CHAPTER-II

LEGAL AID MOVEMENT IN INDIA WITH HISTORICAL PERSPECTIVE

India is a country of rich cultural heritage, where people has been living in peace and amity. It is a land of plenty and abundance so people have lived in a traditionally religion oriented society where the gradually flourishing culture helped in the growth of tolerance, brotherhood, fraternity and philosophy of given and acceptance.

According to\(^1\) the Indian philosophy treats the entire humanity as home and God as the head of the family. It is for the reason that the struggle for existence generated the high sence of morality, the by-product of which was regulation of human conduct. Therefore, many aberation of human conduct, which were considered as of fence under the penal law, were not found. Life was clean, less complex and the spirit of co-existence prevailed.

In India the legal institutions have been working closer to the people, though the concept of legal aid has developed late it can be said that it is only in British period, the germ of legal aid grew and it got its birth from the womb of forma pauperis suit under the Code of Civil Procedure 1886.\(^2\) The Legal Aid Movement in India can be said to be influenced and shaped contemporary legal development in foreign countries specially in England till 1946, it was in an infant stage and negligible form of development to bring attention of general people.

In India the legal aid its present form drew the attention of the people of India from the publication of Rushicliffe Committee Report in England in the year 1946.
However it is worth mentionable that few voluntary organisations did some commendable and praisable work in the field of legal aid. The Bombay Legal Aid Society, deserves credit inviting the attention of the Government in the Year 1946.

The Central Government after independence referred the matter to the Law Commission of India for making suggestion to make this programme effective vehicle and instrument to provide social justice as the principle of equality, which would be an empty slogan if the indigents and disadvantaged are not provided, requisite and competent legal aid.

**HISTORY OF LEGAL AID IN PRE-INDEPENDENCE PERIOD**

K.S. Chhabra observed that as per the view of contratualist, which is accepted by sociologists and the jurists alike, decided to end his free life in state of nature to start an orderly and regulated life, under the control of sovereign. At the time when man walked into an orderly society from the state of nature, there was a pledge that and the realisation of this culture become a way of life in India at a fairly early point of time. Life and religion are closely knit and interwoven and the scriptures were taken as a code of conduct of social norms, therefore, were mostly self enforced and dependence on law of regulating human conduct was not very much looked for life's activities were confined in to pockets and is view of prevailing high sense of mutural well being, were an attitude of supperence was the way of life.

When it is observed about the development of administration of justice in India during Ancient India, Om Prakash Tewari rightfully observes in Ancient India during Aryan and Hindu regimes original courts were Panchayats. that is the representative of all the five sections of the society- (1) The learnd teachers, preachers called Brahmins. (2) The police and defence class called Khatriyas, (3) For farmers, traders and diary
farmers called the Vaishyas, (4) Servants of the society of above three sections, like labours are called Sudras 5) Those who did not fall any of the above classes. The land lord of the village generally called as Mukhiya of the Panchayat. One can appeal to the king. Justice was administered swiftly and honesty.

It means when people fell from the standard of society and the dispute among them were settled by the quick and timely intervention of Elders, whose services were readily available. This is the system which gave rise to acclaimed Panches/Panchayat that is the Board of Five Elders consisting Council of Elders.

In Assam the 'VILLAGE MEI' of village being the council of elders and wise villagers which was in Village Panchayat resolved the disputes between the villagers. These decisions were accepted by the contesting parties without question. It was the PAIK system that the unity and co-relation of four soldiers of Aham regime. The four men unit (PAIK) which later on by intermixing the SAMUA (for ministers and officers) PAIK and KARI (for battle) PAIK gave rise to KHEL. This system contributed a lot for the comprehensive and systematic development of dispute resolution system. Mahapurush (saint) Sri Sankardev tried to organise a unit of dispute resolution system among his followers of Bhagawati Religion to settle their disputes at NAMGHARS of SATRAS under the guidance of 'GOSAIN' (Mahant of Satra) which later expended the system to all NAMGHARS (House of prayer) of Assamese communities irrespective of SATRAS and NON-SATRAS, which later envolved in to KHEL.

According to K.S. Chhabra in course of time, in some areas these become standing boards while other such boards sprang up when necessity arose. Decision making was traditionally accepted as an advice element and therefore the Panches who gave their
verdicts were gradually looked upon as divine agents and their decisions were accepted without demur. By this process a social dispute mechanism with acceptibility base developed and become the pattern in ancient. India and on account of its wide popular prevalence and continuance for a long period, acceptance of Panchayat System as the traditional process of dispute resolution has been handed down even to the modern times.

It can be said that the formal concept of legal aid had birth in India when the system of court started with the introduction of lawyer’s appearance and the institution of court fees in India.

According to Hegel its roots can be found in the retributive instinct of man and the effort of Indian society to deliver justice.

On the other hand the legal aid philosophy in ancient India can be traced even in the Vedic Age.

VEDIC AGE

Disputes are there regarding the Chronology of VEDIC ERA. as it is claimed by some body which existed before 6000 years age while others claim existed before 1800 B.C. In this Vedic period life was rural oriented and simple 'DHARMA' was predominant ideal of individual and society, where general people enjoyed a dignified status in society and every life free from exploitation of caste system had not developed in its mature form.

In ancient India where 'DHARMA' was guiding and governing the society treating it as diktat of consciece. Even the king followed it. According to B.N. Mani Tripathi Law owes its existence to God. Law is as 'SMRITIS'. The king is simply to execute that law and himself is bound by it and if he goes against the law, he should he disobeyed.
PURANAS are full of instances where the kings were dethorned and beheaded when they went against the established law.

According to ancient Hindu Smritikars as guides in legal matter writes\(^\text{11}\) that decisions should not be given by basing it on SHASTRAS alone; there is failure of DHARMA by judgement devoid of reason.

M. Rana Jois considers\(^\text{12}\)-DHARMA an ancient concept of social guidance and governance, had no paraded in the world. It contained the religious element the ethical essence, social force and an ingredient of Political Government it was more than simple. social and economic justice as we mean by them today.

According to M. Rana Jois in TAITRIYA and BRIHADARANYA UPANISHAD referring meaning. DHARMA which substains life, DHARMA should not be destroyed as DHARMA.\(^\text{13}\)

The entire concept of law is incorporated in DHARMA. The meaning it conveys is that an orderly society would be in existence if individuals act according to DHARMA and there by protect it, and as such an orderly society which be an incarnation of DHARMA, in turn protects the rights of individuals through the instrumentality of state (Rajya). A rule in conformity with DHARMA was called DHARMA RAJYA (rule of law).

Saint Narada in NARADA SMRITI said \(^\text{14}\) in case of divergence between Dharma Shastras, a principle based on reason has been declared to be the right one.

While Manu in MANU SMRITI declares- 'the VEDAS. SMRITIS. approved usages, and what is agreeable to one's soul (good conscience). The wise have declared to be the quadruple direct evidence of law. What is agreeable to one's soul suggests
reason which is approve by conscience. The reason which plays a very important part in interpretation of law.

Supporting the above view Sujan Singh explains about legal aid in Vedic era as such. the simple and tolerant life during Vedic period, mixed with the force of 'Dharma' making Indians to avoid causing any pain to another individual and giving him whatever was due to him, did not require the concept of legal aid. However we can find it traces in the social practice and the elements of Dharma itself that the persons in need of help must be assisted, aided and helped.

From the above it can be said that the presence of legal aid was found in the Vedic period within the concept of Dharma.

RIG VEDA PERIOD

In the introductory chapter it is has been already explained how the presence of legal aid was found in sloka 10-137-1 of RIG VEDA. The trace of legal aid is also found in sloka 36th and 42nd of chapter 1 of RIG VEDA. Gobinda Singh observed:

'The 36th and 42nd slok Chapter I underscore the need of saving people from 'Rakshas' and violent people, procuring strength for such protection along side praying the almighty to bless those who donate. Therefore, we do find the existence of voilence and violents in society may be then, exiting or for seeing its existence in future societies and RIG VEDA providing for mustering strength including monetary assistance including DAN (gift) for extending aid and assistance those fearing or facing the attacks.

The sloka 58 of Chapter III of RIG VEDA emphasises the need for removing same. Furthur it clarifies that a king, who gives money to one in such need, is the winner of the wealth of opponents and 'DEVTAS' always protect them.
It can be said without doubt during RIG VEDA period there was the clear provision for social or legal aid by the kings that is state assistance.

