' adopted.

V. Development of Legal Aid in India

After the second World war, we could notice a significant change in the legal scenario and as mentioned earlier the mechanism of legal aid developed during this period mainly due to the high cost of litigation and expensive judicial process. Hence, the need for access to justice became the main focus to the ideal of rule of law. In the process, the need for providing legal aid was also realized. But poverty, ignorance and illiteracy of the masses stood as a barrier in their way and access to justice distanced itself from them. Soon it was realized that such benefit is available only to the rich and influential sections of the society. Thus, the poor and the downtrodden who comprise the vast segment of the population continue to be ignored, oppressed and exploited. However, this situation did not last long and efforts from all sections started favouring these group of people and they started to realise accessual justice. The year 1976 marked the beginning of a new era for these people as Article 39-A providing for equal justice and free legal aid to the poor was added to the constitution by virtue...
of an amendment\textsuperscript{34}. Subsequently another milestone was achieved when the parliament enacted The Legal Services Authorities Act, 1987\textsuperscript{35} to free and competent legal services to the weaker sections by statutory legal services authorities. The Act also provides for organising Lok Adalats to secure that the operation of the legal system promotes justice.

i) Position Before 1976

In India direct efforts were made for providing legal aid to the poor in the year 1945 with the establishment of Legal Aid Society. By the time the society was formed, efforts were made in England for considering extension of legal advice and assistance to the poor person. For the purpose a committee under Chairmanship of Lord Rushcliffe was formed which submitted its report in the year 1945 with certain recommendations.

After the submission of the Report of Rushcliffe, the Bombay Legal Aid Society, in 1945 invited the attention of the Government of India to the said Report and suggested for the appointment of a similar Committee in this country to examine the question of Legal aid to the poor and needy. The Government of India wrote to the Provincial Governments making enquiry whether they would be able to provide greater facilities for legal aid to poor persons in both civil and criminal cases. The provincial Governments, on account of financial stringency were unwilling to provide legal aid beyond what was statutory granted\textsuperscript{36}.

Bombay Committee

In the mean time India got its independence in the year 1947 and

\textsuperscript{34} The Constitution 42\textsuperscript{nd} Amendment Act, 1976

\textsuperscript{35} Act No. 39 Of 1987

\textsuperscript{36} Dr. B.N.Man Tripathy, An Introduction to Jurisprudence (Legal Theory) Allahabad Law Agency, 1994 at p.361.
thus ushered an era of aspirations. Among few steps taken for the progress of the society, the movement for providing legal assistance to the poor could not lag behind. Hectic efforts were started both at the National and State level to make provisions for the legal aid to the poor.

The Government of Bombay appointed a Committee in 1949 under the Chairmanship of a High Court Judge, Shri N.H. Bhagwati to consider the question of the grant of legal aid in civil and criminal proceedings to poor persons, persons of limited means and persons belonging to backward classes and to make recommendations for making justice more easily accessible to these persons. The Committee made a very exhaustive examination of the question of legal aid and submitted its report in 1949. The Report presents a very valuable study on the subject of legal aid and it is a very valuable document. The Committee emphasised that legal aid is a service which the modern welfare State owes to its citizens.

It stated that the problem of legal aid under modern conception of the obligations of the state is to be treated on a par with other social insurance schemes like old age pensions, free educations and free medical relief and therefore the State must take upon itself the responsibility of providing legal aid to poor persons and persons of limited means.

Bengal Committee

A committee to report on the matter of legal aid was appointed in West Bengal under the Chairmanship of Sir Arthur Trevor Harries, former Chief Justice of Calcutta High Court Judge in 1950. The Report of this

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37. Report of the Committee on Legal Aid and Legal Advice, State of Bombay, 1949 p. 8, para 19
Committee was briefer than that of the Bombay committee. With some differences the programme of legal aid envisaged in this Report was essentially the same as was recommended by the Bombay Committee.\[38\]

It seemed that the reports of Bombay and Bengal Committees could not influence the decisions of the policy makers. Again in the year 1956 the Government of India asked the State Governments to make provisions for token legal aid to the poor by taking into considerations the scope of legal assistance to the poor. This request of the Government of India could not find any positive response from the State Government.

