CHAPTER-III

SOCIAL JUSTICE, SOCIAL REALITY AND THE INDIAN CONSTITUTION
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The struggle for independence was over by 15th August 1947. But the attainment of independence was not the end in itself. It was only the beginning of a struggle, the struggle to live as an independent nation and at the same time, establish a democracy based on the ideas of justice, liberty, equality and fraternity. The need of a new constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first tasks undertaken by independent India was the framing of a new Constitution\(^1\).

The 26th January 1950 was a red letter day in the long and chequered history of India. For, on that day the present Constitution of India was brought into force which announced to the world the birth of a new republic. A Constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the government of a state and declares the principles governing the operation of those organs\(^2\).

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The fundamental law of the land is its Constitution. Our Constitution is a complete document to maintain its wholesomeness. When our Constitution initially drafted there was no specific provisions on Legal Aid, still there were certain provisions which indirectly provided in the Constitution of India such as State to secure a social order for the promotion of welfare of the people in which justice, social, economic and political, shall inform all the institutions of the national life. So it indicates legal aid was found present in these directives and the framers of the Constitution certainly had in their mind the concern for the legal aid. Every social change works through law. Every action of ours is governed by laws. In an age of active government it is only expected that government is everywhere and that law has its hand in every process. One of the important areas in the field of Constitutional Law is the Legal Aid and Legal Services which has assumed great significance in contemporary Indian Society. A new era in the direction of legal aid and legal services in India has begun. The year 1976 witnessed a fundamental change in the Philosophy underlying the programme for extending legal aid and legal services to the indigent. In that year Article 39-A was inserted by way of 42nd Amendment in the Constitution aiming at achieving equality as the product of social and economic justice, expressly provided under the heading Equal Justice and Free Legal Aid.

Thus, in the recent years some constitutional changes have sought to rectify certain conflicting balance between the haves and have-nots. In this connection the inclusion of legal-aid services have helped a lot to enable

3. The Constitution of India, Article 38
the poor and the weak to get their rights. "Men by nature are equal" said Locke. If men are equal, they share the same rights. It means all should be treated equally. Thus, equality in its phenomenological sense, exists in the individual consciousness in relation to man and his surroundings. A human being exists in relation to other human beings and the world. Hence, equality indicates a person to person relationship and this relationship is based on freedom and dignity. The weaker sections of the society with the help of the judiciary which is showing increasing social awareness have been able to fight for asserting their rights.

In fact, legal aid has become an instrument to achieve equality before law indicated in our constitution as fundamental rights. It is a fact that after 60 years of freedom, India has a large population of people who are in abysmal poverty. It has become an omnipresent reality of Indian life. It is considered as the greatest impediment to the economic and social progress. Therefore, as long as, a vast multitude of poor exists in India, legal aid shall be necessary if human rights to equality has any meaning in our democracy where economic and social justice along with equality of status and opportunity can be enjoyed by all.

Due to lack of money and material possessions, millions in India may not be able to enjoy their fundamental rights and for them legal aid is absolutely essential to enjoy the fundamental rights enshrined in the constitution. Poverty creates lack of opportunity and develops essence of hopelessness to cope with the hostile forces and exploitative institutions. It has been rightly said that poverty is vulnerable to injustice. Poverty is not
merely an economic phenomenon and is linked with a variety of complex social relationships. As Justice Y.K. Sabharwal (the then Chief Justice) put it:

"For the class which still continues to suffer from hunger of deprivation in the matters of basic needs, and consequent exploitation in all its forms, the promises of equality, liberty and complete justice has remained only on paper. In this context, the role of law as an instrumentality for the alleviation of poverty and deprivation retains its significance."^4

As set out in the preamble, our constitution assures to each citizen not only the political justice but also social and economic justice which are much more important. In fact, mere assurance of political justice is of no substance if the citizens are denied their social or economic rights. Similarly, mere social justice will have no meaning if it is not accompanied by just distribution of economic resources along with equitable access to the opportunities.

Thus, the constitution enjoins that the justice should be accessible to all because access to justice is considered to be an important criterion of democracy in action. Providing legal assistance to the needy persons and helping them to fight with injustice is said to be a step forward in the direction. Free legal aid is for the poor, the exploited, the deprived and the weaker sections of the society. It helps the individual to stand on his/her own feet to fight for justice and equality.

1. SOCIAL REALITY

Immediately after independence, the Constituent Assembly had a strong feeling of restructuring traditional society as it was engrossed with

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social, economic and political inequality. The assembly conceived the constitution of free India not only as a mechanism for governing the country through parliamentary democracy but also an instrument for bringing out social change and a chapter of social justice so that not only political democracy may take root in true sense but social and economic democracy can also be secured in their fullest sense. If we take a deep look into our constitution, it clearly reveals that social justice constitutes its soul. The main objective of the constitution, as laid down in its preamble, is to secure to all its citizens justice, social, economic and political. According to Dr. Ambedkar, the main architect of the Indian Constitution, Social Justice is another name of liberty, equality and fraternity.

Thus, the quest for social justice is a continuing pursuit of absorbing interest in societies with marked social, educational and economic inequalities. In the fast changing scenario, the academic discourse on social justice issues in our country has gathered momentum because our interest in the current concerns of social transformation centers round the welfare of the weaker and vulnerable sections of the society. We are interested in the ushering of a 'Just Society'- a society which maintains a balance between the competing claims of unequal persons. The concept of democracy, freedom, justice and equality are equally dear to us. The broader agenda of social justice in the country need to be examined, especially in relation to the welfare and development of the weaker sections of the society.
The entire scheme of the constitution under the headings preamble, the fundamental rights and the individual freedoms, emphasized on bringing about a reconciliation between individual freedom and social well being and between political and social rights. The effort was for building an egalitarian society on the concept of socio-economic justice. The gains of economic development should result in actual development of weaker sections and developmental opportunities are distributed in an equitable and justifiable manner. That is what our framers of the constitution dreamt about. It was also thought to establish a discrimination free society wherein the oppressed and the exploited, and dispossessed and disadvantaged sections of society are not sidelined in sharing the benefits of development. But the reality today is something different. The ground level conditions do not portray a pleasant scenario. Poverty haunts as much as the powerless of the poor does. Social and economic inequalities which the planned programmes of development sought to minimize, could not become a reality, rather they have further tightened their grips. The persons who are supposed to be the beneficiaries of social justice, have gained little. The oppressed class, the children, the women have only experienced marginal improvement in their situations.