OTHER VEDIC PERIOD

Out of four Vedas namely 'RIG, JUJUR, SAM and ARTHABA' of which particularly in 'RIG VEDA' mention has been made of Social Aid and King's (state) Assistance to the person who is fearing from attack of 'Dharma' The Maha Vakyas of four Vedas which assert the potential divinity of individual.

So it can be found on observation that the continuous and long practice of Vedic Dharma in 'BHARATABARSA' (India) slowly emerges as a right cultural heritaje, which can be said as unique in world over.

Therefore, the concept social justice and provided for all Indians grew during the Vedic periods.

IMPACT OF SOCIO-CULTURAL VALUE DURING VEDIC PERIOD

Considering the socio cultural value and its impact during Vedic period this is found social justice prevailed in the Indian society and it was only the rigidity of caste system which caused social distinction and deprivation for law. Judges were mostly appointed from three upper castes. At the village the local Village Council to modern Panchayats consisted of group of five or more impartial persons to dispense justice to the villagers.

Kane stated it is the impact and contribution of Vedic literature: instinct for moral value, life lead to contention, and prolarged rule of DHARMA covered by rich contribution of peace, compassion, creativity, passion, love, kind and humanity.

The society during Vedic period was simple, straight and less complex for which people thought it were their bounden duties to assist and help the poor and needy persons.
'Unity in diversity' is considered a basic concept in Indian Society amidst several distinct and diverse culture and tradition but the chord of internal unity reflecting the common characteristics of Indian people were brewing is Vedic period to offer the helping hand and sympathy to weak, indigent, poor and paper, inspite of the victimization by upper class in the society.

The above view is also supported by Sujan Singh\textsuperscript{21} referring about Joint Hindu family, assistance to weak and poor by the society which could satisfy the individuals too and real justice, the socio cultural values of Indian society provide speedy existed and strong assistance in the society of Vedic Age.

Thus the social aid or legal aid is our long enriched heritage.

\textbf{THE KAUTILYAN ERA}

This era can be said as a golden period of history of jurisprudence of India. After the eclipse of Buddhism the Indian society was engulfed under tribulent current of Hinduism that is Vedic influence which was flowing even is the peak period of Buddhism. Social co-hesion emerged from 'DHARMA' as social ideals; which led to a death blow particularly to slavery in India in the later part of Kautilyan era. Which was known as era of King Ashoka's administration of justice where justice was the rule of the day at that time and agreed by Arthashastra of Kautilya. The presence of secularism was found, which also brought more cohesion in society leading to more satisfaction of various creed of Indian society.

According to Kautilya's Arthashastra, a system of administration of justice evolved through the courts. Even a town was placed under the administrative control of Nagarkhya (Protector). It is found in Arthashastra\textsuperscript{22}. 

RELAM

Sangrahana  Kharvatika  Dronmukh  Sthamya

(It is an unit  (It is an unit  (It is an unit  (Its an unit establishment  establishment  establishment among  establishment
among 10 villages)  among 200 villages)  400 villages)  among 800 villages)

In the above units, at the centre of these villages the Head Quarters of administrative unit law courts were establishment to decide dispute between citizens in Kautilyan era. There emerged or evolved not only the system of punishment for administration of justice but also the principle of jurisprudence were pronounced due to absence of lawyers and non-introduction of court fees. It did not necessitate the urgency or demand for legal aid like present day sense.

It is found\(^3\) in the civil cases on winning the case there exists, as some historians mention the practice of paying some proportion of value of property to king. Therefore, this practice in itself contained the element of jurisprudence of paper's suit that is first permitting the suit to be filed without court fees and then recovering the same if the plaintiff won the case.

GUPTA ERA

The system of administration which was introduced during the reign of King Ashok continued and followed during the glorious reign of Gupta period. There was no any notable jurisprudential change during the Gupta period.

MEDIEVAL PERIOD

According to U.N. Ghosal\(^2\)\(^5\) Muslim period can be said to have actually commenced from eleventh century. As towards the end of eleventh century there began a downfall
of Hindu Period.

Muslim and Mughals who ruled India for about 600 years, up to early parts of 18th century. According to S. Maqbul Ahmed the social system of Muslim was based on their religion, that is Islam, which may be described as a reformist version of current strength of Arabian practice.

According to Om Prakesh Tewari - in Medieval India under the Muslim rule in India the jurisdiction of Village Panchayat was taken by the KAZIS they administered justice according to the cannons laid down in their Holly QURAN.

We know about the KAZIS which administered through Village Panchayat this view is also reflected as the law of Sultanate was not strictly applied by Panchayat. As a general rule, the decision of Panchayat was binding upon the parties and no appeal was allowed from its decision.

The practice of engaging lawyers (named as VAKILS) started during this period. The institution of lawyer and the practice of paying lawyers fees started during this medical period.

In Medical period there were the provision to provide free legal aid through lawyers during the reign of Shahjahan and Aurangzeb. Such state of lawyers were known as 'vakil-e-sarkar' or vakil-e-sharat who were full time and appointed by Chief Kazi of the province or qaz-ul-quzat. The poor people could get free and speedy justice in the Panchayats but when they were required to approach the above courts through lawyers of course during Muslim regime the traditional Panchayat system were slightly disturbed but there was no total destruction of the system.
THE BRITISH ERA

The British ruled India for almost 200 years, provided a new English model in the adjudicatory system with the aim of formalising the procedure. Considering the aim of the British it is said it was the aim of among greatest British administrator in India to train the people of India to govern and protect themselves. As Sir Thomas Munro wrote in 1824, rather than to establish the rule of British Bureaucracy. The method which they contemplated was doubtless that carried out with most conspicuous success in Mysore.

According to Om Prakesh Tewari under the East India Company regime, the penalising Panchayat type native judiciary suffered a jolt from many drawbacks. Besides the company was unpopular and corrupt which in all times tried to exploit the situation in their own advantages. He further reiterates hence instead of trials being conducted by local tribunals, in cases in where native were also parties they usurped the law in to their own hands from the hands of the natives.

Whatever the aim of British Government may be, in the judicial system many technical and complex procedure were introduced for which the process of litigation become a costly business considering the lawyer's fees and court fees. The process was also time consuming.

The above view is reflected in the report of committee the net effect was that the poor man found it difficult to enter the portals of court and the rich man was able to use legal process as instrument of harassment of his poor adversary.

The committee further comments legal aid and advice are therefore a basic requirement of justice and essential part of administration of justice. It is also important
because it touches on legal institution in precisely those areas where they are vulnerable to adult and being attacked.

It the court system during the British period in France we find the following special feature and characteristics.

Initially the British in the blacktown of Madress (now Chennai) establish Country Court under the village headman known as ADIGAR or ADHIKARI who were responsible for the administration of justice. It was a court of petty jurisdiction which decided small causes of civil nature and breach of peace.35

The above was done by British under the banner of East India Company at the initial stage. But the English hardened its stand in their Judicial Plan of 1672. Since at Bombay (Now Mumbai), they also made provision to administer free justice to the poor, once in a week deciding civil cases. Cases of petty quarrels were also decided in this court.36

While noticing the English settlement in Calcutta (now Kolkata) it is found the traces of abolition of Panchayats is the year 1760 through constitution of Governor's Council. Om Prakash Tewari remarks later Gorwn's Courts were established gradually throughout the British India with no Panchayat Courts.

Even then there was not total extinction of Panchayat System, whose under current prevailed all over India inspite of its dead blow by British.38

While Justice P.S. Narayan comments upon the above subject as such39-however the advent of British rule had totally replaced this system with present legal system that is present administration of justice.

The researcher feels that the British provided helping hand to get the legal aid
by Indian people but it was not in proper sense of term as the people understand today though it was a boon in disguise, the elite people of India understood how the English stained every nerve to destroy the traditional administration of justice along with eastern culture which roused their sentiments towards the growth of spirit of nationalism and the elites forwarded helping hand to preserve those traditional institutions. Justice and Culture.

**INDIAN TRADITIONAL LEGAL SYSTEM VERSUS BRITISH LEGAL SYSTEM**

The British had suffered from superiority complex at the beginning of the establishment of colonies in and around modern Mumbai, Kolkata and Chennai respectively. British brought their concept of common law, introduced the mixture of British common law and local traditional law (*Lex loci*) for Indians without subjecting English people under the local law to avoid the direct conflict of both legal system keeping the *Kazi* and *Panches* as local law officers. It has been reported that gradually the adjudicatory process become more and more formal with the introduction of jurisprudence and when India came to the part of British empire a full fledged adjudicatory set up came into being. Further more, the British Rule exposed the Indian leadership, majority of whom were law students to the British Legal System.