The subject was again discussed at the All India Law Minister's Conference held in the year 1957 and the Conference unanimously agreed that each State would formulate a scheme for legal aid to the poor and forward it to the Ministry of Law. But this also failed to materialize and nothing was done in concrete shape. But the year 1958 marked some positive progress in this field when the first Law Commission of India under the Chairmanship of Mr. M.C. Setalvad tracing the historical development of the concept and considering the question of equal access to justice addressed itself seriously the matters involving legal aid. After careful study, the Commission in its report developed a full chapter on Legal Aid and stressed that 'rendering of legal aid to the poor litigants is not a minor problem of procedural law but a question of fundamental character.... the governments of the States have not been enthusiastic about proposals

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38. Recommendation of Trevor Harries Committee on Legal Aid in West Bengal 1950 and also Appendix II to Chapter 27, Law Commission of India, Fourteenth Report, p.611
calculated to enlarge the scope of legal aid. Nor has the legal profession with some creditable exceptions regarded rendering of legal aid to the poor litigants as its responsibility."

As such, the Law Commission, envisaged the need for legal aid and went onto opine that 'equality is the basis of all modern systems of jurisprudence and administration of justice'. Further, it opined that unless some provision is made for assisting the poor man for payment of Court fees and lawyer's fees and other incidental expenses of litigation he is denied equality in the opportunity to seek justice.

Thus, the report of the Bombay Committee, 1949, the report of Bengal Committee 1950 alongwith the recommendations of first Law Commission of 1958 prepared the necessary background and set the idea of legal aid in motion for introducing the scheme of Legal Aid in India. During 1960, the then Union Government had prepared an outline for Legal Aid Organisations and states for their comments. But the various State Governments in the conference held during 1962 had expressed their inability to allocate funds for the purpose of Legal Aid Scheme.

In 1962, the Third All India Lawyers Conference had further considered the question of Legal Aid. It was suggested by the various participants that Legal Aid was an obligation of both - State as well as the Central Government and it was their duty to provide the funds for this noble purpose.

During 1970, National Conference was convened in New Delhi on

40. Ibid, at p. 126
It was emphasised in that conference that it was constitutional obligation of the state to make provision for Legal Aid to the weaker sections having no means, to help them to get legal assistance.

Subsequently, National Legal Aid Association was established in India in the year 1970 to promote on voluntary basis legal aid with the assistance of Central and State Governments to provide legal services to the indigent. In the same year the 'Free Legal Aid Bill'\(^\text{41}\) was introduced in the Lok Sabha to highlight the need of legal aid to the poor. The bill provided that the Central Government and the State Government shall, by notification in their respective official gazettes, progressively enforce the provisions of this Act.

**Gujarat Committee**

Gujarat Government had for the first time in 1970 appointed a 'Legal Aid Committee' under the chairmanship of Mr. Justice P.N. Bhagwati, the then Chief Justice of Gujarat High Court “to consider the question of the grant of Legal Aid in civil, criminal, revenue, labour and other proceeding to the backward classes so as to render legal advice more easily available and to make justice more easily accessible to such persons including recommendations on the question of encouragements and financial assistance to institutions engaged in the work of such legal aid”.

Mr. Justice P.N. Bhagwati in his report i.e. State of Gujarat Report of the Legal Aid Committee, 1971, had recommended that Legal Aid should be available in all Courts so that indigent persons could get justice. In the words of Bhagwati Committee:

> “Today, unfortunately, our administration of justice has become

\(^\text{41}\) This Bill came up as a Private Members' Bill which was introduced by Mr. Madhu Limaye.
notorious for its delay and expense: the rich and the poor do not stand on an equal footing before the law: the traditional method of providing justice has operated to close the doors of the Courts to poor and has caused gross denial of justice in all parts of the country to millions of people. To them justice has no meaning. It is Word which hardly reached their hearth and homes. They have almost become dead and insensitive to the wrong and injustice. It is to such millions of people, poor and down-trodden ignorant and illiterate, destitute and needy that our system of administration of justice constantly and continually denies justice...

Central Expert Committee

Government of India in the year 1972 had appointed an "Expert Committee" on Legal Aid under the Chairmanship of Hon’ble Justice V.R. Krishna Iyer, the then member of Law Commission of India. The Committee had submitted its report in May, 1973, which was known as 'Processual Justice to the People'. The Committee had suggested:

(a) to bring awareness among the poor, socially, and educationally backward classes regarding their rights;
(b) to give legal aid to labourers, women, children, industrial workers, poor prisoners, minors and Harijans;
(c) to emphasise the need for "Panchayati Justice" and legal aid to the rural poor.

