CHAPTER-I
INTRODUCTION

CONCEPT OF LEGAL AID

Legal aid is fastened on the foot of rule of law on principle of equality before law that is justice to all depending upon equality which is one of the fundamental pillars of democracy.

It can be considered an integral part of administration of justice throughout the world. As it is a natural phenomenon throughout the world. Unless the legal aid to poor is rendered, legal aid which bequeathes certain liberties and freedoms to be enjoyed, the havenots will restore the deprived rights, without it meaning of democracy will be oasis-less democracy and farce for past, present and future. Only through legal aid the deprived, depressed and downtrodden persons can avail and enjoy the much waited fruits and benefits of freedoms and liberties to lay fruit to be harvested by the coming generations. Another benefit of legal aid is greatest happiness to the greatest number as propounded by Jermy Benthan in his Utilitarian Theory.

So legal aid can be termed as one part of law depicting the fundamental social, economic and political value of a particular period of a state enjoyed by its citizens expressing it constitutional and legal rights and obligations.

With the transition of India from laissez faire concept to welfare state concept, it is not only a constitutional obligation of a state but also a primary duty of state to provide special protection and aid to those persons who are unable and ignorant to protect their legal interests.
In Justice Krishna Iyer says - of the spiritual essence of legal aid movement consists in inviting law with human soul, its constitutional care is the provision of equal legal service as much to the weak and is grant as strong and affluent and dispersion of social justice through the legal order.

Again it is said - the concept of legal aid is the very spirit of equality and its movement is dedicated to the principle of equal justice to the poor. Equal justice or fair treatment within the perview of judicial process implies an easy access to courts and other governmental agencies on the basis of equality.

According to Sujan Singh the legal aid is an assistance to the deprived and unequal members of society facing the costly and cuber some legal process in an effort to get justice is equally needed in all societies - the developed, developing and underdeveloped the past present and the future ones mentioning the duty of law in welfare state for social change the concept of legal aid to the needy and the indigent is one the principal means through which social justice is realised. Legal aid is an essential rule for achieving the social oblective of law.

Chief Justice of India explains legal aid is not charity but a constitutional obligation of the state and as such all legal aid functionaries need to strive and ensure that this constitutional pledge is fulfilled in its letter and spirit.

Legal aid which was incorporated in the constitution of India only in the year 1976 by 42nd Amendement by adding Article 39A in Chapter IV of the constitution (Directive Principles to State Policy) with effect from 3.1.77. Article 39A says 

‘State shall secure that the operation of legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable
legislation or scheme 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.

Of course, this Article is not enforceable in court. The concept of legal aid found since the days of Vedic period in India. In Western Countries the concept came primarily in the period of The Magna Carta - The Charter of Liberties where it inscribed -

'To no man will we deny, to no man will we sell, or delay justice or right.'

The Panchayati Adalat of former now known as NYAYA PANCHAYAT is also another example of legal aid which has been prevailing in India since Vedic period. Now on evolution the NYAYA PANCHAYAT has transformed into the nomenclature of Lok Adalat.

In RIG VEDA one finds trace of legal aid 5AB -

'Real greatness lies in uplifting the downtrodden and fallen people and helping the weaker sections of the society'.

The legal aid is to provide justice, while the concept of justice is largely dependent on socio-cultural heritage. The conscience of constitution, who echoes the aims and aspirations of people speaks through the Preamble. Among other things it speaks about socio-economic justice. Justice includes social, economic and political justice.

The quest for identifying the ideas of social justice began quickly on our attaining independence and at present is still on. So in order to provide the fruit of welfare state unless there will be denial to ensure the opportunities for securing justice to any citizen by reason of economic or other disabilities. This is for the reason in order to promote justice or a basis of equal opportunity. The legal aid concept which grew in pre-independence period extended and flourished like a banyan tree in the year 1976 by the inclusion
of Article 39A through the Forty Second Amendment Act, 1976 of Indian constitution.

Having broadview upon legal aid it can be said without doubt the concept of equality before law or equal access to justice is brought by legal aid following the principle of rule of law and natural justice. In order to bring economically weaks, downtroddens or have - nots in the same line and status of riches or well-to-do or haves having the aim of social justice and concept of welfare state. The concept of legal aid has been growing upon the above concepts according to Justice P.N. Bhagwati the another arm of strategy and by far the most important is to encourage the poor to organise themselves to urge them to co-operate with other groups similarly situated and to motivate them to invent and use meta legal tactics to supplement and strengthen standard legal tactics to change law and society.

While equal access to justice which is now a crying need of time in order to continue proper administration of justice, which has been observed by Justice B.C. Juneja:

'Access to justice is powerful expression of a social need which is imperative, urgent and more wide spread than is generally acknowledged'.

The Directive Principles of State Policy which are diktating to the states is achieve welfare of people in order to build social order with the objectives of preamble-social order with the justice in the matter of securing livelihood, common good, decent standard of living, just and humane conditions of work, education, living wages for work, raising of public health by nutrition, improvement of environment etc. can be achieved only with instrument of free legal aid to the poor.
MEANING OF LEGAL AID

Justice Dalveer Bhandari explaining legal aid observed that legal aid means providing lawyers to those who are unable to pay-fees for legal services. Legal aid means not only legal representation in court cases but also includes legal advice, counselling, arbitration and conciliation, creation of legal awareness about their rights, duties, obligations and the like. In order words it is to ensure protection of legal aid, constitutional right of under privileged, the poor, the neglected and the indigent.

In a nutshell legal aid conveys the meaning of equality and assistance provided by society and government to its financially and other weaker and deprived sections of society to carry out the judicial process that is administration of justice in the following respects-

To provide equal access to justice.

To protect their legal, fundamental and constitutional right.

To restore their snatched right.

To enforce rights provided to people by Act, Rules, Regulations and the like.

To provide processual justice.

To provide distributive justice.

To provide participatory justice.

To provide remedial justice.

To provide curative justice.

To provide epistolary justice.

To provide Panchayati Justice in the shape of NYAYA PANCHAYAT.