The British adjudicatory system served two birds with a stone. On one hand it provided a mere systematic process, on the other hand Indian could gauze the partial and discriminatory dealing being extended to them. It was a blessing in disguise because this infused a vigorous spirit in the hands of Indian freedom struggle. Nonetheless Indian could properly understand the various global development in the field of legal aid and in the field of education.
In this respect it is found that the international developments in the area of legal aid like those of Bill of Rights, the report prepared by the League of Nations on the existing legal aid facilities in various countries in the year 1927. The effort of United Nations on the subject made their way to the minds of Indian people through British education. All the more the available benefits of legal aid in England in criminal cases and under the new *forma-pauperies* suits encouraged Indian people, much poorer than Britishers, to demand coverage under the protection of such legal aid benefits.

The result was obvious, finding such a provision in Civil Procedure Code and Criminal Procedure Code which were enacted for Indians during the British regime in India. The adversary system and the institution of court fees added the pick much more.

To cope with the advancement of society it is desirable to enact new laws. While law grows with the growth, strengthens with strength of the people and finally dies away as the nation loses national ability.

While other Jurist declares public good ought to be object of legislation, general utility ought to be the foundation of reasoning.

British to adjust with the increased strength of the people and for public good of British India, after passing the Charter Act, 1833 and introduced the first law institution—the Law Commission of India, 1834. It resulted in Criminal Procedure Code in the year 1878.

The British also enacted the Civil Procedure Code, 1908, but in both the codes there were no express provision of legal aid.

It can be said that the legal aid movement in India has been influenced by contemporary legal developments in foreign countries and specially in England. Till 1946.
it was non-existing or existed a negligible form. The state did not take any interest in providing legal assistance to the poor, however a few voluntary organisations did some useful work in this field.

It is an admitted fact that after the publication of Rushcliffe Committee Report of England in the year 1946, the Legal Aid Movement in India gathered movement.

**EFFORT BY VARIOUS COMMUNITIES**

In the meantime a few organisations grew among the Indian communities to provide legal aid. The pioneer and prominent among them is Bombay Legal Aid Society. The society was registered in the year 1924 and provided legal aid and advice to the poor and downtrodden. It is to be admitted with out doubt that most of the persons who were associated with the society were hailing from lawyers' community. The fund of the society was managed by subscription, donation and government grant.

Bombay Legal Aid Society which performed yeoman's service, so people claimed: Bombay society which did a commendable work and invited the attention of government in 1946 to provide for legal aid benefits on the pattern of recommendation of Rushcliffe Committee of England.

The Bombay Legal Aid Committee was influenced by contemporary developments in England. It was also influenced by Sanfrancisco Conference of United Nation's Charter 1945. Here in this conference proposed to embody the subject was not examined due to not availability of more detailed consideration.

The League of Nations made a survey of legal aid facilities available in various countries and did not find any specific legal aid provision in British India. The movement of legal aid, however got its momentum and thrust in India only after the extensive study
of legal aid by Rushcliffe Commnitte Report.48

Even the 14th Report of Law Commission appreciated the role of Bombay Legal Aid Society, situated at Hamam Street Fort Bombay-1. thus49-the question of legal aid has been engaging the attention of Government of India since 1945. The credit for drawing the attention of Government of India to this important question goes to Bombay Legal Aid Society, which has done pioneer work and rendered great service to the causes of legal aid in the state of Bombay. In 1945, the society invited attention of government of India to the report of the committee on legal aid and advice in England and Wales. appointed in 1945.

Due to endeavour of the above committee, Government of India took the initative50 influenced by contemporary development in England and the demand of Bombay Legal Aid Society in 1946, the Government of India enquired of the State Government whether they would be able to provide greater facilities for legal aid to poor persons in both civil and criminal cases. The state governments were, in general, of the opinion that the existing provisions for legal aid were sufficient and the provision for the grant of similiar aid in criminal cases may be liberalised. But due to financial stringency they were reluctant to undertake any scheme of free legal aid.

Though the effort of Bombay Legal Aid Society did not fulfill and fructify immediately certainaly these endeavours brought the modern concept of legal aid on Indian soil and stirred the sentiment of Government of India and the communities regarding the important need of legal aid provision.

On the other hand it was found in addition to legal aid societies. the Indian people had the concept of 'Community Panchayat' or 'Brandari Panchayat' for dispensing
justice free of cost to the members of the community and also at occasions extending assistance for getting justice from the British Courts.

According to Dr. N. R. Madhab Menon, there were similar voluntary organisations offering free legal aid in some of the cities and also in West Bengal and Delhi. But these could not do much work and there remained Bombay Society on scene. 52

From the above discussion it can be concluded that India entered into Independence Era with their traditional institutions of rendering justice in customary as well as the personal laws strengthened by British system of court- the adversary system and prepared ground for legal aid by the state and the society.

POST INDEPENDENCE ERA

Independent India faced with numerous communal and socio-economic problem. It is a forgone conclusion that legal aid has nexus with the development of society as well as the country according to constitutional goal. In order to attain the goal, ambition and aspiration, the seed of legal aid which already germinated on the behest of Bombay Legal Aid Society to invite government attention.

Due to continuous pressure and correspondence between provinces and the government of India and as a result of a few resolutions moved by Bombay Legislative Assembly and Bombay Legislative Council, Government of Bombay (as it was then called) appointed a Committee in March 1949 under the Chairmanship of Hon'ble Justice P. N. Bhagwati (the then Judge of Bombay High Court) to study in detail the question of granting legal aid in civil and criminal proceedings to poor persons, persons of limited means and persons belonging to backward classes and necessary recommendations for to offer requisite justice to those people. The committee was named as Bombay
Legal Aid and Advice Committee.

The recommendations of the above committee were more or less identical with the recommendations of Rushcliffe's Committee of England.

The committee made very exhaustive examination of the question of legal aid and submitted its report in 1949. The subject of legal aid and it is very valuable document. The committee emphasised that legal aid a service which the modern welfare state owes to its citizen.53

It stated that the problem of legal aid under modern conception of the obligations of the state is to be treated on a par with other social insurance schemes like old age pensions, free educations and free medical relief and therefore the state must take upon itself the responsibility of providing legal aid to poor persons and persons of limited means.54

The committe recommended that the administrative machinery of legal aid should be constituted at four levels.

a) State Level, b) High Court Level, c) District Level, d) Taluka (Sub- Divisional Level)

The committee suggested two tests for determining eligibility for legal aid:

1) Means Test and 2) Prima Facie Test.

It was further proposed that.55

a) No legal aid to be provided in trivial and trifling cases.

b) There should be declaration on oath about 'disposable income' and 'disposable property'.

c) There should be certificate from a respectable citizen or responsible officer
regarding his means.

d) A bond should be executed by the party that there is no chainparty and he will not make compromise without consent of legal aid committee.

e) There may be cancellation of legal aid certificate in certain cases.

Ultimately the committee recommended for-

i) Assignment of lawyers that is every member of Bar should handle atleast six cases per year.

ii) After six cases, the lawyers are entitled to get remuneration.

iii) Costs, when assisted party is successful then cost should be credited in Legal Aid Fund and in case of his failure, cost should be paid out of Legal Aid Fund.

The committee also recommended for 'Partial Legal Aid'. It had also mentioned the scope and extent of legal Aid--

i) Legal Aid may be given to both plaintiff and defendant, complainants, petitioners.

ii) Legal Aid be provided in all courts.

iii) Legal Aid includes a) Court fees, b) Process fees. c) Diet of witnesses (d) Cost of certified copies, (e) Pleaders fees etc.

The Report also included in its recommendations the following sources to raise fund for Legal Aid Committee--


Similarly in 1949, The Government of West Bengal also appointed a committee under the Chairmanship of the Arthur Trevour Harris (the then Chief Justice of Calcutta High Court). The committee recommended for free legal aid in civil and criminal cases.
The Central Government to extend the scope of legal aid to the poor.

