CHAPTER-IV

LEGISLATIVE MEASURES, THE PROBLEM, PROCESS AND PROSPECT
In the previous chapter we have discussed that legal aid is an instrument to achieve equality before law as indicated in our Constitution. It is considered as a fundamental provision for legal aid is also there in Part IV of the Constitution dealing with Directive Principles. Thus, it can very well be said that legal aid as a concept and means to achieve equality, equal opportunity and social justice finds a place of support under fundamental rights, Directive Principles of State Policy and the legislative list of the Constitution of India. On the basis of these i.e. to fulfil the constitutional obligation, the Parliament passed the Legal Services Authorities Act, 1987 which is the foremost statute on legal aid. The main aim of this Statute is "to constitute Legal Services Authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". Further, the Act also provides for "organising Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity". Thus, according to the
provisions of the Act, Legal Services Authorities at the National, State and District levels have been constituted and Lok Adalats including permanent Lok Adalats have also been established. However, before going into details of the legislative measures, let us have a look why the necessity was felt to have a law on legal aid.

1. NEED TO FRAME A LAW ON LEGAL AID

   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 one of the such recommendations was - "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" The Bombay Legal Aid Society in 1945 invited the attention of the Central Government to the recommendations of the Lord Rushcliffe and suggested for the appointment of a similar committee in this country to examine the questions of Legal Aid to the poor and needy.

   Thus, it is evident that the idea of providing legal aid to the poor developed immediately after the Second World War and in India before the Constitution was enacted this has drawn the attention of policy makers. The subsequent few years after the adoption of the constitution are also considered important in this connection.

   The Law Commission of India in its Report on 'Reform of Judicial Administration' published in 1958 stated: "The rendering of legal aid to poor litigants is not a minor problem of procedural law but a question of

1. In England a Committee under the Chairmanship of Lord Rushcliffe was appointed in 1944
fundamental character"\(^2\). Reviewing the efforts made in that behalf in this country and also the position within in relation to legal aid in some other countries the report stated:

"In India facilities for legal aid are very meagre. Apart from voluntary organisations in a few towns like Bombay, Calcutta and Bangalore there is not much organised effort either governmental or private intended to give to the poor the benefit of law. As we have already seen, the Governments of the States have not in general been very enthusiastic about the proposals calculated to enlarge the scope of legal aid. Nor has the legal profession with some creditable exception regarded the rendering of legal aid to the poor litigant as its responsibility"\(^3\).

Besides there are five other reports were made by different Committees which emphasised the necessity of introducing legal services programme in a massive scale. The first one by Mr. Justice Krishna Iyer\(^4\), the second by Hon'ble Justice P.N. Bhagwati\(^5\), the third by a Committee headed by Mr. R.K. Nayak\(^6\), the fourth by Mr. Ram Krishnan\(^7\), a retired judge of the Madras High Court and the fifth by a Committee headed by Dr. L.M. Singhvi\(^8\). The first two, out of these five reports, are comprehensive.

\(^2\) 1st Law Commission 14th Report on the Reform of Judicial Administration, 1958 Vol.1. at p. 587
\(^3\) Ibid. at p.692
\(^5\) Gujarat Committee Report 1971
\(^6\) Madhya Pradesh Committee Report 1974
\(^7\) Tamil Nadu Committee Report 1979
\(^8\) Rajasthan Committee Report 1974
documents dealing in great detail with the philosophy of legal aid and its various aspects. Both these reports are imbued with a social approach and they have analysed the problems relating to legal service programme and made their recommendations in the light of the socio-economic conditions prevailing in the country.

The Bombay Committee which submitted its report in 1949 emphasised that Legal Aid is a service which the modern welfare-state is supposed to extend to its citizens. So, the state must take the responsibility of providing legal aid to poor persons of limited means. The report of Bengal Committee was essentially the same as was recommended by the Bombay Committee. State of Gujurat report of the legal aid Committee had recommended that legal aid should be available in all courts so that indigent persons would get justice. The expert Committee was also in favour of legal aid. The Madhya Pradesh Committee was also very informative. The Committee for implementing legal aid scheme (CILAS) evolved a model scheme for legal aid programme applicable throughout the country by which several Legal Aid and Advice Boards were set up in the state and Union territories.

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 Apex Court observed that 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. The

Judges recommended the Government of India and the state Government that a comprehensive Legal Service Programme be 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 embodied in Article 39-A. The court held that if free Legal services are not provided to the accused, the trial itself may run the risk of being vitiated as contravening Article 21. In *Suk Das case* it was held that free legal assistance at State cost is a fundamental right of person accused of an offence.

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 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.

2. ENACTMENT OF THE ACT

The report of various committees for providing legal aid to poor and needy persons created a favourable atmosphere which paved the way to take necessary steps for enacting a legislation for the purpose. In the meantime, the government inserted Article 39-A in to the constitution of India by way of 42nd Amendment with an intention to provide free legal

11. Ibid.
12. Suk Das v Union Territory of Arunachal Pradesh AIR 1986 SC 991
13. w.e.f. 3rd January, 1977
aid. Article 39-A provides that The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

With the object of providing free legal aid, Government had, by Resolution\(^\text{14}\) appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the Chairmanship of Mr. Justice P.N.Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and advice boards were set up in the States and Union territories. Thus, with the coming into force of this Article, the Government is accordingly concerned with the programme of legal aid as it has to implement the mandate given by the constitution.

To fulfil the constitutional obligation, the Government of India enacted "The Legal Services Authorities Act, 1987"\(^\text{15}\) with an aim to constitute legal services authorities for providing 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 or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

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\(^{14}\) Dated the 26th September, 1980

\(^{15}\) The Legal Services Authorities Act was passed in 1987 which came into force w.e.f. 09.11.1995 except Chapter III, vide Gaz. of India, dtd.9.11.1995, Pt.II, S.3, Ext.,P-1. The Chapter III enforced in Orissa w.e.f. 15.5.1996 vide Gaz. of India, dt.17.5.1996, Pt.II, S.3., Ext.S.O.348(E)
3. THE ACT

Thus, it is now clear that with an aim to provide free legal aid The Legal Services Authorities Act, 1987 has come into existence. The object and statement of reasons as provided in the Act states: Article 39-A of the Constitution provides that the State shall 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 securing justice are not denied to any citizen by reason of economic or other disabilities.

With the object of providing free legal aid, Government had, by Resolution dated the 26th September, 1980 appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the Chairmanship of Mr. Justice P.N.Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and advice boards have been set up in the States and Union territories. CILAS is funded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But, on a review of the working of the CILAS, certain deficiencies have come to the fore. It is, therefore, felt that it will be desirable to constitute statutory legal services authorities at the National, state and District levels so as to provide for the effective monitoring of legal aid programmes. The Bill provides for the composition of such
authorities and for the funding of these authorities by means of grants from the Central Government and the State Governments. Power has been also given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.

For some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of large number of cases expeditiously and with lesser costs. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive.

This Act was amended in the year 1994 for establishing legal services Authorities at the National, State and District level. Besides, the amending Act also intended to constitute Committees known as Supreme Court Legal Services Committee, High Court Legal Services Committees and Taluk Legal Services Committees with a view to provide free legal aid and competent legal services as well as to organise Lok Adalats in their respective spheres.

Further, with the passage of time and taking into consideration the necessities of tackling certain cases urgently which arise out of public utility

services, it was thought there was need to settle urgently these cases so that people get justice without delay even at pre-litigation stage and thus, most of the petty cases which ought not to go in the regular Courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent.