To provide speedy justice through traditional and permanent Lok Adalats.
To provide pre-litigative justice.

To get rights of speedy trial in pending cases in courts and tribunals.

To ensure justice at cheap cost or free of cost.

To provide justice at door step.

To provide clinical legal justice and education.

To provide legal awareness to hoodwink justice.

To provide legal advice to the people.

To provide legal education to the people.

To provide civil justice.

To provide criminal justice.

To provide political justice.

To provide economic justice.

To provide due and upto date legislation (Acts), Rules and Regulations.

To provide social engineering.

To provide para-legal aid.

To teach public interest lawyering.

To provide concilatory and amicable justice.

To extend legal aid insurance in developing countries.

To provide lawyers at free of cost.

To provide expenditure to indigent to initiate suit.

To provide indigent with cost to bring witness and other incidental cost of litigation.

To provide indigent with court stamp free of cost or with out stamp.

To provide indigent with copy of judgement without cost.
To provide leverage provision to poors to stand in equal footing with well-to-dos in court.

To provide counsel to jail inmates, undertrial, destitutes, scheduled castes, scheduled tribes, women, children, calamity effected people, residents of juvenile home, remand home and the like.

Legal aid is an essential function of state to protect the weaker and down-trodden against the strong and influential one in the matter of interpretation of law and statute to bridge the gap between haves and have nots; keeping in view the scientific pattern of welfare state.

The Report clearly states without legal aid the equality before law and rule of law cannot be achieved as equality is the basis of jurisprudence and administration of justice. In so far as a person is unable to obtain access to court of law for having his wrongs redressed, for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provisions is made for assigning the poor man for the payment of court fees and other incidental costs of litigation; he is denied equality in the opportunity to seek justice.

Justice P.N. Bhagwati, who is the pioneer of legal aid movement in India explained the meaning of legal aid as that providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have resort to it for enforcement of rights given to them by law.

So the most important duties and functions of a welfare state to create such atmosphere and environment to render the said duties and functions to reach the coveted
social justice by removing inequality and injustice from the threshold of capitalism and
globalisation. India is to provide scientific pattern according to preamble of constitution
in its footsteps of welfare state. State must shoulder the responsibility to render social
justice to the poor and down-trodden people of India. This meaning also bears to
all countries of the world.

The above view is also supported by other jurist^ being welfare state. India is
also taking its long strides towards socialism.

In order to mitigate economic inequalities and social disabilities incorporation of
social justice is necessary in the administration of justice are urgently felt.

So another purpose of legal aid to help and assess the poor and downtrodden
to encourage them to contest in legal battle with the help of state instead of being a
silent spectator and thinking the poverty as the irony of fate. to get rid from social
inequality particularly in the administration of justice. So that the poors should feel that
in the legal battle the world 'might is right' is ineffective and obsolete.

On the other hand legal aid can be told as a social arrangement extending and
providing special help and assistance to the weaker sections to enable them to enforce
their legal rights taking the equal positions with powerful, affluent, elite and rich men
through legal process.

The above view is also reflected in the writing of Justice V. R. Krishna Iyer—
'The spiritual essence of a legal aid movement consist in inviting law with a human
soul its constitutional core is the provision of equal legal service as much to the
weak and in want as to strong and affluent, and the dispensation of social justice
through the legal order.'
MEANING AND DEFINITION OF LEGAL AID

It has already been discussed the provision of legal aid which is essential for the safe walk of democracies on the track of rules of law and the equal protection of laws. Lawyers gradually going from simpler to complex with varied technicalities, so the importance of legal aid is increasing, the meaning and definition of legal aid is going from simpler to complex.

In order to ensure rule of law and equality of justice, the legal provision is not sufficient to treat rich and poor equally. There must be needful and proper provision in law, so that poor must be in a position to get their legal and constitutional rights enforced and they should get such facilities to put up proper and adequate defence when they are sued for any liability if the state or community will not provide any such legal help. The whole concept of equality before law will become discriminatory and meaningless for the poors. This concept bring into force the existance of legal aid.

Referring to the meaning of definition of legal aid it is said legal aid means giving to person of limited means, gratis, or for nominal fees, legal advice and legal assistance in courts in civil and criminal matters. Its primary objects is to make it impossible for any man, woman or child to be denied equal protection of the law simply because he or she is poor. Legal advice is co-releated with legal aid. But legal advice is quite independent of any legal proceeding in any court of law or tribunal. Its nature not only remedial but has preventive protential also.

Again it is found that unless a common man irrespective of wheather he is rich or indigent fails to assert and indicate his right, the world 'LAW' will be nothing but a fruitlees exercise of powers of legislature unless and untill the machinary of justice
is actively effective and works in time. The new Encyclopaedia Britiannica defines legal aid as professional legal assistance given either free or nominal sum to indigent persons in need of such help.

According to Sujan Singh recapitulating the Indian definitions of legal aid, we note that it is a combinations of remedial package and also the preventive aspect of legal aid. Under the former legal aid has been recognised to be constitutional rights of the deprived and destitute sons of India, particularly so if their fundamental rights are abridged and if they are in face with criminal type of litigation.

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

According to International Covenant on Civil and Political Rights which guarantees to everyone.

The right to be tried in his presence and to defend himself in person or through legal assistance of its own choosing, to be informed if he does not have legal assistance of this right and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

While European Convention of Human Rights defines 'To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance to be given it free when the interest of justice so require.'

In the state of Canada a person is his ordinary needs of social aid prima
facie proof that he is an economically unprivileged person within the meaning of preceding para graph.

In United States of America the legal services (legal aid) programme is considered comprehensive education to apprise eligible people of their legal rights and obligations. The community action programme, law schools, the-organised bar, individual attorneys and others should be involved in this phase of the programme. A strong preventive law approach should be established to educate potential clients to become aware of their legal rights and to protect them. So that legal remedy sought after involvement will be the exception rather than the rule.

According to The Legal Services Authorities Act, 1987, where the word 'Legal Services' include legal aid. In the Act, legal services are defined as:

'Legal services include the rendering of any services 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.'

