CHAPTER – XI

LEGAL PROFESSION , LEGAL AID AND CUSTOM
CHAPTER-XI

LEGAL PROFESSION, LEGAL AID

AND CUSTOM

The presence of Mukhtyars and unmodified customary laws makes the Lakshadweep legal system and legal profession unique. The delayed introduction of proper laws and legal institutions necessitates to analyse how Lakshadweep has got a separate system. In what way is it different from the mainland?

Judicial System in Madras Province

When the 1912 Act was introduced into the Lakshadweep, the judicial set up of Madras Province was having a very good hierarchical order both in civil and criminal side. On the civil side the Madras Province is having a well defined three tier Court system in the moffussil area right from 1873\(^1\). Before that also the Madras Provinces was having Courts like Zilla Court. The new hierarchical setup introduced in 1873 is having:

(1) District Court (2)The Court of Subordinate Judge (3)The District Munsiff

The District Judge and the Subordinate Judge had unlimited pecuniary jurisdiction. The munsiff was empowered to try all civil suits valued upto Rs.5000. First appeals from the original decisions of the District Courts lay to High Court\(^2\). The High Court is at Madras. Appeal from the decision of the Munsiffs and the Subordinate

\(^1\) For the full text of the Act, see Madras Code, VII edition (1952), pp.100-107.
\(^2\) Id., S. 13.
Judges upto value of Rs. 10000, lay to District Court and in other cases to High Court.\textsuperscript{3} Section 16 of the Act made the personal law of Hindus and Muslims enforceable. In other cases the Court was required to decide cases according to the three celebrated principles, viz. justice, equity and good conscience, which constituted the basic principles governing the modern judicial system. The District Courts, Subordinate Courts and District Munsiff were in existence in the other part of Madras Province right from 1873. From year 1802 onwards the Madras Province, the office of Judge, Magistrate and the Collector of Revenue were held by distinct persons. But in the year 1912 by the new regulation in the islands the judicial powers and the revenue powers were vested on the Amin. Right from 1865 the mofussil courts were precluded from introducing any English or Foreign Law under the cover of the words “justice, equity and good conscience”\textsuperscript{4}. There was no such ban in the 1912 island Regulation.

1680 witnessed another landmark by the recognition of English as the Court language in Madras\textsuperscript{5}. Till that time Portuguese, Tamil and Malayalam were the Court languages. In 1802 based upon the humane and liberal plan of Lord Cornwallis’s Adalat system started in Madras. The significant feature of this plan was the offices of Judge and Magistrate and of the Collector of Revenue were to be held by distinct persons. In 1827 some more institutional changes appeared in the administration of justice. Indians were appointed as Native criminal judges. But they were having no jurisdiction over Europeans\textsuperscript{6}.

\textsuperscript{3} Ibid.
\textsuperscript{4} Sanjiva Rao, The Advocates Act & The Legal Practitioners Act (5\textsuperscript{th} edn.1991), p.7.
\textsuperscript{5} Supra n 1 at p.42.
\textsuperscript{6} Madras Regulation VII of 1827.
To implement Munro recommendation that the criminal cases ought to be tried
by the Native Panchayat or jury as they would be fully conversant with the character and
antecedents of the accused and witness; trial by jury was introduced in criminal trial. By
this Governor – in – Council could authorize any judge to conduct trial with the
assistance of jury. Intelligent and respectable native resident between 25 and 65 year's
age was to be nominated to serve as jury. If the judge disagreed with the jury the matter
had to be referred to Sadar Nizamat Adalat, who had power to order denovo trial.

With Regulation V of 1816 recognition was given to the age-old system of
Village Panchayats in the determination of suits without any pecuniary limits, subject to
the consent of parties concerned. The Village Munsiff was empowered to summon a
Village Panchayat consisting of odd number of respectable residents. The minimum
number was fixed at five and the maximum was eleven. The Panchayats was empowered
to decide all cases with unlimited pecuniary jurisdiction. Provincial Council could set
the decision of Panchayat aside if favoritism in deciding the case was proved. But if
another Panchayat confirmed the decision taken by one Panchayat it becomes final. The
District Munsiff was also authorized to call a Panchayat for deciding civil disputes of
any amount in the same manner as Village Munsiff called a Village Panchayat. The
collectors were empowered to refer disputes relating to occupancy rights, cultivation or

7 Madras Regulation X of 1827.
8 Ibid. Also see Sir Thomas Munro Commission Report of 1816. This Commission was
constituted to inquire and report about the reforms required in the administration of justice.
Munro was a favourite of panchayats. He encouraged greater use of panchayats for settling
disputes.