The Committee which suggested far reaching changes in the law reforms and administrative justice, set forth the parameters of legal aid to the poor

42. S. N. Dhyani, Law-Morality and Justice, Indian Developments, Metropolitan Book Co. (P) Ltd., 1984 at p. 127
as a sure means to social justice indicating the mechanism for speedy and effective and inexpensive justice to all those who need such assistance.

This Committee had also recommended certain tests for determining whether a person was eligible for legal aid or not. These tests were:

(i) **Means test**: Before providing legal aid, the means and sources of income of applicant should be considered.

(ii) **Prima Facie Case Test**: This test does not apply in criminal cases. In civil cases, when means test is concluded the applicant is required to show that he has a prima facie case, either to prosecute or to defend an action.

(iii) **Reasonableness Test**: After the means test and prima facie case test being satisfied, duty falls on the Legal Aid Committee to finally decide whether it is reasonable to provide legal aid to the applicant or not.

Further, the Committee suggested that the Parliament by law should establish a statutory corporation called National Legal Services Authority independent of the government since individuals may have to be assisted against the Government. Further it also suggested that a comprehensive Legal Aid and Advice Act should be passed by Parliament with National Legal Services Authority and State Legal Boards to give effect to the said programme. But the report of the expert committee also failed to produce the desire results although to some extents stimulated action for legal aid not only at the State level but also at the Central level for extending the benefit to the Poor and needy persons.
Madhya Pradesh Committee

Madhya Pradesh Government convened a High Power Committee in 1973 at Jabalpur to prepare a scheme for legal aid. The Committee resolved that legal aid work should be done on statutory basis. It constituted a preparatory Committee in the stewardship of R.K. Nayak to prepare a feasible and comprehensive statutory legal aid scheme for the state. The Report of the Committee is very informative. The scheme for legal aid envisaged is substantially the same as that of earlier Reports. Thereafter Madhya Pradesh Government has passed an Act, 'The Madhya Pradesh Legal Aid and Advice Act, 1976 thereby becoming the first state in the country to provide for a statutory base of legal aid.

It has been realised that legal aid and advice must be made available to the weaker sections of the country for proper and effective implementation of socio-economic programmes of the nation.

The Central Government with a view to establishing an adequate and vigorous legal service programme in all the states in the country on an uniform basis and also to make legal aid services available to weaker sections of the country appointed a Committee consisting of Justice P.N. Bhagwati and Mr. Justice V.R.Krishna Iyer of the Supreme Court of India with the former as its Chairman.

ii) Post 1976 Scenario

The year 1976 set a milestone in the history of legal aid movement in India when provision for legal aid to the poor was incorporated by the Constitution (42nd Amendment) Act, 1976 in the form of Article 39-A which
was made a part of the Part-IV of the Constitution dealing with Directive Principles of State Policy. Thus, Article 39-A makes it obligatory on the parts of the State to 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 that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities’.

Thus, this provision incorporated in the Constitution obligates the States to provide free legal aid to the needy and indigent people so that justice is not denied to them merely because of poverty.

Through the same Amendment entry 11-A relating to ‘Administration to justice’ was also included in the concurrent list thereby enabling both the Central Government and the State Governments to legislate on matters relating to legal aid.

After the inclusion of these provision hectic activities started at the Central and State level in implementing the provisions of legal aid. Subsequently, an organisation named as ‘The Indian Council of legal Aid and Advice’ with Justice P. N. Bhagawati as its patron was formed to help the poor seeking justice. This was also followed by certain noteworthy decisions by the judiciary, particularly by the Apex Court which translated the philosophy of legal aid for the poor by making social justice available to them.

The same year also witnessed the formation of another Central Committee constituted by the Central Government with justice P.N.
Bhagawati as the Chairman, Justice V.R. Krishna Iyer as the Member and Sri N.L. Vaidyanathan as the Secretary. The Committee which submitted its report in August 1977 under the title ‘Report on National Juridicare: Equal justice- Social justice’ brought forth certain practical recommendations in the area of legal aid.

Again in the year 1980, the Central Government constituted a committee under the Chairmanship of justice P.N. Bhagawati known as ‘Committee for Implementation of Legal Aid Schemes’ and the main objective of the Committee was the formulation and implementation of comprehensive legal aid scheme, in various states of the country, on a uniform basis. So far the Committee has done a commendable job and to a great extent has been able to achieve the objective with the help of State Legal Aid Advice Boards.