In order to fulfil the above objectives, the government again amended the Legal Services Authorities Act in the year 2002\textsuperscript{17} to set up Permanent Lok Adalats for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

The salient features of this amended legislation are:-

(i) to provide for the establishment of Permanent Lok Adalats which shall consist of a Chairman who is or has been a District Judge or Additional District Judge or has held judicial officer higher in rank than that of the District Judge and two other persons having adequate experience in public utility services;

(ii) the Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers of goods by air, road and water, postal, telegraph or telephone services, supply of power, light or water to the public by any establishment, public conservancy or sanitation services in hospitals or dispensaries, and insurance services;

(iii) the pecuniary jurisdiction of the Permanent Lok Adalat shall be up to Rupees Ten Lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. It shall have no jurisdiction in respect of any matter relating to an offence not compoundable under any law;

\textsuperscript{17}The Legal Services Authorities (Amendment) Act 2002 (Act No.37 of 2002) w.e.f. 11.06.2002.
(iv) it also provides that before the dispute is brought before any Court, any party to the dispute may make an application to the Permanent Lok Adalat for settlement of the dispute;

(v) where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits; and

(vi) every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat.

4. SCHEME OF THE ACT

The Act consists of Seven Chapters spread over 30 sections. For realising the objective of the Act it provides for the constitution of National Legal Services Authority, State Legal Services Authority, District Legal Services Authority for providing competent legal services to the weaker sections of the society including women. The Act also provides to constitute Supreme Court Legal Services Committee, High Court Legal Services Committee and Taluk Legal Services Committee. The Central Authority coordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions and other legal services organisations and give general directions
for the proper implementation of the legal services programmes.

5. ENFORCEMENT MACHINERY

For the purpose of carrying out the objectives of the Act the Central Government have already constituted the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under the Act. Also the State Government constituted the State Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to the State Authority under this Act.

The most effective enforcing machinery is the Central Authority constituted by Central Government. As per the provisions of the Act the Central Authority shall consist of the Chief Justice of India as the Patron-in-Chief¹⁸, and a serving or retired judge of the Supreme Court as the Executive Chairman¹⁹.

The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member Secretary of the Central Authority. The Member Secretary’s function is to work out modalities of the Legal Services Schemes and Programmes approved by the Central Authority and ensure their effective monitoring and implementation throughout the country²⁰. Other powers also given from Rule 6(b) to Rule 6(k). Under Rule 3 the Central Authority shall consist of not more than 12 members in which two Chairman of State Legal Services Authorities may be nominated by the Central Government in

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¹⁸. The Legal Services Authorities Act, 1987, Sec.3(2)(a)
¹⁹. Ibid. Sec.3(2)(b)
²⁰. The National Legal Services Authority Rules 1995 Rule 6
consultation with the Chief Justice of India.

I. The National Legal Services Authority

The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under this Act.

The Central Authority shall consist of - "(a) the Chief Justice of India who shall be the Patron-in-Chief; (b) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and (c) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India".

The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

The terms of office and other conditions relating thereto, of members and the Member-Secretary of the Central Authority shall be such as may be

21. The Legal Services Authorities Act, 1987,Sec.3(1)
22. Ibid.Sec.3(2)
23. Ibid. Sec.3(3)
prescribed by the Central Government in consultation with the Chief Justice of India.24

The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act.25 The officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.26

The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India and all orders and decisions of the Central Authority shall be authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.27 Further no act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority.28

II. Supreme Court Legal Services Committee

The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations.

24. The Legal Services Authorities Act, 1987 Sec.3(4)
25. Ibid. Sec.3(5)
26. Ibid. Sec.3(6)
27. Ibid. Sec.3(7)
28. Ibid. Sec.3(8)
29. Ibid. Sec.3(9)
made by the Central Authority.30

The Committee shall consist of - (a) a sitting Judge of the Supreme Court who shall be the Chairman; and (b) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India.31

The Supreme Court Legal Services Committee shall consist of a sitting Judge of the Supreme Court who shall be the Chairman; and the Committee shall consist of not more than nine Members out of the nine Members four Members are Ex-officio Members they are (i) Attorney General of India, (ii) Additional secretary in the department of Expenditure, Minister of Finance, Government of India or his nominee; and (iii) Additional Secretary in the Department of expenditure, Ministry of Finance, Government of India or his nominee; and (iv) Registrar General of the Supreme Court of India. Sub-Rule of Rule 3 provides the Chief Justice of India may nominate other Members from amongst those possessing the qualification and experience prescribed in sub-rule (4) of the rules as under (a) an eminent person in the field of law; or (b) a person of repute who is specially interested in the implementation of the Legal services Schemes; or (c) an eminent social worker who is engaged in the upliftment of the weaker sections of the society including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

The Chief Justice of India shall appoint a person to be the Secretary

30. The Legal Services Authorities Act, 1987 Sec.3-A(1)
31. Ibid. Sec.3-A(2)
32. The National Legal Services Authorities Rules, 1995, Rule 10(1)
to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government. The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority. Further the Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions.

The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

III. Functions of the Central Authority

The Central Authority shall perform all or any of the following functions, namely- (a) lay down policies and principles for making legal services available under the provisions of this Act; (b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act; (c) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities; (d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this

33. The Legal Services Authorities Act, 1987, Sec.3-A(3)
34. Ibid. Sec.3-A(4)
35. Ibid. Sec 3-A(5)
36. Ibid. Sec.3-A(6)
purpose, give training to social workers in legal skills; (e) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats; (f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation; (g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor; (h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution; (i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act; (k) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions; (l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures; (m) make special efforts to enlist the support of voluntary social welfare institutions, working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and (n) co-ordinate and monitor the functioning of and other legal services organisations and
give general directions for the proper implementation of the legal services programmes.\(^{37}\)

In the discharge of its functions under this Act, the Central Authority shall, wherever appropriate, act in co-ordination with other governmental and non-governmental agencies, universities and others engaged in the work of promoting the cause of legal services to the poor.\(^{39}\)

**IV. State Legal Services Authority**

Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.\(^{33}\)

A State Authority shall consist of - (a) the Chief Justice of the High Court who shall be the Patron-in-Chief; (b) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and (c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.\(^{40}\)

The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed.\(^{37,40}\)

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37. The Legal Services Authorities Act, 1987, Sec.4
38. Ibid Sec.5
39. Ibid Sec.6(1)
40. Ibid. Sec.6(2)
prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority: Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court. The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court and the administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

All orders and decisions of the State Authority shall be authenticated

41. The Legal Services Authorities Act, 1987, Sec.6(3)
42. Ibid.Sec.6(4)
43. Ibid.Sec.6(5)
44. Ibid.Sec.6(6)
45. Ibid.Sec.6(7)
by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority\textsuperscript{46}. Further, no act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority\textsuperscript{47}.

V. Functions of the State Authority

The duty of the State Authority to give effect to the policy and directions of the Central Authority\textsuperscript{48} and the State authority shall perform all or any of the following functions, namely to give legal service to persons who satisfy the criteria laid down under this Act; conduct Lok Adalatas including Lok Adalatas for High Court cases; undertake preventive and strategic legal aid programmes; and perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations\textsuperscript{49}. In the discharge of its functions the State Authority shall appropriately act in co-ordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing\textsuperscript{50}.