The State Governments were advised to make some token provision in their budget.56

Criticising the difference, between Gujrat Committee and West Bengal Committee F.P. Collins observed that57 like P. N. Bhagwati, Harris Committee has not used the term 'Disposable Income' and Disposable Property' in means test. The reasons obvious that the report of P.N. Bhagwati was more or less based upon Rushcliffe's Committee Report of England. It is reported that the sincere efforts and dynamic endeavour of P.N. Bhagwati and A. T. Horris though not implemented due to lack of funds but their views had a significant impact upon the movement for legal aid in India.58

With the enforcement of constitution of India from 26.1.1950, the legal aid is embraced under the item of administration of justice and falls in the state list. Therefore the Government of India again (2nd time) wrote to the state governments requesting them to make further provision of legal aid in criminal cases in respect of offences punishable with not less than 5 years rigorous imprisonment and appeals arising out of those cases.59

This time also realised the need and made provisions for legal aid benefit to the members of Scheduled Castes and Scheduled Tribes. The State of Punjab, like those of Bombay, Bihar, Kerela and Madras also adopted such a scheme. The funds of the Government of India sanctioned for the welfare of the class of people, were diverted by the state governments for this purpose.60

Again West Bengal Government considers it necessary to have the question of legal aid to persons having no resources enquired into by a Committee under the
Chairmanship of Sir Arthur Trevor Horris, the then retired Chief Justice of Calcutta High Court, this committee considered the in each details and made valuable recommendations.

Again in January 1956 the Government India for the 3rd time sought from the state governments their tentative views for increasing the scope of legal aid to poor to include in the Five Year Plan for granting legal aid to poor. The state government may examine the matter again if possible to include their budget provision of legal aid. Most of the state government were reluctant to embark on any scheme involving financial obligations. Some of them replied they had made token provisions ranging from Rs. 1,000/- to Rs. 20,000/- thousands in their budget. Unfortunately the question of legal aid had been regarded as a very minor importants as compare to other projects.

In 1957, there was a Law Minister's Conference for discussing and evolution of legal aid programme. The meeting after threadbare discussion observed that–

i) Each state should formulate scheme for legal aid to poor.

ii) The scheme may envisage appointment of committees at different levels to entertain applications and to examine whether there is a *prime facie* case deserving legal aid.

iii) The scheme should enable requisitioning of the services of every member of Bar up to six cases in a year;

iv) At the experimental stage, the scheme may be framed by executive orders.

and

v) Each state should forward to the Ministry of Law, the scheme formulated by it.

So, it found that there were no organised efforts to render legal aid except a
few cities like Bombay, Calcutta and Madras (old names). Even the governments or agencies did not pay any heed to give any benefit in respect of legal aid.

The legal profession too, failed to discharge social responsibility for providing legal aid to poor. In order to provide legal aid in criminal cases, provision were made in all states for employment of a lawyer in the Courts of Session and the High Court for the defence of persons accused of offences punishable with death.

Some states also made provisions for the employment of counsels for poor persons in reference for the verdict of the jury and appeals from acquittals.65

In early 1960, the Central Government drew up a scheme for legal aid to the poor and forwarded to it various existing legal aid organisations and states for implementation. But as ill luck would have it the states expressed their inability to do so due to lack of finance. The scheme provided in 14th Report of Law Commission, 1958 that every state shall constitute a legal aid fund which shall receive money as grants from State and Union Government, contribution from partially assisted persons, costs realised by assisted persons from their opposite parties, fee received from legal advice and donations from private persons.

The Central Government accepted the recommendation of XIVth Law Commission Reports, 1958, in the matter of administration of justice and various tests to decide indigent persons. The Commissions also mentions that the scope and extent of legal aid64 would include-

i) Legal aid may be give to both plaintiff and defendants in original as well as in appellate stage.

ii) Legal aid may be provided in all Courts and Tribunals, particularly to civil
iii) Legal aid will be provided to the applicant who is an accused punishable only with imprisonment;

iv) The package of legal aid proposed by the scheme provided:

a) The professional assistance;

b) Remission of court fees;

c) Remission of process fees;

d) Remission of travelling and subsistence allowance of witnesses;

e) Free certified copies of judgement and orders; and

f) Free preparation of appeal papers, books including the printing and translation of documents wherever necessary.

5) It was also proposed in the scheme that remission of court fee should be absolute and should not be recoverable even if the assisted persons succeeded in the case.

While considering the miscellaneous provision of the scheme it was underscored that-

a) Legal aid scheme should be given statutory force;

b) Every Legal Aid Committee should have an office of during entire office hours;

c) The legal aid committee should grant a formal grant in applicant admitted to legal aid but such certificate should be liable to cancellation if the committee in any stage is of the opinion that the legal aid being misused and;

d) The period for which an application for legal aid is pending with the legal aid committee shall be excluded from computation of the period of limitation:
The scheme like 14th Report of Law Commission suggested to constitute fund from the sources mentioned in the report. It only added an additional source of fund which was the private donations.

The scheme failed to convince the State Governments to undertake the desired task of legal aid. They again expressed their inability to bear the financial burden of legal aid in the conference of State Law Ministers in middle of 1962.

The problem of legal aid was again considered in Third All India Law Conference 1962 in which it was resolved that it is the duty of state to provide legal aid and both centre and states should make fund available for the same. But no concrete decisions were taken upon it.

The Central Government there upon decided to draw up a scheme for central support of legal aid activities and the Law Ministry was in a process of doing but in the mean time the emergency of late 1962, on account of Chinese Aggression started. The result was that any further effort to extend legal aid activities on the part of Central Government was shifted by financial limitation. Legel aid was also identified as one of them.

Here it is found legal aid should be invariably made available for cases in various regulations promulagated in scheduled areas. The report also highlighted the aspect of making payments to lawyers involved in the process of providing legal aid. It also laid down that the fees to be paid in government cases. The report however regretted that the scheme was not given due publicity.

After Chinese invasion again the legal aid movement in India consolidated in Bombay. An interested group of local lawyers organised the working with more vigour
and spirit. It started its activities with various social organisations of Bombay like Family Service Centre. Through it provide yeoman's service to poor persons in the matter of legal advice but the attempt failed to provide legal assistant in pending litigations. Analysing the difficulties of Bombay Legal Aid Committee, 1907, the chief difficulty of the programme was the limited scope of committee of lawyers and social workers for active participation and the fact that it received no found whatsoever from either public or private sources.

The problem of legal aid attracted the attention of political leaders and parliamentarians. They had gone a step further in direction and suggested statutory recognition of The Legal Aid Act 1970 which was introduced into Lok Sabha on 13th March 1970 by Mr. Madhu Limaya, Member of Parliament as a private member's bill on the ground that in India, police and magistrate are known to have deprived citizens of their liberties. It was argued that there was a gap between the constitutional guarantee given under Article 22(1) and the real difficulty faced by the poor persons.

The Bill further stressed many of the accused cannot defend themselves properly, and this sometimes results in their unjust conviction. The Bill put obligation on the shoulders of the state to provide free legal aid to indigent persons that is those earning less than Rs.150/- per month. It was commented as the bill was neither sponsored by the government support it's fate was known beforehand but it manifested the serious attention upon the subject.

The growing realisation of the need to provide legal aid to poor caused some loud thinking on the subject. A Conference known as National Conference on Legal Aid, 1970 to consider the matter of legal aid. The conference was unanimously of the view that there is an urgent need to provide legal aid to poor. Schemes, in this connection
were discussed in the conference. The conference also wanted for imposing a statutory obligation on the state to provide legal aid and programme.

The national legal aid conference made the government of India to introduce in the Parliament in 1970 an amendment to the Advocate's Act, 1961, whereby the Bar Council of India was entrusted the responsibility of legal aid upon the shoulders to work for poor without funds from government. Dr. L.M. Singhvi who was elected chairman of the conference realising the necessity of legal aid observed that "the task of organising legal aid to poor and populous country like India is a task of stupendous magnitude and bewildering complexity. It would require a steady moral commitment and considerable human and material resources. If legal aid not to remain a merely symbolic or token, the state would have to find and allocate substantial fund for legal aid in order that lawyer may be paid part of the taxable fee which is quite small and to support a nation wide organisation supervising the norms and procedure of legal aid. Free legal aid should be watched and should not be allowed to be diluted or diminished below reasonable standards. As the numerically second largest Bar in the world we have considerable legal man power which can be utilised. We should also tap the students who would in the process of working for legal aid programmes acquire an awareness of the problems of the poor and sense of social involvement and responsibility which would make them better lawyers, better citizens.

The Gujrat Committee which was constituted by a resolution passed by the Government of Gujrat on 2nd June, 1970 to appoint a 5 membered committee under the Chairmanstrip of Hon'ble Chief Justice P. N. Bhagwati with other 4 (four) members, with terms and reference.
To consider the question of grant of legal aid in civil, criminal, revenue, labour and other proceedings to the backward classes, and to make such recommendations as may be desirable so as to render legal advice more easily accessible to such persons including recommendations as may be desirable so as to render legal advice more easily available. To make justice more easily accessible to such persons including recommendations on the question of encouragements and financial assistance to institutions it engaged in the work of such legal aid.