Another important achievement during the Post 1976 period is the enactment of a most comprehensive legislation on Legal Aid. It was in the year 1987 the Parliament enacted the much awaited legislation namely The Legal Services Authorities Act, 1987. The objective of the Act is ‘to constitute legal services authorities, to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunities’. Thus, the legislation has twin objectives that free and competent legal services are provided to the weaker sections of the societies and to ensure that opportunity of securing justice is not denied to
any body. The Act also envisages to organise Lok Adalats for operation of legal system in order to promote justice.

VI. Other Developments

Besides all these developments we have got certain other provisions relating to legal aid in other legislations also. Prior to 1976 we have Order XXXIII of Civil Procedure Code 1908 as amended in the year 1976 which provides for legal suits by indigent persons. Similarly Sections 304 of Criminal Procedure Code, 1973 embody legal aid concept where the accused is entitled to legal aid at state cost.

i) Civil Procedure Code

In order to extend the benefit of legal aid the Code of Civil Procedure also has a provision for those who are poor and incapable of meeting the expenses of court fees etc. Ordinarily in Civil Proceeding the court procedure is a costly affair. For the administration of civil justice which includes the principle of equal standing, the code intends to reach to the poorest of the society by extending such benefits. Thus, in order to make the civil justice possible for the deprived and destitute persons, the code provides for the suits to be filed by indigent persons. This provision has been added by amending the code in the year 1976. The relevant provisions of the code are as follows:-

Rule 1 provides subject to the following provisions, any suit may be instituted by an indigent person.

Explanation 1. A person is an indigent person -

(a) 'if he is not possessed of sufficient means other than property exempt from attachment in execution of a decree and the
subject-matter of the suit to enable him to pay the fee prescribed by law for the plaint in such suit' 
(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit.

Explanation-II: - Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III: - Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

Order 33, Rule 1-A of C.P.C deals with inquiry into the means of an indigent person.

Rule 9-A: States court to assign a pleader to an unrepresented indigent person. (1) Where a person, who is premitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(2) The High Court may, with the previous approval of the State Government, make rules providing for -

(a) the mode of selecting pleaders to be assigned under sub-rule (1)

(b) the facilities to be provided to such pleaders by the Court;

43. Rule 9-A inserted by Act No. 104 of 1976 Section 81 (w.e.f. 1.2.1977).
Rule 10 deals with costs where indigent person succeeds. Rules-11 defines procedure where indigent person fails. 11-A defines procedure where indigent persons suit abates. Rule 12 deals with State Government may apply for payment of court-fees. R-13 deals with State Government to be deemed a party. Rule 14 defines recovery of amount of court-fees. Rule 15 defines refusal to allow applicant to sue as indigent person to bar subsequent application of like nature. Rule 15-A deals with grant of time for payment of court-fee. Rule 16 deals with costs and 17 defines defence by an indigent person pleader but the judicial interpretation did not serve the required purpose.

ii) Appeal by Indigent Person

Order XLIV of the Civil Procedure Code provides for the appeal to be made by indigent person and the provisions are -

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application, accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suit by an indigent persons, in so far as those provisions are applicable.

2. Grant of time for payment of court fee: Where an application is rejected under Rule-1, the Court may, while rejecting the application, allow the applicant to pay the requisite court-fee, within such time as may be fixed by the Court or extended by it from time to time; and such payment, the
memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

3. Inquiry as to whether applicant is an indigent person:

(1) Where an applicant, referred to in Rule-1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of the Court.

(2) Where the applicant, referred to in Rule 1, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case, that the inquiry should be held by the Court from whose decision the appeal is preferred.

iii) Criminal Procedure Code

Under Section 340 of the Code of Criminal Procedure 1878 was provided that the accused had a right to be defended by a pleader but the judicial interpretation did not serve the required purpose. Resultantly, this provision continued to carry the meaning that the accused was meant to
engage his own counsel until the Code was re-drafted in 1973\footnote{w.e.f.1974}, providing therein, under Section 304, that the accused facing a trial in the \textit{Court of Sessions} and not represented by a pleader for want of sufficient means should be assigned a pleader at the cost of the State.

The Supreme Court has held that the obligation to provide legal aid to the indigent accused does not arise only when the trial commences but arises right since the accused is produced before the nearest Magistrate as required by section 57 of the Code and Article 22(I) of the Constitution. However, in \textit{Ranjan Dwivedi Vs. Union of India}\footnote{AIR 1983 SC 624}, it was held that accused cannot obtain a writ of mandamus for enforcing this obligation. He must apply for it u/s.304.