9 Madras Regulation VIII of 1806.
irrigation to Village or District Panchayats for decision\textsuperscript{10}. By Regulation XI of 1816 the heads of villages and Tahsildars were authorized to punish for petty offences. The heads of villages were authorized to order imprisonment up to 12 hours and Tahsildars up to 24 hours or a fine of one rupee. In 1821 they were authorized to punish petty thefts\textsuperscript{11}.

### Procedure

In order to regulate both the civil and criminal matters brought before it, the power to make rules and orders were given to the High Courts. An attempt was seen to bring uniformity to the rules of procedure, in the High Court and Subordinate Courts. This attempt to achieve uniformity in the rule making powers of the High Courts came out, when they were guided as far as possible by the Code of Civil Procedure 1859, in civil cases and the Code of Criminal Procedure 1861, in criminal matters\textsuperscript{12}.

### Law Applicable

Clause 19 of the Letters of Patent of 1865 read with clause 18 of letters patent of 1862, ordained that in exercise of its original civil jurisdiction, the High Court should apply the same law or equity as would have been applied by Supreme Court which meant English Common Law and Rules of equity as modified by Indian legislation.

Clause 21 of the Letters of Patent of 1865 required that in the exercise of its appellate jurisdiction, the High Court should apply the law or equity and rule of good conscience, which the Court in which the proceedings were originally instituted ought to

\textsuperscript{10} Madras Regulation XII of 1816.

\textsuperscript{11} \textit{Supra} n. 1 at p. 183.
have applied to such proceedings. The Mofussil Courts were strictly precluded from introducing any English or foreign law under the cover of the words "justice, equity and good conscience." In short, on the original side of the High Court, English Law and Rules of Equity continued to be administered as before and on the Appellate side local laws were applied.

Legal Profession

In every society legal profession is an important one. By profession 'we mean scholarship, as the profession of law.' The importance of the legal profession can be identified from Law Commission's assessment as "a well organized system of judicial administration postulates a properly equipped and efficient Bar." States' administration of justice is directly related to the efficiency of the well-organized legal profession. That reflects the quality of marshalling the facts and law before a court with the legal arguments for and against the litigating parties. The quality of decisions is having a direct bearing on the quality of the pleading, which is resting only on the knowledge of the person who is conducting the case in the court. Goodie has described a community of the professionals is varying from other communities based on socialization and social control and client choice or the evaluation of the professional. The process of the professionalization is the "climax job pattern" of occupational environment and no occupation becomes a profession without antagonism and struggle. Law as a

12 Clause 27 of the letters of Patent 1865.
13 Sanjiva Rao, supra n. 4 at p. 7.
14 Fernald, Synonyms and Antonyms (1947), p.102.
profession existed therein ancient\textsuperscript{17} and medieval India though its concept was quite different from what it is today.

The Right to Practice in Mainland

The right of practice in the present Indian Courts is governed by S. 29 of Advocates Act 1961\textsuperscript{18}. In response to a demand by the legal profession for unification of the Bar, Section 29 of the Advocates Act has been enacted. As per that, from the appointed day, there shall be only one class of persons entitled to practice the profession of law; section mandates that class as Advocates. This date has later notified with effect from 1\textsuperscript{st} June 1969\textsuperscript{19}.

Advocates Act

Section 24(3) of the Advocates Act prescribes who may be admitted as advocates and also in state roll. The conditions include: he should be an Indian citizen, who has completed the age of twenty-one years and who has obtained a degree in law. From

\textsuperscript{17} V.D. Kulasrestha, Landmarks in Indian Legal and Constitutional History (6\textsuperscript{th} edn. 1989), p. 450. See also Ludo Rocher, "Lawyers in classical Hindu Law", XIII (3and 4) Indian Bar Review 353; Philip B. Calkins, "Lawyers in Muslim India", XIII (3and 4) Indian Bar Review 373.

\textsuperscript{18} S. 29 of the Act reads as: “Advocate to be the only recognised class of persons entitled to practice law- subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, by only one class of persons entitled to practise the profession of law, namely, advocates”.