The Report of Gujrat Committee discussed in length and breadth including academic aspect of the problem and ground realities to know the working of the scheme and to measure the aspirations and needs of Indian people for legal aid. The committee also studied the legal aid problem from the constitutional, philosophical and organisational points of views. It also described the measure and scheme to meet the aspirations and needs of Indian people for legal aid.

The Gujrat Committee recommended that legal aid should be available in all courts. That an effective legal aid assistance is not only essential to the maintenance of the democratic way of life and the rule of law but also a poor country like ours a Socio economic necessity.

The committee further recommended that legal aid in all types of civil and criminal courts as well as in difference catagories of Administrative Tribunals like Tribunals adjudicating industrial and allied matters.

Labour Tribunal for 'Workmen's Compensation. Authorities under the payment of Wages Act. and Minimum wages Act; Labour Courts constituted under the Industrial Disputes Act, Employees State Insurance Court and Tenancy Tribunals. It recommended
the constitution of Taluka Legal Aid Committees, District Legal Aid Committee, the Small Causes Court Legal Aid Committee for the city of Ahmedabad, apart from establishment of Estate Legal Aid Committee. In such committees, the report suggested for the association of government judiciary, the Bar, Law schools and the Community representatives.

The report further provided that there should be legislation, to in case of assisted persons. There should be remission of court fees of legally assisted persons, should be remission required to pay a fix court fee of Rs. 10/- (ten) as in the case of claims for damages under the Motor Vehicle Act, 1939. Where the damages claimed are below Rs. 10,000/-, if the legally assisted persons may be provided with that amount out of legal aid funds. The reason advocated by the committee for above suggestion was to stop drain out of legal aid fund in the payment of court fees.

The committee further reports to remit process fee of the same proportion as to the extent of partial legal aid granted to the assisted person.

The legal aid which should provide lawyers to assisted persons, the committee suggested to provide proper and effective legal representation in courts to the poor and the indigent. The legal aid scheme must, therefore, provide lawyers for affectively representing the case of poor litigants in courts; the lawyers may either be persuaded to work free of charge or, if remuneration is required to be paid to them, it should came out of legal aid fund— wholly or partly according to the legal aid given is full or partial.

The Scheduled Castes and Scheduled Tribes were the class of persons who should be eligible for the benefit of legal aid 'the lawyers fees' according to the report constituted vary large items of legal expenses and obviously it must form a part of any comprehensive legal aid scheme.
Considering the principal object of legal aid scheme the report recommended to provide proper and effective legal representation in courts to the poor and the indigent. The legal aid scheme must, therefore provide lawyers for effectively representing they may either be presented to work free of charge or it should come out of legal aid fund wholly or in parts accordingly as the legal aid given in full or partial.

But the report of the committee accepted the view after proper study and random survey not to provide special facility to backward classes but to face means test like people of general caste should be the only criteria for grant of legal aid. The report in addition to means test, recommended *prima facie* case test and the reasonableness test before granting legal aid.\(^{80}\)

The committee suggested for legal aid fund out of the following sources \(^{81}\):

a) Donation.

b) Money collected by organising entertainment programmes.

c) Revenue from legal aid stamps.

d) Collected from legal aid cess.

e) Membership collection of the state legal aid committee.

f) The cost in litigations awarded to assisted person.

g) Recovering the amount of legal aid granted to legal aid person.

h) Contribution made from partially assisted person.

i) Fees paid by the applicants for legal advice.

j) The refund from Central Government as the expenditure incurred.

k) Contributions from the bodies of local self government.

l) Annual contributions from Nagor Panchayats and Gaon Panchayats.
m) Share from amount of property awarded in favour of an assisted person.

n) Balance amount from general revenue of the state.

The Gujrat Committee Report of 1971 also stressed for inclusion of preventive legal service within the legal aid programme report. The committee was of the view of remedial litigation oriented legal service programme could not meet the need of the poor and where in the world and more so in a poor country like India. Confining legal aid to the remedial legal service from three angles, like

i) reasons for inadequacy of the legal service programme.

ii) the basic approach of the preventive legal aid service programme and the fundamental principle under lying it and

iii) the specific content of the preventive legal service programme.

In the preventive legal service programme, the report suggested six distinct kind of services to be rendered to the poor, namely, legal advice, education representation, research and innovation, institutional changes and organisation of the poor.81

The Gujrat report81 provide to be a milestone in the legal aid movement of the country. After persual of the report, legal aid to the state from November-5, 1972, been extended to the whole of the State of Gujrat.

On the other hand claiming it as an exhaustive report, through principal in character but the report was very much national in its from and impact. The recommendations of the report not only stimulated the Government of India to appoint an expert committee on legal aid in October, 1972 but also the Gujrat report proved to be a stepping stone for the expert committee, which submitted its report in 1973.81

In order to give a boost in the continuance of legal aid movement, Government
of India appointed an 11 memberd expert committee under the Chairmanship of Justice V.R. Krishna Iyer, the then member of Law Commission of India in the year 1972.

The Central Government made the following reference to the committee:

i) To consider the question of making available to the weaker sections of the community and persons of limited means and educationally backward classes in particular facilities for-

a) Legal advice so as to bring among them an awareness of their constitutional and legal rights and just obligations and unnecessary litigations; and

b) Legal aid proceeding before civil, criminal and revenue courts so as to make justice more easily available to all sections of the community.

ii) To formulate having regard to the resources available a scheme for legal advice and aid for the said purpose, and

iii) To recommend the time and manner in which the scheme may be implemented.

The committee submitted its report in 27th May 1973. It is titled as 'Processual Justice to the People'.

Underlining the principle of legal aid as a means of the justice is a social necessity. It states that Indian law and instrumentalities, thanks to some lingering colonial hangover, are accused of being, out of step with social justice. Where the bulk of the people are of backward in social and economic justice, the rule of law, notwithstanding its mean of majestic equality, will fail its mission, in the absence of a scheme to bring the system of justice nearer the downtrodden. Therefore, it becomes a democratic obligation to make legal process a sure means of social justice. The major strategy to end estrangement between law and the society is legal aid in its comprehensive coverage which is what
we mean by the expressive though newly minted word 'judicature'.

The committee stated the legal aid or legal assistance is a part of the administration of justice and that consequently, it is the responsibility of the state governments to take necessary initiative in this regard.

Underscoring the joint responsibility of Central and State Governments the report specified the subject of legal aid to the handicapped certainly bears indirectly on the quality of the administration of the states. Undoubtedly, therefore, the comprehensive scheme of legal aid must involve the states financial and to the extent the judicial and the executive wings of the state have to work it, even administratively. The project will be joint also from the point of view of constitutional competence. Parliament can make the relevant law.

From the recommendation of Expert Committee it is important to note that it sets to rest the controversy of liability of the government which held and hindered the implementtion of legal aid services in India. The report observed that parliament should under the entries of schedule VII of the constitution, make provisions for a comprehensive scheme of legal aid and to give grants for that purpose.

The report of the expert committee had agreed with Gujrat Committee in the following matters and had the similarity thus –

i) For the involvement of NYAYA PANCHAYAT.

ii) Means of qualifying the means test and prime facie case test before getting the benefit of legal aid during trials as well as appellate stages. and

iii) Embracing legal advice that is non-litigative aid and the prevention of litigation within the scope of legal aid.
The special feature of the Expert Committee report was that it laid emphasis and inhabitants of tribal areas. In order to collect first hand information the Chairman visited by himself the Andaman and Nicobar group of islands for spot study of the needs of such far flung area. The committee also visited the snowclad Himalayan Lahaul and Spiti areas.

The Expert Committee also suggested cadre of properly oriented and trained police and judicial personnel for juvenile and young delinquents-stressing for delicate and humanist legal aid for the rising generation, substantive and procedural legal aid to women regardless of their means and sensitive assistance to scheduled castes by legal aid lawyers.

In order to stop the menace of majority upon minority in democracy the committee further suggested when passion stroke the fire of wrath against small groups, legal aid activism rises to resist. Unpopular belief and tiny group briefs are the touchstone of the legal aiders bonafides.

The report also placed the prisoners in the special class of Indian population who should be extended legal aid without considerations.

Another special feature of the report was to defend the defenders, that is armed personnel through legal aid.

Further the expect committee pointed out that it is due to the reason that till recently it has been assumed or taken for granted that legal aid to poor is co-extensive with administration of justice which is a state subject, falling within entry 3 of State List.