It is found that the definition of legal aid as it is with every system of jurisprudence, succeeds to cover all the entire need to the country except in some areas of remedial and preventive part.

In remedial part the person who has to face the means and prima facie test or declare income through affidavit to avail legal services free of cost, along with annual income the person's wealth and property should also be considered. While in preventive part Panchayati Raj institution should be involved directly with the Lok Adalats stressing on prelitigative settlement. Legal aid is rendering of free legal assistance and advice to the people who can not afford to pay for those services in order to improve equality.
AIMS OF LEGAL AID

The following can be described as aims of legal aid in broad prospective-

(i) First and foremost aim is to enforce rule of law.

(ii) To provide equality before law and equal access to justice to the poors and downtrodden.

(iii) To infuse confidence to the people that portals of justice are opened to all irrespective of haves or haves-not.

(iv) To provide different justices like-processual, preventive, distributive, remedial and participatory.

(v) To lessen the accumulation of huge number of cases at different courts and tribunals.

(vi) To settle cases at pre-litigative stages as far as practicable.

(vii) Law should be easily accessible to all irrespective of social, economic, political, geographical, biological and any other types of differences.

(viii) To accomplish the intention and duty of Legislatures and Governments to achieve the goal of welfare state in the track of democratic socialism.

(ix) To reduce and subsidise the cost of litigation.

(x) To provide legal aid and advice free of costs to those earmarked class and people living below poverty line.

(xi) To educate people about legal & constitutional rights to bring legal awareness.

(xii) To provide counsel at subsidised or free of cost to poor and downtrodden including undertrial, arrested and accused to contest in cases.
(xiii) To suggest to state to enact timely and fruitful legislation to cope with advancement of society.

(xiv) To create vested interest for the economically weaks and downtrodden.

(xv) To survive the true democracy in real sense of term.

(xvi) To provide speedy justice following the principle, 'Justice delayed is justice denied'.

(xvii) To create para-legals to serve as bare-foot-lawyer.

The following are the aims of legal aid (legal services) in narrow prospective-

(i) To provide free provision of legal aid and assistance.

(ii) To pay lawyer's fee to eligible persons by Government or Non Government Organisations.

(iii) Exemption of paying court fees and return of those who has already paid.

(iv) Bearing other expenses by Government or Non Government Organisations for incidental costs-like expenses for witnesses, typing cost of suit, expenditure to get certified copy of judgement and the like.

(v) To provide legal advice free of cost either at Counselling Cell or Legal Aid Clinic, and legal aid camp.

If legal aid to poor person is not provided either in time or according to need it will result in-

- Increase the rate of racidivism.

- Frustration of people.

- Will lead to lose of faith in law and judiciary.

- Will lead to erosion of democratic functioning of state and society.
- Breach of law will be order of the day and will lead to chaos and lawlessness.

- People will seek justice in street instead of court.

- The gap between riches and poors will increase.

- Will lead to agitation and class struggle.

Supporting the above view S.S. Sharma narrates what will be consequence if legal aid is not offered.¹⁹

'Indeed, in the present legal system the poor are always exploited, harassed and be always faces the painful side of law. Therefore, before the patience is exhausted something has to be done. Law must not only speak justice but also behave justly to do justice and this can be done only by infusing of legal aid in the arteries of present Indian Legal System.'

Justice P.N. Bhagwati also rightly states²⁰-the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impedingment in the way of their obtaining justice from the courts.

Justice Ravi S. Dhawan, Judge, Allahabad High Court supporting the above points writes.²¹

'The spiritual essence of a legal aid movement consist investing law with a human soul, its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order. The political thrust of the movement is that if legality lets down the masses and protests, in actual working, only the upper bracket, anti law will become a way of life of the numerous poor, the people being prone to seek justice in the streets in preference to the law in the courts.'
It is found that\textsuperscript{14} the political thrust of legal aid movement is that if legality lets down the masses and protects in actual working, only upper bracket anti law will become a way of life of the numerous poor, the people being prone to seek justice in the streets in preference to the law.

On the other hand Justice P.N. Bhagwati has observed that\textsuperscript{18} it is highly dangerous and explosive situation and the earlier we realise its gravity, the better it is for all of us in this country.

**OBJECT OF LEGAL AID**

It is pertinent to note that it is hard to differentiate object of legal aid from the bosom of aims of legal aid which are interrelated to each other.

Justice Ravi S. Dhawan, Judge Allahabad High Court made the remarkable observation by offering legal aid, legal advice and counsel in court by educating people in their legal rights and helpings to win them in practice, by reducing or subsidising the cost and delay of litigation, by listening to the grievances of the humble and by identifying where law lags or injuriously obscure and suggesting suitable action through reform oriented litigation or legislation. By championing the cause of the worker, wife, consumer, tenant, tiller and victim of wooden officialdom, by sensitising the legal and judicial profession and by creatively injecting into legal studies and research the problems of law and poverty by involving the community in the judicial process at certain levels and through other forward looking measures legal aid seeks to make the rule of law a dependable ally of the weak and a liason between the statute book and the deprived. Law reads to order only with legal aid and tensions and mass violations are often the syndrome of the malady of law versus poverty. Legal aid, if efficacious, creates a vested
interest for the poor in the law.

Justice A.B. Srivastava mentions the object of legal aid[^22A] to provide free and competent legal services to weaker section of society to ensure that opportunities for securing justice are not denied to any person by reason of economic or other disabilities: and to organise Lok Adalats to secure justice on the basis of equal opportunity. The mounting arrears are also aimed to be reduced, amity between the litigating parties would be established and also the intention of Art 39A of Constitution would be fulfilled.

**IMPORTANENCE OF LEGAL AID**

Considering the importance of legal aid in India, it will be worthwhile to start with a comment of Law Commission of India[^23].

'The rendering of legal aid to poor litigants is not a minor problem of procedural law but question of fundamental character'.