\textsuperscript{19} See Gazette of India 1969, Part II, See 3 (ii), Extraordinary, p. 569
1/6/1969 onwards no person other than an advocate enrolled under Advocates Act 1961 is entitled to practice in any court or before any authority.

Section 55(5) says that notwithstanding anything contained in the Advocates Act, vakils, pleaders, mukthars and revenue agents shall continue to enjoy the same rights in respect to practice as if the provisions of the Legal Practitioners Act, 1879 had not been repealed. Section 6 of Legal Practitioners Act 1879 empowers the High Courts to make rules as to qualifications etc. of pleaders and mukhtars. All such rules should be published in the official gazette

and then alone it should have force of law. Section 7 of the Legal Practitioners Act 1879 mandates the High Court to issue a certificate authorising the pleader or mukhtar to practice up to the end of the year. Each year that has to be renewed. Section 9 of the

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20 S. 24 reads: “Persons who may be admitted as advocates on a state roll-(1). Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:- (a) he is a citizen of India: provided that subject to other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India duly qualified, are permitted to practice law in that other country; (b) he has completed the age of twenty-one years; (c) he has obtained a degree in law.... (3) Notwithstanding anything contained in sub-section(l) person who-(a) has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law as an advocate of a High Court (including High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or (aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate to practice the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date.”

21 This section has been repealed when Advocates Act 1961 came into force.

22 S. 7 of Legal Practitioners Act 1879. Its text is as follows: “Certificates to pleaders and mukhtars:- on the administration, under section 6 of any person as a pleader or mukhtar the High Court shall cause a certificate, signed by such officer as the court, from time to time appoints in this behalf, to be issued to such person, authorising him to practice up to the end of the current year in the courts and in the case of a pleader, also the revenue offices specified therein. At the expiration of such period, the holder of the certificate if he desires to continue practice, shall subject to any rules consistent with this Act which may from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practices, or by such officer as the High Court, from time to time, appoints in this behalf. On every such renewal, the certificate (f.a. Contd)
Act enables every pleader to practice in any Court or revenue office under that High Court. But section 9 empowers mukhtars on enrollment to appear in any civil courts and criminal courts. S. 11 of the Act empowered the High Court to declare functions of Mukhtars. Section 12 of the Legal Practitioners Act has empowered High Court to suspend or dismiss any Pleader or Mukhtar who is convicted of any criminal offence implying a defect of character which unfits him to be the pleader or mukhtar. Since Legal Practitioners Act 1879 had not been extended to Lakshadweep these provisions of mukthars are not applicable to Lakshadweep.

The extension of various laws and establishment of various courts in Lakshadweep have been described. From that discussion a picture is unfolded on the evolution of the administration of justice in Lakshadweep. Although part of the history of administration of justice, the growth of legal institutions and legal profession are discussed as a separate chapter here.

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23 S. 9 of Legal Practitioners Act 1879 states: "Mukhtars on enrollment may practice in courts. Every Mukhtar holding a certificate issued under S. 7 may apply to be enrolled in any civil and criminal court mentioned therein and situate within the same limits; and subject to such rules as the High Court may, from time to time, make in this behalf, the presiding judge shall enroll him accordingly; and thereupon he may practice as mukhtar in any such civil court and any court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead and act in any such criminal court and any Court Subordinate thereto."

24 S. 11 of the Act reads: "Power to declare functions of Mukhtars: Notwithstanding anything contained in the code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practicing in the subordinate courts, and in the case of a High Court not established by Royal Charter, in such court."

25 See for details, supra Chh. V and VI.
In 1912 when the Britishers took up the modernization of Lakshadweep legal system, they have not extended this set up to islanders willfully. The present system of civil judiciary in South India has been implemented through the Madras Civil Courts Act 1873. This Act provided for the constitution, organization, jurisdiction and powers of civil Courts in Madras Province. Though the Rajas of Cannanore, Portuguese and the Britishers ruled these islands only the Britishers could bring about any change in legal system or legal profession.

From the above, it could be seen that by the time this 1912 Regulation was implemented in Lakshadweep the mainland was having a well defined legal system, were qualified persons manned separate civil and criminal judiciary. It was separate from executive wing of the government. Separate procedures were prescribed for both civil and criminal courts. There were separate hierarchical system of courts. When 1912 Regulation was implemented the executive and judicial functionaries concentrated on one and the same persons in the islands.