Our society considers woman weak. The position of uneducated woman is still weak, i.e. socially and economically. Economic dependence make them more weak. In order to remove this, they should be educated at any cost. Unless this goal is achieved economic dependence can not be removed. Educated woman can be employed and can be free from economic
stagnation. Dependence on man folk will be reduced. The progress of the nation depends upon the progress of the woman and not the harassment of woman\(^5\).

Education is directly related to the development of an individual and the community. It is the most important single factor for economic development as well as social emancipation. For the weaker sections of society, education has a special significance because for a number of centuries, their illiteracy and social backwardness have been used for their harassment, humiliation and economic exploitation. The problems of education of the underprivileged groups and the general population are different both quantitatively as well as qualitatively\(^6\).

Access to education is not merely a basic human right but is also a key factor for social progress and in reducing the gap between socio-economic groups.

Of late there is a keen competition between man and woman all the world over. There has been a feeling that the world has been man-dominated one and women as a class have been trying to raise their heads by claiming equality. Perhaps this is also one of the reasons of the man dominated world which has resulted in various kinds of violence against women\(^7\). It is the responsibility of the women themselves to come forward for their just and right cause failing which no amount of law or efforts by the voluntary


\(^6\) Ram Ahuja, Society in India, Rawat Publications, Jaipur 2002 at p.234

\(^7\) 'Women and Criminal Law in India Some General Observation and Suggestion' in Law and Changing Society, Edited by Manju Saxena and Harish Chandra,Deep & Deep Publication Pvt.Ltd., 1999 at p.225
organization, or courts or even police will give fruitful results. Now it is high time that they should come forward and prove that they are not inferior in any way to the men\(^8\).

Our constitution makers have also provided certain special provision in our constitution to enable the Government to enact laws for the welfare and progress of the women and children\(^9\).

Indian Society reformers were inspired much by the ideals of nineteenth century western liberalism and they brought pressures upon the government of the day for putting on the statute book the reformatory laws. The directive principles were the directives which were given to the parliament, State legislatures and Executive to create facilities for improving the social, economic and political status of the weaker section.

A principle interaction involving an activist judiciary, a responsive legislature and an alert administration can certainly provide on an increasing scale a society moving definitely in the direction of the establishment of a just and fair society based on social and economic justice.

Right to counsel and legal aid was included as an integral ingredient of fair procedure. The mandate of Article 21 was satisfied if deprivation of liberty was authorized by a legislation duly enacted by a legislation possessed of the requisite jurisdiction. This Article-21 was primarily a protection against executive arbitrariness\(^{10}\).

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8. Ibid. at p.229  
The Constitutional guarantee of Right to Life which includes the Right to live with human dignity\textsuperscript{11} envisages the obligation of the State including local authorities to provide basic services like water supply, sanitation, roads and pathways etc.

Because of the high cost of litigation, lack of awareness of their rights and the inordinate delay in the disposal of cases by Courts, it has become quite unaffordable for the poor to approach the Court for the enforcement of their Rights and for the redressal of their grievances. Thus, for the poorest sections of the society even after the commencement of the Constitution, justice remained a distant dream because of their social and economical backwardness. The situation was sought to be improved by the passing of the Constitution 42nd Amendment Act in 1976 which provided for equal justice and free legal aid with a view to ensure that opportunities for securing justice are not denied to any citizen by the reason of economic or other disabilities. However, it took more than 10 years for the Parliament to enact the supporting legislation i.e. the Legal Services Authorities Act, 1987 and another 8 years to bring it into force in 1995.

In Indian rural society, community life is still based on custom. In this society paternalism and not equalitarianism is the dominant attitude. A poor man is never independent, conscious and assertive individual. Again the present day legal system is very much expensive. It takes a long time to decide even petty cases. There is no real legal equality and that in turn presupposes relative social and economic equality. This is a pity that under

\textsuperscript{11} F.C. Mullin v Union Territory of Delhi (1981) 1 SCC 608
the prevailing system, legal equality is to a large extent only formal because of extreme social and economic inequalities. In fact, there is no legal equality at all. The result is that there is some lacuna on which the traditional legal system exists. Violation of human rights of the poor mostly is caused by unjust social and economic structure of the society. The existing legal system has failed to solve the problem of poverty and bringing about developmental change.

Amongst the poor, women and children are more vulnerable than others. Women are constantly subjected to harassment, oppression, discrimination and exploitation. Personal security and protection from exploitation are closely inter linked with access to justice. Therefore, free legal aid services is inevitable for the protection of weaker sections of the society.

Many people in this country still have no access to justice though preamble to the Constitution provides that the Constitution is to secure to all its citizens amongst other things ‘Justice, social, economic and political’. It may be due to various reasons such as ignorance of their rights, their indigent conditions or their illiteracy there may also be social or geographical barriers for them. The fact remains that there are unmet needs of the millions of the people in this country. However, before going into details it is important to start with the preamble of the Constitution.

The Preamble opens with the Words "we the people of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens Justice, social, economic and political....". We the people of India indicates the source from which the Constitution comes, viz., the people of India. In fact, liberty, equality and fraternity which the Constitution seeks to serve for 'We, the people of India' is to serve the primary objective of ensuring social, economic and political justice. The Preamble to an Act sets out the main objectives which the legislation is intended to achieve. The Constitution makers gave to the Preamble "the place of pride". The Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the makers. In Keshavananda Bharti case the Supreme court held Preamble is the part of the Constitution.