Stressing upon the legal aid as a part of legal system the committee opined that
what the entry 'administration of justice' connotes in the apparatus and machinery for the enforcement of legal rights and liabilities, it is 'intra-mural' activities that the administration of justice is concerned with, and then also not with all of them. But legal aid is not confined to the machinery and apparatus of law. It is an integral part of the legal system. The legal system the framework of rules defining legal rights and liabilities would be a mere dream, a barren figment as unreal as a castle in the air, if those rights and liabilities remained unascertained, legal aid is a basic, indispensable postulate of legal system and not a matter of charity or confined to the four walls of the court building.

Accepting the recommendation of the expert committee, the Central Government amended the order XXXIII and order XLIV of Civil Procedure Code, 1908 by Act 104 of 1976, so as to enable a court to assign a pleader at the expense for the state to an indigent suiting or even defending a suit.

The committee stated that there is in legislative list not one entry but by a host of entries touching same areas or some times only the fringe of legal aid. The possible relevant entries are to be found in the following lists.

<table>
<thead>
<tr>
<th>Name of</th>
<th>Entry</th>
<th>No of legislative List</th>
<th>Content of entry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union List</td>
<td>Entry 77</td>
<td></td>
<td>Constitution, organisation, jurisdiction and powers of Supreme Court and the fees taken there in and persons entitled to practise in Supreme Court.</td>
</tr>
<tr>
<td>-Do-</td>
<td>Entry 78</td>
<td></td>
<td>Constitution and organisation except provisions as to the officers and servants of the High Court, persons entitled to</td>
</tr>
</tbody>
</table>
Concurrent List Entry 2  Criminal Procedure Code and court of
practise before the High Courts.
criminal code matters.

- Do -  Entry 11 A  Administration of justice, constitution
and organisation of all courts except
Supreme Court and High Courts.

- Do -  Entry 13  Civil Procedure Code included all
matters is the code at the commencement
of this code.

-Do-  Entry 20  Social and economic planning.

-Do-  Entry 23  Social security and social insurance
employment and unemploy ments.

- Do-  Entry 24  Welfare of labour.

- Do -  Entry 26  Legal, medical and other profession.

State List  Entry 3  Jurisdiction and powers of all courts
with respect to any of the matters in the
list.

It has been suggest that it is permissible to view legal aid as a part of economic
and social planning. But even apart from that it can certainly be related to the entire
legal system, and this would bring it in the concurrent list, or at last make it transcend
the state list.93A

PROVISION OF LEGAL AID IN CRIMINAL PROCEDURE CODE, 1973

The Criminal Procedure Code was enacted in the year 1878 by the English.
As per recommendation of Expert Committee constituted by Central Government, 1972, which submitted report in 1973, the Criminal Code was amended in the year 1973 and under section 304, legal aid is provided to an unrepresented accused in Court of Session at the state expenses by providing a lawyer. By this section High Court is also allowed to make rules in this respect.

The above provision was made as per recommendation of expert committee. The following were the three recommendations as regards legal aid in criminal matters. thus-

i) Initially representation by a lawyer should be made available at general expenses to accused person without means in all cases tried by Court of Session.

ii) Representation by a lawyer should be made available at government expenses to appellant without means under the code.

iii) Representation by a lawyer should be made available at government expenses to an accused person without means.

Regarding constitutional provision it is found that the wide ambit of right of counsel written in the constitution is apparent from Article 22 (1) which obligates intimation on the ground of arrest to every arrested person and allows him right to counsel for advice and defence.

**INVolVEMENT OF ADVOCATES TO LEGAL AID**

It is a very good side of legal aid movement that in order to advocates cooperation and involvement on 18th August, 1970 The Advocate Acts (Amendment) Bill was introduced in Rajya Sabha and passed in the year 1973, known as Act 60 of 1973, whereby section 9 A was added providing for constitution of Legal Aid Committees.
The Amendment came in to effect from 31.1. 1974.

PROVISION OF LEGAL AID IN CIVIL PROCEDURE CODE, 1908

The provision of *forma pauperis* suit which was in existence, the Law Commission in its 27th Report depending upon recommendation of committee the new word 'indigent' person was substituted in case of the word 'pauper' to keep harmony with modern legal outlook.

The pauper was one who did not have properly worth Rs.100/- in all sources. Accordingly through the Amendment Act. 1976 was passed and the word pauper was substituted by the word indigent person. The above amendment also amended Rule I. order XXXIII and amended and eligibility limit of indigent person had been raised from Rs.100/- to Rs. 1000/-

Order XXXIII. Rule I of Civil Procedure Code lays that a person is an indigent person (formerly pauper) when he has not possessed of sufficient means to enable him to pay the court fees for the plaint or the suit where no court fees are prescribed in which it is not entitled to property worth Rs.1000/-, besides his necessary wearing apparrals and subject matter of suit.

While the words 'sufficient means' do not imply sufficient property. It includes sole means of livihood. Therefore, while considering the application of indigent. the court should conduct an enquiry that whether the person is capable to raise money to pay court fees because 'sufficient means' denotes not having the capacity to pay court fee."

Order XLIV of Civil Procedure Code deals with appeals by indigent person, which is allowed on application.

The importance of legal aid which was felt for a well devised organisational
structure of legal aid agencies. The Expert Committee recommended for active involvement of lawyers, voluntary agencies and law schools. Recommending for the institution of legal aid clinics in law colleges, the committee desired them to produce legal aid literature for mass circulation, permitting students and law teachers to appear in courts on behalf of indigent persons. For this purpose the report suggested amendment in The Advocates Act, 1961, by inserting section 33A to read as under:

Section 33A: Legal Aid by Law Teachers and Students:

Notwithstanding any thing contained in the preceding section, the following categories of person may appear in any court or tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:

i) Teachers of law school which provides full time instruction for the profession LL.B. Degree and which maintains a legal aid clinics as part of its teaching programme where poor persons receive legal aid, advice and related services.

ii) Students of third year LL.B. class of Law school as aforesaid who are participating in the clinic's activities and who have been certified by the Dean/Principal of Law School.

Provided such representation in the case of students shall be under the supervision of lawyers associated with said legal aid clinic and with approval of judge in whose court the student appears.

Explanation: - The supervising Lawyer who shall be an advocate under this Act is presumed under the last preceding provision to assume personnel professional responsibility for the nature and quality of the students' legal services.
As regards the financial arrangement to carry out legal aid programme, the Expert Committee advised to sanction grant by State and Central Government. The committee however permitted charging fees for legal advice, collecting costs awarded in favour of legally aided person and contributions by private donations.

Another interesting feature of the report it recommended a comprehensive Legal Aid and Advice Act by parliament and permitted making the legal aid flexible to suit the needs and nods of each state.

In the year 1970. TamilNadu Government appointed one member committee of former justice of the Madras High Court Mr. Justice P. Ramakrishna to study and recommend upon legal aid. The important recommendations of the committee were "—

i) Provision of legal aid benefit by the court itself, without intervention of the legal aid committees, if the person was entitled to court fee exemption.

ii) A person charged with an offence attracting death penalty and facing trial in the Court of Session if unrepresented by the counsel be extended legal aid without resorting to the means test.

In Madhya Pradesh the government constituted a committee headed by Sri Rajendra Kumar Nayak, General Secretary, National Forum of Lawyer for legal aid, who submitted the report in March 1975. Basing upon its recommendation the Legislative Assembly of Madhya Pradesh enacted The Madhya Pradesh Legal Aid and Advice Act, 1976. Madhya Pradesh is the first state to have enacted and provided statutory base of legal aid providing the formation of State Legal Aid and Advice Board. District. Tehsil and even Village Level Aid and Advice Committees.

Rajasthan State Government also constituted a committee headed by Dr. L.M.
Singhvi the report of which was known as Report of Rajasthan Law Reforms and Legal Services Committee made two recommendations: 

i) Constitution of special committee to identify issues of public interest litigation. 

ii) For setting up Nagarik Salah Kendra to redress personal grievances of the aggrieved, who approached for it. 

Rajasthan Government executed the recommendation of the committee and constituted the State Legal Aid and Advice Board in November 1975 and also constituted Legal Aid Committee at High Court Level, District Level and also in Tehsil Level. 

Special mention may be made about the venture made by the National Forum for Lawyers, a national organisation with its branches at the level of each state, the Union Territory of India under the auspices of All India Congress Committee, Indian National Trade Union Congress and Indian National Rural Labour Federation. 