For the first time legal profession – Mukhtyars - got recognition during the British period in Lakshadweep. The absence of guidance and control from part of the government was a peculiarity as regards the entry and continuance as Muktiar in the island courts even today. No standard qualification has been prescribed nor any examinations are being required there even today. Anybody, who is appearing in front of any legal authority and claiming that he is a Muktiar, no legal authority can deny him opportunity to conduct or defend case of others. It is a peculiar situation. After 1972
nobody can practice legal profession in any other main land court without having legal degree and the necessary registration obtained from Bar Councils in the states.

This was the difference as regards legal profession. Similarly important variations exists as regards the dispute resolution institutions and the law which was applicable in these institutions in mainland and the island. The island legal system still lag behind the mainland with respect to legal institutions and legal profession when one approaches it from the angle of skills and technicalities.

During British period the Lakshadweep got institutionalised dispute resolution in the form of Amin Courts, Divisional Officers Court and Collectors Court. They have got chance to appeal in High Court and even in Governor General in Council. Islanders, first time experienced a written code and laws and also a well-defined procedure in courts. All these happened in the islands mostly through 1912 Regulation. In 1969 islanders got courts manned by legally qualified persons. Just before that only in 1967 they got almost all the mainland laws extended to the islands. The District Court in the island was established in 1996 only.

When the Mukthyar system was introduced in Lakshadweep as per 1912 Regulation the term Mukthyar was not defined. Apart from that in the Legal Practitioners Act the term is Mukhtar where as in the 1912 Regulation the term used is Mukthyar. In the Bombay presidency, Mukhtar means one who may with the permission

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26 See for details, supra Ch. V.
27 Ibid.
28 For a detailed discussion, see supra Ch. VI.
of the court represent an accused in any proceeding. The mukthars are not competent to sign documents such as plaints, written statements etc which the law requires to be signed by the pleader, though he may present such documents to the court. In Lakshadweep plaint and written statement are usually signed by Mukthars. They are doing all the legal jobs that are being done by the advocates in mainland. Till recently they were not having the power to attest documents. They were doing all these things not on the basis of any statutory background, but on the basis what they got through the custom of the island. But in the year 1995 Kerala High Court conferred that power. The only statutory provisions about their existence are Sections 18 and 25 of 1912 Regulation. The term Mukthar is not defined there. No selection procedure or powers to control or register has been mentioned. No qualification has been prescribed. Even now the Mukthars are practicing. Actually in practice they are subject to the control of the presiding officer. But that also only in a limited way because all these Mukthars are the political leaders in the present system. They are using black coats in the court. The only provisions in the 1912 Regulation, which mentions about Mukthars are Sections 18 and 25. Section 18 reads as follows:

“No pleader shall be allowed in any Court except with the special permission of the Collector. Parties may, however, be represented by their island Mukthars.”

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29 In re Baji Rao Abaji, AIR 1928 Bom 33.
30 Liakat Hussain v. Bigeswar Sanval, 16 Cr LJ 578.
This Section is applicable for criminal justice. On the civil justice side the section which enables the appearance of the **Mukthyras** in court is Section 25 of the Regulation 1912, which reads:

“(1) The Collector or the Inspecting Officer may refer any case for disposal or report to two or more of the island assessors. When it is referred for disposal, the assessors shall report their decision to the court referring the case.

(2) The parties may challenge any assessor, and on sufficient reason being given another assessor shall be selected in his place.

(3) The parties shall be allowed to attend the hearing of the suit in person or by a **Mukhtyar**, and the evidence shall be taken in open court.

(4) The officer trying the suit shall make a memorandum of evidence of each witness as it is given, and shall, after the conclusion of the hearing, pronounce judgment in open court either in the presence of parties or after notice to them. The judgment shall be in writing and shall contain the points for determination and the decision thereon.”

After the coming into force of Advocates Act 1961, nobody is entitled to be enrolled for the practice of legal profession without law degree. But in Lakshadweep the different practice continued. So we have seen that the Advocates Act 1961 has not been extended to Lakshadweep. Old 1912 Regulations govern the **mukthyras** or the custom developed within the legal institutions. Just as mainland legal system, Lakshadweep legal system also has now become much technical. The unequipped **mukthyras** cannot cope with the needs of the society. One may say that it is high time the further entry of
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The isolated existence of these islands has contributed to the formation of particular mode of legal thought prevailing in the Lakshadweep. Long before the society reached a stage where law is created by the deliberate creation of legislation, the need for institutionalized means of resolution of the dispute were very much there in the Lakshadweep society. The Kootams during Rajas period, which continued even during the initial period of Britishers, exemplifies this.

