CHAPTER-IV

EXISTING CONSTITUTIONAL AND STATUTORY PROVISION OF LEGAL AID

The constitution of India is a sacred document of nation. In the words of Justice A.S. Anand-

The Constitution of India, the treasure of wisdom was drafted and handed over to the citizens of this country by those who were passionately driven by our dream of securing social, economic and political justice to WE, THE PEOPLE OF INDIA. Their notion of justice was based on the principle of equality before law. We have an expending constitution which learns from the past, manages the present and cares for the future.

An analysis of the constitution reveals that legal aid has a comprehensive constitutional status in our country. If one studies the Constitutional provision carefully it becomes quite evident that in various provisions a strong foundation of legal aid has been established. The principle of equality before law would have been an empty slogan if the indigent and disadvantaged people were not provided with the requisite legal aid.

Following Article-14 of the Constitution equality can not be denied on the ground of lack of means or resources to afford legal services.

Like wise in the same manner according to Article-22 (1) a person who is arrested shall not be detained in custody without giving information about the grounds of such arrest and shall not be denied the right to counsel and the person shall be allowed
to defend by a legal practitioner of his choice.

Legal aid which in course of its evolution has developed in to a legal right instead of charity. It has already been observed how several states of India implemented various schemes of legal aid without express provision of the Constitution of India.

The year 1976 can be considered to be a glorious year due to 42nd Constitution Amendment Act, since it infused the blood of legal aid by inserting Article 39A to the Constitution of India being a Directive Principle of State Policy. This can be termed as a landmark decision in the history of legal aid.

Article 39A is nothing but a way to achieve the goal of social, economic and political justice which the Preamble and other Articles of Constitution of India envisage in order to attain the goal of liberty, equality and fraternity.

It is one of the Directive Principles of State Policy under Part -IV of the Constitution of India. In other words vide Article 39A state is under an obligation to adopt suitable measures for providing free legal aid to the poor.

On the other hand the Expert Committee of Legal Aid has stated that legal aid in India has comprehensive constitutional status and ambit, its inspiration, individuality and operation being found in numerous Articles of the Constitution. They have referred to Articles 14, 15, 17, 19, 22, 29, 30, 31A, 31B, 31C, 38, 41, 42, 43, 46, and Part XVI and have stated–

Distributive justice to be effectuated by the state through law is writ large in the Articles of the Constitution. All these solemn undertakings can not be honoured without the activist technology and task force of large scale and multiform legal aid.
CONCEPT OF EQUALITY HAVING REASONABLE CLASSIFICATION

The principle of equality for which access to justice is first and foremost essential and absence of the principle of equality would be an empty slogan, if the indigents and disadvantaged are not provided requisite and competent legal aid. Article-14 of the Constitution ensures equality along with preamble, equality of status and opportunity and promote among them all and equal protection of laws can not be denied. meaning there by that equality can not be denied on the ground of lack of means or resources to afford legal services.

While equality before law can be understood from equality before law means among equals, the law should be equal and should be equally administered that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for all the citizens of full age and understanding without distinctions of race, religion, wealth, social status and political influence.

In order to achieve the preambular object it is the state’s bounden duty to upgrade the lowest or lowliest and equalise to those of height and might. Here legal aid as a catalysing agent to the process bringing socio-economic transformation through the instrument of law.

The Preambular goal of social justice which is a pregnant sentence can be defined. Social justice is a generous concept which assures to every member of the society a fair deal. Any remedial injury, injustice, inadequacy or disability suffered by a member, for which he is not directly responsible, falls within in the liberal connotation of social justice.

The essential need of legal aid can be based on yet another imperative consideration,
that no true democracy can survive without the proper system of administration of justice of which the poorest are able to take advantage. It will not be tall to comment that very existence of free government depends upon making the machinery of justice available to the humblest of its citizens.

Freedom and equality of justice are regarded twin fundamental conception of American Constitution. Equality in the administration of justice forms the basis of all modern system of Jurisprudence.6

The term equal protection of law is a corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of laws will not be violation of equality before law.7

It is found that equality before law involves the concept that all the parties to a proceeding or a case in which the justice is sought must have an equal opportunity of access to the court of law, for presenting their cases to the court. But the access to court depend upon the payment of court fees and fees of skilled lawyer. Until a person is able to obtain access to a court of law due to poverty for having wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection having no meaning and to that extent fail in their purpose. Unless same provision is made for assisting the poor man for the payment of lawyers, he is denied equality in the opportunity to seek justice.

Attributing the vital role of transplanting legal aid in to reality it was held 8-

The rendering of legal aid to the poor litigant is therefore, not a minor problem of procedural law, but a question of fundamental character.’

So, if Legislatures take care to reasonably classify the person for legislative
purposes and if it deals equally with all persons belonging to 'a well defined class', it is not open to change of denial of equal protection on the ground that law does not apply to other persons. To pass the test of reasonable classification, the Supreme Court prescribed two mandatory conditions which are:

(i) that the classification must be founded on an intelligible differential which distinguishes persons or things which are grouped together from others, left out of group.

(ii) that, the differential must have a national relation to the object sought to be achieved in a question.

To achieve the objective of achieving equality in the Indian society and to dispense justice amongst its unequal segments, legal aid for those aspiring and promised to grow equal to those loaded and luxuriated attracts a source and substance from Article 14 of the Indian Constitution.

**RIGHT TO LIFE AND LIBERTY STRENGTHEN AND SUPPORT LEGAL AID**

Article 21 of Indian Constitution on the other hand an Article which gives much support and strength of legal aid to improve one's life and liberty. Article 21 provides—

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

Now this Article 21 is reinforced by Article 39A. Therefore, the state must give facility to be defended by counsel to the accused.

Supreme Court interpreted Article 39A keeping in view the provisions of Art 21, it said that procedure in Article 21, guarantees fair procedure which inevitably includes natural justice including right to appeal on fact where criminal conviction is involved.
with loss of individual liberty on the question of state engaged lawyer and his remuneration. The court said that legal profession owes his duty to the people but it does not mean that the services of a lawyer should be free in every country. The court has discretion and authority to determine the fee for the counsel assigned to the prisoner.\textsuperscript{12}

In order to execute 'procedure established by law', law must be fair and just to fulfill the demands of natural justice.\textsuperscript{13} Article 21, therefore, guarantees legal aid as fundamental right of the citizen.\textsuperscript{14}

Similarly Article 22 of the Constitution also lays down the foundation of legal aid otherwise the constitutional protection would be almost meaningless.\textsuperscript{15}

Free legal assistance at state cost is a fundamental right of a person accused of an offence.\textsuperscript{15}\textsuperscript{A} Article 22(1) states- no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to counsel, and to be defended by a legal practitioner of his choice.

In the context of Art 22(1), Supreme Court has clearly declared that according 'procedure established by Law' to satisfy the fair, just and reasonable criminal procedure, court can set free the accused person on the ground that there was no provision for making available legal services to an accused who was poor to afford a lawyer and therefore, had to go through the trial without legal assistance.\textsuperscript{16}

'Justice delayed is justice denied', so according to the maxim in speedy justice only to way to provide proper justice. Speedy justice provides life and liberty to a person according to Article 21 of the Constitution of India. So speedy justice can be accepted to be another segment of legal aid, has also been declared to be an ingredients
of established procedure.\textsuperscript{17}

According to Art 22(1) every person has a right to consult a lawyer from pre-arrest stage, arrest stage and have an effective interview with lawyer. Now question arises what will be the position of a person who cannot engage a lawyer due to pecuniary condition. Article- 22 has not been so liberally construed by the judiciary. Yet some dynamism could be seen in it. The initial view, as read from Janardan vs State of Hyderabad\textsuperscript{18}, was that the Article did not guarantee any absolute right to be provided with a lawyer by the state but it carries with itself the right to have an opportunity to engage a lawyer.

**CONSTITUTIONAL STATUS OF LEGAL AID**

After 42\textsuperscript{nd} Amendment of Constitution it casts a duty on the state to provide legal aid vide Artical 39A. The situation has gained mobility with Article 21. In Hussainara Khatoon vs State of Bihar\textsuperscript{19} it was accordingly held that every accused person unable to engage a lawyer at his own cost, had his constitutional right to have a counsel engaged by state.\textsuperscript{20} Now Supreme Court has held \textsuperscript{21} that it is the duty of the state to provide a counsel to a person who cannot afford to engage any lawyer.

The main object behind insertion of Article 39A \textsuperscript{22} is to mitigate inequalities so that justice reaches to the door of the poor and weaker section of the society. In other words, a person should not be denied justice merely on the grounds of poverty or on the ground of that he is not in a position to engage a lawyer to conduct his case.