VI. High Court Legal Services Committee

The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court, for the purpose of

\textsuperscript{46} The Legal Services Authorities Act, 1987Sec.6(8)
\textsuperscript{47} Ibid.Sec.6(9)
\textsuperscript{48} Ibid.Sec.7(1)
\textsuperscript{49} Ibid.Sec.7(2)
\textsuperscript{50} Ibid. Sec.8
exercising such powers and performing such functions as may be determined by regulations made by the State Authority\(^{51}\).

The Committee shall consist of - (a) a sitting Judge of the High Court who shall be the Chairman\(^{52}\); and (b) such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority, to be nominated by the Chief Justice of the High Court\(^{53}\).

The Committee shall have not more than eleven members, including the Chairman thereof\(^{54}\). Under Regulation 3(2) the following shall be ex-officio members of the Committee:-(i) a sitting Judge of the High Court, to be nominated by the Chief Justice of the High Court; (ii) the Chairman, Orissa Administrative Tribunal; (iii) the President, High Court Bar Association; (iv) the Chairman, Orissa State Bar Council; and (v) the Secretary to the Committee appointed as such by the Chief Justice of the High Court under sub-section (3) of Section 8-A of the Act.

The Chief Justice of the High Court may nominate other Members (not exceeding five) from amongst those possessing the qualification and experience prescribed in sub-Regulation (4) of the Regulation as under (a) an eminent social worker who is engaged in the upliftment of the weaker sections of the society including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or (b) an eminent person in the field of law; or (c) a person of repute who is specially interested in the implementation of the Legal Services Schemes\(^{55}\).

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51. The Orissa Legal Services Authorities Act, 1987 Sec.8-A(1)
52. Ibid.Sec.8-A(2)(a).
53. Ibid.Sec.8-A(2)(b)
54. The Orissa State Legal services Authority Regulation 1996 Regulation 3 (1)
55. The Orissa State Legal services Authority Regulation 1996 Regulation 3 (4)
The Chief Justice of the High Court shall appoint a Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the State Government. The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority.

The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions. The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

VII. District Legal Services Authority

The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to the District Authority under this Act.

A District Authority shall consist of the District Judge who shall be its Chairman; and such number of other members, possessing such experience and qualifications, as may be prescribed by the State Authority.

56. The Legal Services Authorities Act, 1987, Sec-8-A(3)
57. Ibid.Sec.8-A(4)
58. Ibid.Sec.8-A(5)
59. Ibid.Sec.8-A(6)
60. Ibid.Sec.9(1)
61. Ibid.Sec.9(2)(a)
Government, to be nominated by that Government in consultation with the Chief Justice of the High Court\textsuperscript{62}.

In the State of Orissa the District Authority shall have not more than eight members\textsuperscript{63}. The ex-officio members of the District Authority are (1) District Magistrate; (2) Superintendent of Police of the District; (3) Chief Judicial Magistrate of the District; and (4) District Government Pleader\textsuperscript{64}.

The State Government may nominate in consultation with the Chief Justice of the High Court other Members from amongst those possessing the qualification and experience as under (a) an eminent social worker who is engaged in the upliftment of the weaker sections of the society including Scheduled Castes, Scheduled Tribes, women, children, and rural labourers; or (b) an eminent person in the field of law; or (c) a person of repute who is specially interested in the implementation of the Legal Services Schemes\textsuperscript{65}.

As regards, the enforceability of Article 39-A it has been observed -

"There can be no doubt that the petitioner is not entitled to the grant of a writ of mandamus for the enforcement of the Directive Principle enshrined in Article 39-A. The remedy of the petitioner, if any, lies by way of making an application before the learned Additional Sessions Judge under Sub-section (1) of Section 304 of the Code of Criminal Procedure, 1973, and not by a petitioner under Article 32 of the Constitution.

The efficacy of any legislation depends to a great degree on the five

\textsuperscript{62} The Legal Services Authorities Act, 1987, Sec.9(2)(b)
\textsuperscript{63} The Orissa State Legal Services Authority Rules 1996, Rule 10 (1)
\textsuperscript{64} Ibid, Rule 10(2)
\textsuperscript{65} Ibid, Rule 10(4)
Ts of not only the legislative body, but also the enforcement machinery vested largely in the executive, with final redress to the Judiciary: Intent Interpretation, Implementation, Infrastructure, and Integrity. A stringent law drafted with the best and most honest of intentions may get twisted beyond intent in its interpretation, the implementation skewered by the paucity of an infrastructure which impedes effective and expeditious judicial redress and may also become a prey in the hands of officials whose integrity may be suspect.

The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial service not lower in rank than that of a subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court. The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

The officers and other employees of the District Authority shall be

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67. The Legal Services Authorities Act, 1987 Sec. 9(3)
68. Ibid. Sec. 9(4)
69. Ibid. Sec. 9(5)
entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court\textsuperscript{70}. The Administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State\textsuperscript{71}.

All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority\textsuperscript{72} and no act or proceeding of the District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority\textsuperscript{73}.

VIII. Functions of the District Authority

The duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority\textsuperscript{74}.

Without prejudice to the generality of the functions referred to in sub-section (1), the District Authority may perform all or any of the following functions, namely - co-ordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District; organise Lok Adalats within the District; and perform such other functions as the State Authority

\textsuperscript{70. The Legal Services Authorities Act, 1987 Sec.9(6)}
\textsuperscript{71. Ibid.Sec.9(7)}
\textsuperscript{72. Ibid.Sec.9(8)}
\textsuperscript{73. Ibid.Sec.9(9)}
\textsuperscript{74. Ibid.Sec.10(1)}
may fix by regulations\textsuperscript{75}. In the discharge of its functions under this Act, the District Authority shall, wherever appropriate, act in co-ordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing\textsuperscript{76}.

IX. Taluk Legal Services Committee

The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals\textsuperscript{77}.

The Committee shall consist of - The Seniormost Judicial Officer operating within the jurisdiction of the Committee who shall be the ex-officio Chairman; and such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court\textsuperscript{78}.

The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions\textsuperscript{79}. The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in

\textsuperscript{75}The Legal Services Authorities Act, 1987Sec.10(2)
\textsuperscript{76}Ibid.Sec.11
\textsuperscript{77}Ibid. Sec.11-A(1)
\textsuperscript{78}Ibid.Sec.11-A(2)
\textsuperscript{79}Ibid.Sec.11-A(3)
consultation with the Chief Justice of the High Court. The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

X. Functions of Taluk Legal Services Committee

Under Rule 13 (1) of Orissa State Legal Services Authority Rules 1996, The Taluk Legal Services Committee shall have not more than five members. The Taluk Legal Services Committee may perform all or any of the following functions, namely:- co-ordinate the activities of legal services in the taluk; organise Lok Adalats within the taluk; and perform such other functions as the District Authority may assign to it.

6. IMPLEMENTATION PROBLEMS

The Legal Services functionaries are facing difficulties in getting adequate financial support from the state governments for performing their functions. The enhancement of the income limit for availing the free legal aid services will also bring more people within the ambit of the entitlement; but, there is a danger that the core poor may become marginalized and get ignored in the midst of too many claimants. While the state governments, under their constitutional obligation, should make available adequate funds for the legal services functionaries, the latter should give more attention to the needs of the core poor who have a stronger case for such aid and assistance.