In Lakshadweep, Kootam had been the method of settlement of disputes for a long time. In the early there was no police in the island. When the British rule and governmental agencies was enforced in the islands, the enforcement of law and order was a must. Since the Britishers motive here was to preserve the territory profitably to meet their colonial interest their requirement of the modernization of this society was just to preserve their rule in a peaceful manner. The better method in these remote islands was not to touch their simple life. So they have not imposed so much laws. And the customary law was allowed to prevail in important areas. The posting and maintaining a police force in this remote area would not be economical. The requirement of society also was not demanding police then.

Though the Britishers have not created police machinery, the governmental regulations were developed. They have identified some conflicts between the customary law and the newly imposed laws. Here the Lakshadweep situation was entirely different from mainland where through various enactment new authorities, forms of legal obligations and rights were created. Moreover they were highly technical and more or less a replica of western model. That necessitated English knowing people to identify the
working of English so as to communicate to the English officers. So, in that process did emerge in the mainland vakils and pleaders along with English Attorney and solicitors. Class of specialist advisers and experts who know their way around legal process who can interpret these processes to ordinary people affected by them. There the legal procedure developed into sophisticated legal institutions which were working on the basis of Evidence Act and Civil and Criminal Procedure Codes. The interpretation in such a situation requires mastery over the principles of English law. The real reason for the emergence of Vakils and pleaders in the mainland was that the few English people in India could not satisfy the needs of society. The Lakshadweep situation was different in the sense. The laws of Lakshadweep were not as technical as those of mainland. Being a Scheduled Area the laws extended in the mainland were not applicable there unless it was specifically extended.

The Evidence Act, Civil Procedure Code and the Criminal Procedure Code were not as such applicable, though they were working following that system. The equity, good conscience and justice were the principle followed. That apart the customary law governs the major areas of selections. So the fundamental thing required in such a legal system is the mastery over the customary law and commonsense.

In mainland India, because of different systems of inheritance based on Dayabhaga, Mithakshara etc and because of the Hindu law higher level specialization is needed which resulted in the emergence of the Hindu pandits and Muslims Maulavis. But the Lakshadweep customary law was not codified, nor were there many tough interpretations. The local people can identify the customary law easily. It is for the
officers who decided cases to elaborate on that. That is, English people and the mainlanders who came there as Monegar, Amin, Inspecting officers, and Collectors’ assistant. The requirement of simple legal knowledge in the islands was not that much sophisticated and technical as that of mainland. That is why the Britishers have created the institution of mukhtyars without prescribing any qualification or tests. Apart from that, getting any qualified person, in that isolated island was nearly impossible. That could be the reason that 1912 enactment extended up to 1965 without any modification in the institutional set up. As regards the legal profession is considered even in 1999, these 1912 Regulations’ stipulations are following without any change.

Evolution of the Concept of Legal Aid - Climaxing in Legal Services

The Law Ministers’ Conference held on September 18-19, 1957 recognized the necessity to establish Legal Aid Schemes. The state laid down the foundation for the movement to attain momentum in due course. The Law Commission of India took up the cause in 195831.

Krishna Iyer Committee

As an attempt to implement human rights32 and the recommendations of Law Commission on October 27th 1972, the Government of India constituted a Committee

32 Universal Declaration on Human Rights and International Convenient on Civil and Politics Rights underlined norms that everyone has the right to an effective legal aid by the Constitution or by law. The right to defend oneself and legal assistance to him of his chosen Counsel, to be (f.n. Contd)
under the Chairmanship of Justice V.R. Krishna Iyer, the then Judge, Supreme Court of India, as Expert Committee, to consider the question of making available legal aid and advice to the weaker sections of the community and persons of limited means in general and social and educational backward classes in particular. In 1974, the said Committee submitted its report known as “Processual Justice to the People” and dealt therein in extenso with the need for legal aid and advice to the poor, to the dalits, tribes and backward classes etc. It also recommended numerous projects for implementation. Then Article 39A was brought in the Constitution under chapter IV. It enjoins the state to promote the operation of legal system on the basis of equal opportunity and, in particular, shall provide free legal aid by suitable legislation or in any other way, to ensure that opportunities for securing justice or justice is not denied to any citizen by reason of economic or other disabilities.