Actually, our freedom struggle was not only for capturing power but also for securing economic freedom and social justice for all. The socio-economic aspirations of the people and their demand for the guarantees of the classical individual liberties shaped the thinking of the Constitution makers on the subject which found expression in the Preamble to the Constitution and which constitutes the very soul of the Constitution. The Preamble 'an epitome' of the broad features of the Constitution spells out

14. Justice Subba Rao, (as he then was) in I.C.Golok Nath v State of Punjab, AIR 1967 SC 1643
15. In re. Berubari case AIR 1960 SC 845
16. AIR 1973 SC 1461
the aspiration of the people to secure to all citizens social, economic and political justice and affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote among the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. For the Constitution makers, dignity of the individual was of supreme importance

The concept of legal aid is not new in India. Legal Aid has existed since the very inception of Indian civilization. Its beginning could be traced to the natural instinct of a man to help his neighbour and other fellow beings against injustice and redress grievances on the basis of equality.

Law must not only speak justice but also do justice. Law must become a source of strength and comfort to the deprived and vulnerable sections of the community and an active dispenser of social justice. We are actively engaged in the task of making access to justice which is a basic Human Right, a living reality for the people of our country. Access to Justice is an integral part of social justice.

The Preamble in nutshell contains the ideals, aspirations and hope of the people of the country. It embodies certain cherished human values, principles and spiritual norms and recognizes and upholds the dignity of human beings. It accepts the individual as the focal point of all developments and regards his/her material, moral and spiritual development as the chief concern. According to the Preamble sovereignty lies in the people.

18. Justice P.N. Bhagawati, Law as Instrument of Change, Metropolitan Book Co. (P)Ltd. 1984 at p.41
The actual dealing to the preambular objectives of our interest has been given in Parts III and IV, of the Constitution in the fundamental rights and directive principles of state policy. These two, in the apt words of Granville Austine, constitute the conscience of the Constitution. Hence the working of the preambular words provides many objectives and give importance through the fundamental rights and directive principle of state policy, enshrined in the Constitution.

3. FUNDAMENTAL RIGHTS

In India, the concept of rights has been well recognized since the ancient times. The Mahabharat preached “Sarve Bhavantu Sukhina, Sarve Santu Niramaya, Sarve Bhadrani Pashyantu, Ma Kashchid Dukhbha Bhavet”.

The concretization of the concept of right took place only in the 20th Century. The constitution of India guarantees certain basic human rights (known as fundamental rights) like the rights to life, liberty, equality freedom of speech and expression to the people. The Indian judiciary by resorting to a liberal and purposive interpretation of the various Articles of the Constitution has widened the scope of rights available to the common man.

The fundamental rights, in the words of Justice Bhagawati ‘represents the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human beings can develop his personality.

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to the fullest extent". The fundamental rights secured to the individual are in the nature of limitations or restrictions on the actions of the State. As aptly noted by Justice Bhagawati, 'they weave a 'pattern of guarantee' on the basic structure of human rights and impose negative obligations on the state not to encroach on individual liberty in its various dimensions".

The fundamental rights are enforceable against the State and its instrumentalities are coming within the ambit of Art.12 of the Constitution. Part III of the Constitution contains a long list of fundamental rights. Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Govt. They are limitations upon all the powers of the Govt., legislative as well as executive and they are essential for the preservation of public and private rights notwithstanding the representative character of political instrument. The declaration of fundamental rights in the Constitution serves as reminder to the Government in power that certain liberties, assured to the people by the constitution are to be respected.

The judiciary with its creativity and social consciousness began to impress upon the importance of free legal services to the poor accused persons who have no free access to justice. One can witness judicial activism in the sphere of securing socio-economic justice to the under-privileged sections of the society. It has, in fact, undertaken a relentless crusade to strengthen

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23. Ibid.
24. Mathews J in Hartado v People of California, 28 Led 232
the roots of right to legal aid, a directive enshrined in Part IV of the Constitution. The Supreme Court has taken a lead to nurture the right to life and personal liberty enumerated under Article 21 of the Constitution. The Courts in its pronouncements in a catena of cases maintained that right to legal aid is an integral part of Article 21 of the Constitution.

Aim of Article 14 is to ensure the equal justice. The guarantee of equal justice will be meaningless if the poor or illiterate or weaker persons cannot enforce their rights because of their poverty or illiteracy or weakness. The legal aid should be provided to such person so that the guarantee of equal justice may be meaningful. Legal aid, as a catalyzing agent to the process bringing socio-economic transformation through the instrument of law, becomes connected with the provision christened as equality before law.

There may be cases involving offences such as economic offences or offences against Law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service need not be provided by the State.

In the words of Dr. Jennings:

"Equality before the law means that among equals, the law should be equal and should be equally administered that like should be treated alike. The right to sue and be sued, to prosecute and be..."

27. M.H. Hoskot v State of Maharashtra, AIR 1978 SC 1548
prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.  

Article 21 is another Article, which has given much strength and support to legal aid. The growth and maturity of this Article was initially slow, but its amplitude has now progressed by leaps and bounds,

Article 21 says:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

The term ‘life’, ‘personal liberty’ and ‘procedure established by law’ all have been given broader meaning and larger dimensions.

The constitutional provisions touching life and liberty have received the most liberal construction even though some initial steps were somewhat unsure and flattering. Thus, for instance in the Gopalan case Article 21, received a positivist construction. The words, ‘according to the procedure established by law’ were interpreted in positivist terms to virtually mean procedure prescribed by the legislature. In the Maneka Gandhi case the Supreme Court held that the ‘procedure established by law’ must be ‘just, fair and reasonable’ and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and that the requirement of Article 21 would

31. Maneka Gandhi v Union of Union AIR 1978 SC 597
not be satisfied. After 27 years from Gopalan case the limited construction of Art.21 was replaced by a more dynamic concept.