It is the Art 39 A of the Constitution which provides constitutional status to free legal services to the poor.\textsuperscript{23} In India, with Article 39A of the constitution equal justice is assured to unequal persons. This newly introduced Article of Directive Principles
obligating the state to provide legal services, impelled the court to further specify the way in which prisoner's rights in this regard were to be protected. 31

The Directive Principles to State Policy (Part-IV of the Constitution) were further strengthened with the insertion of Article 39A and Entry 11A of Concurrent List by 42nd Amendment Acts, 1976 to the VII schedule of the Constitution.

Analysing the objective of the Article 39A the Supreme Court in Ranjan Dwivedi Vs Union of India.35 held that it is clear from the terms of Article 39A, the objectives of the Constitution is social equal justice, so that legal aid has to be implemented by comprehensive schemes. Directive Principles and Fundamental Rights much be harmonise as both are aiming at the same goal of bringing about a social evolution and the establishment of a welfare state which is envisaged in the Preamble. Primarily Article 39A but so far as the court of justice can indulge in judicial law making within interstice of the Constitution, the court too are bound by this mandate.

Article 39A is a interpretative tool for Article 21,26 while petitioner is not entitled to writ of mandamus for the enforcement of Article 39A,27 in the absence of Legislation28 implementing of Article 39A, an accused can not compel state to provide him a lawyer at the cost of state, through a writ petition. The only remedy lies to an indigent accused to request Session Court with an application under Section 304 of Criminal Procedure Code, 1973.29

When a lawyers is engaged by state for indigent accused it becomes the duty of the state to pay remuneration to counsel not as charity but as may be equitably fixed by court. The state must provide reasonable facility to such counsel for conducting an appeal as a condition of 'reasonable, fair and just procedure' which is postulated in
Article 21 of the Constitution of India. Thus Article 39A may be used as an aid to interpretation of Article 21.

The right of free legal aid arises when the accused for the first time produced before the Magistrate and continue throughout the trial. Right of legal aid extends even to security proceedings.

The right to be defended by a lawyer of his own choice extends not only to trial but also to appeal arising out of the decision. Even the accused is entitled to free legal aid and advice for filing and arguing appeal.

It is found that it was connected the directive contained in this Article 39A with the fundamental right of life and personal liberty under Article 21. The raised status of this Article, by way of its reading along with fundamental right, has made Justice Iyer to designate Art 39A as the most fundamental directives.

Prior to incorporation of Art 39A to the Constitution of India, legal aid apart from the provisions of fundamental rights and preamble was found present, till it was expressly provided in Article 38, 41, 42 and 43 in all directives in the Constitution.

Similarly Articles 19, 29 and 30 also demonstrate the concern for the weaker classes and minorities. All the commitments of the Framers of the Constitution and basic intention of constitution would be rendered nugatory if the legal aid to the poor, disadvantaged and indigents is not provided. Therefore like most of the other countries, in our country the Constitution itself has firmly laid down the foundation of legal aid programme.

The idea of equal access to justice would go against the imposition of an excessive rate of court fees as well as Art 39A casts responsibility on the state to provide legal aid which is essential for the implementation of aagarian reforms and achieving socio
economic justice. This 42nd Amendment brought a new era in the field of legal aid movement after incorporation of Article 39A.

Article 39A of the Constitution of India is administering justice in criminal cases when the accused is unable to engage a lawyer owing to poverty or similar circumstances. The trial would be vitiated unless the state offers free legal aid for his defence by engaging a lawyer to whose engagement the accused does not object.35

It is worth mentioning that with the introduction of Article 39A in the Constitution it also necessitated to amend Legislative List, that is VII Schedule of the Indian Constitution by inserting Entry 11A by 42nd Amendment Act, 1976. By this amendment the major change brought about to boost legal aid movement taking administration of justice' from State List (List II) to Concurrent List (List III), where both State and Union can enact on necessity. Off course Entry 3 of State list empowers the jurisdiction of all courts except the Supreme Court with respect to any of the matters of that list. Entry 11A includes administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts.

In the report of National Judicare 'Equal Justice Social Justice', submitted to Union of India it is mentiond that, laws have failed to protect the socially and economically poor. Socio economic equality promised by the constitution will become a living reality only if free legal services to the weaker sections of the community are guaranteed as a state responsibility.

It is generally alleged that law is a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive.6

In order to keep continuity of social welfare of the people, justice is first and
formost necessary in order to achieve systematic progress, it is necessary to remove poverty to promote and develop the faith of common men in the laws as well as Constitution.

**LEGAL AID IN CRIMINAL ADMINISTRATION OF JUSTICE**

The function of judiciary is to protect and enforce the rights of the individuals and to punish wrong doers. This function is called criminal administration of justice.

It has been defined by Salmond as the maintenance of right within political community by means of physical force of the states. Inshort administration of justice implies three things the state, the law and the securing obedience to law by means of the physical force of the state.

One part of administration of justice is criminal administration of justice. The purpose of criminal justice is to punish the wrong doers. The legal aid in criminal process is to sensitise the wavelength of the poor. 37

The legal process, without legal aid to the poor may be a guarantee of anarchy and not of order. To live with fair hands and feet we need an efficient means and methods to carry out justice in every case in the shortest possible time and the lowest possible cost. Which hurts most is criminal process.38

The International Covenant on Civil and Political Rights, 1968, recognised the right of accused to legal assistance, without payment by him, if he does not have sufficient means and where the interest of justice so require. Interenational Covenant on Civil and Political Rights adopted by the General Assembly of United Nations Organisation in January' 1966, provided that in determination of any criminal charge against an accused he should be provided with minimum guarantee in full equality. This provision is also
supported by Charter of Human Right of United Nations Organisation vide Resolution 217A (III) of 10th December, 1948.

According to mandatory section 304 of the Code of Criminal Procedure, the accused in criminal cases are provided counsel at the state expense. Indian courts appoint from time to time amicus curiae in various criminal cases. In India there was no specific provision in the Criminal Procedure Code, 1878, for the appointment of pleader for the poor accused. On the other hand section 340 of that Code provided that the accused may be represented by the pleader. It did not give him right to legal aid at the expense of state. Assistance of counsel at the expenses of the state was provided by rules and administrative orders issued by the state. There are some High Courts which have issued circulars, orders and framed some criminal rules of practice in this respect to provide legal aid to accused.

But section 304 of Criminal Procedure Code, 1973 which gives effect to the recommendation of the Law Commission by conferring on the accused the right of legal aid at the expense of State Government in cases triable by Court of Session and empowering the State Government to extent this facility in other cases vide section 304(1) and 304 (3).

The old section 340 of Criminal Procedure Code (before amendment) provided that an accused has a right to be defended by a pleader. But while interpreting the said section the Supreme Court held that the American rule founded on due process of law is not applicable in India, hence an accused has no absolute right to be supplied with a lawyer by a state. Therefore, the only duty of the Magistrate is to afford him an opportunity to engage lawyer.
Now the dictum laid down in Tarasingh case, Janardhan Reddy case, has since been rendered nugatory by section 304 of new Code of Criminal Procedure. The newly added provision has brought the law in vicinity of the Poor Prisoners Defence Act of England and VI th Amendment of the Constitution of United States of America.

The present position is when an accused is produced or appear before a court, the court should inform the accused that he has a right to be represented by a lawyer. If the accused can not provide a counsel for him, then the court will provide him a lawyer for his defence. The accused has also the right to engage a lawyer of his choice. When an accused is asked for his defence by counsel and he is not poor, then the accused has no right to say that the procedure established by law has not been complied with. Legal aid must be made available to prisoners in jail whether they be convicted person or undertrial.42A

The right to be defended by a lawyer of his own choice extends not only to trial but also to appeal arising out of decision.43

The above provision in addition to Article 22 (1) of the Indian Constitution, is supported by section 303 of Criminal Procedure Code 1973 which provides -

'Any person accused of an offence before a criminal court, or against whom proceedings are instituted, may of right be defended by a pleader of his choice.'

The above section contemplates that the accused should not only be at liberty to be defended by a pleader at the time when the proceedings are actually going on but also implies that he should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purpose of his defence.43A

Section 304 (2) provides that High Court may, with the previous approval by
the State Government make rules providing for -

a) The mode of selecting pleaders for defence under section (1)

b) The facilities to be allowed to such pleaders by the courts.

c) The fees payable to such pleaders by the Government, and generally, for carrying out the purpose of such Section (1).

It is generally alleged that law is a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive, so the intention of founding father of the constitution was to provide legal aid to the needy, the indigent and the poor.