Only a systematic process of empowerment of individual woman by women's awareness building can not protect her against all forms of

80. The Legal Services Authorities Act, 1987 Sec.11-A(4)
81. Ibid. Sec.11-A(5)
82. Ibid. Sec.11-B
violence and it is only through the political, social and legal strategies can be made effective. These questions indicate not merely that the law is inadequate but that the social position of women far from improving with the years is actually deteriorating. In every court a compulsory scheme for free legal aid with women lawyers and social workers as far as possible to help women in distress including those arrested and prosecuted should be provided for.

The result is that poverty becomes with them a condition of total helplessness. 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 recognised as one of the principal items of the programme of the Legal Aid Movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose.

7. APPROACH TO THE PROBLEM

In India free legal aid programme has basically two important aspects.

Firstly, in judicial and administrative cases, free legal aid, in terms of lawyer’s fee, court fee and cost of preparation of paper-book, is provided to poor persons, to members of scheduled castes and backward classes, women and children.

84. Ibid at p.8
85. Suk Das v Union Territory of Arunachal Pradesh AIR 1986 SC 991
Secondly, under the Preventive Legal Aid Programme the following aspects are covered: (a) To resolve the cases of the people through Lok Adalats. (b) To launch awareness campaigns and disseminate information about the Legal Aid Programmes by organising the Para-legal Literacy Camps and the Legal Aid Workshops. (c) To train the para-legals so as to enable them to provide first-aid in legal disputes. (d) To implement the legal-aid programmes through the universities and colleges, and collaboration with the voluntary social organisations. (e) To make research in the laws pertaining to the weaker sections of the society and promote public interest litigation.

Keeping into consideration the sufferings of women Article 39(A) was incorporated in the Indian Constitution. One of the ways of providing justice to the women has been considered to be free legal aid, holding of Lok Adalat and making petitions under Public Interest Petition. The experiment of Lok Adalat as an alternate mode of dispute settlement was considered to be a successful way of providing justice to the women.

The Govt. of India constituted a 'Committee for Implementing Legal Aid Schemes (CILAS) which came in to effect in September, 1983. The efforts of CILAS attained an effective statutory form when the Legal Services Authorities Act 1987 was passed. Other committees have already started Free Legal Aid Assistance much earlier. The main purpose of the Legal Services Authorities is to make available the legal aid to the eligible persons otherwise the constitutional goal of creating equal opportunity for securing

87. Roma Mukherjee, Legal Status & Remedies for Women in India, Deep & Deep Publication, 1998 at p.x
justice for the people would remain elusive. The creation of equal opportunity for the people irrespective of their economic condition or status in the realm of administration of justice is indeed essential. Otherwise it may not be possible to dispense justice in the true sense and without any hindrance.

The Criminal Procedure Code was enacted in 1878. Under Section 340 of the Code it 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 unless the Code was re-drafted in 1973\(^88\). providing therein, under Section 304, that the accused facing a trial in the 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. Under Code of Civil Procedure, there is no specific provision for providing legal aid to woman. Order 33 of C.P.C. only provides for the suits by indigent persons.

In most western countries Legal Aid Programme is confined to one aspect, i.e., providing financial assistance to the poor so that he can go to the Court to get his grievance redressed or to defend himself. In India Legal Aid has various aspect viz. (a) financial assistance in Court cases or cases before administration tribunals or departments; (b) Lok Adalats; (c) para legal training and legal awareness campaigns; and (d) pre-litigation adjudication\(^89\).

\(^88\) w.e.f. 1st April, 1974
\(^89\) Justice N.C. Jain, Legal Aid, Its Scope and Effectiveness of The Legal Aid Rules in This Regard AIR 1996 Jour 184
In any case, it was held that it was the duty of members of Bar and Benches to make litigants of this class, i.e., woman be made known of their legal right under the Legal Services Authorities Act\textsuperscript{90}.

8. PERSONS WHO ARE ENTITLED TO GET LEGAL AID

All laws are made for all men, - common or uncommon. By common man, in common parlance, we understand - a man on the street. A man who may not have any status, office, post or rank in society. He is only a human being an ordinary citizen with expectations of a just and human order. A person of whatever name and nomenclature is known in the society. A legal system and its effectiveness has to be gauged or measured by the extent of its usefulness to the common man. The failure of law for common man is due to no change of heart or outlook of other fellow beings who are privileged and have a better status in the society. There has been no emotional integration between haves in the society and have nots. The society cannot be improved by laws. Social reforms are done not by laws but by leaders in the society who are virtuous, wise and of high moral character. Before making the laws or along with them, no attempts have to be made on behalf of the State or their agencies to spread moral education to encourage since with spirituality. The spirituality and science alone can rule the world including the Government based on democracy. In the absence of any effort in proper direction, the common man is deprived of the benefit of the laws enacted for him which do not reach him due to inefficient bureaucracy and mal administration\textsuperscript{91}.

\textsuperscript{90} Rajeshreeben Dharmendrabhai Patadia v. State of Gujarat, 2002 Cri LJ NOC 5 (Guj).
\textsuperscript{91} Justice D.H.Dharmadhikari, 'Law and Common Man' AIR 1990 Jour., 41
As per the provisions of the Sec. 12 of The Legal Services Authorities Act 1987, every person who has to file or defend a case shall be entitled to legal services under this Act if that person is- (a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution\(^2\); (c) a woman or a child; (d) a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or (f) an industrial workman; or (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986; or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than twelve thousand rupees or such other higher amount as may be prescribed by the Central Government if the case is before the Supreme Court.

\(^2\) Article 23 (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

\(^3\) Act No.53 of 1986 [Repealed by The Juvenile Justice (Care and Protection of Children) Act 2000, Act No.56 of 2000]
As per Rule 16 of the Orissa State Legal Services Authorities Rules 1996 any citizen of India whose annual income from all sources does not exceed rupees 50,000/- (fifty thousand) should be entitled to legal service under clause (h) of Section 12 w.e.f. 1st October 2005, if the case is before a court other than the Supreme Court.

However as per rules the following persons are not entitled to the legal aid unless the Chairman of the Committee approves it as a special case: -

(1) Proceedings wholly or partly in respect of defamation or malicious prosecution or any incidental proceedings thereto;

(2) A person charged with contempt of court proceedings or any incidental proceedings thereto;

(3) A person charged with perjury;

(4) Proceedings relating to any election.

(5) Proceedings in respect of offences where the fine imposed is not more than Rs.50/-.

(6) Proceedings in respect of economic offences and offences against social laws.

The legal aid is also denied where the person seeking the legal services,

(1) is concerned with the proceedings only in a representative or official capacity; or (2) if a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his

94. Such as The Protection of Civil Rights Act, 1955, and the Immoral Traffic (Prevention) Act, 1956 unless in such cases the aid is sought by the victim
interests are not likely to be prejudiced on account of the absence of proper representation.

In the above two circumstances even the Chairman cannot sanction legal aid as a special case.

Further Legal Aid will not be given in the following cases when approached such as proceedings wholly or partly in respect of defamation; or malicious prosecution; or a person charged with contempt of Court; and perjury, proceedings relating to any election, proceedings incidental to any of the above proceedings, proceedings in respect of offences where the fine imposed is not more than Rs.50. Proceedings in respect of economic offences and offences against social laws, such as the protection of Civil Rights Act, 1955 and the Immoral Traffic (Prevention) Act, 1956 unless in such cases the aid is sought by the victim.95

In this connection it may be mentioned that to create awareness among the women of their right to free Legal Services it was held that it was the duty of members of Bar and Benches to make litigants of this class, i.e. woman be made known of their legal right under the Legal Services Authorities Act96.