In a democratic country unless rule of law prevails there can be no law and order may continue. For a peaceful and progressive society only a few mighty and strong persons can not subscribe unless the common man, irrespective whether he is rich or poor, is able to assert and vindicate his rights given to him by law. There must be proper administration of justice and machinery to carryout the same in which legal aid plays a most important pivotal role to achieve justice easily accessible to all equally, irrespective of their social, political, economic, geographical, biological or any other kinds of differences.

The above view is reflected in its 14th Report of Law Commission of India which states[^24].

'Equality is the basis of all systems of jurisprudence and administration of justice.

In so far as a person is unable to obtain access to a court of law for having
his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purposes. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.

So it is found that unless the common man irrespective of status and vindicate his constitutional, legal or natural right the word law will be nothing but a word of mockery and futile exercise upon them. This bears the importance of legal aid.

If legal aid is denied on account of poverty it will amount to denial of justice, which will amount to negation of social justice and violation of the rule of law which is the moot point of true democracy.

The following citation indicates the importance of legal aid:

'Legal aid seeks to make rule of law a dependable ally of the weak and liaison between the statute book and the deprived mass. Law leads to order only with legal aid, and any tension and mass violation of often the syndrome of the malady of law versus poverty. Legal aid if efficacious creates a vested interest for the poor in the law:

While discussing the importance of legal aid.S.S. Sharma comments: 'Denial of justice on account of poverty amounts to negation of social justice and violation of the principle of our democracy. We can only reassert it by transfusing legal aid in our legal system. The life of democracy then depends upon making the machinery of justice so effective by incorporating legal aid that every citizen can get the benefit of its impartiality in administration of justice.'
It is found that society has a life of growth as an animate object, which is quite distinct from every individual, so in order to enliven the life of society in its field of socialistic welfare state the infusing of legal aid must continue in the arteries of legal system.

If Jurist Duguit Theory of Social Solidarity is viewed in this context it is found that the need of legal aid and in exchange provision to provide free legal aid is important for sociological society and social solidarity.

While it can be said without doubt and with firm determination legal aid is sine qua non for achieve jural order. Legal aid is important and vital for administration of justice being the essential tool for democratic social welfare state to achieve the principle of equality before law or equal access to justice to awake the people to step forward with equal footing on foot prints of well-to-dos and to enliven the faith of poors upon judiciary as in India even in new millennium (in 2001 A.D.) 31% people of India and 40% people of Assam lived below poverty line being deprived from the test of true functional democracy.

Unless much criticised social stigma of poverty is not eliminated from the crux of Indian Society, the social importance of legal aid will not lessen, it will increase step by step assuming the greater dimension and size. While on the other hand it is an accepted corollary that without assuring economic freedom, the political freedom in India is not meaningful and upto ones expectation to reach the desired result.

Considering the importance of legal aid Justice V.R. Krishna Iyer observed 'Legal aid is a dynamic dimension of law, social engineering through law, conduct conducive to distributive equity and synthesis of competing claims become the
So Justice Iyer advocates the x-raying status quo procedure and modern scientific socially appropriate 'Justice technology' culture. To-morrow's court system must become at once sentinel, monitor, mentor and ombudsman of the new world legal order.

Discussing the importance of legal aid Sujan Singh explains - it can safely said that the goddess of justice can now dispense justice blind folder only if the administrators dispense and practitioners of justice keep up their eyes wide open and the poor and destitute in the society are being helped to stand equal to their dominating and prosperous adversaries. And this can be ensured only by way of effective provisions of legal aid in all societies - developing, developed or the underdeveloped.

On discussion and on research this researcher finds three meladies or unhealthy syndromes of traditional system of justice for which to remove those maladies particularly for poor persons legal aid (service) are too much importance-

(i) Huge and heavy expenses
(ii) Unexpected and unpredictable delay in disposal
(iii) Cubersome and complex procedure of court.

In short the importance of legal aid can be summarised as the poor and illiterate should be able to approach the courts for judicial remedy where ignorance and poverty should not be an impediment in the way of their obtaining social justice from the courts as well as legal paternity.

Now legal aid movement has become an social movement and its ultimate aim is to establish social righteousness by mitigating and ameliorating legal aid capacities and hardships of weaker sections of the society. Legal aid in modern legal, political
and social theory is originally related to urge for social justice. While social justice can be termed as gravitational doctrine—which directs all other doctrines in the field of expectation, co-operative relation and realisation of social justice. It can be compared with polestar of north sky by which all other stars can be identified.

On the other hand on careful study of audio alterem partem, it is found that audio alterem partem, is one of the principles of natural justice can be fulfilled by following the device of legal aid and in the absence of legal aid it will be nothing except to hoodwink justice.

While equity which is previous generation of legal aid, like equity, legal aid has developed to mitigate the rigour of law, to lessen its hardships and make it comparatively just and acceptable. Equity 308 is medieval in its orientation and has antiquated itself where as legal aid is modern and more alive and potent to provide a new approach and evaluation of law and its working in society by looking to the practical social consequences and defects. Legal aid with all the potentiality, has to become a programmatic attack upon legal anomalies. It can provide stimulus for theoretical analysis, schematic unfoldment and amplification of law and its doctrines.

**SPEEDY JUSTICE THROUGH LEGAL AID NOW A FUNDAMENTAL RIGHT**

Due to gradual importance and necessity legal aid and legal awareness got legal and constitutional status in the year 1976 A.D. incorporating Article 39A in Chapter IV. Supreme Court too has interpreted legal aid as the "right of free legal aid and speedy trial are implicit in Article 21 of the Constitution of India, before the case Supreme Court 31 held that right to free legal service is implicit in Art 21 without which the procedure
cannot be said to be reasonable, fair and just and directed the state to provide free legal aid at state expenses to such persons.

But the most important Supreme Court Judgement provided through Article 39A since it is considered to be basic human rights.

What is considered to be fundamental right has now been transformed in to human rights, this right of speedy trial has been extended to prisoners by Supreme Court of India.

In order to avail speedy justice it is the duty of court and constitutional mandate or obligation to inform the accused litigant that they are entitled to get legal aid service from government if they are unable to engage lawyers or other notified reasons. It is applicable during and until completion of the trials.