The most important judgement of Supreme Court is P. Ramchandra Rao vs State of Karnataka 43B, where a Bench Seven Judges overruling the judgement of Common Cause vs Union of India, 43C, and Rajeeo Sharma vs State of Bihar 53D which prescribes time limit for conclusion of criminal trial to meet the fundamental right of the accused for speedy trial.

LEGAL AID IN CIVIL ADMINISTRATION OF JUSTICE

There is no specific provision of providing counsels at the state expense in civil cases but there is a provision by which the indigent person can institute a suit under order XXX III and X LIV of Civil Procedure Code, without payment of court fees.

Those to whom the above relief is provided in these order is of limited utility to the poor person.44 On the other hand the Code of Civil Procedure merely exempts on utterly poor person from payment of court fees. Again although a waiver of court fee is allowed, there is no mandatory provision for assigning counsel to the pauper and therefore, it is unlikely that he will be able to successfully prosecute his suit.45
An indigent person has been defined as a person who is not possessed of sufficient means (other than the property exempt from attachment in execution of decree and the subject matter of suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, if he is not entitled to properly exempt from attachment in execution of a decree and the subject matter of suit.

If the application to sue as an indigent person is granted the plaintiff is not liable to pay any court fee or fees payable for the service of process in respect of any petition, appointment of pleader or other proceedings connected with the suit. Where a person who is permitted to sue as an indigent person, is not represented by a pleader, the court may if the circumstances of the case so require assign a pleader to him according to Rule 9A(I), of Civil Procedure Code. This benefit now available to a defendant under Rule 17, which has been inserted by the Amendment Act, 1976, provided that any defendant, who desires to plead a set off or counter claim, may be allowed to setup such claim as an indigent person and the rules contained in this order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

Rule 18 of that order which has also been inserted by the Amendment Act, 1976 provides that subject to the provisions of order XXXIII, the central or state government, may make such supplementary provisions as it thinks fit for providing free legal services to those who have been submitted to sue as indigent person, the High Court may with previous approval of State Government make rules for carrying out supplementary provisions made by Central or State Government for providing free legal services to indigent persons and such rules may include. The nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which and the agencies
through which services may be rendered.

Supreme Court held that this Order XXXIII is applicable to tribunals but not in writ petition in High Courts or Supreme Court. 45A

Order XLIV of Civil Procedure Code deals with appeals by indigent persons. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person. subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable. Where an application of appeal as an indigent person is rejected, the court may, while rejecting the application, allow the applicant to pay the requisite court fee, with in such time as may be fixed by court or extended by it from time to time, and upon such payment the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance. Where an applicant was allowed to sue or appeal as an indigent person in court from whose decree the appeal is preferred, no furthers enquiry in respect of question, whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of decree applied for, but if the government pleader or respondent disputes the truth of the statement made in such affidavit, an including in to the question aforesaid shall be held by the appellate court or under the orders of the appellate court, by an officer of the court.

Where an applicant is alleged to have become an indigent person since the date of the decree appealed from, the inquery in to the question whether or not he is an
indigent person shall be made by the appellate court by an officer of that court unless the appellate court considers it necessary in the circumstances of the case that the enquiry should be held by the court from whose decision that appeal is preferred.

Explanation III of order XXX III of Civil Procedure Code states about the person suing in representative capacity. It lays—

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

The benefit of *forma pauperis* can be availed by both natural and juristic person. Supreme Court further held that even if the request to sue in *forma pauperis* is not accepted, the suit is accepted to have commenced from the day of application for such permission was filed.

The court has the authority to allow or reject the application after verification of the contents supporting indigency of the applicant. And if the application is admitted, the plaintiff is exempted from paying court fee and process fee. Rule 18 of the Order XXX III makes such a provision and it reads—

'Procedure if application is admitted where the application is granted it shall be numbered and registered, and shall be deemed the plaint in the suit, shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court fee or less payable for service of process in respect of any petition appointment of a pleader or other proceeding connected with the suit.'

Vide Rule 9A (2) High Court may with the previous approval of the State
Government, may make rules providing for-

(a) The mode of selecting pleaders to be assigned under Sub Rule (1)

(b) The facilities to be provided to such pleader by the court.

(c) Any other matter which is required to be or may be provided by the rules for giving effect to the provisions of Sub Rule (1).

Supreme Court has held that lis starts at the moment and indigent application is filed, hence all interlocutory applications can be entertained and injunction may be granted.

On the death of an applicant his legal representative would be entitled to be brought on record, in his place and to continue proceeding as a suit on payment of court fees. The representatives have to pay court fees unless they prove indigence or pauperism and obtain leave to continue as indigent.

The application of indigency may be rejected on the following grounds:

1) If the application is not written and presented in the manner prescribed in Rule 2 and 3

2) When applicant is not indigent.

3) If the applicant has disposed of any property fraudulently two months before filing of application. If the value of disposed money is not exceeding the limit of indigency then the application may not be rejected.

4. When there is no cause of action.

5. When other person gets interest in subject of matter of suit.

6. When suit is time barred.

7. When other person sound in financial matter.
The central and state government can make supplementary provisions for free legal services to such indigent person under rule 18, Order XXXIII of the Civil Procedure Code.

LEGAL AID PROVISION IN ADVOCATES ACT, 1961

Starting from the Indian High Court Act, 1861 and evolving through Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920), and Indian Bar Councils Act, 1926 (38 of 1926), after independence as per recommendation of Law Commission and the All India Bar Committee in the year 1953, gave birth to the Advocates Act, 1961.

At the very beginning in the Advocates Act, 1961 there was no provision to impose duty or obligation to impart legal aid by the lawyers. But due to global phenomena in general and the speedy development of the concept of legal aid movement, only in the year 1973, the provision of legal aid was incorporated by amending the Advocates Act, 1961.

CONSTITUTION OF LEGAL AID COMMITTEES

Section 9A of Advocate Act, provides -

1. A Bar Council may constitute one or more Legal Aid Committees each of which shall consist of such number or members, not exceeding nine but not less than five, as may be prescribed.

2. The qualification, the method of selection and the term of office of members of legal aid committee shall be such as may be prescribed from above section 9A it can be inferred that the Bar Council has a statutory obligation to constitute legal aid by lawyers through these committees.
While the Bar Council of India Rules, 1983, accordingly casts duty on every advocate of the country to render legal aid. Rule 46 of the above rule provides as under-

'Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of lawyer is entitled to legal assistance even though he can not 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 of an advocate owes to society.'

The above rule clearly imposes an obligation upon an advocate to provide legal aid within his economic limit. So particularly the senior advocates with sound economic condition have, therefore an obligation to work for the free legal aid to the poor.

The Advocates Act, 1961, therefore only regulates the legal profession for legal aid to the poor people in India. However, through the institution of Bar Council of India and the State Councils are empowering them to make rules for their functioning with reference to provide legal aid as a part of the professional conduct of the advocates.

The most remarkable thing to be noted in Legal Aid Rules framed by Bar Council of India is that an advocate is held directly responsible for giving legal aid to poor. The Rule 15 of Bar Council of India Rules, 1983, provides that it shall be the duty of every advocate of at least five years standing to conduct at least six cases free of his professional charges. No such advocate shall be entitled to refuse to conduct such cases if so asked by the legal aid committees.

LEGAL AID UNDER PANCHAYATI RAJ ACTS

In the justice delivery system under the Panchayati Raj Institutions, the Gram Panchayats are the grass root organisation which have been functioning since the Vedic
Ages, working with conciliatory view, emerging from the old concept of village committee that is 'Gram Mel'. Now said as 'Goan Mel ' in rural societies worked not only the force of social sanction alone but also the statutory prescriptions also recognised them as one of the finest institutions of rendering administration of justice in grass root level.

A Panchayat in Ancient India was a full fledged court to entertain disputes - civil as well as criminal, collect and take evidence and give a decision on the cause before it.51

Even after the incorporation of the Constitution of India the Panchayat which was included in Part IV of the Constitution that is in Directive Principles of State Policy under Article 40 of the Constitution. But for continuous increase of importance Indian Parliament by its 73rd Amendment of Constitution in the year 1992 by including it in the Article 243 to 2430 confers it uniform and all India pattern and strengthened it grass root level Gram Panchyat.

Following the new constitutional provision the states are now upgraded and strengthened the Panchayati Raj System offering greater participation of the people. Most of the states there are the provision of Panchayati Adalats while other states are helping at the best executing authority about legal aid.

The object clause of Punjab Panchayati Raj Act, 1994 provides that the statute interalia casts duties on a Gram Panchayat for promotion of public awareness and participation in primary and secondary education. The public awareness includes also the legal awareness to be created by Panchayati Raj institutions among the people.