Bhagwati Committee

Another Committee under the chairmanship of Justice P.N. Bhagwati elaborated the legal aid and advice scheme in its report entitled “Report on National Judicare Equal Justice Social Justice” on August 31, 1977. This ultimately formed a blue print for the legal aid schemes.

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informed of that right, if he has no legal assistance, is the duty of the state to assign legal assistance without payment of fee when he is an indigent person have clearly been specified. 31 By 42nd Constitution (Amendment) Act (1976). 34 The Legal Aid Newsletter published by CILAS in 1995.
CILAS

In implementation of the directives contained in Article 39-A\textsuperscript{35} and the report, the Government of India in its Resolution dated September 26, 1980, constituted a committee known as the Committee for Implementing Legal Aid Schemes (CILAS). The Committee had been headed by Justice P. N. Bhagwati. The National Legal Services Authority (NALSA) succeeded the CILAS with effect from November 9, 1995 when Legal Service Authority Act 1987 amendment was brought in.

CILAS has been charged with responsibilities to formulate in detail and to implement comprehensive legal aid program, on a uniform basis, throughout the country\textsuperscript{36}. The Legal Aid Program thus evolved by CILAS is judiciary-oriented and is of two-fold in character, namely: court-oriented legal aid; and preventive or strategic legal aid.

Article 39A makes the duty of dispensation of legal aid and equal justice to all citizens by legislative or appropriate scheme to the needy and the poor. Dispensation in respect of legal aid relating to Court-oriented cases by way of providing free legal

\textsuperscript{35} Article 39-A reads: "Equal justice and free legal aid: 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 on 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."

\textsuperscript{36} To effectuate the policy, the CILAS evolved a model scheme laying down the infrastructure of the Legal Aid Boards in all the states and Union Territories and forwarded the same to the state Governments for adoption with such modifications as the local conditions deemed appropriate. As per the scheme, three-tier system, viz., state Legal Aid & Advice Board as an apex body at the state level and Legal Aid Committees at the District and Taluk level respectively were constituted. The state Legal Aid & Advice Board was made responsible to implement Legal Aid Programs in the states concerned; maintenance of true and proper accounts; and setting up of the Legal Aid Committees at each High Court, District and Taluk levels of the concerned state.
services in the form of aid in payment of Court fee, advocates' fee, expenses involved in preparation of paper books and summoning of witness etc. to the indigent person is an obligation on the part of the state. Therefore, the responsibility in that behalf was cast on the state Legal Aid & Advice Boards and the Legal Aid Committee funded by the respective State Government. The Central Government also had constituted, from time to time, the Supreme Court Legal Aid Committee, headed by a sitting Judge of the Supreme Court of India.

The concept 'welfare state' accepted by modern state made it mandatory that special protection should be provided to the persons incapable of protecting their rights and interests. This should be provided in such a way that thereby they can develop their personality. The plural hierarchical set up with the wide disparities existed in the Indian society when reaching the justice delivery system; it questions the very efficacy of the legal system.

Legal Aid in Lakshadweep

The legal aid and the related matters are highly important in Lakshadweep legal system. Its working will reveal how far bureaucratic delay can reach the standards of legislative passiveness, when there is a tilt in the equilibrium among the three legs of democracy – legislature, executive and judiciary. In the first approach the implementation of legal aid in the island society seems so simple. The very far-reaching change that has to be introduced in the Lakshadweep legal system is converting the implementation of the legal aid into a complex one. The issue is emerging out from the legislation to constitute legal services authorities to provide free and competent legal
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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
organize Lok Adalats to ensure that the operation of the legal system promotes justice on
a basis of equal opportunity. The name of this statue is Legal Service Authorities Act,
1987. This came into force on 11th October 1987. The impact of this Act on this island
society is great. The Act entitles every indigenous — the whole is placed in the category
of Scheduled Tribe. The entire native islanders belong to one group getting free legal
services. They can file or defend a case, irrespective of their annual income. A native
furnishes an affidavit stating that he is a Scheduled Tribe before the concerned authority
and satisfies him that he has a prima facie case to prosecute or to defend. The case
includes a suit or any proceedings before court. The wide meaning provide by defining
the court means a civil, criminal or revenue Court and includes any tribunal or any other
authority constituted under any law for the time being in force, to exercise judicial or
quasi judicial functions. This is entitling each native Lakshadweep islander to get his
cases or problems filed or defended before any Court or quasi judicial bodies by legally
competent persons. The above situation has been further expanded by the definitions
‘legal services’ by giving of advice on legal matter.