\section*{VII. Development of Legal Aid in Orissa}

With a view to facilitating the access of economically and socially underprivileged sections to legal remedies, the Government of Orissa have formulated a scheme of providing legal aid to them. The scheme is contained in a set of rules called the \textit{Orissa Legal Aid to the Poor Rules, 1975}\footnote{The Orissa Legal Aid to the Poor Rules, 1975 published vide Orissa Gazette Ext. No.2019/23.12.1975 (w.e.f. 23.12.1975)}. The Orissa High Court have been consulted and they have concurred in the issue of these rules. Rule-10 which deals with the legal aid in cases of appeal and revision reads as:-No legal aid shall be given for appeals or revisions against orders of lower Courts. Legal aid may be given where the party sanctioned legal aid succeeds in the lower Court but is forced to go to a higher Court in pursuance of the appeal or revision filed by the opposite party.

\footnotetext[44]{w.e.f.1974} \footnotetext[45]{AIR 1983 SC 624} \footnotetext[46]{The Orissa Legal Aid to the Poor Rules, 1975 published vide Orissa Gazette Ext. No.2019/23.12.1975 (w.e.f. 23.12.1975)}
The Orissa State Legal Aid and Advice Scheme, 1981 as recommended by the State Level Committee constituted in Law Department Resolution No.4615-L dated the 9th March, 1981 and approved by the Government, published vide Law Deptt. Notification No.8012-L/5.5.1981. This scheme consists of 33 Clauses. Clause 10 (1) deals with the Cell for Women - which states that every Committee shall have a Cell for Women consisting of such number of members of the Committee and such other persons who are engaged in Social Work within the area of the Committee, as the Committee may appoint. The Committee while selecting non-members on the Cell shall have due regard to the fact whether such persons are social service minded and have experience of working for the welfare of women and are otherwise capable of looking after the interests of women. The Committee shall, as far as possible, try to give preference to women in selecting persons on this Cell.

As per clause-10(2): the Cell shall act as liasion between the Committee and the women residing within the area of the Committee and try to ascertain the problems and difficulties which the women may be facing and bring them to the notice of the Committee and take all such steps and make all such recommendations as may be necessary for the purpose of resolving the problems and grievances of women by resort to the legal process. The Cell may also undertake socio-legal surveys and researches into the conditions of women and make recommendations for legal reform to the Board through the Committee.

As per clause 10(3) the Cell shall also look after the interest of women residing within the area of the Committee and protect and further their interests and ensure that the benefit of the legal aid programme reaches them.
The Orissa Legal Service Authorities Rules, 1996 was made by the State Government in consultation with the Chief Justice of Orissa High Court in exercise of the powers conferred by Section 28 of the Legal Services Authorities Act, 1987 published vide Orissa Gazette Ext. No.394 dt. 15.4.96. The Orissa Legal Service Authorities Rules contains 17 numbers of Rules and came into force with effect from 15.4.96.

Before the Legal Services Authorities Act 1987 came into force Committee for Implementing Legal Aid Schemes (CILAS) which is a national body stands at the apex of the legal aid hierarchy. The states, however, independent to make and mould their legal aid schemes or statutes, accept the guidance and grants given by CILAS. Therefore, when we present the organisational structure of legal aid in India, we find CILAS at the top.

The inter-connection between the various ladders of legal aid hierarchy and CILAS is through State Legal Aid Board. However, the State Act and/or schemes remain to be the primary source and strength of the scheme but such designs and directions are adopted and adjusted as per the guidelines received from the Committee for Implementation of Legal Aid Schemes.

After constitution of the Legal Services Authorities at the State and District levels the provisions of the Orissa State Legal Aid and Advice Scheme, 1981, published in the notifications of the Government of Orissa in the Law Department Nos. 8010, State-L, dated the 5th May 1981, which were made for the same purpose, have become redundant and the Orissa State Legal Aid and Advice Board constituted under the said Programme and the Committees constituted by the Board under the said Scheme have become defunct.
The Legal Service Authorities Act 1987 was amended by the Legal services Authorities (Amendment) Act, 1994. Now the said Act, as amended by the Amendment Act, 1994, has come into force from November 9, 1995. Its Chapter III i.e. State Legal Services Authority is being brought into force in phases. The provisions of Chapter III came into force in the State of Orissa w.e.f. 15.05.1996 leading to constitution of Orissa State Legal Services Authority.