The right of speedy trial is just and correct because generally to complete a civil suit it takes average 10 years. According to Justice P.S. Narayan:

'The life span of or civil case or a law suit in civil side, is ranging average between 8 to 12 years. Who knows even after a successful decision or order in favour of a party, whether he would be able to see light at the end of tunnel after having passed through long legal and procedural conduit pipes.

So the clarion call of A. S. Anand, the then Chief Justice of India at the beginning of millennium draws the attention of people – equel justice to all is a constitutional pledge which must be fulfilled at the earliest in its letter and spirit.

In a developed and vast country like India to render speedy legal aid only through governmental machinery will be too tuff and troublesome. The voluntary organisations or Non Government Organisations can play a very crucial role in this purpose by forwarding
their helping hands.

The above view is reflected in the judgement of the Supreme Court which observed that in order to accomplish the object of social justice contemplated by Art 39A, the state should encourage voluntary social organisations to come forward and actively participate in the legal aid programmes so that the benefit of justice reach the common man.

LEGAL AID IS A CATALYST FOR SOCIO ECONOMIC JUSTICE AND A BASE FOR EQUAL FOOTING

Following the equality before law as equal access to justice as provided under Article 14, to provide life and personal liberty in the due procedure of law under Article-21, of Indian constitution in the context of Article-38, the state is to secure a social order for the promotion of the welfare of the people. Free legal aid to provide equal and economic justice and opportunity under Art 39A; serves a catalyst to provide as a base for equal footing. Until such time when poverty in India can be completely eliminated and ended, the work of legal aid as catalyst will be very much crucial. It may be concideed a pedestal for the society to bring in-equals, economically weak and deprived ones to stand on equal footing with well-to-dos.

In a nutshell legal aid particularly to poor will last and continue to remain as constitutional necessity. There are inequilities in economics, social, psychological, cultural and geographical sense in a developing country like India.

In this respect the comment of Sujan Singh is noteworthy—

'Legal aid as a catalysing agent to the process bringing socio-economic transformation through the instrument of law, becomes connected with the provision christened
LEGAL AID (SERVICES) IS AN OUTCOME OF SOCIO-ECONOMIC PHILOSOPHY

It is found that almost in all the developed countries and in many underdeveloped countries there are many state financed schemes of legal aid and advice (services) to the weaker sections of society. In fact the strong movement for legal aid in the recent years is an outcome of the emergence of the socio economic philosophy and welfare state and consequent struggle against poverty to ensure the just human living to people at large. In this respect mention can be made about the United Nations Conference on Human Rights held in Tehran in 1968. The above conference stressed the obligation of the state to provide legal aid system for the protection of human rights and fundamental freedoms.

It states that United Nations Organisation should provide necessary resources to the member states in this connection. Accordingly the United Nations Organisation has already impressed upon the desirability of providing legal aid expressly by implication in the international instruments.

The above is found in Article 8A of Universal Declaration of Human Rights read with Article 14(3)(d) of International Covenant on Civil and Political Rights (as discussed earlier)

Article 8A States.

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

The preambular objective of constitution of India under Art 51(a)(c) and (d)
emphasise for upholding the fraternity and unity and integrity of the country. clause (j) of Art-51 A casts a fundamental duty on all citizens of India.

'To strive to-wards excellence in all spheres of individual and collective activity. so that the nation constantly rises to higher levels of endeavour and achievement'.

In almost all developed countries and in many underdeveloped countries also there are state financed schemes of legal aid and advice to weaker sections of society. In fact the strong move for legal aid in the recent years is the outcome of emergence of the socio economic philosophy as well as welfare state.

Previously it is already discussed how United Nations Conference on Human Rights hold in Tehran in the year 1960 stressed the obligation of states to provide legal aid to poor. It adopted resolution to the effect that the Government should encourage the development of comprehensive legal aid system for the protection of human rights and fundamental freedoms and they should consider ways and means of deferring the expenses involved in this connection. It also states that United Nations Organisation should provide necessary resources to the member states in this matter. United Nations Organisation has already impressed upon the necessity and desirability of providing legal aid expressly or by implication in the international instruments.

Equal justice was the cardinal principle of administration of justice ever in VEDIC and SMRITI period. The famous Manu Stated:

'Let the Prince, therefore Like Yama, not heeding his own likings and dislikings. we have exactly like Yama, supressing his anger and controlling himself'.

Justice V. R. Krishna Iyer opines:

'A powerful , planned comprehensive legal protestatanism. radical enough to a
bandon the spell of five-star prosperity and to wage war on mass poverty and social disability is the demand of the Indian jurist'.

**PHILOSOPHY OF LEGAL AID**

Justice A.H. Ahmadi, Judge of Supreme Court describes the philosophy of legal aid as enshrined in Art 39A of the constitution has many facts which can be described as (i) financial (ii) preventive (iii) curative (iv) educational (v) service oriented and the like.

**CONSEQUENCES WHEN POOR AND RICH WILL BE TREATED ON EQUAL FOOTING**

The concept of equality before law will suffer most if poor and rich are not treated equally violating the gist (essence) of Art 14 of the constitution of India among equals every body is equal.

The law by treating the rich and the poor alike, by adopting posture of equality in its application to the rich as well as poor, becomes discriminatory in effect and the co-relates of poverty produces inequality.

Jurist Engen Ehrlich who advocated for 'living law' and 'realistic approach' of law concerned with facts to avoid mystical notion of laws. He observes _de jure_ equality may actually accentuate _de facto_ in equality. He argues:

'More the rich and poor are dealt according to the same legal proposition, the more the advantage to the rich is increased.'

This kind of discrimination is far from dangerous because it is not so apparent and easy to defect except when its consequences are analysed in sociological data.

If laws to transform our social lives and generate confidence in our problem ridden
and divergently divided society and population legal aid is must and compulsory to the poor and indigent persons.

**TRACK AND TREND OF LEGAL AID**

With regard to the track and trend of legal aid to fetch the desired standards of social, political, economic and all round development through rule of law. legal aid can be termed as catalyst.