In the adversarial system of adjudication effective legal representation significantly influences the fair consideration of a case. The nature of the cause of action which determine what weight age the courts accord to the absence or a presence of a lawyer. The legal representation is an ingredient of fair procedure under Article 21. So no person can be deprived of life and liberty except through legal proceedings providing for legal representation.\(^\text{32}\)

In the life and liberty context the state is obliged to fulfill the obligation in proactive terms which means that the state is not just required to favourably consider the request of an accused for legal representation but has to proactively take all necessary steps for the realization of the right. The legal representation has to be provided as Aid wherever it is so necessary.\(^\text{33}\)

The society at large discriminates against women almost at every sphere of life and a female is subjected to discrimination at home and outside including places of work. In the male dominated society, a female, right from her birth is treated unequally. It is a pre-conceived notion that a female is inferior to a male both physically and intellectually although there is no medical and scientific basis of such a notion. A Judge while deciding a case relating to female issues, is required to be aware and be sensitized to such

\(^{32}\) M.H.Hoskot v State of Maharashtra AIR 1978 SC 1548

\(^{33}\) Suk Das v Union Territory of Arunachal Pradesh AIR 1986 SC 991
discrimination suffered by the women. If a Judge is not aware to such discrimination suffered by the women and is not sensitized to the same there is every probability that he/she will decide incorrectly as he/she may tend to treat the women with the male opponent in the Court as equal.34

Thus, for the preservation of rule of law, and democracy and for making the Fundamental Rights including of right to equality and equal justice meaningful the legal aid to the poor and weak persons is necessary. This fact has been taken into consideration by the Court and it has been made clear that the right to free legal aid is included within the meaning of right to life and personal liberty under Article 21 of the Constitution of India.35

Article 21 and 22 are linked up together while Article 21 enables the State to deprive a person of his life or personal liberty according to the procedure established by law. Article 22 prescribes certain procedure in respect of both punitive and preventive detention.36

The Covenant on Civil and Political Rights provides under Para 3(d) of Article 14 that 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. But the Constitution does not provide

36. M.H.Hoskot v State of Maharashtra AIR 1978 SC 1548
this right as fundamental in Part III. However, it was held by the Supreme Court in *Hussainara Khatoon v State of Bihar*\(^{37}\), that the right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the constitution. The majority opinion of the Court in the above case found it is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as indigence or incommunicado situation is under a mandate to provide a lawyer to the accused if the circumstances of the case and needs of justice so requires, provided the accused does not object to the provision of such lawyer.

Further Justice Krishna Iyer observed: 'If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal......for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice'\(^{38}\).

In *Hussainara Khatoon v State of Bihar*\(^{39}\) the Supreme Court again held that a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and just’. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation.

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37. AIR 1979 SC 1369 at p.1374
38. M.H.Hoskot v State of Maharashtra, AIR 1978 SC 1548
39. AIR 1979 SC 1369
through the Court's process that he should have legal services available to him. Free legal service to indigent and poor accused is therefore implicit under Article 21 of the Constitution\(^{40}\).

In the above case, the Judges recommended to the Government of India and the State Government that a comprehensive legal service programme is introduced in the country, because of a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21 and also because of the compulsion of the constitutional directive embodies in Article 39-A\(^{41}\).

Although the State in India might find it difficult to provide free legal services to an indigent accused owing to financial constraints, the Supreme Court in *Khatri v. State of Bihar*\(^{42}\) directed the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. Justice Bhagawati, in the above case held that:

"The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, "the law does not permit any Government to deprive its citizens of constitutional rights on the plea of poverty"\(^{43}\).

The learned Judge in the above case further observed that the constitutional obligation to provide free legal services to an indigent person

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40. Ibid at p.1376
42. AIR 1981 SC 928
43. Ibid at p.931
arises from the time his personal liberty is in jeopardy, i.e., as soon as he is arrested and produced before a Magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Similarly, in *Suk Das v. Union Territory of Arunachal Pradesh* 44, the Supreme Court held that it is obligatory for the magistrate or the Sessions Judge to tell the accused that legal aid was available at State cost and to provide the same unless the accused refused to accept the same. The Supreme Court in another case 45 held that if the State itself should travesty this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved, a second look at its policy is overdue.

The Australian Law Reform Commission report quoted in the above case says "The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement - the most basic 'human right' - of a system which purports to guarantee legal right" 46.

44. AIR 1986 SC 991
46. Ibid at p.856
Hence right to free legal services is clearly an essential ingredient of reasonable fair and just procedure for a person accused of an offence and it must be held implied in the guarantee of Article 21 and State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. Now it is a settled law that free legal assistance at State cost is a fundamental right. By enlarging the scope of legal aid the Supreme Court laid down that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the state when he is first produced before the magistrate as also when is reminded from time to time.

For the Constitution makers, dignity of the individual was of supreme importance. The objective was to improve the quality of life for the individual by guaranteeing the fundamental rights of freedom, equality etc and by imposing a wide range of duties on the State in the form of Directive Principles the modern version of Raja Dharma. Together the Fundamental Rights and the Directive Principles, which in the words of Granville Austin represent the 'conscience' of the Constitution seek to make India a dynamic, vibrant modern and forward looking polity in which a 'certain measure of well-being for all' and 'a certain measure of opportunity in the economic sphere' will be assured to all. The

47. Granville Austine, The Indian Constitution, Cornerstone of a Nation, Oxford University Press, Bombay, 1966 at p.75.
primary object of the Fundamental Rights and the Directive Principles is to build up a classless egalitarian social order.

4. DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principle of State Policy as contained in Part IV of the Constitution are detailed in Articles 37 to 51 of the Constitution. They possess two characteristics. Firstly, they are not enforceable in any court, if a directive is not obeyed or implemented by the state. They are merely directives issued to the state. Secondly, they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The Directives lay down the lines on which the state should work under this constitution. The Directive Principles are the embodiment of the ideals and aspirations of the people of India and the goal towards which they expect the state to march for their attainment.

The framers of the constitution of India with a view to ensure social justice incorporated the very principle in the Preamble to the constitution that justice, social economic and political will be available to all. Further, the concept of justice has been enshrined in Part IV of the Constitution, wherein the States have been directed to secure a social order in which social, economic and political justice shall inform all the institutions of national life. Article 37 of the Constitution, which runs as under:

"The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless

fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.

It follows that it becomes the duty of the court to apply these principles in interpreting the constitution and the laws. The same was observed in *U.P.State Electricity Board v Hari Shankar*\(^{50}\) that what the courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. In *Bandhua Mukt Morcha v Union of India*\(^{51}\), the court has also held that though the Directive Principles are unenforceable by the courts and the courts cannot direct the legislature or executive to enforce them, once a legislation in pursuance of them has been passed, the courts can order the state to enforce the law, particularly when non-enforcement of law leads to denial of a fundamental right.

Article 38 imposes a duty on the State, which obviously includes the judiciary, to usher in a social order in which justice-social, economic and political, must inform all institutions of national life.

In *Mohd. Hanif Qureshi v State of Bihar*\(^{52}\), and In re *Kerala Education Bill, 1957*\(^{53}\), the apex court held that though the Directive Principles cannot over-ride the fundamental rights, in determining the scope and ambit of the fundamental rights, the court may not entirely ignore the Directive Principles.

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50. AIR 1979 SC 65
51. AIR 1984 SC 802
52. AIR 1958 SC 731
53. AIR 1958 SC 956
and should adopt the principles of harmonious construction so as to give effect to both as much as possible. Although the Directive Principles are not justiciable they are nevertheless fundamental in the governance of the country. They prescribe the goal to be attained and the fundamental rights lay down the means by which that goal is to be achieved. Later in *C.B. Boarding and Lodging v State of Mysore*, the court held that it did not see any conflict on the whole between the provisions contained in Parts III and IV and that they are complementary and supplementary to each other. Finally, in *Minerva Mills v Union of India*, it was held that harmony and balance between fundamental rights and directive principles is basic structure of the constitution.

Further it was held that if the citizens are to receive the advantage of any beneficent measures of the administration, the administrative process should be such that the benefit reaches the citizen in full measures and with expedition.

Article 39-A of the Constitution mandates that, the state to secure that the operation of the legal system promotes justice, on the 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

55. AIR 1970 SC 2042
57. AIR 1980 SC 1789
58. New India Industrial Corpn. v Union of India AIR 1980 Del.277 at p.282
securing justice are not denied to any citizen by reason of economic and other disabilities. By combined interpretation of Articles 14, 21 and 39A, the Supreme Court in *Sheela Barse v. State of Maharashtra* held that the State should provide free legal aid to a poor or indigent accused person who is arrested and put in jeopardy of his life or personal liberty and it is a constitutional imperative mandate under Arts. 14 and 21.

Part IV of the Constitution is one of the most cardinal important Chapters of the Constitutions which is cooling for the amelioration of the people's social and economic condition. These principles which aim at making the Indian masses free in positive sense ordains that the state shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of the nation life.

For the women prisoners the court suggested that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Interrogation should be carried out only in the presence of female police officers/constables. The court further directed that whenever a person arrested by the police and taken to the police lock-up, the police will immediately inform the fact of such arrest to the nearest legal aid committee. A lady Judge be deputed by the City Session Judge to make surprise visit to the police lock-ups with a view to provide the arrested persons an opportunity to hear their grievance and ascertaining what are

59. AIR 1983 SC 378
the conditions in the police lock-up and whether the requisite facilities are being provided. The Magistrate, before whom an arrested person is produced, shall enquire from the arrested person whether he has any complaint of torture or mal-treatment in the police custody.

Justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. The judicial function of a Court, therefore, in interpreting the Constitution and the provisions of the Act requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status.

The Supreme Court has indicated several parameters in assisting the victims of rape. One of the parameter regarding Article 38(1) which speaks- “It is necessary, having to the Directive Principles contained under Article 38(I) of the Constitution of India to set up Criminal Injuries Compensation Board, Rape Victims frequently incur substantial financial loss. Some for example, are to traumatized to continue in employment.”

The Directive Principles cannot override the fundamental rights. However, as the Supreme Court has observed in determining the ambit of the fundamental right the court may not entirely ignore the directive principles and they should try to give effect to both as much as possible. Actually, as the Supreme Court has observed, there is no conflict between the Directive Principles and the Fundamental Rights and they are meant to supplement each other. There is no dis-harmony between them.

60. Sheila Barse v State of Maharashtra AIR 1983 SC 378 at p.382
Article 38 to 51 unlike the Articles on fundamental rights confer no rights on any one. A law implementing Directive Principles may confer rights on persons. These rights will be statutory rights whereas the fundamental rights are conferred by the Constitution. The fundamental rights cannot be taken away by any law in view of Article 13(2). Thus in a conflict between fundamental rights and statutory rights, the former will prevail.

All these above indicates Legal Aid was found present in the directives and the framers of the Constitution certainly had in their mind the concern for Legal Aid. After that in the year 1976 the Article 39(A) inserted by way of 42nd Amendment in the Constitution aimed at achieving equality as the product of social and economic justice under the heading equal justice and free Legal Aid.

5. FUNDAMENTAL DUTIES

The Part IV-A which consists of only one Article 51-A was added to the Constitution by the 42nd Amendment, 1976. This Article for the first time specifies a Code of eleven fundamental duties for citizens. Clause e of Article 51-A says that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

The fundamental duties, are, therefore, intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour.