Are all the Lakshadweep people enjoying this service? If not, why? The reason for the non-implementation of the Legal Services Authorities Act can be due to the

37 Supra n. 35.
40 Id., S. 13.
41 Id., S. 2 (a).
42 Id., S. 2(aaa).
43 Id., S. 2(c).
weakness of the legislation itself. There are three authorities. National Legal Service Authorities\textsuperscript{44}, State Authority\textsuperscript{45} and the District Legal Services Authority\textsuperscript{46}. Its functions also are detailed by the Act. The activities in the state have to be co-ordinated by State Authority and the activities in the District have to be co-ordinates by District Authority. In this grouping the National Authority is entrusted with the specific function of co-ordinating the work of union territories. The Union Territories are not coming under state. The District Authorities will not be having any separate existence without having any State Authority. So this uni district union territory is left without any legal service authority.

Another reason for the absence of popular initiative to use the Legal Authorities Service Act in the island is that section 1 (3) stipulates that the Act should come into force on the date on which Central government issue a notification. The Act was passed by the Parliament on 11\textsuperscript{th} October 1987. The required central Government notification was issued with effect from 9-11-1995\textsuperscript{47}. Interestingly the chapter III is the vital part of the enactment, which mentions the constitution\textsuperscript{48} of the State Legal Services Authority, functions\textsuperscript{49} of State Authority, High Court Legal Services Authority and District Legal Services Authority. Without this no function visualised by this Act can be operationalised in a state territory. By withholding the operation of chapter III of the

\textsuperscript{44} Id., S. 4.
\textsuperscript{45} Id., S. 7.
\textsuperscript{46} Id., S. 10.
\textsuperscript{47} Ministry of Law, Justice & Company Affairs (Department of Legal Affairs) New Delhi dated 9\textsuperscript{th} November 1995.
\textsuperscript{48} Supra n. 39, S. 6.
\textsuperscript{49} Id., S. 7.
enactment in practice there was no such enactment for the service of the public. The power to fix the date for community functioning of chapter III is on the Central Government, but that can be done only after framing rules by the respective State Government in consultation\textsuperscript{50} with the Chief Justice of that area. This notification was delayed due to various reasons is the states. One may be the differences of opinion between the judiciary and the law department or home department as regards the deputation of their staff in the newly created Legal Services Authority. This was particularly with respect to enhancing the promotional avenues for the staff. Secondly the reluctance on the part of state government was to shoulder the financial responsibilities emerging out of this. Thirdly the lack of importance attached to this cause by politicians and the bureaucrats alike. Through this legal services right is a constitutional one the central government is denying this valuable rights to the islanders by not taking any steps to frame rules under S. 28 of the Act. In the case of Union Territory of Lakshadweep, no state govt. can be blamed for absence of mal functioning of the legal services.

When the Legal Services Authority is to be implemented in the Lakshadweep most of these 62000 people are entitled to get the free legal services. For that large machinery, legal professionals are needed for filing and defending the cases and also for giving free legal advice. The major issue that confronts them are whether Mukhtyars or lawyers should be entrusted this work. Considering the higher technical and professional skill needed by the present legal system of the Lakshadweep, the people of Lakshadweep will never take the risk for an option to fall on Mukhtyars. The

\textsuperscript{50} \textit{Id.}, S. 28.
continuance of the new entrants as Mukhtyars and their continued appearance without any person bed qualification test etc. the case may be to obtain the control over the newly forming authorities. The Advocates Act also does not permit this. In short when this valuable right the people are enforced in the Lakshadweep it will be death knell of the system. In case of Union Territory of Lakshadweep earlier the Legal Aid activities in that territory were entrusted to the Kerala State Legal Aid and Advice Board in a limited way. This is only by a specific notification from the central government and also by a government order of state of Kerala.