Dealing with such a situation the Gujarat High Court in Prafullaben Dhirubhai Kanjiya v Dhirubhai Kachrabhai Kanjiya97, where the petitioner has not been informed of her right of free legal aid directed to the Gujarat High Court Legal Services Committee to provide free legal aid to the

95. However, even in the above cases, the Chairman of the Supreme Court Legal Services Committee can, in an appropriate case, direct that legal aid be granted
97. AIR 2001 Guj. 157 at p.160
petitioner in this case. The aggregate amount of expenses and the fees, if any, paid by her in case to her counsel exceeds the amount to be given to her by the Gujarat High Court Legal Services Committee. She has to bear the burden of difference. Where the amount of expenses and the fees which have been incurred and paid by her to the Advocate is less than the amount of expenses and fees to be sanctioned by the committee, then to that extent only the amount has to be paid.

Further in *Sugreev v Sushila Bai*, the Rajasthan High Court dealing with a similar case held that "Where an application was filed by litigant of poor economically weaker section of society to sue as indigent person, it is the duty of the Court either to send the matter to the concerned authority under Act of 1987 or the concerned authority under Rule 18 of Order 33 of C.P.C. to grant free legal services. Where despite of having been made known of her or his this legal right under the Act of 1987, the litigant of the category enumerated under Section 12 of the Act, 1987 does not desire to get the free legal service the Advocate concerned should mentioned and bring it to the notice of the Court concerned in the form of formal declaration of his own or of the litigant concerned to be enclosed to the petition, suit, application revision and appeal etc. as the case may be, which is presented in the Court. The Court, on the first available opportunity to it to ascertain from the litigant concerned whether he or she is desirous of taking the free legal services or not; where he or she desires...".

Thus it is clear from the above two cases that a court is under obligation to ask the accused or any person coming under Section 12 of

98. Ibid at p.160
99. AIR 2003 Raj. 149
100. Ibid
Legal Services Authorities Act that he is entitled a free legal service and unless this is done and failure to do so is sufficient ground for remand, re-trial or re-hearing of the case in question.

As per Section 13 of the Act, persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.¹⁰¹

Further an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.¹⁰²

Every affidavit must be entitled in the cause or matter in which it is sworn, but the names of the first plaintiff and defendant are sufficient if there are more than one. An affidavit in contemplated action should be entitled both in the contemplated action ...... An affidavit must be expressed in the first person and must state the deponent's place of residence and his occupation or, if he has none, his description. An affidavit must be in book, following continuously from page to page, both sides of the paper being used, and it must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject. Dates, sums and other numbers must be expressed in figures and not in words.¹⁰³ However, an application with the affidavit sworn at the foot of the application was also held to be sufficient compliance.¹⁰⁴

¹⁰¹ The Legal Services Authorities Act, 1987, Sec. 13(1)
¹⁰² Ibid, Sec. 13(2)
¹⁰⁴ M.M.Quasim v. Manohar Lal Sharma, AIR 1981 SC 1113
The verification of affidavits enables the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. When there is mischief of lack of proper verification the affidavits was not admissible in evidence\textsuperscript{105}.

Procedurally, Nyaya Panchayat should act as a third party setting a dispute through conciliation, bringing about harmonious relations and avoiding bitterness. Its main role is to decide the dispute as formal courts do. Hence, adjudication occurs only when a compromise is not arrived at amicably. The simple formalities should bring down the cost of litigation to the minimum.

9. AVAILABILITY AND USE OF FUNDS

Generally, the functioning and performance of the enforcement machinery depend upon the availability of funds and the way they use it. The central authority shall establish a fund to be called the National Legal Aid Fund. The amount credited thereto from grants by the Central Government, Grants or donations to the Central Authority and the amount received by the Central Authority under the orders of Court or from any other source.

National Legal Services Authority establishes a Fund to be called the “National Legal Aid Fund” to be opened under the Major Head 8229-Development & Welfare Fund and the said Fund shall be operated in terms of the provisions of Section 15 and 18 of the said Act and in accordance with the instructions that may be issued by the Ministry of Finance and Comptroller and Auditor General of India, from time to time\textsuperscript{106}.

\textsuperscript{105} A.K.K.Nambiar v Union of India, AIR 1970 SC 652

\textsuperscript{106} F.No.6(15)/89-CILAS/NALSA. dt.23.04.1997
A State Authority shall establish a fund to be called State Legal Aid Fund. The amount credited to this fund are any grant made by the Central Authority, Grants to the State Authority by the State Government or by any of the persons, any other amount received under the order of any court or from other sources.

Every District Authority shall establish a fund to be called the District Legal Aid Fund. The sources are grants made by the State Authority, grants or donation by any person to the District Authority. But, here is a control of State Authority because when any grants or donations be made by any person to the district authority i.e. with the prior approval of the state authority.

Another source of the District Legal Aid fund is any other amount received by the district authority under the orders of any court or from any other sources.

The State Government had no power either to sanction or release the funds out of the budgetary allocation of authority. Once the amount is allocated in the budget to the authority, it becomes the funds of the authority and the government has no power over it107.

In addition to the National Legal Aid Fund the Supreme Court Legal Services Committee is also funded by costs awarded by court and the Court has directed to be paid directly to the Committee108.

In addition to the State Legal Aid Fund the High Court Legal Services Committee is also funded by costs awarded by Court and the Court has directed to be paid directly to the Committee109.

107. Lawrence Fernadas v Karnatak, State Legal Service Authority, AIR 2001, Kant, 55 at p.56
108. State of Maharashtra v Uttamrao Rayala Nikam, 1994 (2) SCC 116
It was observed by the Supreme Court in *Kishore Chand v State of H.P.*\(^{110}\) that assigning an experienced defence counsel to an indigent accused is a facet of fair procedure and an inbuilt right to liberty and life envisaged under Arts. 14, 19 and 21 of the Constitution. Weaker the person accused of an offence, greater the caution and higher the responsibility of the law enforcement agencies. Greater care and circumspection are needed by the investigating agency in this regard. Before accusing an innocent person of the commission of a great crime like the one punishable under Sec. 302 I.P.C. an honest, sincere and dispassionate investigation has to be made and to feel sure that the person suspected of the crime alone was responsible to commit the offence. It will enhanced public confidence on investigating agency\(^{111}\).

Further the court held that "it is time that the investigating agency evolved new and scientific development in the field of investigation. The court also said it is the duty of the state that is Central or State Government to organise periodical refresher courses for the investigating officers to keep them abreast of the latest scientific development in the art of investigating and the march of law so that the real offender would be brought to book and the innocent would not be exposed to prosecution"\(^{112}\).

The Supreme Court also in *Hussainara Khatoon v State of Bihar*\(^{113}\) observed "We fail to see why the state Government cannot employ more experts or set up a larger number of testing laboratories or establish more...\]

\(^{110}\) AIR 1990 SC 2140
\(^{111}\) Ibid at p. 2147
\(^{112}\) Ibid at p. 2147
\(^{113}\) AIR 1979 SC 1377
forensic laboratories. It is also necessary to have more than one serologists in the State. This is a situation which the State Government can certainly remedy by taking prompt action. There are also many other measures which can be taken by the State Government for the purpose of accelerating the pace of the investigating machinery but it would not be proper for this Court to suggest or recommend any such measures because this Court has not the requisite expertise of material for doing so and moreover the National Police Commission appointed by the Government of India is seized of this question and it is considerable what steps and measures should be taken for the purpose of expediting the investigative process and making qualitative improvement in it\textsuperscript{114}.