The basic aims and objectives of the forum was to provide infrastructural support for the implementation of Twenty Point Economic Programme of Mrs. Indira Gandhi, Prime Minister of India to ameliorate the lot of poorest of the poor in the country. The legal aid was a part of this programme. 

Government of India in pursuance of decision of National Forum for Lawyers, appointed a Committee in 1975 involving some members of National Forum for lawyers, under the Chairmanship of Mr. Swaran Singh, a former Union Minister. The Swaran Singh committee made exhaustive recommendations for amending the constitution which were incorporated by way of 42nd Amendment of constitution in the year 1976, in the Part IV Chapter that was Directive Principles to State Policy by adding Article 39A including entry 11A that is 'Administration of Justice' in the concurrent list.
Article 39 A provides as follows:\textsuperscript{100–}

'The state shall secure that the operation of 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.

After Swaran Singh Committee as per suggestion of National Lawyers Forum the Government of India appointed a committee or juridicare under the Chairmanship of Mr. Justice P.N Bhagwati, the then Judge of Supreme Court where Mr. Justice V.R. Krisna Iyer of Supreme Court on May 19, 1976 joined as member after the Forty Second amendment of the constitution to consider the matter of legal aid to weaker sections of the community, to assess the extent and nature of unmet legal needs for economically underprivileged person, to access the value and effectiveness of the legal aid scheme in operation in the country, to make recommendation for establishing and operating dynamic legal service programme for all the state.\textsuperscript{101}

The above committee submitted its report on 31st August. It has remarked \textsuperscript{102} the committee of juridicare has encouraged the holding of legal aid camps and 1.O.K NYAYALAY as in rural areas. The functioning of committee has generated tremendous enthusiasm amongst the State Government, Lawyers, Judges, Social and Public Workers and amongst the people in general.

The terms of reference of the committee were as follows.\textsuperscript{103}

i) to consider the question of making legal aid and advice available to the weaker section of the country;
ii) to assess the extent and measure out unmet legal need for such economically
under privileged persons and determine the most effective method of providing
legal services to them;

iii) to assess the value and effectiveness of legal aid schemes presently functioning
in the country;

iv) to make recommendations for establishing and operating a comprehensive
and dynamic legal service programme for effective implementation of the socio
economic measures taken or to be taken by government including formulation
of schemes for legal services;

v) to draw legal services programme in all states on a uniform basis;

vi) to draw on the guidelines outlining the ways in which non professional or
professionals in the fields other than law could be utilised for the implementation
of socio economic programme; and

vii) to make recommendations on such other connected questions as may be
referred to it by the central government.

The report of National Juridicare over and above its interim report submitted
its final report with a draft of The National Legal Services Bill, 1977. The report named
by the committee itself, was a conjunction to the report of expert committee.

The Chairman and Members of the committee visiting many places and interviewing
many persons put forward very practical recommendation in the area of legal aid. The
committee wanted the government to draw a particular recommendation on NYAYA
PANCHAYAT and LOK NYAYALAY as conciliation; not litigation and legal services
to weaker sections.
The National Juridicare committee rightly wanted the legal aid programme to revolve more around the concept of conciliation and compromise than equipping to fight a long drawn litigation. The LOK NYALAYA of the committee are now today's Lok Adalat to bring about amicable settlement of disputes. The committee further suggested that each conciliation cell to explore the possibilities of settlement in all cases, where a person was found eligible for legal aid.\(^{105}\)

The committee also suggests conciliation cell should function for amicable settlement of cases / disputes before starting or after starting of a case.\(^{106}\)

The National Juridicare Committee identified members belonging to the scheduled castes, scheduled tribes, the women, workers and those belonging to minority communities as special classes requiring the benefit of legal aid.

The report also underscored the need for associating and involving voluntary agencies and social services organisations in the programme of legal aid, going along the view of Dean Roscoe Pound, the committee opined that law if viewed in sociological prospective, is a social service of specialised type. Its goal is social engineering, its end product is justice but the raw reality is that the legal system does not offer easy access to the common people.\(^{107}\)

The committee in the draft of National Legal Services Bill. 1977. made the provision of National Legal Services Authority; National and State Councils of Legal Services Clinics; the State Legal Services Boards, its Regional Boards and Zonal Councils.

The report of National Juridicare Committee recommended to include legal aid in National Plan. The National Juridicare Committee brought legal aid movement to a place, where from no about turn of the government was possible. It must be admitted
without hesitation that at the national level the most important development in this area was the constitution of Central Committee for Implementing Legal Aid Schemes (CI.LAS) which in due course evolved and transformed into National Legal Services Authority under the banner of The Legal Services Authorities Act, 1987.

The Government of India according to recommendations of National Juridicare Committee constituted 108 known as Committee for Implementing Legal Aid Scheme for implementing legal aid scheme in India under the Chairmanship of Mr. Justice P.N. Bhagwati for the term of three years in the first instance. The term of the committee was further extended for further period of two years with effect from 26th September 1983 on the same terms and conditions. Again the term of said committee was extended for one year.

The committee was reconstituted for Implementing Legal Aid Scheme has done pioneering work in the field of legal aid to the poor. It was thought by said committee that the states are primarily responsible for providing legal aid to poor needy persons. The committee suggested model scheme for legal aid throughout the country particularly for states and union territories to bring uniformity of programmes. The Committee for Implementing Legal Aid was founded wholly by grants from central governments. The governments was accordingly concerned with constitutitional mandate.

The committee has formed a model scheme for legal aid and advice. The model scheme evolved by the committee consists of dynamic and comprehensive legal aid programme of a uniform pattern all over the country.

The scheme postulates the setting up a Board of Legal Aid and Advice as an apex body in each state. It lays down the constitution and function of the Board.
Such Board is to be in overall charge of administration and implementation of Legal Aid Programme in state. For effective implementation of the programme, the Board shall constitute a Legal Aid Committees at High Court Level as well as the District and Taluka or Tehsil Level.

Every citizen whose income of family in all sources does not exceed Rs. 5000/- per annum shall be eligible for free legal services. But this limitation as to income does not apply in cases of Scheduled Castes and Scheduled Tribes, Vimukta Jatis and Nomadic Tribes or woman or childern in case of disputes where one of parties belongs to above class.

In cases of great public importance or in a test case the decision of which is likely to affect cases of numerous other person belonging to weaker sections of the community, or in a special case which for reasons to be recorded in writing is considered otherwise deserving of legal aid, the Board may itself initiate proceeding or grant aid.

The central government has constituted ensuring legal aid in case coming before the highest court of the country. This committee was headed by Supreme Court Judge.

The committee has taken up the programmes such as promoting legal literacy and creating legal awareness amongst the poor, carrying legal services sections of the community by organising legal aid camps in the rural area, training para legals or bare footed lawyers in basic element of social legislation. So that they can help identifying the legal problems of the poor, protect them against exploitation and oppression and provide them first aid law, identifying problems affecting special categories of weaker section of the community such as scheduled castes, scheduled tribes, agricultural labours, women and childern through the special cells set up for the purpose, setting up the projects
for socio legal survey and research in the areas of law affecting the lives of the poor with a view to increasing our knowledge about poverty and its problem in the country, promoting public interest litigation with a view to bringing the problems of the poor before the courts and finding solutions to them through the process of law organisation working in the area of rural development. In order that legal process may be increasingly utilised for the purpose of bringing about socio economic change and eliminating the institutional causes of poverty and setting up legal aid clinic in the universities and law colleges with a view to diverting the vast but untapped energy of the student in constructive channels in the cause of service of the poor.  

The worth mentionable is that the committee had never given legal aid directly to the people that is poor persons but financed and supported various committee at different levels. In order to prepare National Plan on legal literacy it has entrusted the law teachers, members of Bar to compile teaching materials on legal aid. It had successfully organised para legal training camps at different places.