The track and trend of legal aid can finds reflecting through the legal advice, legal aid clinics and counselling centres; legal literacy through booklets, posters, pamphlets, radio and television; legal aid through legal aid camps, legal aid counsel scheme, legal aid clinic, for cases of pre-litigative and litigative stage; speedy justice through Lok Adalats and Permanent Lok Adalats. The above functions of legal aid now collectively it is called as LEGAL SERVICES.

Para legals which are said as 'BARE FOOT LAWYERS' by whom the people can be taught about the rights and responsibilities by exercising their legal and constitutional rights in a developing country through which friction or dispute between the citizens and Governments can be minimised and a bridge can be established amidst them. This will help to create a proper and cogent atmosphere assisting the government to carryout their plans and programmes and will help to lead to speedy administration of justice.

In the words of Sujan Singh the future track and trend of legal aid can be traced as:

'Legal aid is a leverage provision in the juridical administration, pulling up the weak and the meek to stand equal before the strong and resourceful adversary. In short legal aid is a pedestal for the unequals in a society, facing litigation, to make them
look of 'equal size' as that of the long stunted opposing party. Therefore, till inequality prevails in a society, the need and importance of legal aid will remain as before. And inequality in its economic, social, physical, cultural and geographical sense, is existing in the developed, developing and also the underdeveloped societies in the world over. Inequality has been existing in the past, continues today, thereby giving us a parasight that it will perpetuate in future also.

Even equality is reviewed in the context of present trend of globalisation and world development where the communities strike to bring equalisation among people are stepwise going to be proved as ineffective. The capitalism is spreading its base in the every nook and corner of world. Even in the twenty first century the track and trend of equality of people (where legal aid is a device to bring equality) will be further checked in all spheres. It will generate so called 'free economy' by way of adopting new techniques, plans, programmes, science and technologies by which the laissez faire trend may revive from welfare state principle, which will mean there will be more inequality among people particularly in the field of administration of justice which indirectly will require the furthering need of legal services to poors and downtroddens in future days to come.

In the context of increasing trend of population of India as well as unemployment, the dimension of illiteracy rate, will be another stumbling block in the advancement in reaching the stage of equality before law or equal access to justice.

So, in this context of those problems and impediments in near future with the growing strength and spread of globalisation, that is free economy, this researcher feels that the necessity and importance of legal aid to poors (Legal Services) will increase tremendously.
THE RESEARCH AND THESIS

This researcher after a thoughtful study and considering the lack of legal awareness of the people of Assam in general and people of Nagaon District in particular, has selected the topic. A CRITICAL STUDY OF LEGAL AID IN ASSAM WITH PARTICULAR REFERENCE TO NAGAON DISTRICT for the following reasons-

(i) The topic is not researched by any scholar particularly in North East and Eastern India in general.

(ii) With the advancement of society and population there has been an enormous increase of litigation of which in the year 2001, when 40\% people of Assam are living below poverty line and are not in a position to contest with well-to-dos in order to test the real democracy, social justice, equality, speedy and equal access to justice. This thesis is expected to be a comprehensive documents for the intellectuals of Assam to rouse the sentiments of legal awareness among people particularly below poverty line.

(iii) That more than 400 persons of nook and corner of Nagaon District, will be interviewed to know about the different aspects of legal aid will also create a sense of awareness to avail the different benefits of legal aid.

(iv) The subject being comparatively new and in India only a few researches are being undertaken upon the topic and the last research included the records and data upto 1994. So this thesis will help anybody to get reference upto 31st December 2003 including data and records.

(vi) This researcher tries to evaluate and synthesise the implication and implementation of The Legal Services Authorities Act, 1987 after its total enforcement.
(vii) The topic is selected because the importance of this topic is growing tremendously all over the world in its journey for equal access to justice. So this research will help to show the implementing agencies its positive and negative angle of the topic after proper and careful scientific study of the subject.

(viii) People by this research will know the importance and impact of legal aid in the present context of society and to rouse of awareness will help to grow the democratic government in proper sense of the term.

(ix) The investigation particularly for people of Assam will help to know the present achievement of legal aid from statutory pronouncement and the need of future to be followed for proper and scientific development of society to fetch equality before law and equal access to justice.

(x) The research will help to restore the eroding faith of people over democracy, rule of law, natural as well as administration of justice when they will know that availing of legal aid can not only provide the equal footing with well-to-dos of society but also can render the speedy justice as order of the day, which will stop the people from asking proper and speedy justice in the road instead of court and revive democracy instead of revolution.

**METHODOLOGY ADOPTED**

In order to advance the research a questionnaire containing 80 questions are to be distributed among 400 people selecting on random survey method of undermentioned categories in three different Sub-Divisions (namely Nagaon, Kaliabor and Hojai) of Nagaon District - advocates-80 persons, persons below poverty line-80 persons, persons receiving legal aid-80 persons, persons related to legal profession-80 persons, student
of law and intellectuals-80 persons. The answers of questionnaires will be collected and percentage of answers will be found out to substantiate the required points and answers.

Data of various aspects will be collected on primary and secondary sources. Research will be done on doctrinal and empirical method depending upon interview, enquiry and observation and the like.

**HYPOTHESIS EVOLVED**

For the purpose of study the following hypothesis has been adopted to prove-

'Though the various legal provisions as enumerated for legal aid (now services) are sufficient to provide our day to day necessity but the implementation is beyond satisfaction in Assam in general and Nagaon District in particular.'

The purpose of the present research is to make an objective study of the concept of legal aid in India. The research also seeks to examine and evaluate the legal aid movement in India since the Vedic Period and to study the movement in different countries of the world. A sincere attempt has been made to study the legal aid (services) in Assam in general and Nagaon District (a district of Assam) in particular collecting different data and following random survey method. It again endeavours to trace out the handicaps and impediments in the way of effective implementation of legal aid programmes and to propose the valuable suggestions so that the present position or practice for providing legal aid can be improved for the betterment of lots of poor and downtrodden segment of Indian society.