The National Legal Aid Fund shall be applied for the cost of Legal Services, grants made to State Authority, the cost of legal services provided by the Supreme Court Legal Services Committee and any other expenses.

A State Legal Aid Fund shall be applied for the cost of functions referred under Sec.7 which are Legal Service to persons, conduct Lok Adalats including Lok Adalats for High Court cases, undertake preventive and strategic Legal Aid Programmes and the cost of Legal Services provided by the High Court Legal Services Committee.

A District Legal Aid fund shall be applied for the cost of functions referred to in sec.10. They are any functions delegated by the State Authority. The District Authority co-ordinate the activities of the Taluk Legal Services Committee other Legal services in the district and to organise Lok Adalat's within the district.

\textsuperscript{114} Hussainara Khatoon v State of Bihar \textit{AIR} 1979 SC 1377 at p.1380
The measure source of the fund of the State Legal Services Authority comes from the state government. So it becomes imperative for the state Governments to take necessary and adequate steps on a priority basis while granting or allocating funds to the state authority for the effective implementation of Legal Aid services to the weaker sections of the society by reason of economic or other disabilities.

In order to protect the weaker sections it is thought that law should be utilised as an instrument of "Socio Economic" change. One should not forget that speedy trial is the fundamental right of a litigant and the accused. Nyaya Panchayat at the grass root level will secure social justice. Resolution of cases through Lok Adalats is a composite endeavour. It implies resolution of people's disputes by discussion, counselling, persuasion and conciliation so that it gives speedy and cheap justice with the mutual and free consent of the parties.

10. POWER OF LOK ADALAT OR PERMANENT LOK ADALAT

The Court shall refer the case to the Lok Adalat for settlement in the following circumstances if the parties agree or if one of the parties makes an application to the court for referring the case to the Lok Adalat for settlement and if the court is prima facie satisfied that there are chances of such settlement or the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat; provided that no case shall be referred U/s.20 to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties.
The Authority or the Committee\textsuperscript{115} on receipt of an application from any one of the parties to any matter which is falling within the Jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised\textsuperscript{116}, that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat for determination. Also, in this matter a reasonable opportunity of being heard will be given to other party otherwise this matter shall not be referred\textsuperscript{117}.

The Lok Adalat has been vested with powers of Civil Court\textsuperscript{118}, while trying a suit regarding (a) the summoning and enforcing the attendance of any witness and examining him on oath; (b) the discovery and production of any document; (c) the reception of evidence on affidavits; (d) the requisitioning of any public record or document or copy of such record or document from any Court or office; and (e) such other matters as may be prescribed and all members and staff of Authorities, Committees and Lok Adalats deemed to be public servant within the meaning of Sec.21 of IPC\textsuperscript{119}.

If the fact which constitute the charge do not appear on the face of the sanction, it must be established by extranious evidence that those facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction\textsuperscript{120}.

\textsuperscript{115} The Legal Services Authorities Act, 1987, Sec.19(1)
\textsuperscript{116} Ibid S.19(5)(ii)
\textsuperscript{117} Ibid Sec.20(2) proviso
\textsuperscript{118} Ibid Sec.22
\textsuperscript{119} Ibid Sec.23
\textsuperscript{120} P.C.Joshi v. State of Uttar Pradesh, AIR 1961 SC 387
11. AMICABLE SETTLEMENT/CONSENT OF PARTIES

The Legal Services Authorities Act provides for the establishment of permanent Lok Adalat, to exercise jurisdiction in respect of one or more public utility services and shall formulate the terms of a possible settlement which may be acceptable to the parties\textsuperscript{121}.

The Act provides for arbitration to settle disputes in respect of cases related to public utility services like, transport, Post & Telegraph, Telephone, Power supply, Water supply, Sanitation, Health care and Insurance, etc.\textsuperscript{122}.

Any party to a dispute may, before the dispute is brought before any Court, make an application to the Permanent Lok Adalat for the settlement of dispute\textsuperscript{123} and after an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any Court in the same dispute\textsuperscript{124}.

The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner\textsuperscript{125} and as per Sec.22-D of the Act the Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908\textsuperscript{126} and the Indian Evidence Act, 1872\textsuperscript{127}.

\textsuperscript{121} The Legal Services Authorities Act, 1987, Sec.22-A
\textsuperscript{122} Ibid Sec.22-B
\textsuperscript{123} Ibid Sec.22-C(1)
\textsuperscript{124} Ibid Sec.22-C(2)
\textsuperscript{125} Ibid Sec.22-C(5)
\textsuperscript{126} Act No. 5 of 1908
\textsuperscript{127} Act No.1 of 1872
Every award made by the Lok Adalat and permanent lok adalat shall be final and binding on all the parties. Every award shall be deemed to be a decree of a Civil Court and shall not be called in question in any original suit, application or execution proceeding and also transmit any award made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by the Court. 

The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following legal principles, equity and natural justice. Ultimately, the Lok Adalat passes an award, and every such award shall be deemed to be a decree of the civil court or as the case may be, which is final. The award of Lok Adalat is final and permanent which is equivalent to a decree executable and the same is an end to the litigation among parties.

Further, where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, written and signed by the parties, the court after satisfying itself about the settlement, can convert the settlement into a judgment decree.

Where the Court has not recorded any consent of the parties to the suit for referring the matter to the Lok Adalat and in such circumstances, the Lok Adalat does not get any jurisdiction to look in the matter at all.

The moment one of the parties to the dispute express unwillingness to arrive at a compromise or settlement, the Lok Adalat would stand stripped.

128. The Legal Services Authorities Act, 1987, Sec.21 & Sec. 22-E
130. Ibid at p.553
131. Ibid at p.555
132. Commissioner, Karnataka State Public Instructions (Education), Bangalore v. Hanamant, AIR 2002 Kant 446 at p. 447
of its jurisdiction to deal with the dispute in any manner\textsuperscript{133}.

The amendments made to the Code of Civil Procedure by Amendment Act of 1999 and Amendment Act of 2002 seek to institutionalise the ADR techniques in the Indian judicial system. By the said amendments, a new Section 89 has been introduced in the Code of Civil Procedure, and as per the said provision the court may formulate the terms of a possible settlement and refer the same for either arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation. Hence Section 89 of the Civil Procedure Code provides for resolution of disputes through arbitration, conciliation, compromise, mediation and through Lok Adalat.

12. BENEFITS AVAILABLE UNDER LOK ADALAT

The awards passed by Lok Adalats are now deemed to be decrees of the Civil Court and are final and binding on all the parties to the disputes and no appeal lies to any court against these Awards. Thus it has become very important and active means of amicable dispute settlement. Taking into consideration of the various provisions of the Act the following may be deduced to be the benefits available under Lok Adalat.

(1) There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules. (2) The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like the Civil Procedure Code and the Evidence Act while assessing the claim by Lok Adalat. (3) The parties to the dispute can directly interact with

\textsuperscript{133} Commissioner, Karnataka State Public Instructions (Education), Bangalore v Nirupadi Virbhadrappa Shiva Simpi, \textit{AIR 2001 Kant} 504
the judge through their counsel which is not possible in regular courts of law. (4) The award by the Lok Adalat is binding on the parties and it has the status of a decree of a civil court and it is non-appealable, which does not cause the delay in the settlement of disputes finally.