A Critical view of Legal Aid

Legal aid implemented by the CILAs through Kerala State Legal Aid and Advice board also has many uniqueness in respect of the laws in Lakshadweep. They have given intensive training to the Mukhtyars on various laws. The High Court judges, the director of training High Court of Kerala, Eminent lawyers and law teachers have taken classes. The study materials boarding and lodging have been provided by the State including T. A. and D. A. The law books in Malayalam also have been given to them. Actually this was an attempt to equip the mukthyars with the legal system in the mainland system. The legal aid board has conducted legal literacy programs for the general public on various law touching civil and criminal justices. These camps were conducted in islands. For the first time in the island history the Lakshadweep police personnel have been given intensive training on various laws the Legal Aid Board has made use of retired deputy director of prosecution, District Judges, training director of high Court Munsiffs. In collaboration with the science and technology department training was given to the entire wardens of all the islands.
Nothing has been done by the Kerala State Legal Aid and Advises Board on one major area. This is free litigational assistance. No district or State committees as envisaged under CILAS scheme was not formed in the earlier legal aid era i.e. before the implementation of Legal Services Authority Act. The reason was that no amount has been earmarked for that. In effect the valuable rights provided under Articles 39A and 21 of the Constitution has been denied to these peoples for a long time. Even now it is denied i.e., chapter III of National Legal Service Authority Act has not yet been implemented.

Chapter III of the Act relates to constitution of State Legal Services Authority, High Court Legal Authorities, and District and Taluk Legal Service Committees in consultation with the Chief Justice of the High Court. This is the chapter, which directly gives life to legal service activities in the society. The initiative should come from Union Government, Lakshadweep administration, the Chief Justice of Kerala high Court, who are having jurisdictions over islands at various level. But so far nothing has been done and the Legal Services Authority Act is not implemented there in reality. The staff for the effective functioning of the act is required to be appointed. Adequate funds for the proper functioning of Lok Adalat Legal Literacy and litigational assistance are to be allotted. The more delayed are the steps, the larger will be the denial of human rights.

When the National Legal Services Authority Act is implemented the customary law and culture of the island society is going to be recognized fully in contrast with the western legal culture based on the advisory system. The Lakshadweep legal ethos is
basically conciliatory. In the National Legal Services Act the alternate dispute resolution methods have got statutory recognition. The decision of Lok Adalats has got a statutory recognition in the award and the decree under the Act. The court fees paid on suit is refundable under the Court Fees Act of the concerned states, private litigants could be encouraged to have their disputes negotiated, concealed, settled or arbitrated through Lok Adalats. One of the reasons of the success of this provision in other states of India is due to the scope for release of heavy pressure on judiciary by disposing of cases and also by relieving the parties from the delay in getting justice. However the higher authorities dismiss the proposal for Lok Adalats in the island on the ground that the mechanism is not economical in the islands. The number of cases that can be settled will be very few.

The authorities in the islands have the fear that if Lok Adalats settle the cases in large numbers the courts in the islands will have no more job to do, ultimately those courts may have to be wound up. This is an unnecessary fear. If the fear comes true, it will be good for the islanders and for the sole of law. The people would be saved from all the difficulties arising from the protracted trial and its expenses. In the days of alternative dispute resolution, the fear is to be ruled out. Further chances of wiping out the judicial system are also remote.

The administration of justice in a territory cannot be approached from an economic angle especially in the remote islands. The basic quality, which is trying to be achieved in all sorts of societies in the administration of justice, is access to justice. These islanders shall not be burdened to go for appeals at High Court and even to
Supreme Court by spending huge amount. It is the duty of the State to provide cheap legal services of better quality. So to avoid expenses and to rejuvenate the old concealatory based community oriented amicable dispute resolution process in this society Lok Adalats is a must. It is in identity with the specific legal culture of this society. This alternate dispute resolution process has to be taken at pre-litigational stage. That can totally wipe out the filing in the Courts. In a society like Lakshadweep it is a boon. Generally, that is not going to happen, only portion of the cases is going to be settled. But in the smallness of the islands and the face to face relationship existing there, then is immense potential to use alternate dispute mechanism to reach a stage of model legal system to the entire world. In this society it is the duty of the state to provide near total free litigation assistance and free legal literacy and legal advice. Shadows are on the other side of the picture. If this State sponsored lawyers scheme is not properly efficiently managed, this society will be living example of how bureaucracy can bring a total social destination in a backward region.