Prior to the Forty Second Amendment the fundamental law of the land attached more importance on right. The makers of the Constitution were concerned about the moral and natural rights. The intention behind it was, that the citizen and the State would shoulder the responsibility to protect the Constitutional order as their moral duty. Through the passage of time the citizens became conscious about their rights and thereby neglected their duties. Right and duties are very important elements of law. They are correlated to each other in such a way that one cannot be conceived without the other. A right is always against someone upon whom the correlative duty is imposed. Thus, to give a concrete shape to the Constitution, Part IV-A was rightly inserted by the Forty Second Amendment for healthy administration of justice.

The fundamental duties which include the duty of every citizen of India and not for the State. They are not akin to the fundamental rights guaranteed in Part III of the Constitution. While the fundamental rights are enforceable against the State and its instrumentalities coming within the ambit of Art.12 of the Constitution, fundamental duties are not enforceable. They are only in the nature of guidance addressed to the citizens in contrast to the fundamental rights, which are addressed to the State and its instrumentalities. If any statute conforms to the fundamental duties, the same cannot be challenged as being violative of Part III of the Constitution, subject, of course, to legislative competency.  

64. D.J.De, Constitution of India, Asia Law House, 2002 at pp.1289-1290
Article 51-A(e) of the Indian Constitution to renounce practices derogatory to the dignity of women, on the other, we have explored and designed a new derogatory practice of sex determination and killing of a female fetus. The science and law have become the basic tools for achieving such disgusting and immoral ends. It is hoped that the law, science and ethics would have a way to check social malpractices and to mould the social attitude and behaviour for a dignified social change. So free Legal Aid is absolutely necessary to women in this respect.

6. LEGISLATIVE POWERS

The legislative powers of Parliament and State Legislatures is subject to the provisions of the Constitution, viz (1) the scheme of the distribution of powers, (2) Fundamental rights, (3) other provisions of the Constitution.

The power of the Legislature under Article 245 to enact laws is a plenary power subject only to its legislative competence and other constitutional limitations. The power to make a law includes the power to give effect to it prospectively as well as retrospectively. The Legislature has power to alter the existing law retrospectively. The power to validate a law retrospectively is, subject to other constitutional limitations, an ancillary power to legislate on the particular subject.

7. THE LISTS UNDER SEVENTH SCHEDULE

The three lists viz. List I or the Union List, List II or the State List, List III or the Concurrent List contained in the seventh Schedule of the Constitution demarcate the legislative fields of the centre and the State.

The Parliament is vested with exclusive power to make laws with respect to any of the matter mentioned in the Union List\textsuperscript{66} and the state Legislature have exclusive power to make laws for such States or any part thereof, with respect to any of the matters enumerated in the State List\textsuperscript{67}. However, the Parliament and the Legislature of any State is competent to make laws with respect to any of the matters enumerated in the Concurrent List\textsuperscript{68}. Parliament has power to make laws with respect to any matter for any part of the territory of India not include (in a State) notwithstanding that such matter is a matter enumerated in the State List\textsuperscript{69}.

This Court laid emphasis that the basis of distribution of powers between Union and the States is that only those powers and authorities which are concerned with the regulation of local problem are vested in the State and those which tend to maintain the economic nature and commerce, unity of the nation are left with the Union\textsuperscript{70}.

The power to legislate is given to the appropriate legislatures by Art.246 of the Constitution. The entries in the three lists are only legislative heads or the field of legislation, they demarcate the area over which the appropriate legislature can operate. Widest amplitude should be given to the language of the entries\textsuperscript{71}. The lists are designed to define and delimit the respective areas of respective competence of the Union and the States.

\begin{itemize}
\item[66.] The Constitution of India, Article 246(1)
\item[67.] Ibid:Article 246(3)
\item[68.] Ibid:Article 246(2)
\item[69.] Ibid:Article 246(4)
\item[70.] State of West Bengal v Union of India AIR 1963 SC 1241
\item[71.] D.J.De, Constitution of India, Asia Law House, 2002 at p.1954
\end{itemize}
These neither impose any implied restriction on the legislative power conferred by Art.246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. Constitution must be interpreted as an organic document in the light of the experience gathered.

Till the incorporation of Article 39-A, some were having doubts about the competency of the Parliament to legislate on matters ‘relating to legal aid’. However, the perusal of the seventh schedule reveals that there are several entries in the Union List and the concurrent list which have direct or indirect connection with legal aid, but there is no specific entry as to legal aid. The entry which has been much debated is administration of justice. It occurred in the State List. The inclusion of ‘Administration of Justice’ in the State that led the Central Government to believe that grant of legal aid to the poor was co-extensive with the administration of justice and, therefore, it was primarily the responsibility of the State Government. Upon this the Expert Committee on Legal Aid headed by Justice V.R. Krishna Iyer commented:

72. Ibid. at p.1955
73. Synthetics & Chemicals Ltd. etc. v State of U.P., AIR 1990 SC 1927, at p.1951
74. Union list - Entries 77 and 78 deal with persons entitled to practice before the Supreme Court and High Courts respectively.
75. Concurrent list- Entries 2 and 13 deal with Criminal procedure and Civil procedure, Entry 11-A deals with Administration of Justice, Entry 20 deals with economic and social planning, Entry 23 deals with social security, Entry 24 deals with welfare of labour and Entry 26 deals with legal profession.
76. State list: Entry 3 deals with Administration of Justice, Court fee etc. By 42nd Amendment Administration of Justice was deleted from this entry and placed in Entry 11-A of concurrent list.
"First, there is no specific entry as to 'legal aid' and secondly, the only relevant entry in the State list (Administration of Justice) etc., covers only one state of legal aid and that too a limited extent, namely, the provision of State appointed counsel in conventional, civil and criminal proceedings, in the orthodox courts. But in order to make up the totality of legal aid much more is required. It is permissible to view legal aid as a part of social planning. But even apart from that, it can certainly be related to the concurrent list or at least make it transcend the State List"77.