The other duty provided in the section 30 (XII) (a) is promotion of public awareness particularly to the Scheduled Castes, Scheduled Tribes and other weaker
sections of the community. The other important duties of the Act are not only the organisation of Mahila Mandals but also for promotion of moral, social and material well being of the people.

Judging from the various angles it can be easily substantiated that the first and foremost function of the Panchayati Raj institutions is to entrust the Gaon Panchayat in order to achieve the target and goal of Preventive Legal Aid. Keeping the above view the section 34 of the above act is empowered with to issue necessary order for removal of encroachments and nuisance.

In addition to section 34, there are other sections which clearly state and bestow judicial functions on the Gram Panchayat, particularly in the matter of criminal jurisdiction which extend to a wide range of offences under Indian Penal Code as included in the Schedule -II of Punjab Panchyati Raj Act, 1994. In this Schedule-II, the offences cognisable by Gram Panchayats are Section - 160, 172, 174, 175, 178, 179, 180, 188, 202, 228, 264, 265, 266, 267, 270, 277, 288, 290, 291, 294, 323, 334, 341, 352, 358, 379, 411, 403, 406, 417, 420, 426, 427, 428, 429, 447, 504, 506, 509, 510, of Indian Penal Code.

The Schedule also includes the Section 24 and 26 of Cattle Trespass Act, 1871, Section 16 of Punjab Vaccination Act, 1953; Section 13 and 17 of Punjab Primary Education Act, 1960; Section 29 and 31 of Punjab Weight and Measures (Enforcement) Act, 1958; are cognisable by Gaon Panchayats.

Here Gram Panchayats are also providing preventive and distributive legal aid, para legal aid and for enforcement of social justice and the concept of equality before law. Since people show a reluctance in approaching the courts, they try to resolve disputes
by way of Panchayats or through mediation by well wishers. 

In Kerala there are the provision of rendering legal aid through Panchayats and in the Panchayati Raj Act. Accordingly Valtavada Gram Panchayat in Idduki District was declared litigation free on 25-3-2001. This goal was achieved by the District Legal Services Authority. Idduki with the co-operation of Vattavada Grama Panchayat. It took about three months to sort out all the disputes in prelitigative stage and the cases pending litigation in the in Deviculum Munisiff's, Magistrate's court and other courts in Idduki District, 47 cases in prelitigative stage and 25 cases pending in different Idduki District were considered and settled. No other cases from Valtadava Panchayats remains to be disposed of. This result was achieved due to continuous efforts put in by the District Legal Services Authority, Idduki and the Valtavada Panchayat. 

After all the Gram Panchayats are mini adminstrative set up constituted by statute and offering legal aid in various capacities. It is remarked Village Panchayats which are accepted today as the basic units of democracy in rural India, are now established particularly through out the entire country. These basic democratic bodies have been vested with considerable powers and functions with the responsibility of developing the economic, social and political life of Villagers. In addition to its multiferous municipal duties to ensure the social and political development, it is also necessity and for those bodies to perform the function of administration of justice, for adjudication of disputes between the villagers, without any elaborate or complicated machinery and procedure. These bodies are to be called as 'Nyaya Panchayats'. These Nyaya Panchayats one intergal part of administrative justice, need to do certain reform in order to bring social change in the rural level of the country.
The idea of the Gram Panchayat alias Naya Panchayat as People's Court established under the various provisions of various Panchayati Raj Acts of various states rendering yeoman's service to the people were constituted as per recommendation of Law Commission in 1958.\textsuperscript{55}

Having given full weight to the various criticism levelled against Panchayat Courts, we feel justified in reaching the conclusion that with safeguards designed to ensure their proper working and improvement, these courts are capable of playing a necessary and useful part in the administration of justice in the country.

Later on a study team studied\textsuperscript{56} the system of Nyaya Panchayat appreciated the role played by Nyaya Panchayat particularly in the matter of participation by laymen in the administration of justice and in the matter of disposing cases more expeditiously and appreciated the provision of decentralisation of administration.

Panchayat under Article 40 included in Directive Principles to State Policy of Indian Constitution. In Nyaya Panchayat no Code of Civil or Criminal Procedure is applied. Even on necessity in the Nyaya or Village Panchayat the Civil or Criminal Code can be used by amendment of said Codes.

If the elected members of Nyaya or Gram or Village Panchayat are properly trained to administer justice, these Gram or Nyaya Panchayats would be able through democratic decentralisation to provide access to the administration of justice. It would be able to share the workload of pending cases and coming cases of main judicial system in petty cases. As the present system of justice is too expensive for the common man, the small disputes must necessary be left to be decided by such system of Panchayati Justice calling it as People's Court or Popular Court. Administration of justice must be
brought at the door step of this villagers which would be easy and cheap, less procedure ridden, more informal, flexible and more compulsory based.

LEGAL AID IN THE LEGAL SERVICES AUTHORITIES ACT, 1987

In pursuance of the constitutional provision provided under Article 39A and the suggestions of the Central Government's Committees, mentioned above, the Central Government passed The Legal Services Authorities Act, 1987, on 11th October 1987 (Act. 39 of 1987), to provide legal services to weaker sections of society as mentioned earlier.

The Preamble of the Act states that it is an Act to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice, which are not denied to any citizens by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the Legal System to promote justice on a basis of equal opportunity.

The enforcement of the Act was postponed. In the meantime of the Act was amended by The Legal Services Authorities (Amendment) Act, 1994. Now the said Act, as amended by the Amendment Act, 1994, has come into force from November 9, 1995. However Chapter-III is being brought into force in phases.

After the coming into force of The Legal Services Authorities Act, 1987, the Committee for Implementing Legal Aid Schemes (CILAS) has ceased to exist and matters relating to legal aid are being governed by the Act.

The Legal Services Authorities Act, 1987 which contains all total 30 sections out of which the following are the basic feature or important provisions—
1) Definition of Legal Services [section 2-(C)]

2) Criteria for providing Legal Aid [section-12]

3) Entitlement to Legal Services [section-13]

4) Constitution and function of National Legal Services Authorities [section 3 and 4]

5) Constitution and function of State Legal Services Authorities [section 6&7]

6) Constitution and Function of District Legal Services Authorities [section 9 and 10]

7) Constitution of Supreme Court Legal Services Committee [section 3A]

8) Constitution of High Court Legal Services Committee [section-8A]

9) Constitution and function of Taluk Legal Services Committee [section 11A and 11B]

10) Organisation and Functions of Traditional and Permanent Lok Adalats [section 19 to 22D]

11) Statutory financial provision of Legal Services [section 14 to 18]

12) Rule and Regulation making power of Central and State Government [section 27 to 30]

13) Protection of action taken in good faith and overriding effect of this Act [section 24 and 25]

**DEFINITION OF LEGAL SERVICES**

Section 2(I)(C) of The Legal Services Authorities Act, 1987, defines 'Legal Service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on
any legal matter.

To carry out the obligation of Art-39A of the Constitution of India the petitioners are entitled to ask the High Court to issue directions sought for in the writ petition for proper implementation of the provisions of the Act and to carry out the purposes of the Act in true sense and spirit and not to scuttle by resort to any pretences and / or the constitutional directives as an empty slogan. 58

Under title and scope under section 1(1) of The Legal Services Authorities Act, 1987, which points out only for appointment of Legal Services Authorities and does not indicate anything as to free legal aid. 59 In this Act legislatures use two words 'may' and 'shall' in two different parts of the same provision prima facie, it would appear that the legislature manifested its intention to make one part directory and another part mandatory. 60

Though the definition of legal services does not speak it clearly but by introducing Chapter VIA, prelitigation conciliation and settlement by amendment 61 inserting section 22A to 22E clearly speaks above for speedy disposal of cases about prelitigative settlement of cases at the initial stage particularly through Permanent Lok Adalat and cases relating public utility services. Also the words 'Legal Services' include the system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes is a spirit of conciliation outside the courts.

CRITERIA OF LEGAL SERVICES

Section 12 of The Legal Services Authorities Act, 1987 lays the criteria for giving Legal Services. It says- every person whose income from all sources does not exceed Rs. 9,000/- (Nine thousand) per annum from all sources shall be eligible for
free legal services (section- 12(h) [in Assam the present income limit is Rs. 25,000/-
(twenty five thousand) per annum from all sources). But in the case to be instituted/
defended in Supreme Court this ceiling of income is Rs. 12,000/- (twelve thousand)
from all sources.