The Orissa State Legal Services Authority Regulation 1996 was made by the Orissa State Legal Service Authority in exercise of the powers conferred by section 29-A of the Legal Services Authorities Act, 198747.

2. INTERNATIONAL DEVELOPMENT

The developed and powerful countries of the world like U.S.A., U.K., Canada and Australia have recognized the right to legal aid. They have adopted the schemes of legal aid. The Charter of the United Nations makes provisions for the better protection and promotion of human rights in the world. The dreams of the makers of the Charter of United Nations changed into reality when the General Assembly adopted the ‘Universal Declaration of Human Rights on December 10, 1948. The Declaration internationalized the movement of human right to legal aid. Article 8 of the Universal Declaration of Human Rights provides:-

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

47. Published in the Orissa Gazette, Extraordinary dated the 30th December 1996 (No.1406) and came into force with effect from the 30th December 1996.
The Third United Nations Conference on the Prevention of Crime and Treatment of Offenders was held in 1965 at Stockholm, which realized the need for legal aid making use of the following recorded words:

"The availability of legal aid for accused and convicted persons was discussed. There was unanimity on the need to provide legal assistance to arrested and accused persons and to those convicted of crime who may wish to appeal. This is justified not only in terms of human rights and society decency but also because the failure to provide adequate legal aid may have well leave the convicted persons with a sense of injustice ... the lack of an adequate legal aid system thus tends to increase to recidivism".

The International Conventions and Declarations have recognized the right to legal aid as a human right and fundamental freedom of the people of the United Nations. The International Law provides that the legal aid should be accepted as an essential part of justice of every nation. Every poor accused must be provided the benefit of legal aid and legal services. The right to life, liberty, equality and dignity are basic human rights of people. It should be protected by the system of administration of justice and by providing legal aid, legal services and legal justice to the people.

The Universal Declaration of Human Rights recognises human rights as the foundation of peace, justice and democracy. Human rights are inalienable entitlements; they constitute the ground-rules for human development. The human rights framework reflects the crucial
interdependence of economic, social and cultural rights, on the one hand, and civil and political rights, on the other\textsuperscript{48}.

I. Universal Declaration of Human Rights

The influence of the Universal Declaration of Human Rights (UDHR) has been substantial. Its principles have been incorporated into the constitutions of most of nations. Although a declaration is not a legally binding document, the UDHR has achieved the status of Customary International Law because people regard it 'as a common standard of achievement for all people and all nations'.

In the Universal Declaration, 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood' \textsuperscript{49} and every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status\textsuperscript{50}.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination\textsuperscript{51} and everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law\textsuperscript{52}. Further everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.

\textsuperscript{48} Manoj Kumar Sinha, Human Rights & Good Governance, IJIL,Vol.46,No.4,p.548.
\textsuperscript{49} Universal Declaration of Human Rights, 1948, Article-1
\textsuperscript{50} Ibid. Article -2
\textsuperscript{51} Ibid. Article - 7
\textsuperscript{52} Ibid. Article -8
in the determination of his rights and obligations and of any criminal charge against him.53.

II. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly by its resolution on 16 December 1966. The first Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the same resolution, provided international machinery for dealing with communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.54.

The International Covenant on Economic, Social and Cultural Rights recognise the rights to work; to the enjoyment of just and favourable conditions of work; to the widest possible protection and assistance for the family, especially mothers, children and young persons.57.

III. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights recognizes to protect the right to life and lays down that no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and calls for the prohibition of arbitrary or unlawful interference with an

53. Ibid. Article-10
54. Resolution 2200 A (XXI) of 16 December 1966
56. Ibid. Article - 7
57. Ibid. Article 10
58. International Covenant on Civil and Political Rights, 1966 Article - 6
59. Ibid. Article-7
individual's privacy, family, home or correspondence, and of unlawful attacks on his honour and reputation\textsuperscript{60}.

Similarly, Article 14(3)(d) of the International Covenant on Civil and Political Rights states:

"In the determination of any criminal charge against any person, everyone shall be entitled to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

The first Optional Protocol to the International Covenant on Civil and Political Rights enables the Human Rights Committee, set up under that Covenant, to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted by the General Assembly on 15 December 1989\textsuperscript{61}. Asper Article 1 of this Optional Protocol, no one within the jurisdiction of a State party to the Protocol may be executed.