The Constitution (Forty-second Amendment) Act, 1976 has included the ‘Administration of Justice’ in Entry 11-A of the concurrent list. By this both the Central and the state Governments are competent to legislate on matters relating to legal aid.

Propagating the need for a movement of legal aid to poor, S.:N.Johri said:

"No democracy can survive if the justice becomes the mirage to majority. This spells out the political need for the programme of legal aid to poor"78.

This item became relevant to be explored and explained when legal aid explicitly was missing in the Constitution of India. But to find out legal aid even without any express mention, the Expert Committee report underscored the

78. S.N.Johri, Programme and Movement of Legal Aid to Poor, AIR 1981 (Journal) 27
provisions of the Seventh Schedule to remind the duty of the governments.79

The report observed on the item: Administration of Justice:

"The view that 'legal aid' falls within the legislative entry relating to 'administration of justice' appears to be based on over-emphasis of the last aspect at the cost of the first two. What the entry 'administration of justice' connotes is the apparatus and machinery for the enforcement of legal rights and liabilities. Justice, as the pithy saying goes, is giving every man his due."80

8. HUMAN RIGHTS, SOCIAL JUSTICE & LEGAL AID

Human rights represent a moral force to ceaselessly act against inhuman oppression and exploitation of the powerless and defenseless. Protecting and promoting human rights is one of the most serious social concern of a society which believes in the rule of law. The definition of human rights as given by the United Nations is as follows:

"Human rights could be generally as those rights which are inherent in our nature and without which we can not live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increased demand for a life in which the inherent dignity and worth of each human being will receive respect and protection."81.

In the present context, human rights are universal and apply to all individuals without any discrimination. Human rights are also known as fundamental rights because they are basic to human life and can not be taken away by any Act of the State due to their constitutional validity. In a country like India wedded to democracy, it can very well be said that democracy has no meaning for the citizens unless the citizen is able to secure his basic human rights like education, employment, right to live a life of dignity and self respect. In the case of weaker sections, this has been interpreted to incorporate the right to legal aid also. At present, the society which is under the process of social and economic revolution assumes utmost importance for the future generation and the entire mankind. Along with social and economic empowerment, legal empowerment also assures significance in the present context.

Legal aid as human right is implicit in Articles 7, 8 and 10 of the Universal Declaration of Human Rights. It is also clearly provided in Clause 3 of Article 14 of the International Covenant on Civil and Political Rights. Even in Article 6(3)(6) of the European Convention of Human Rights and Article 8(2) (E) of the American Convention of Human Rights, legal aid is prescribed as a fundamental right. It is rightly said by Learned Hand that the important commandant for the human right is “Thou shall not ration justice”. Right to counsel is also provided by 6th amendment of the Constitution of United States.

Lord Denning has aptly observed that “since the Second World War, the greatest revolution in the law has been the system of legal aid. It means that in many cases, the lawyer’s fees and expenses are paid for by the State and not by the party concerned”\(^{83}\).

In the opinion of Justice J.N.Bhatt “the innocent and unassisted persons, obviously, would be at a great disadvantage to fight a legal battle than a legally aided person. The Legal Aid system, as such, is a legal technology of peaceful transformation of society so as to ensure equal justice-cum-social justice”\(^{84}\).

Justice Bhatt further added that “It will be interesting to note that a great crusader of the legal aid concept and movement in the USA is Regnald Herbert Smith, who instituted the Bostal Legal Aid Society from 1914 and published his findings and views in the Classic book 'Justice and Poor'. A new impetus and direction came to be given to the legal aid concept under the Economic Opportunity Act of 1964 during the time of President Johnson. The underlying purpose was to deliver legal advice and aid to the very neighborhood of the underprivileged. It got very good momentum on account of Legal Service Corporation Act, 1794. In England, the Rushcliffe Report proved to be a strong foundation for organizing legal aid movements in which the State had to make substantial financial contribution and finally, it led to the enactment of first comprehensive law named “Legal Aid and Advice Act, 1949”\(^{85}\).

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85. Ibid at pp.50-51
The right to legal aid, as we can read, attained status and importance with the dynamic interpretation made to the provisions of the Indian Constitution by the socially conscious judges of this developing land. Appreciating this approach, a Division Bench of the Apex Court with Justice A.P. Sen and D.P. Madon, underscored the need of such adoption of Indian Law to the changing need of society. It was in *Central Inland Water Transport Ltd. v Brojo Nath Ganguly*\(^6\), the Supreme Court observed:

"The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable.... The law must, therefore, in a changing society, march in tune with the changed ideas and ideologies. Legislature are, however not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a constitution is too cumbersome and

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\(^6\) AIR 1986 SC 1571
time consuming to meet the immediate needs. This task must therefore fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.  

9. LEGAL AID AS A PART OF SOCIAL JUSTICE

The concept ‘social justice’ which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is thus an integral part of “justice” in generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribal and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person.

There are three important organs of the democracy. They are Legislature, Executive and Judiciary. The rule of law plays an important role in the administration of the country. The Constitution of India gives much emphasis on the rule of law. All these three organs have to do their work within the purview of the Constitution. Even the Government is to function under the Constitution. The Constitution provides protection to the people of the country against the unlawful action of the administration. No one is above the law. The Executive have to exercise their powers in accordance with the law of the country.