The research encompasses in eleven chapters. In this first introductory chapter an earnest attempt is made to highlight the concept, meaning, definition, aims, objects, philosophy, importance of legal aid and how it serves to provide speedy justice as a
catalyst of social justice describing its present track and trend of legal aid getting the status of fundamental right in precedents and how it is now transformed into basic human rights. The mention of evolvement of hypothesis is also made here and in due course of research mention is made how the hypothesis will be proved.

In chapter II, named as 'Legal aid movement in India with historical perspective', an earnest attempt will be made to give an idea how the concept of legal aid was prevailing since the VEDIC Period to the present century though at the other nomenclature in the administration of justice. In the period of Mughal Rules, continued in the court of KAZI or MAULAVIS how in the shape of Panchayati Justice it survived the death blow struck by British during their regime. The speedy justice which forms part of legal services has been rendering in different periods and places.

A discussion will also be attempted on how the new concept has grown during the days of independence era. How due to enormous endeavour of Justice P.N. Bhagwati, V.R. Krishna Iyer and Gujrat state, Government of India has brought about the constitution of the 'Committee for Implementation of Legal Aid Scheme' (CILAS) since 26-9-80. The history of Assam legal aid movement will be separately studied in chapter VIII.

In chapter III, entitled as concept of legal aid outside India that is foreign countries' a particular study will be made starting from Statute of Liberties- Magna Carta of England to U.S.A. and also in different democratic, socialist and communist countries and how like U.K. in Europe as well as in America adopted the similar system of legal aid of English pattern. A study will also be made how United Nations Organisation has been playing a pivotal role to provide an important status through its various conventions and conferences and how Tehran Conference on Legal Aid Organised by United Nations
Organisation and its agencies recommended its member states for providing legal aid to poor and have-nots.

In the fourth chapter entitled as 'Existing Constitutional and statutory provision of legal aid' it is proposed to study how the legal aid was prevailing in the nook and corner of India during CILAS (constituted in the day 26.9.1980). Here also a study will be made how as per provision of Art-39A, The Legal Services Authorities Act. (LSAA) 1987 passed despite its several constraints and why it was given effect only from 9.11.95 in India. A sincere attempt will be made on what type of provisions are made in giving the nomenclature of 'Legal Services' to the legal aid.

Studied will be made, how the different Authorities and Committees are provided in The Legal Services Authority Act., 1987, to implement and monitor the different legal services -which include-legal advice, spread of legal literacy, legal aid Counselling Centre, Lok Adalot and Clinical Legal Aid and the like.

In chapter V entitled as 'Para Legal Aid' the investigator will attempt to state how the new concept of Para Legal Aid is growing, to render legal aid by other than the practising lawyers. How Para Legals being the barefoot lawyers can provide yeoman's service to the nation in general and the deprived and indigent people in particular to give a boost to the legal aid movement in India. The earnest attempt will also be made to know how the concept of para legals are growing in different countries of the world and how they will provide para legal aid there.

In chapter-VI entitled as 'Implementation and Implication of Legal Aid in States and Union Territories' it is proposed to observe how The Legal Services Authorities Act, 1987 is implemented and what are its implications. How this statute serves the
interest of needy people of India. What are the consequences and the results under the enforcement of said Act, 1987. Various available data on how this statute becomes inevitable for the poor and indigent people of India in its struggle and race for attainment of equal access to justice will be investigated. A study will also be made how Clinical Legal Education and Clinical Legal Aid has been growing to provide legal aid and advice.

In chapter VII entitled as 'Lok Adalot - A Viable Alternative Dispute Resolution System being People's Court' will be discussed. How effective it has been in providing speedy justice and reduce the backlog of cases as an alternative dispute resolution system. The nomenclature of 'Lok Adalot' will also be studied as Panchayati Justice -which is alternative can be called as People's Court. An earnest attempt will also be made here to substantiate how Lok Adalots have been providing yeoman's service not only the indigent people of India but also the people of every corner in order to provide speedy and amicable settlement as a tribunals in friendly atmosphere, barring future prospect of appeal. Again after the introduction of Permanent Lok Adalot, how people are availing the immediate benefit in the matters of 'Public Utility Services' through the Permanent Lok Adalot is also proposed to be taken up by the investigator.

In chapter VIII - entitled 'Legal Aid in Assam' the investigation intends to analyse the origin, development of legal aid in the state of Assam since the days of Pragjyotishpur to present day, which existed particularly in 'KEBANG' (elders' council) of Tribal people like Bodo, Karbi Kachari Tribe and also in the report of Chinese Traveller Huen Tsang about amicable settlement of disputes through MEL without referring to King's Court.

How in the reign of Ahom Kings the 'KHEL' which consisted of 'PAIKS' served the purpose of legal aid. In Assam the 'NAGARA BRAHMINS' who served as legal
practitioner and helped also in legal aid's amicable settlement. Investigation will also be made how during Sri Sankardeva who organised SATRAS, KHELS and NAMGHARS where 'GOAN MEL' sat and decided the disputes of people amicably. Reasons will be studied how even the Burmese invasion could not destroy either 'GOAN MEL' or 'KEBANG', SATRAS, NAMGHARS. Investigation will also be made how and during the struggle for independence in the first part of 20th Century the above evolved and created RAIZAR MEL (PEOPLE'S COUNCIL) which also served the purpose of legal aid. It will be studied how after independence the Rural Panchayat, Anchalik Panchyat and also Goan Panchyat served the purpose of legal aid. Here also it is intended to critically study the legal aid during the days of Committee for Implementation of Legal Aid Schemes and The Legal Services Authorities Act, 1987. Though Legal Services Authorities Act, 1987 was enforced in India from 9th November 1995 but the constitution of State Legal Services Authority was enforced in Assam only from 31st July 1997. Here it is critically investigated how much benefit has been gained by the people of Assam during non-statutory period that is during the days of Committee for Implementation of Legal Aid Scheme and statutory period, that is during the days of The Legal Services Authorities Act, 1987.