The Universal Declaration came to be recognised as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick to measure the degree of respect and compliance with.

\textsuperscript{60} Ibid. Article - 17
\textsuperscript{61} Resolution No.44/128 of 15th December 1989.
international human rights standards everywhere on earth.

IV. Convention on Elimination of All Forms of Discrimination Against Women

The General Assembly on November 7, 1967 adopted a Declaration on the Elimination of Discrimination against Women, and in order to implement the principle set forth in the declaration, a Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the General Assembly on December 18, 1979. The Convention came into force in 1981. As on September 15, 2001, the Convention had 168 States Parties.

States Parties to the Convention condemned discrimination against women in all its forms and agreed to pursue by all appropriate means to eliminate discrimination against women and to this end they undertook:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein;

(b) To adopt appropriate legislative and other measures prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men;

(d) To refrain from engaging in any act or practice of discrimination against women;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
(f) To repeal all national penal provisions which contribute
discrimination against women.

V. International Legal Aid Association

In 1958 the International Bar Association sponsored the organisation of
the International Legal Aid Association. The main objective of establishing the
International Legal Aid Association has been to guide and supervise legal aid
work throughout the world wherever such help is needed to improve, to expand
legal aid where it already existed, to encourage its introduction where it does
not exist and to co-operate with all organisations interested in the administration
of justice. The purpose of this Association is to (1) compile and maintain a directory
of legal aid agencies, (2) collect and distribute information concerning both the
services provided by such organisations and laws and other provisions regulating
legal aid in the various nations, (3) develop facilities for the referral of cases on
a basis of reciprocal service among the cooperating agencies, and (4) encourage
the establishment of legal aid services in all countries where they may be needed
and to cooperate with bar associations, the judiciary, social welfare agencies,
and other international organisations interested in extending and improving legal
aid and defender services. The need for such an International Organisation was
recognised by the League of Nations in 1924 and later by the International Red
Cross and other International Agency concerned with social welfare especially
those dealing with migration.

VI. Legal Aid in Some other Countries

Legal Aid in India has been immensely influenced by the
contemporary legal developments in England and other European countries.
Although it is true that legal aid idea did exist in an embryonic form since the declaration of the Magna Carta, but in modern times it is well developed and reached its maturity. In order to understand and appreciate the Indian legal aid system, it is desirable to make a brief survey of legal aid schemes in foreign countries.

Roman Law

Roman Law, while a formidable intellectual trump, displayed in practice a rather callous disregard of some principles of equal justice that today seem axiomatic. In post classical times, endeavours were made to solve the legal problems of the poor on a practical level. There was a practice of the court assigning an advocate to women, minors and weak persons; and to those deprived of justice because of the fear inspired by their adversary.

England

Magna Carta (1215) is the first document which grants certain basic freedoms and protection to individuals. Though it was granted at the instance of barsons, all the classes of the society were behind it and though it was declaration of the rights principally for the barrons which in many ways was in derogation of the rights of the people, some of the grievances of all sections of the society were tried to be removed.

In the English system, the Legal Aid was created through series of statutes by the State. They are:

1. The Legal Aid and Advice Act, 1949.
2. The Legal Aid Act, 1964.

The Legal Advice and Assistance Act, 1972.

The Legal Aid Act, 1974.

The Legal Aid Act, 1979 (as amended by the administration of Justice Act, 1985)

The Legal Aid Act, 1988.

The following kinds of Legal Aid provided in the English Legal System could be highlighted here, as under:

1. The Legal advice and Assistance (also known as the green Form Scheme). This covers advice and help with any legal problems and in some cases, assistance by way of representation.

2. Civil Legal Aid. This covers representation in Court proceedings including assistance in the subjects preliminary or incidental to proceedings.

3. Criminal Legal Aid for criminal offence.

4. In addition, duty Solicitors are available at most Magistrate's Courts and Police Stations and offer free legal advice.

5. A Court may grant non mean tested representation for some contempt proceedings.

Legal Aid in USA

The organised attempts to provide legal assistance to the poor in USA are reported to date back to 1876. By the end of 1913, only twenty-
eight such local organisations provided legal aid in the United States. At the 1920 American Bar Association meeting, a special committee on legal aid was created. Legal Aid in criminal cases, however, was available in USA, as a legal mandate. The VIth amendment to the American Constitution provided: “In all criminal prosecution, the accused shall enjoy the right .... to have the assistance of counsel for his defence”. The American Supreme Court in 1938 in a case declared that VIth Amendment provided for the appointment of a counsel for the indigent defendant in federal criminal proceedings unless the accused waived his right.