Besides the above limitation of income does not apply in case of Scheduled
Caste or Scheduled Tribe [section 12(a)], victim of trafficking in human being or begger
as referred under Article 23 of Constitution of India [section 12(b)]; a woman or child
[section 12(c)], disabled person [section 12(d)]; a victim of mass disaster, ethnic violence,
caste atrocity, flood, draught earthquake or industrial disaster [section 12(e)]; an industrial
workman [section 12(f)]; a person in the custody of protective home, juvenile home,
psychiatric hospital or psychiatric nursing home [section 12(g)].

In view the above decision of Supreme Court in the year 1993 in the case Tyron
Nazareth Vs State of Goa. is very important following the decision in Khatri II Vs
state of Bihar and Suk Das Vs Union Territory of Arunachal Pradesh where no
legal aid was provided to the accused / convicted with a lawyer; as indigent person
under section 304 of Criminal Procedure Code, Supreme Court under the circumstances
of the case set aside the conviction of 10 years imprisonment and the case was remanded
for de-novo trial.

Another important case of recent time is -Rishi Nandan Pandit Vs State of Bihar. Supreme Court was pleased to hold that there was miscarriage of justice as the High
Court proceeded to decide the appeal unaidered by the arguments of an advocate or
an amicus curiae mission to do so was held as procedural flaws might have been averted
if a counsel was appointed to argue for the appellants.
The object of legal services/aid is to ensure equality before law by ensuring that those who cannot afford legal representation do not suffer because of their mere indigence or illiteracy or any disability. None else than Article 39A is 'Loadstar' and it speaks of only economic and other disabilities as deciding factors. What is of course very necessary is that only those who are really indigent, make use of free legal aid facility. A means and resources statement on oath, if necessary, can be required to be made before the magistrate and accordingly, if he faces below the pre-determined poverty line he is to be provided free legal aid automatically.

It can be said without doubt that combined and conjoint reading of Article 22(1) and 39A of the Constitution of India, Section 304 of Criminal Procedure Code and the provision of The Legal Services Authorities Acts, 1987, the right of accused to enjoy the services of an advocate or a counsel is a criminal case is unfettered and unqualified.

A court is under an obligation to ask the accused or any person coming under Section 12 of the Legal Services Authorities Act, 1987, that he is entitled to free legal services and unless that is done and failure to do so is sufficient ground for remand, retrial or rehearing of the case is question.

It is not on record that the Chief Judicial Magistrate had informed the accused that he is entitled to free legal assistance. Offer for free legal aid by presiding officer or a court has to be reflected in the order sheet.

ENTITLEMENT FOR LEGAL SERVICES

Section 13 of The Legal Services Authorities Act, 1987, lays-

1) 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 a person has a prima facie case to prosecute or defend.

2) 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 under the concerned authority has reason to his believe such affidavit.

Order 19, Rule-1 to 3 of Civil Procedure Code also deals with affidavits which generally includes- (1) Power to any to be proved by affidavit (2) Power to order attendance of deponent for cross examination (3) Matters to which the affidavit shall be confined.

Rule 3, Order-19, of The Civil Procedure Code provides that a deponent of an affidavit must confine to facts of his knowledge.

The above section lays down that persons are entitled to receive legal services only when the concerned authority is satisfied that such person's need is genuine.

CONSTITUTION AND FUNCTIONS OF NATIONAL LEGAL SERVICES AUTHORITY

Section 3 lays out how to form the National Legal Services Authority, which is a Central Authority to be formed with Chief Justice of India as Patron in Chief, a Serving or Retired Judge of Supreme Court as Executive Chairman to be nominated by President of India, other Members and Member Secretary to be nominated by Central Government having such satisfaction and experience as prescribed in consultation with Chief Justice of India. The officers and employees are appointed by Central Government. Even the terms of office of Central Authority are decided by Central Government in consultation with Chief Justice of India.
The first such National Legal Services Authority is constituted on 9th November 1995 with Justice K.Ramaswamy, Judge of Supreme Court where the Member Secretary is the rank of Special Secretary of Central Secretariat.

Section 4 and also Section 5 of this Act lay down the functions of National Legal Services Authority. The following are the important functions—

1) to lay down policies and principles for the availability of legal services;
2) to frame most effective and economical schemes for availability of legal services;
3) to utilise the funds and make and appropriate allocations to the States and Districts Authorities, to organise legal aid camps in rural areas, provide justice by way of Social Justice Litigation in environment protection, consumer protection, training to social workers;
4) encourage settlement of disputes in pre-litigative and litigative stage through different Lok Adalats stressing upon negotiation, arbitration and conciliation;
5) to provide grant in aid for specific schemes to Non Government Organisations, State and District Authorities;
6) to develop clinical legal education in different legal institutions in consultation with Bar Council of India;
7) to take measure to spread legal literacy, legal awareness and legal advice among people particularly weaker sections of the society which are consisting of Scheduled Castes, Scheduled Tribes, Women, Rural and Urban Labours.
8) to work in co-ordination with other legal authorities and committees. (section5).
CONSTITUTION AND FUNCTIONS OF STATE LEGAL SERVICES AUTHORITIES

Section 6 of this Act lays down the provision of the constitution of State Legal Services Authorities. The section provides that State Government shall constitute a State Legal Services Authority for the state to exercise the powers and perform the functions conferred on or assigned to a State Authority under the Act. The Chief Justice of concerned High Court and a Serving or Retired High Court Judge will be nominated as Patron in Chief and Executive Chairperson respectively by the concerned Governor as well as State Government in consultation with Chief Justice of High Court. State Government appoint a person not less than the rank of District Judge as Member Secretary in consultation with Chief Justice of High Court. The other members of this State Legal Services Authority having such qualification and experience are nominated by state government in consultation with Chief Justice of High Court. The State Legal Services Authority appoints officers and employees as prescribed by state government in consultation with Chief Justice of High Court for the efficient discharge of its function under this Act. While the respective State Government must bear the administrative expenditure of the State Legal Services Authority.

The Act provides that it shall be the duty of the State Authority to give effect to the policy and directions of the National Authority. Further without prejudice to the generality of the functions referred to above the State Authority shall perform the all or any of the following functions-

a) Give legal services to the persons who satisfy the criteria laid down under the Act.
b) To conduct different Lok Adalots including Lok Adalot in High Court cases.

c) Undertake different strategic and preventive legal aid programmes.

d) Perform such other functions as the State Authority may in consultation with the Central Authority fixed by regulations.

In discharge of its functions the State Authority shall act in co-ordination with the agencies, described in Section-8 of the Act and shall be guided by such directions as the Central Authority may give to it in writing.

CONSTITUTION AND FUNCTION OF DISTRICT LEGAL SERVICES AUTHORITIES

The Act provides that under Section-11 of the Act, the State Government shall in consultation with Chief Justice of High Court, constitute a body to be called the District Legal Services Authority for every district in state to exercise the power and perform the functions conferred on or assigned to the District Authority under the Act. The District Legal Services Authority shall consist of-

a) District Judge who shall be its Chairman

b) Members of such qualification and experience nominated by State Government in consultation with Chief Justice of High Court.

c) State Authority shall in consultation with Chairman appoint a person belonging to State Judiciary not lower than the rank of subordinary Civil Judge as Secretary of District Authority.

The Act provides that it shall be the duty of every District Authority to perform such of functions of the State Authority in the district as may be delegated to it from time to time according to Section-10 of the Act. The following functions are to be
performed by the District Authority-

a) Co-ordinate the activities of the Taluk Legal Services Committees and other Legal Services in the District.

b) Organise different Lok Adalats in the District.

c) Perform such other functions as the State Authority may fix by regulations.

CONSTITUTION AND FUNCTIONS OF SUPREME COURT LEGAL SERVICES COMMITTEE

Under Section -3A of this Act, 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 made by Central Authority.

The committee shall consist of-

a) a sitting Judge of the Supreme Court who shall be the Chairman;

b) such other members possessing such experience and qualifications as may be prescribed by the Central Government to be nominated by Chief Justice of India;

c) Chief Justice of India will appoint a person to be Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Authority.

CONSTITUTION AND FUNCTIONS OF HIGH COURT LEGAL SERVICES COMMITTEE

Section -8A of this Act lays that the State Authority shall constitute a committee to be called High Court Legal Services Committee for every High Court, for the purpose
of exercising such powers and performing such functions as may be determined by regulations made by State Authority.

The High Court Legal Services Committee shall consists of-

a) a sitting Judge of High Court who shall be the Chairman;

b) such other members possessing such experience and qualifications as may be determined by regulations made by State Authority to be nominated by the Chief Justice of the High Court.

c) the Chief Justice of High Court shall appoint a Secretary to the committee possessing such experience and qualifications as may be prescribed by the state government.