In view of above facilities provided by "The Act" Lok Adalats are boon to the litigating public that they can get their disputes settled fast and free of cost amicably. As per Section 21(1) of the Act, in the event of a matter determined by compromise or settlement by a Lok Adalat in a case referred to it by a court, the Court-fee is to be refunded in the manner laid down in the Court Fee Act, 1870. The Court has also given the favourable view in this regard.

The Lok Adalat is based on the principles of justice enshrined in the very preamble of the Constitution which represents the aspirations of the people of India and are expected to enable the people to achieve the cherished goal of justice.

Lok Adalat is controlled by the Legal Services Authorities Act, 1987. It shall be guided by the principles of justice, equality, fair play and other legal principles. Section 22 confers upon it most of the powers of a civil court. An award of the Lok Adalat shall be deemed to be a decree of a civil court. All proceedings before a Lok Adalat are considered as judicial proceedings.

135. Abdul Hassan v. Delhi Vidyut Board, AIR 1999 Del. 88
136. The Legal Services Authority Act, 1987, S. 20(4)
137. Ibid Sec. 21
Lawyers are entitled to appear before a Lok Adalat. They may help the Lok Adalat in persuading the parties to arrive at a compromise or settlement between the parties of litigation. A lawyer’s assistance in a Lok Adalat is equivalent to ‘legal practice’ and lawyers are the only clan competent to render it. Lawyers’ assistance would be eminently desirable to settle cases promptly. There is a legal obligation on the part of lawyers to participate in the Lok Adalat proceedings. It is also a moral obligation. Lawyers are officers of Lok Adalats as completely as they are officers of the regular courts. Abstaining from appearing in Lok Adalat due to conflict in respect of some part of an enactment is not justifiable. Lawyers’ grievances may be tackled by invoking writ jurisdiction under the Constitution of India. Lawyers are expected by the society to demonstrate enough commitment to offer their expertise for the achievement and advancement of the noble mission of Lok Adalat138.

Besides the above mentioned provisions. The Legal Services Authorities Act also empowers the Central Government to make rules135 in consultation with the Chief Justice of India to carry out the provisions of this Act. Accordingly, the Central Government has made The National Legal Services Authority Rules1995 and the Supreme Court Legal Services Committee Rules 2000. The Permanent Lok Adalat (other terms and conditions of appointment of Chairman and other persons) Rules, 2003.

Similarly, the State Government has also been authorised to make

139. The Legal Services Authority Act, 1987 Sec.27
rules. By virtue of the powers conferred on the states by the Act the Orissa Government has made 'The Orissa State Legal Services Authority Rules 1996'.

Further the Act also empowers the Central Authority as well as the State Authorities to make regulations which should not be inconsistent with the provisions of the Act and the rules made thereunder should provide for all matters for which provisions are necessary or expedient for the purposes of giving effect to the provisions of this Act. Accordingly, the central authority has made The Supreme Court Legal Services Committee Regulations 1996 and the State Legal Services Authority Orissa has made The Orissa State Legal Services Authority Regulations 1996.

In exercise of the powers, conferred by sub-sections (5) and (6) of Section 3-A read with clause (h) of sub-section (2) of Section 27 of the Legal Services Authorities Act, 1987, the Supreme Court Legal Services Committee, in consultation with the Chief Justice of India, has made The Supreme Court Legal Services Committee (Group C & D posts) Recruitment Rules, 2001.

13. PROVISIONS RELATING TO LEGAL AID IN ALLIED LAWS

Besides the Legal Services Authorities Act there are also several other legislations where we find certain provisions relating to Legal Aid. The provisions of the said legislations are discussed below:

140. Ibid. Sec.28
141. Ibid. Sec.29
142. Ibid. Sec.29-A
143. Published in the Gazette of India, Extraordinary, Part.II, Sec.3(i), dtd.8th Aug. 2001,1987
I. The Advocates Act, 1961

As per the provisions of the Advocates Act 1961, the State Bar Councils and the Bar Council of India are required to play effective role for the implementation of the free legal aid as provided under Article 39-A of the constitution. Thus, in order to come in conformity with the constitutional mandate the respective councils perform their respective duties in providing legal aid to the needy persons.

The Advocates Act prescribes certain functions of the State Bar Councils and as per the provisions\textsuperscript{144} the functions of a State Bar Council shall be to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest\textsuperscript{145}; and to organise legal aid to the poor in the prescribed manner\textsuperscript{146}.

Further the Act provides that a State Bar Council may constitute one or more funds in the prescribed manner for the purpose of - (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates; (b) giving legal aid or advice in accordance with the rules made in this behalf\textsuperscript{147}; and may receive any grants, donations, gifts, or benefactions for all or any of the specified in sub-section (2) which shall be credited to the appropriate funds or funds constituted under that sub-section\textsuperscript{148}.

Further as per the provisions of the act\textsuperscript{149} the Bar Council of India is also required to promote legal education and to lay down standards of such

\textsuperscript{144} The Advocates Act 1961 Sec. 6
\textsuperscript{145} Ibid. Sec.6(1)(ee) [Inserted by Act 70 of 1993, section 2 (w.e.f.26.12.93)]
\textsuperscript{146} Ibid. Sec.6(1) (eee) [Inserted by Act 70 of 1993, section 2 (w.e.f.26.12.93)]
\textsuperscript{147} Ibid. Sec.6(2) (a)
\textsuperscript{148} Ibid. Sec.6(3)
\textsuperscript{149} Ibid Sec. 7
education in consultation with the Universities in India imparting such education and the State Bar Council\textsuperscript{150}, to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest\textsuperscript{151}; to organise legal aid to the poor in the prescribed manner\textsuperscript{152}. The Bar Council of India may constitute one or more funds in the prescribed manner\textsuperscript{153} and give legal aid or advice in accordance with the rules made in this behalf\textsuperscript{154}. The Bar Council of India may receive any grant, donation, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate funds constituted under that sub-sections\textsuperscript{155}.

Further as per Sec.9-A of the Act\textsuperscript{156} a Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed, and the qualifications, the method of selection and the term of office of the members of a legal aid committee shall be such as may be prescribed.

The rules prescribed by Bar Council of India provides that every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an advocate’s economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society\textsuperscript{157}.

\textsuperscript{150} Ibid. Sec.7(1)(h)
\textsuperscript{151} Ibid. Sec.7(1)(h)(ia) [Inserted by Act 60 of 1973, section 7 (w.e.f.31.1.74)]
\textsuperscript{152} Ibid. Sec.7(1)(h)(ib)
\textsuperscript{153} Ibid. Sec.7(2)
\textsuperscript{154} Ibid. Sec.7(2)(b)
\textsuperscript{155} Ibid. Sec.7 (3)
\textsuperscript{156} Section 9-A. was inserted by Act No. 60 of 1973 w.e.f.31.1.1974
\textsuperscript{157} The Bar Council of India Rules 1975, Rule 46
A lawyer has an obligation to render public interest and pro bono legal service. A lawyer may fulfil this responsibility by providing professional services at no fee or at a reduced fee to individuals of limited financial means or to public service or charitable groups or organisations, or by participation in programmes and organisations specifically designed to increase the availability of legal services. In addition, lawyers or law firms are encouraged to supplement this responsibility through the financial and other support of organisations that provide legal services to persons of limited means.\(^{158}\)

II. The Mental Health Act 1987

The Mental Health Act 1987 replaced the Indian Lunacy Act of 1912 as the legislation regulating admission and discharge into mental hospitals. The inclusion of Section 91 allowing for legal representation and legal aid, along with other provisions, have been relied upon to demonstrate that the Mental Health Act 1987 is a modern day legislation regulating the field of psychiatric treatment.