Till 1963, The Supreme Court of USA did not consider legal aid as a fundamental right to thereby cast a duty upon the state to provide counsel at the expense of state. In 1964, the American Congress passed the criminal Justice Act on the recommendations of the Attorney General Committee on Poverty and the Administration of criminal Justice, presided over by Mr. Allen to provide legal aid in criminal cases. In 1966, the Bail Reform Act was passed to minimise financial burden of the accused. In 1970, the Criminal Justice Act was amended to provide some compensation to private Attorneys.

The Equal Access to Justice Act was passed by the American Congress in 1980. It aims at providing legal aid to small business men, as individuals burdened by the inordinate legal cost of challenging unjustified governmental actions. The legal aid growth in USA is definitely of interest to Indians and so is its progress in some other developed countries.
Legal Aid in Canada

The legal aid programme has always been administered by the Bar in Canada. Upto 1951, legal aid in Canada was provided on adhoc basis by members of legal profession but in 1951 it acquired the statutory sanction. In 1963 a joint committee on legal aid was set up to evaluate the existing plan. It suggested steps for the future. On its recommendations, an Act was passed in 1967.

3. THE REMARKS

In the pre-independence and even the pre-Constitution period of Indian history, we, therefore, find the judicial role having extended the benefit of legal assistance, and consultation to the under-trial prisoners, the accused in police custody and also those in judicial custody. The principle of equality and the objective of justice have been the points of argument with the Indian judiciary to ask for consultation with the counsel and to provide for extending the required climate and respect to the pleader of the accused in custody. The climate of free India with Fundamental rights, guaranteed under Part III of the Constitution, however, provided further scope for judicial interpretation and extension of the area of legal aid even in the pre-42nd Amendment phase of the post-Constitution period.

Having seen the background briefing in relation to legal aid from Ancient period international background and the concern raised during pre-independence period the education and consciousness is very vital for development of weaker sections in all aspects.

In every society women are regarded as the prey of the basic instincts of the males in male dominated society. From time immemorial, women are
depicted as the element for satisfaction of the lust either in the literature or in the epics, it is the women who are the worst sufferers and the present age is the culmination where we find the women are the commodities at the mercy of the television and other media. The Telecast of various advertising Agencies, some exerted films practically trigger off the passion of male viewers who are suddenly attracted with fiery indignation. The gospel goes - ‘healthy mind is the reflection of good health and healthy society comes out of good and civilised citizen’.

In the light of various factors, some of which have been mentioned above, it has become necessary to have a review of the facts in relation to social conditions, keeping in mind the changing scenario and emerging trends in law and society. Legal Aid is important not only for the development of women but also for the country which may arrive at a position to create an orderly society which will be advantage to all of us. The enforcement of Rule of law is an absolute necessity for the existence of any orderly society. We have a vast reservoir of manpower and talent which may be utilised to the maximum. According to Manu (Ancient Law Giver) Law is an order of human behaviour. Law has to change with the changing society and law is an instrument of social change. In order to avoid undue exploitation of women workers in the society the arbitration is the good system for determing the labour dispute between management and labour. Right to legal aid has become an integral part of the international human rights jurisprudence. Legal aid makes it possible for the poor and the underprivileged to access justice and to use the judicial system effectively.
for redressal of wrongs or enforcement of human rights. The poor, the disadvantaged and ordinary citizens with moderate earnings who cannot afford lawyers to represent them, have lacked access to the legal system and to legal fora in which they can agitate for the enforcement of their legal rights. Hence legal aid is now recognised also as a vital part of the administration of justice. After the independence the legal status of women have been a substantial improvement. Yet, many women do not know their legal rights because many are illiterate and the poor are ignorant of their rights and hence, do not resort to courts. They lack knowledge of their rights as well as economic means to enforce them. Being socially disadvantaged, they are also prevented through social pressures from approaching the courts for enforcement of their rights especially against family members.

In such a situation, new support systems for them and a great deal of awareness generation and sensitization to the human rights of such groups have to be created before we develop a good supportive infrastructure for such groups to have equal access to justice.