In the chapter IX - entitled as 'Legal Aid in Nagaon District during Non-statutory Period'. This period covers from 26-9-1980 to 8-11-95. In this chapter a sincere attempt will be made to analyse the data collected from different sources to see how much benefit the people enjoyed from legal aid during the non-statutory period that is during the days of Committee for Implementation of Legal Aid Scheme, how legal institution of Nagaon strived its level best to render legal aid to the needy persons. Here also
a historical study will be made to trace the availability of legal aid in Nagaon District from the days of King Samudragupta, when 'DABAK' kingdom of present Nagaon District was ruled. Study will be made about the trace of VEDIC civilisation confirming the system of 'Village Council' or 'KULANI' of five people in Nagaon District. During Ahom regime traces of legal aid will be found out in Nagaon District how civil cases were disposed of locally and amicably except its appeal cases tried outside the local jurisdiction. Investigation will be made how Sri Sri Sankardev's SATRAS, NAMGHARS and KHELS system first started in Nagaon district, and 'MEL' who sat at NAMGHAR decided the case amicably proving the trace of legal aid. Trace will be made why SATRAS were treated as Upper Adalot (court) and NAMGHARS were treated as Lower Adalot. Study will be made why through KHELS, MELS, NAMGHARS - the legal aid institutions, people of Nagaon District succeeded to revolt against king for his repression and exploitation-and organised people to chase the King who fled from Nagaon. Analysis also will be made how depending upon 'SMRITI' and 'DHARMASUTRAS' and legal aid principles cases were decided amicably. Study will also be made why even Madmoria Insurrections for three times that could not destroy the prevailing system of administration of Justice and legal aid. Analysis will be made how the legal aid practised through 'RAIZARMEL' being strengthened and organised the First Peasant Revolution of Assam in Phulaguri of Nagaon on 18th October 1861. Study will also be made how the above revolution gained strength from Sepoy Mutiny or 1st Inaian War of Independence organised under the banner of Maniram Dewan of Assam.

The investigator will also examine how the British inspite of their strong resentment for local administration system of India recognised Panchayati System and referred some
disputes to arbitration under Bengal Regulation Act, 1772.

Analysis will also be made the 'RAIZARMEL' which not only organised people in Independence Movement but also helped for amicable settlement of disputes following legal aid principles.

Those Musalmans who are residing in Nagaon district investigating will be made how they decided their disputes through KAZIS or MAULAVIS.

Study will be made how after independence the Panchayati Justice regenerated in Nagaon District after introduction of Assam Rural Panchayat Act, 1948.


Analysis will be made to find out how much percentage of people benefitted by legal aid and advice in Nagaon District during the days of the Committee.

In the chapter X, entitled as 'Implementation of Legal Aid in Nagaon District during Statutory Period' that is after the enforcement of The Legal Services Authorities Act, 1987 (Statutory Period), an analysis will be made of the implementation of the Act, 1987 since 9th November, 1995 and how benefits in the matter of legal aid, legal advice, legal literacy, Lok Adalot, Legal Aid Clinic have been availed by the people of Nagaon district in general and indigent people in particular will be studied on the basis of data collected by primary and secondary sources and on empirical method.

Stress will be given towards understanding through analysis the various answers of questionnaires collected by interview technique from varied categories of people selected by random survey method to find out the various required data and informations.
in the implementation and implication of Legal Aid Movement of Nagaon District including legal awareness.

Study will also be made upon involvement of practising lawyers in the arena of legal aid movement including para-legals and Non-Government Organisations working for the advancement of legal aid movement in Nagaon district. Study and investigation will also be made upon sensitation of judicial officers in the performance of The Legal Services Authority.

Depending upon the various data and informations collected through interview technique an attempt will be made to establish the hypothesis which had been already evolved.

In last but not least chapter-XI, entitled as 'conclusions and suggestions' a sincere attempt will be made depending upon the whole study, collection of data and informations, comment of judges, jurists and lawyers, some suggestions will be forwarded in the matter of The Legal Services Authorities Act. 1987; in respect of Constitution of India and other legislations; in the matter of reducing backlog of cases to provide speedy justice in the aspect of involvement of Non Government Organisations; in the matter of prelitigative settlement of disputes; in the sphere to strengthen The Legal Services Authorities in financial angle; in the angle of administration of Legal Service; in the matter of legal aid and legal advice; legal literacy and legal education in respect of clinical legal education and legal aid clinic; in the matter of traditional and permanent Lok Adalots; in the matter of undertrial prisoners and in the respect of family courts in order to improve and enlarge existing legal aid (Services) provisions and make effective the practical side of Legal Aid Scheme. The various recommendations made in this connection by some important
Committees needed by eminent jurists have also been considered and supported.

NOTES AND REFERENCES


5A. Basu, Dr. D.D- 'Shorter Constitution of India'. P-67. Para-III

5AB. Rig Veda, 10-137-1.


Gazette, P-587.


8. Supra Note- 2, P-3, Para -III.

9. Supra Note 1, P-10, Para- VI.


12. Supra Note 3, P-55, Para -IX.


14. Vide Article 14 (3) (d).

15. The European Convention of Human Rights was signed in Rome on November 4, 1950, vide its Article 6 (3)(c).


18A. Van, AS Hennie 'Taking Legal Aid to People' Published in conference paper of International Conference on Legal Aid. 6-8th April' 2005. Port Elizabeth, South Africa organised by Nelson Mandela Metropolitan University.

19. Supra Note-2, P-4, Para -I.


22. Ibid, P-II, Para-I.


24. Ibid, P-587, Para-IV.

25. Ibid, P-587, Para -V.

26. Supra Note-2, P-5, Para -III.


29. Supra Note -3, P-8, Para -I

29A. Supra Note-2, P-9, Para -II.
29B. Supra Note -2, P-8, Para- III


35. The Assam Tribune, 9th November, 2000. P- 5, Col -V.


37. Supra Note - 3. P-10, Para -II.

38. Supra Note 5C, P-20. Para -V.


41. Supra Note -10. P-44, P-III.

42. Supra Note -3, P-II, P-I.