Section 91 has accorded greater importance to the right to legal aid than legal representation. Thus as per Section 91(1) where in any proceeding before a Magistrate or District Court a ‘mentally ill person’ is not represented by a legal practitioner because such person does not have ‘sufficient means to engage a legal practitioner’ then the District Court or Magistrate ‘shall assign a legal practitioner to represent him at the expense of the State’. Further as per section (2) of section 91 where a person having sufficient means is unrepresented the Magistrate or District Court are to assign a legal practitioner only if ‘it appears to the District Court or

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Magistrate, having regard to all the circumstances of the case, that such person ought to be represented by a legal practitioner'. By virtue of this section, an absolute right to legal aid and a qualified right to legal representation has been accorded to a 'mentally ill person'.

The legal aid rights of persons with psychosocial disability can be constructed from three sources: the Constitution; the Mental Health Act 1987 and the Legal Services Authorities Act 1987.

As already mentioned right to counsel and legal aid was included as an integral ingredient of fair procedure. In accordance with this formulation persons with psychosocial disability would be entitled to legal aid in all those circumstances where they are being deprived of their personal liberty. This would include reception orders directing compulsory civil commitment in psychiatric institutions. 'The scientific methods used to condition a man's mind are in a real sense physical restraints .....' 159.

III. The Protection of Civil Rights Act, 1955

Article 17 of the Constitution provides 'Untouchability' stands abolished and its practice in any form is forbidden. In order to enforce this Constitutional provision, the Untouchability (Offences) Act, 1955 was enacted as a central Law. The Act was subsequently amended and renamed as 'The Protection of Civil Rights Act, 1955' under which the practice of untouchability was made both a cognizable and noncompoundable offence.

This Act provides that the state Government shall take such measures as

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may be necessary for ensuring that the rights arising from the abolition of untouchability are made available to, and are availed of by, the persons subjected to any disability arising out of untouchability\textsuperscript{160}. As per Section 15 A (2)(i) of the Act the State Governments are required to take adequate facilities, including legal aid, to the persons subjected to any disability arising out of 'untouchability' to enable them to avail themselves of such rights.

The Act provides that the Central Government is also required to take such steps as may be necessary to coordinate the measures taken by the state Governments in regard to implementation of the Act.

IV. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

This Act has been enacted to check and deter crimes against members of the Scheduled Castes and Scheduled Tribes by the non-Scheduled Castes or non-Scheduled Tribes as the existing laws like the protection of Civil Rights Act 1955 and the normal provisions of the Indian Penal Code have been found inadequate to check atrocities on Scheduled Castes and Scheduled Tribes. The Act creates distinct and different offences from the other penal statutes. As per Section 21 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 the State Government shall take such measures as may be necessary for its effective implementation, which include the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice.

\textsuperscript{160} The Protection of Civil Rights Act 1955 Sec. 15-A
V. The Family Courts Act 1984

The Family Courts Act, 1984 provides for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be antitied, as of right to be represented by a legal practitioner: Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.\(^{61}\)

A party will be entitled to take legal advice at any stage of the proceedings either before the counsellor or before the Court. A party in indigent circumstances will be entitled to free legal aid and advice.\(^{62}\) The Court shall maintain a panel of Lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the Lawyers from the said panel provided the lawyer is available and willing to accept the case.\(^{63}\) The circumstances under which such legal aid will be made available to a party shall be as laid down by the High Court.\(^{64}\)

VI. Miscellaneous Provision

The National Commission for women strongly felt the need of strict implementation of the Legal Services Authorities Act, 1987 by which the

\(^{161}\) The Family Courts Act, 1984 Sec. 13
\(^{162}\) The Family Courts (Orissa) Rules, 1990, Rule 27
\(^{163}\) Ibid. Rule 28
\(^{164}\) Ibid. Rule 30
Legal Aid Boards were empowered to organise Lok Adalats for the speedy disposal of cases. The Commission has coined a new and innovative idea of organising 'Parivarik (Mahila) Lok Adalat' for the speedy disposal of cases relating to family. Emphasis on amicable settlement of disputes is an important aspect of the Parivarik (Mahila) Lok Adalats ideology. To this end, the process of conciliation is applied strictly in the adjudication of disputes. Simplicity of procedure and flexibility of functioning are the two essential features of Parivarik (Mahila) Lok Adalats, which are not encumbered by elaborate rules and civil or criminal procedure or the laws of evidence. Parties are heard in a normal and informal manner.

With the above objectives in view, the Commission sent letters to the Chief Justice of the High Courts requesting them to advise the State Legal Services Authorities to cooperate with the National Commission for women in organising Parivarik Mahila Lok Adalats. The Chief Justices were also requested to advice the District and Sessions Judges who are also the Chairpersons of the District Legal Services Authorities, to actively help the N.G.Os (Non Governmental Organisations) to organise the Parivarik Mahila Lok Adalat. The National Commission for women thus invites Non Governmental Organisations to send their proposals.

In response to its call, the commission has received positive response from the people belonging to all walks of life in support of the Parivarik Mahila Lok Adalats in a successful manner. The cases dealt in Parivarik Mahila Lok Adalat fell into the following categories:

14. THE REMARKS

The right to assignment of counsel at Government expenses was emphasized in the 14th Law commission Report165. Thereafter, in 1969 the Law Commission again strongly recommended that the right of the accused to representation at the cost of Government should be placed on statutory footing in relation to trials for serious offences and as a first step in this direction, the Commission proposed that such a right should be available in all trials before the Court of Session166.

It is extremely important that public and social workers should be involved in the legal services programmes, irrespective of their political affiliations, so long as they are dedicated to the cause of legal services to the vulnerable sections of the community167.

Legal awareness will definitely create confidence among poor, weaker sections of the society and will enable them to make conscious use of law as an instrument to safeguard their rights and interests.

We must accept the reality that many people in this country still have no access to justice. 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 people in this country. In respect of Justice Delivery System, there is a lurking feeling that there is no level playing field for the ordinary citizens and that there is no equality in the judicial process.¹⁶⁸

Law treats both rich and poor alike, irrespective of their financial needs, social and economic status. However, beneath the surface of equality, there is a profound inequality in the operation of our legal system. This has shaken the foundation of this principle which believes that the state is obliged to provide sustainable help to the traditionally weak and vulnerable members of the society that to enjoy substantive equality and not the theoretical version of equality. Here comes the role of the law and the legal process. Equality envisaged in the constitution can provide social justice. This can only be done through the legal process and a responsible judiciary to implement the noble vision of law. In the opinion of Dr. Manmohan Singh, the Prime Minister of India, 'the rule of law can become a living reality for millions and millions of our people, only if the rights of law-abiding citizens are effectively protected and safeguarded, only if justice is

¹⁶⁸. Justice K.G. Balakrishnan, (as he then was) Nyaya Deep, Editorial, Jan.2005
seen to be delivered and delivered in time, only if the right of the weak and dispossessed are protected\textsuperscript{169}. Then only, the role of law as an instrumentality for fulfilling the promises of the constitution and give succor to the millions of people in the times of distress can be able to retain its significance.