CONSTITUTION AND FUNCTIONS OF TALUK LEGAL SERVICES COMMITTEE

Under Section -11A this Act, the State Authority may constitute a committee, to be called Taluk Legal Services Committee, for each Taluk or mandal or for group of Taluks or mandals. The committee shall consists of-

a) the senior most Judicial Officers operating within the jurisdictions who shall be the ex-officio Chairman; and

b) such other members possessing such experience and qualifications, as may be prescribed by the State Government to be nominated by State Government in consultation with Chief Justice of High Court.

The Taluk Legal Services Committee may perform all or any of the following functions under section namely 11B of this Act.-

a) co-ordinate the activities of Legal Service in the Taluk:
b) organise Lok Adalat within the Taluk; and

c) perform such other functions as the District Authority may assign to it.

ORGANISATION, POWER AND FUNCTIONS OF DIFFERENT LOK ADALATS

The term 'Lok Adalat' literally conveys the meaning of People's Court or a Panchayat Adalat in the traditional sense of the term. But it is neither People's Court in socialist practice nor a Panchayat Adalat in the Indian practice.69

In The Legal Services Authorities Act, 1987, a Lok Adalat has been given a peculiar statutory status not formerly known either in the western jurisprudence or in original jurisprudence. It is neither an Arbitration Tribunal or Board nor a conciliation board.70

The Lok Adalats are of two types (1) Traditional Lok Adalat and (2) Permanent Lok Adalat.

TRADITIONAL LOK ADALAT

The Traditional Lok Adalats are continuing since Vedic Period in India. It has got the statutory status by Amendment of The Legal Services Authorities Act, 1987, in the year 1994, by adding Act 59 of 1994 and notifying with effect from 29th day of October 1994.

Section 19 of the Act lays the following provisions for organisation of Lok Adalat—

1) The above mentioned authorities and committees may organise Lok Adalat at such intervals, places and for exercising such jurisdiction and for such areas as it thinks fit.

2) Every organised Lok Adalat shall be consisted with a serving or retired judicial officers and other persons having experience and qualifications prescribed for
it.

3) Lok Adalat shall have jurisdiction to determine and arrive at a compromise
or settlement between the parties to a dispute in respect of any case pending
before it or any matter which is falling within the jurisdiction and is not brought
before any court for which Lok Adalat is organised.

On the other hand Lok Adalat shall have no jurisdiction in respect of any case
or matter relating to an offence not compoundable under any law. It means Lok Adalat
has jurisdiction upon compoundable offences.

Section 20 of this Act states the procedure according to which the Lok Adalat
will take cognizance of a case. Where any case referred to Lok Adalat or where a
reference has been made to it, the Lok Adalat shall proceed to dispose of the case
or matter and arrived a compromise or settlement between the parties and shall be guided
with the principles of justice, equity, fair play and other legal principles. Where no
compromise is arrived, the record of the case is returned to the original court, the original
court will proceed to deal with such cases from the stage which was reached before
such reference.

Section 21 of the Act lays down that every award of Lok Adalat shall be deemed
to be decree of Civil Court or as the case may be, an order of any other court. In
the case where the compromise is arrived the court fee paid in such case shall be refunded
vide Court Fees Act, 1970, (Act 7 of 1970). Every award of Lok Adalat is final and
binding on all parties to the dispute and no appeal should lie in any court against the
award.

Section 22 this Act deals with the power of Lok Adalat. It says Lok Adalat
has the same power of Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely-

1) (a) Summoning and enforcing of attendance of any witnesses 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 offices: and

(e) such other matters as may be prescribed.

2) Lok Adalat shall have the requisite powers to specify its own procedure for the determination of an dispute coming before it.

3) Lok Adalat and its proceeding shall be deemed to be judicial proceeding with the meaning of Section 193, 219 and 228 of Indian Penal Code (45 of 1860) and civil proceeding for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

PERMANENT LOK ADALAT

Chapter VI A of The Legal Services Authorities Act, 1987, deals with the matter of Permanent Lok Adalat. This chapter is recently introduced by amendment particularly to deal with pre-litigation, conciliation and settlement.

Section 22A (a) provides Permanent Lok Adalat means a Permanent Adalat established under Sub-Section(1) of Section 22B.

While Section 22B(I) provides notwithstanding anything contained in Section 19 the Central Authority or as the case may be, every State Authority shall, by notification.
establish Permanent Lok Adalat at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

Section 22A(b) provides what is public utility service. According to this section public utility service means--

i) transport service for the carriage of passengers or goods by air, road or water; or

ii) postal, telegraph or telephone services; or

iii) supply of power, light or water to the public by any establishment; or

iv) system of public conservancy or sanitation; or

v) service in hospital or dispensary; or

iv) insurance service, and includes any service which the Central Government, or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter.

Section 22 B(2) lays every Permanent Lok Adalat established for an area notified under sub section (1) shall consist of-

a) A person, who is or has been, a district judge or has held judicial office higher in rank than that of the district judge, shall be the chairman of the Permanent Lok Adalat; and

b) Two other persons having adequate experience in public utility services to be nominated by Central Government or as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority.
Section 22C provides about cognizance of cases by Permanent Lok Adalat-
i) It provides to apply by application to settle the dispute.
ii) It has no jurisdiction relating to an non compoundable offence.
iii) It has no jurisdiction to settle dispute whose value is above ten lakh rupees.
iv) It has to reach an amicable settlement of dispute in an independent and impartial manner.
v) When a settlement of dispute is reached the parties shall sign an settlement agreement and Permanent Lok Adalat shall pass an award in terms there of and furnish a copy of the same to each of the parties concerned.
vi) The Permanent Lok Adalat has power to decide the dispute even if the parties in dispute fail to come to a settlement except the dispute to any offence.

Section 22D lays a Permanent Lok Adalat shall have to settle the dispute on the principles of natural justice, objectivity, fair play, equity and other principles of justice and shall not bound by the provisions of Civil Procedure Code 1908, (Act 5 of 1968) and Indian Evidence Act, 1872, (Act I of 1872).

Section 22E provides that-
i) Every award of Permanent Lok Adalat to be final and binding on all parties.
ii) Its award is deemed to be decree of Civil Court.
iii) The award shall be announced by majority decisions of members.
iv) The decision/award cannot be called in question in any original suit, application or execution proceeding.
v) The Permanent Lok Adalat may transit any award made by it to Civil Court having local jurisdiction and such Civil Court shall execute the order as if it
were a decree made by that court.

In exercise of power conferred by clause (I-a) of Sub-Section (2) of section 27 of this Act, Central Government makes Permanent Lok Adalat (Other Terms and Conditions of Appointments of Chairman and other persons) Rules, 2003 and notified vide No.- G.S.R 3(CE) dated 2-1-2003.

STATUTORY FINANCIAL PROVISION OF LEGAL SERVICES.

The fund which required in order to carryout the various provisions of The Legal Services Authorities Act, 1987, is derived by the following ways–

Under Section-14 of this Act Central Government releases fund as grant to Central Authority.

Section-15 allows the Central Authority to establish a fund National Legal Aid Fund to which the fund is collected thus–

1) (a) all sums of money gives as grants by the Central Government under Section-14;

(b) any grants or donations that may be made to the Central Authority by any other person for the purpose of this Act;

(c) any amount received by the Central Authority under the orders of an court or from any other sources.

2) The National Legal Aid fund shall be applied for meeting–

(a) cost of legal services provided under this Act including grants made to state Authorities;

(b) the cost of legal services provided by the Supreme Court Legal Services Committee;
Section -16 of this Act lays down the provision to constitute State Legal Aid Fund. It lays–

1) A State Authority shall establish a fund to be called State Legal Aid Fund, and there shall be credited there –
   a) all sums of money paid to it or any grants made by Central Authority for the purposes of the Act;
   b) any grants or donation that may be made to the State Authority by the State Government or any person for the purposes of the Act;
   c) any other amount received by State Authority under order of court from any other sources.

2) A State Legal Aid Fund shall be applied for meeting–
   a) the cost of functions referred to in Section -7;
   b) the cost of Legal Services provided by the High Court Legal Services Committee;
   c) any other expenses which are required to be met by the State Authority.

Section -17 of this Act lays about the District Legal Aid Fund–

1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited there to–
   a) all sums of money paid or any grants made by the State to the District Authorities for the purposes of this Act;
   b) any grants or donations that may be made to the District Authorities by any person, with the prior approval of the State Authority, for the purposes
of this Act;

c) any other amount received by the District Authority under the orders of any
court or from any other sources.

2) A District Legal Aid Fund shall be applied for meeting–

a) the cost of functions referred to Sections 10 and 11B:

b) any other expenses which are required to be met by the District Authority.