The committee had given grant in aid to State Legal Aid and Advice Boards and other para legal institutions for conducting legal aid programmes. The criteria for giving grant in aid was the following:

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Legal Programme</th>
<th>Amount not exceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Legal aid camp</td>
<td>Rs. 3500/=for every camp</td>
</tr>
<tr>
<td>2</td>
<td>Legal Literacy Programme</td>
<td>Rs. 5000/=</td>
</tr>
<tr>
<td>3</td>
<td>Training of Para Legal</td>
<td>Rs. 10,000/=for each district</td>
</tr>
<tr>
<td>4</td>
<td>Public Interest Litigation</td>
<td>Rs. 50,000/=</td>
</tr>
<tr>
<td>5</td>
<td>Rural / Urban Entitlement Centres</td>
<td>Rs. 50,000/=</td>
</tr>
</tbody>
</table>
6. Legal Aid Clinic

Rs. 5,000/= 

The legal aid programmes adopted by the committee may be classified in following two categories-

a) Litigation oriented legal aid programme and

b) Preventive legal aid programme

The committee had never organised litigation oriented legal aid programmes because it had felt it proper to leave the work to State Legal Aid and Advice Board of various states. But for organising the preventive legal aid programme it had formulated the following schemes-

1) Promotion of legal literacy including publication of legal aid newsletter, booklets, documentary films, video films and the like.

2) Establishment of National Legal Literacy Cell with the Committee for Implementing Legal Aid Schemes.

3) Legal Aid Camps / Lok Adalots.

4) Urban and Rural Entitlement and Legal Support Centres for co-ordinating the activities of the various non political social action groups working at the grass root level in rural areas.

5) Training of Para-Legals in which rudimentary knowledge of social welfare laws and procedure is imparted to social workers.

6) Legal aid clinics to involve law students to the legal aid programmes, and

7) Public interest litigation in a collaborative efforts to see that basic human rights become meaningful for the large masses of the people.

On account of various efforts made by the various commissions, conferences
and specially for Committee for Implementing Legal Aid Schemes. the central government was compelled not only to constitutionalised the legal aid movement incorporating article 39A in constitution of India but also enacted The Legal Services Authorities Act, 1987 vide the provision enumerated in article 39A of the Indian constitution.

So the legal aid which originated during the Vedic period has been evolved and flourished phasewise passing through Kautilyan. Gupta. Medieval period entered the Mohammedan Era where KAZIS and MAULAVIS performed the key role of legal aid as it was perviously performed by PANDIT, SERPHANS and village headman. During British era the different legal aid committees had rendered the legal aid which after independence of India due to various efforts made by various commissions, conferences and specially for Committee for Implementation of Legal Aid Schemes. the Central Government was compelled to amend constitution of India incorporating Article 39A by 42nd Amendment Act, 1976. By virtue of Art-39A the Central Government enacted The Legal Services Authorities Act, 1987 which has been playing the pivotal role in Legal Aid Movement in present day society.

NOTES AND REFERENCES


2. Section-304, Civil Procedure Code, 1886.


4. Tewari, Om Prakash 'Lok Adalat', Sri Sai Publications 1035. Section-16. Faridabad

6. Rajguru, Dr. Sarbeswer; 'Asamiya Samaj Aru Sanskriti' (Fistst Part); Balgopal Prakashan, Milanpur, P.O- Haiborgaon, Nagaon, 1990. P-110. Para -II.

7. Ibid 3.


11. Ibid, P-90, Para -III


13. Ibid. PP- 6-7, Para -V-I.

14. Supra Note-10, P-90, Para-V.

15. Ibid, P-90, Para -VI.

16. Singh, Sujan-'Legal Aid, Human Rights to Equality; Published by Deep and Deep Publication, New Delhi, 1998, P-75, Para-III.

17. Singh, Gobinda- 'Translation of Important Parts of Rig Veda'; Sadna Pocket Books.
New Delhi, 1992, PP- 3136, P-III.


20. Ibid, P-267, Para-III.

21. Supra Note -10, PP- 77-78, Para -I (both pages).

22. Kautilya's Arthashastra, Chapter- II, P-36, Para -III.

23. Supra Note -16, P-79, Para -II.

24. Ibid, P-79, Para-IV.


27. Supra Note 4, P-8, Para -V.


32. Supra Note -4, P-8, Para- I, Legal Aid.

33. Report of Gujrat Committee on Legal Aid constituted by Govt of Gujrat 1971, P-14, Para -III.
34. Ibid, P-14, Para -V.
35. Supre Note -4, P-8, Para- VI.
36. Ibid, P-9, Para -VI.
37. Ibid, P-9, P-VIII
38. Supra Note -16, P-64, Para- II.
    3rd Edition -2004, P-93, Para-II.
40. Supre Note -33, P-15
41. Supra Note- 16, P-85, Para -I.
44. Sharme, S.S. - 'Legal Aid to Poor', Deep and Deep, Pulication. 1993. New Delhi-
    110027, P-64, Para -I.
45. Ibid, P-45. Para -I ( last part).
    Para -III.
47. League of Nation - 'Legal Aid for the Poor, Vs Legal'. 1927. V-27.
48. Rushcliffe Committee, Appointed by Lok Government in England by Lord Chancellar
    in 1944 to enquire in to legel aid facilities to poor in civil and criminal cases.
50. Supra Note- 44, P-65. Para-III.
52. Madhab Menon, Dr. N.R.'s Article -'Legal Aid and Justice for the Poor' in Dr.
Upendra Baxi's - 'Law and Poverty'. P-46.

53. Supra Note -10, P-360, Para -II.

54. State of Bombay Report of Committee on Legal Aid and Legal Advice. 1949. P-8, Para-XIX.


56. Ibid, P-32, Para-II.


60. Supra Note -16, P-89, Para -III.


62. Supra Note -49, P-588.

63. Supra Note-49, P-594.

64. Government of India- 'Outline of Scheme for Legal Aid to the Poor'. Part -V. 1960.


69. Supra Note -10, PP-362-363, Para -VII & I.


71. Singhvi, L.M.-'Exordial Address to The National Conference on Legal Aid'. Published in Ahmed, M.B.'s (et al) 'The Administration of Justice in Medieval India'. P- 289.

72. The other members of the committee were -


II. Sri Vasantlal, V. Mehta, Deputy Speaker Gujrat Vidhan Sabha.

III. Sri Madav Singh, F. Solanki, MLA.

IV. Sri K.M. Satwari, Secretary, Legal Deptt., was Made to Act as Secretary of the Committee.

By a subsequent resolution dated 10th February'1971, Sri Girishbhai Petel, Principal. New Law College, Ahmadabad was appointed member of the Legal Aid Committee.


The Government of India vide notification dated 27th October 1972. appointed following 11 membered expert committee to include.

I) Mr. Justice V.R. Krishna Iyer Chairman
II) Dr. L.M Singhvi Member
III) Shri Jaisukh Lal Hathi  
IV) Shri M.K Ramamurthi  
V) Shri D.P. Singh  
VI) Shri Harish Chandra  
VII) Mrs. Lakshmi Raghuramaiya  
VIII) Shri Gopi Nath Dixit  
IX) Dr. N.R. Madhab Menon  
X) Shri Kanwar Lal Sharma  
XI) Shri P.B Venkata Subramanian Member Secretary

86. Report of Expert Committee on Legal Aid "Processnal Justice to the People 1973."
P-I.

88. Ibid, P-4.
89. Ibid, P-8.
90. Supra Note-16, P-107, Para-VIII.
91. Supra Note-86, P-28.
92. Ibid, P-34.
93. Ibid, PP- 5-6.
93 A. Ibid, PP-6 to 7.
94. Sadhana Dutta Roy Vs State of West Bengal (1978) CRLJ (Noe) 131 Cal.
96. Supra Note- 86, P-164.
97. Supra Note-16, P-II4, Para -I & II.
98. Ibid, P-114, Para -III
104. Forwarding Letter of the Report by Mr. Justice P.N. Bhagwati. D.O. No-C.
J/1/77 Dated August 31, 1977, Addressed to Prime Minister of India.

105. Ibid, P-40.

106. Ibid, PP-77-78.

107. Supra Note-16, P-120, Para-II.


109. Constituted Committee for Implementing Legal Aid Scheme with the following Members-

I. Hon'ble Mr. Justice R.S. Pathak, Chief Justice of India. Patron in Chief.

II. Hon'ble Mr. Justice R.N. Mishra, Judge. Supreme Court of India. Executive Chairman.

III. Hon'ble Mr. Justice N.D. Ojha, Chief Justice, High Court of Madhya Pradesh. Member.

IV. Hon'ble Mr. Justice V.R. Ratnam, Judge Madras High Court. Member.

V. Secretary (Expenditure), Ministry of Finance, Govt. of India. Member.

VI. Secretary, Department of Legal Affairs, Ministry of Law and Justice- Member.

VII. Secretary, Committee for Implementing Legal Aid Scheme. Member Secretary.


111. Published in Times of India, July 7, 1982. P-7.

112. Supra Note -110, P-3.

113. Supra Note-44, P-81, Para-II.

114. Ibid, P-81, Para-IV.