87. Ibid at p.1584
88. Consumer Education & Research Centre v. Union of India, AIR 1995 SC 922 at p.938
The reason for introducing Article 39-A in the constitution was to secure equal justice for all which is a cardinal objective of the constitution. Legal aid is an integral part of a welfare state because the natural growth and development of all individuals is imperative in a democracy. The concept of Legal Aid has been explicitly available in the afore mentioned provision of the constitution. If we thoroughly study our constitution, one thing is clear that, ‘social justice’ constitutes its soul. Therefore, it is very important to ensure social justice to all the weaker and vulnerable sections of the society. It can be achieved by protecting the rights and interests of these people and treating them equally with others. Equality is a major component of social justice. Thus, the basic premise of social justice is the emancipation of the underprivileged, exploited and oppressed sections of the society. They should be liberated from all kinds of social and economic exploitation and discrimination. Then only the constitutional goal which our forefathers dreamt in the aftermath of independence can be realised. The object of justice is to lay greater emphasis on resolving the issues swiftly because it is the legitimate expectation of each individual. In fact it is the spirit that keeps justice alive. In order to provide access to justice to the poor and needy, new methods have been innovated and new strategies have been devised thereby coming to the rescue of millions of people who were denied the basic human rights and to whom freedom and liberty have got no meaning.

Thus, considering the constitutional philosophy, the concept of Legal Aid in India may be read as follows:
"The concept of Legal Aid is the very spirit of equality and its movement is depicted to the principles of equal justice to the poor. Equal justice is fair treatment within the purview of judicial process. It implies an easy access to courts and other Governmental agencies on the basis of equality. Equal justice requires a systematic approach in response to the prevailing inequalities and injustices existing in our society. Legal aid is a vital limb of our constitution and becomes, for this reason, an interpretative doctrine reflecting the desires fulfillment of the basic objectives of equality. Equal justice is corrective of inequalities which create social imbalance without which justice in society can’t be established in truth. If a large section of society is prevented from exercising its legal power for protection of their rights, and security of an honourable existence, there can be neither equality nor justice in such a society"89.

Thus, legal aid as a part of social justice intends to achieve equality before law and give the weaker section of the society a moral courage to raise their voice against injustice. The concept of legal aid rightly aims at providing equal justice to the indigent. It is truly the spirit of equality. Equality of law and equity before the law is an imperative provided in the fundamental right in our constitution. We must remember that "a constitution is not just a document in a solemn form, but a living framework for the government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit"90. As such, our constitution has rightly incorporated

89. S.S.Sharma, Legal Aid to the Poor, Deep & Deep Publication, New Delhi, 1993 at pp.6-7
the legal services as a remedy, with a view to make the above mentioned rights a reality, for the depressed, downtrodden and destitutes of the society.

10. THE REMARKS

Progress of the nation depends upon the progress and prosperity of the weaker sections particularly those oppressed and depressed. The more of the progress of the women the more will be the progress of the nation. The less the harassment of women the more will be the glory of India. It is a known fact that social change takes place due to various cultural, religious, socio-economic factors which in turn change the social attitude and behaviour. In India, the law has attempted to initiate social change. It has tried to mould the social attitude and behaviour. Parliament and various State Legislatures have passed many legislations which have the purpose of bringing about a social change. Such efforts in a nation like India “give rise to exaggerated claims of impact on social change, and equally unrealistic assertions that all legal systems merely follow and support processes whose fundamental operations are carried out in the broader sphere of social and political life”\textsuperscript{91}. In a conservative society like India the role of legislation in initiating social change is dependent upon a variety of factors. The social welfare legislation is required to penetrate through the apathetic or sometimes even hostile attitude of the people. It is a difficult process indeed. But the desired break-through is not dependent only upon

the hostile or otherwise attitude of the people. There is no doubt that without
the desire of the people to mould themselves or their institutions, there
can not be any social change. It is, however, “accepted that in modern
times, the relative success or failure of any legislative measure, designed to bring
about a social change, is very much influenced by the functioning of the
implementing agency”\textsuperscript{32}.

The present legal system is not free from many defects. It looks upon
the poor as beneficiaries. It does not treat them as participants in it. It deals
only with regard to problems of corrective justice. It does not deal with regard
to distributive justice. It has, therefore, failed to bring real change in the life
of people specially to those people belonging to weaker sections of the
society. The legal service system of any country must be able to provide
distribution of power within society. Unless and until this is achieved the
poor will not be able to fully share the benefits of development\textsuperscript{33}.

This miserable condition in which the poor find themselves can be
alleviated to some extent by creating legal awareness amongst the poor. That is why, it has always been recognized as one of the principal items of
programme of the legal aid movement in the country to promote legal
literacy\textsuperscript{34}.

In our social structure women play a significant role but in actual
practice they are not treated equally and they enjoy a status subordinate


\textsuperscript{34} Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991 at p.994
to their male counterparts. Therefore, time and again the importance of protecting their rights has been recognised at the international and national level through various instruments. In this connection Justice K.G. Balakrishnan re-affirming the gender equality observed: “Equality, however, still remains the exception rather than the norm and there are only a few instances where women are given equal treatment, and that too, not without a fight. While continual efforts have been made by the legislature, judiciary and women’s organization to secure to them a position of equality and their basic human rights, a significant change is yet to be brought about. Despite, all the safeguards, the women in our country continue to suffer due to lack of awareness of their rights, illiteracy and oppressive practices and customs. In order to ensure that women are not discriminated against and that their rights are not violated, what is necessary is a change in the attitude of society towards women. Unless the members of society consider women and men as equals and treat them equally sans their inherent prejudices, the rights of women cannot be adequately secured”.

When millions of people live in a condition which is unimaginable without the most basic of their needs fulfilled, it is better to go by the ground realities and make the law, the legal institutions and other institutions work together for making social justice a reality. For this what is needed is that there must be adequate awareness regarding the substantive legal provisions as well as the working of the legal institutions which can render

them necessary help for enforcement of their rights. Not only this, the people
must be made to believe that enforcement of such rights can be possible
and they can be able to get adequate remedies. For the purpose the legal
mechanism should be strengthened. Then only the cherished goal of our
constitution makers can be fulfilled.