RULES AND REGULATIONS MAKING POWER OF THIS ACT

CENTRAL GOVERNMENT POWER TO MAKE RULES

Section 27(1) of this Act empowers the Central Government to make rules to

carry out the provision this Act.

While Section 27(2) provides without prejudice to the generality of the foregoing

power, these rules may provide–

a) the member experience and qualifications of other members of Central Authority:

b) the experience and qualifications of he Member Secretary of Central Authority

and his power and functions;

c) the terms of office and other conditions relating their members and Member

Secretary of the Central Authority;

d) the number of officers and other employees of Central Authority:

e) the conditions of service and the salary and allowances of officers and other

employees of Central Authority;

f) the number, experience and qualification of members of Supreme Court Legal

Services Committee;

g) the experience and qualification of Secretary Supreme Court Legal Services
Committee;
h) the member of offices, employees, including their salary service conditions of Supreme Court Legal Services Committee;
i) the upper limit of annual income of a person entitling Legal Services;
j) the manner is which the accounts of the Central Authority, State Authority or the District Authority shall be maintained;
k) the experience and qualifications of other members of Lok Adalat to be organised by Supreme Court Legal Services Committee;
l) the terms and conditions of appointment of the Chairman and other persons of Permanent Lok Adalat.

According to the powers conferred by Section 27 of this Act on 27th November, 1995, Central Government makes The National Legal Services Authority Rules. 1995; which is still prevailing all over India. It has all total 13 Rules covering all the above provisions as enumerated under section 27 of this Act. Again under the provision of this Section 27 the Supreme Court Legal Services Committee Rules, 2000; was framed and published in the Gazette of India, Extraordinary Part II Section 3(i) dated 3-7-2000.

STATE GOVERNMENT POWER TO MAKE RULES

Like Central Government, State Government is empowered under Section 28(i) of this Act to make rules is consultation with Chief Justice of High Court may by notification to carry out the provisions of this Act.

2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters—
(a) The number, experience and qualifications of other members of the State Authority.

(b) The powers and functions of Member Secretary of State Authority.

(c) The terms of office or other conditions relating there to, of Members and Member Secretary of State Authority.

(d) The number of officers and other employees of the State Authority.

(e) The conditions of service and the salary and allowances of officers and employees of State Authority.

(f) The experience and qualifications of High Court Legal Services Committees.

(g) The number of officers and employees along with their conditions of service and the salary of High Court Legal Services Committee.

(h) The number, experience and qualification of member of District Authority.

(i) The number of officers and other employees of the District Authority.

(j) The condition of Service, salary and allowances of officers and employees of the District Authority.

(k) The number, experience and qualification of members of Taluk Legal Services Committee.

(l) The number of officers and other employees of Taluk Legal Services Committee.

(m) The conditions of service and the salary and allowances of officers and other employees of the Taluk Legal Services Committee.

(n) The upper limit of annual income of a person entitling him to Legal Services.

(o) The experiences qualifications of other persons of Lok Adalat and
By virtue of the above Section -28 of this Act, the various State Government are framing various Legal Services Authorities Rules. Accordingly Assam also framed The Assam State Legal Services Authorities Rules, 1996, which was published in the Assam Gazette Extraordinary no. 88, dated 8-5-1996 and notified accordingly.  

CENTRAL GOVERNMENT POWER TO MAKE REGULATION:

Section -29 of this Act empowers the Central Government to make regulations in the following matters -

1) Central Government may by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters -

   a) Powers and functions of Supreme Court Legal Services Committee.
   b) The terms of office and other conditions relating there to the members and Secretary of the Supreme Court Legal Services Committee.

According to the provision of this section- 29, The Supreme Court Legal Services Committee Regulation, 1996; was enacted and published.  

STATE GOVERNMENT POWER TO MAKE REGULATION

While Section -29A lays the provision to frame regulations by State Governments thus -

1) The state Authority may, by notification, make regulations not inconsistent with
the provisions of this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely

a) The other functions to be preferred by the State Authority.

b) The powers and functions of the High Court Legal Services Committee.

c) The number, experience and qualifications of members of the High Court Legal Services Committee.

d) The terms of office and other conditions relating thereto, of the Members and Secretary of High Court Legal Services Committee.

e) The terms of office and other conditions relating thereto, of the Members and Secretary of the District Authority.

f) The number, experience and qualifications of Members of the High Court Legal Services Committee.

g) Other function to be performed by the District Authority.

h) The terms of office and other conditions relating thereto, of Members and Secretary of the Taluk Legal Services Committee.

In exercise of the above power the states have framed the various Legal Services Authorities Regulations in Assam, the Assam State Legal Services Authorities Regulations, 1998, is enacted in exercise of power conferred vide Section 29A.
IMPORTANT PROVISIONS OF ASSAM STATE LEGAL SERVICES AUTHORITY

RULES, 1996

The following are the special provisions of Assam State Legal Services Authority Rules, 1996

1) The State Authority is consisted of 15 members vide Rule-3 to which Advocate General; Secretary, Department of Finance; Secretary, Department of Legislative; Director General of Police; Chairman Schedule Caste and Schedule Tribe Commission; Two Chairmen District Authority; an eminent social worker; an eminent person of law faculty and a person of group are members.

The term of State Authority is two years vide Rule-5 and subject to renomination. The Member Secretary of the State Authority shall be whole time employee and can hold office for term of maximum 5 years.

The officers and other employees of State Authority shall be entitled to draw pay and allowances as per rate of State Government.

A Joint Registrar is minimum can hold the post of Secretary High Court Legal Services Committee vide Rule-8.

Under Rule 10, the District Authority shall be consist of 8 members out of which the following are the ex-officio member under chairmanship of District Judge-


Under Rule 11, the District Authority may have such other officers and employees
for day to day works to be notified by state government. They will be entitled to draw pay and allowances as per rate of State Government vide Rule-12.

Vide Rule-13, the Taluk Legal Services Committee shall be consisted of 5 members under the chairmanship of Sub-Divisional Judicial Magistrate. They are- i) Sub-Divisional Officer ii) Sub-Divisional Police Officer iii) An eminent Social Worker (to be nominated) iv) An eminent person in the field of Law (to be nominated) v) A person of repute interested in Legal Services Scheme (to be nominated).

The upper limit of annual income of a person entitling Legal services is Rs. 25,000.00 (twenty five thousand) per annum (Rule-16).

Rule -17 provides the qualifications and experience of other person of Lok Adalat (Conciliators) they are - (i) An eminent social worker (ii) A lawyer of standing and (iii) A person of repute, interest in social services scheme.

IMPORTANT PROVISIONS OF THE ASSAM STATE LEGAL SERVICES AUTHORITY REGULATION, 1998

The following are the important provisions of the Assam State Legal Services Authority Regulations, 1998.

Vide Regulation 4 the state Authority will sit once in every three months. It also provides the holding of Annual General Meeting of the State Authority in the month of April in each year.

Regulation 5(2) of the Act provides that the Executive Chairman has the power to direct that legal aid, legal advice or other legal services to provide to any person entitled under the Act and Rules in respect of any matter before any Court, Tribunal or Authority in the State of Assam.
Regulation 6 (2) states the State Legal Aid Fund shall be kept deposited in Nationalised Bank which shall be operated by the Member Secretary with the prior written approved of the Executive Chairman.

Vide Regulation 7, The High Court Legal Services Committee shall consist of eleven members including Chairman of which sitting Judge of High Court will be Chairman. The other members are- i) One sitting Judge of High Court ii) Advocate General of Assam iii) The Chairman/Member of the Administrative Tribunal iv) The Chairman/Member of Assam Board of Revenue v) The Secretary to the Legislative Department vi) The Registrar (General), Gauhati High Court vii) President, Gauhati High Court Bar Association viii) Chief Justice, Guwahati High Court or his nominee ix) An eminent social worker x) A person of repute engaged in Legal Service and xi) A eminent person in the field of law.

Vide Regulation 8, the term of office of High Court Legal Services Committee is 2(two) years. Vide Regulation 9, the duty of the above committee to implement and perform such policies and other functions.

The function of Secretary vide Regulation 10 shall be the custodian of all assets, accounts, records and funds placed at the disposal of the committee.

Regulation 11 lays about the meeting of the committee, in which Chairman presides. meets once in a month and five members out 11 members form quorum.

Regulation 13 lays about the function of District Legal Services Authority, where the Secretary shall maintain the proper accounts of receipt and expenditure of fund and convene meeting of District Authority with prior approved of Chairman.

According to Regulation-14, the District Authority shall meet once in a month.
the proceeding of the meeting shall be maintained by Secretary. The quorum of the meeting shall be three members.

According regulation 15, the District Legal Aid Fund will be maintained in the Nationalised bank out of which expenditure can be made for minor incidental charges such as payment for court fees, stamp duty and expenditure necessary for obtaining copies of documents. All expenditure on legal aid or other legal services and also for the expenditure necessary for carrying out various functions of District Authority is met from this fund.

Similarly Regulation- 16 provides for the senior most Upper Division Assistant of the office performing the functions of the Secretary of the Taluk Legal Services Committee to exercise the power and functions of Taluk Legal Services Committee-like keeping of record, minutes of the proceedings of the meeting.

According to Regulation 17, the Taluk Legal Services Committee will meet once in a month, the Secretary will maintain the minutes of the meeting where three members will form a quorum.

While Regulation 18, lays the fund of the Taluk Legal Services Committee will come from District Authority and State Authority, to be maintained and operated in an account in a Nationalised Bank. From the fund various expenditures such as payment of court fee, stamp duty, obtaining copies of documents are met. The fund is subject to audit by Assam Local Fund (Accounts and Audit) Act, 1930.

Regulation 19 provides the most important procedure to organise Lok Adalot while Regulation 20 provides about notices to be served for attendance or appear before Lok Adalot. Regulation 21 provides the provision to hold Lok Adalot in High Court.
While Regulation 22 provides there will be only three members to each bench. Lok Adalot where one of the members will be serving or retired Judicial officer, one is from legal profession and third one from social workers. Regulation 23 also provides same criteria for the constitution of Lok Adalot at sub-Divisional level. While Regulation 24 fixes the ceiling of cost of Lok Adalot upto five thousand rupees.

Regulation 25 empowers the Member Secretary of State Authority for summoning of records from Secretary, High Court and Taluk Legal Services Committee for safe custody.

While Regulation 26 lays about the process of functioning of Lok Adalat, while Regulation 27 lays about the remuneration to the Presiding Officers and member of the Benches of Lok Adalot. These remunerations are Rs. 300/- in maximum and Rs. 100/- in minimum per day.

Regulation 28 lays about the procedure for effecting compromise or settlement of Lok Adalats, while Regulation 29 says that the award to be provided should be categorical and lucid of Lok Adalat.

In order to find out the total number of cases disposed the Regulation 30 provides for compilation of result of Lok Adalats. The expenditure for Lok Adalat are met from respective fund of the committee/Authority (regulation 32).

The most important aspect of Lok Adalat which is clarified by Regulation 34 that in Lok Adalat, the parties are not required to be represented by their lawyers, it is optional not mandatory to engage lawyers by the parties. Again Lok Adalats are free to use its own procedure and not subject to Code of Civil Procedure, 1908 or Evidence Act, 1872. Lok Adalat cannot charge any fee for each various orders or
settlements.

While Regulation 35 is important narrating the various modes of legal aid to be provided. It includes- a) Payment of court fee/process fee, expenses of witness or any other charge payable in connection with legal proceeding, b) Representation by legal practitioner in any legal proceeding c) Supply of certified copy of judgements, orders, notes of evidence and documents in legal proceedings d) Preparation of appeals, including typing and translation of documents in legal proceedings and e) Drafting of legal documents.

Regulation 36 attracts the attention by providing where no legal services are provided. These are a) Defamation cases b) Cases of malicious prosecutions c) Proceeding relating to any election d) Proceedings in respect of offences punishable with fine only e) Proceeding in respect of economic offences and offences against social laws like suppression of Immoral Traffic in women and girls Act, 1956 f) Seeking legal aid in official or representative capacity.

While Regulation 37 provides for a prescribed proforma (FORM-B) to ask for legal aid in the shape of application to be addressed to Member Secretary/Secretary of the concerned Committee/Authority. Regulation- 37(4) provides no application for legal aid will be allowed in the case of a) When the applicant has knowingly made false statement b) No prima facie (except criminal prosecution case to institute or defend the proceeding) c) The application is frivolous or fictitious d) The application is not entitled under Regulation- 36 and e) It is not otherwise reasonable to grant it.

Regulation- 39 provides the issue of Certificate Eligibility in Form-C to those who are allowed free legal aid.

According to Regulation- 40, the legal practitioners to whom cases are assigned
either for free legal aid or advice out of fund are entitled honorium from the respected committee or Authority by which as per he is assigned the responsibility and rate of schedule empowered under Regulation 40(1) where different honorium are provided for different types of assignment which are ranging from Rs 50/- to Rs. 500/- in maximum.

Under Regulation 41(2) every legal aided person shall have to execute an agreement in Form- D, agreeing that in the event of court passing a decree or order in his favour awarding costs or other momentary benefit or advantage to him, he is to repay by way of reimbursement to the concerned Authority/Committee.

According to Regulation 42, the concerned Authority/Committee has the power to cancell the certificate of eligibility on a) false affidavit of income b) material change of circumstances c) any misconduct, misdemeanour or negligence on the part of legal aided person d) not co-operating with Authority/Committee e) engaging other legal practitioner than the engaged by Authority/Committee f) on death of legal aided person g) the entertainment of legal aided person from the authorised jurisdiction.

Off course Regulation- 43 empowers the emergency power to Executive Chairman or Chairman of Authority or Committee to take action on immediate necessity when the circumstances do not allow to convene the respective meeting of Authority/Committee.

The last Regulation-44 permits here and in what circumstances the officers, employees or members can accept or avail the benefit of travelling allowances and daily allowances for journey in connection will varied works of Legal Services including Lok Adalot.

From the above discussion it can besaid without doubt that legal aid or services having constitutional and different statutory provisions including the delegated legislations
in the shape of rules and regulations now take the position of one of the urgent duties of state to provide it in order to properly carry out the concept of equal access to justice to all. It is now declared in as fundamental right to life under Article 21 of the Constitution of India.

NOTES AND REFERENCES


2. The state shall not deny to any person equality before law or equal protection of laws within the territory of India'.


6. Smith, Reginald Haber- 'Justice and Poor' Camegio Foundation for the Advancement of Teaching", 1979, P-I.


18. (1951) SCR 344
19. Supra Note -17.
20. Provision of Art- 39 A which provides for legislation or scheme to provide legal aid to poor.
21. Supra Note-13, P-1369
22. Art 39A reads- 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'.
27. Supra Note- 25, P- 624.

28. The Legal Services Authorities Act. 1987, was not enforced in 1983.

29. Supra Note -25, P- 624.

30. Supra Note -14.

31 Supra Note -11.


34. Supra Note- 11; Para-IV.

35. Supra Note -27.

36. Supra Note -33, P-17, Para-IV.


41. Janardhan Vs State of Hydrabad, AIR1951 SC. 344.
42. Tarasingh Vs State, AIR 1951, SC 441.
43.B. 2002 AIR SCW 1841.
43.C. 1996 AIR SCW 2279.
45. Ibid.
45.A. Supra Note -12, P- 1549.
47. Vijoy Pratap Vs Dukh Harnum Nath, AIR 1962 SC 941.
47.A. Ibid, P- 941
47.B. Saleem Bangalore Sri Ranga Vilas Motors Vs S.S. Srishna Sastry, AIR 1962 Mys 47.
48. Sharma, S.S.- 'Legal Aid to Poor'; Deep and Deep Publication, F-159 Rajouri Garden, New Delhi-110027, P- 103, Para-II.
50. Supra Note -10, P- 175, Para -V.
51. Tewari, Om Prakash- "Lok Adalot" Sri Sai Publications, Faridabad (Haryana) P-10, Para-III.


57. All the provisions of the Act except Chapter-III enforced w.e.f. 9th November,1995. vide O 893(E) dtd. 9th November 1995.


59. Supra Note 51, P-15, Para-VI.

60. Srivastava, Justice A.B.- 'The Legal Services Authority Act with Central & State Rules and Regulations', Allahabad, Law Publisher Pvt. Ltd., Allahabad-2111001 (India), P-3, Para-V.

61. Inserted by Amendment Act No. 36 of 2002, Section-4, w.e.f. 11.6.2002.

63. 1981 (1) SCC 627.
64. 1986 (2) SCC 401.
65. 2000 SCC (Cri) 21.
66. Supra Note -63, P-628.
68. Vide Notification S.O. 892 (E) dtd. 9th November, 1995, Published in the Gazette of India Extraordinary, Pt-II.
69. Supra Note -51, P-5, Para-II.
70. Ibid, P-5, Para-III.
71. Amendment Act No. 36 of 2002, Section-4, w.e.f. 11-6-2002.
75. Schedule [under Regulation 40(I)]of the Assam State Legal Services Authorities Regulation 1998, Published in 'Access to Justice' of Assam State Legal Services Authority, June 2003, P-54.