CHAPTER - VII

CONCLUSION, SUGGESTIONS AND FUTURE OF LEGAL AID

A. CONCLUSION

The foregoing discussion shows that in ancient India the system of administration of justice was so evolved as to rule out the need of any system of legal aid to the poor, because even the lowliest of the low could directly and without spending any money reach the highest citadel of justice. Neither the Hindu Law nor Muslim Law provided for realisation of Court-Fee, nor was there an institution of the lawyers of the type existing today. But the system of Panchayat Justice was developed during this period which made the justice reach at the doors of the poor. During the British period, nothing concrete was done and the justice because a distance cry for those who could not pay lawyer's fee. It was only at a very late stage that the court fee was exempted in pauper suits by the Code of Civil Procedure, 1908. In criminal matters the Code of Criminal Procedure, 1898 provided for the legal assistance to the poor accused in cases which involved death sentence. The position continued to be the same till the attainment of independence by India on August 15, 1947 and the framing of her own constitution which came into force on January 26, 1950, declaring India to be Sovereign Democratic, Republic and securing to all its
citizens: Justice, social, economic and political and equality of status and opportunity. The preamble to the Constitution which underlines these objectives of our National Charter lays emphasis on justice in all its manifestations. The Fundamental Rights and the Directive Principles of the State Policy contained in parts III and IV of the Constitution emphasise this theme of justice and equality and have been rightly called by Austin as: "The conscience of the Constitution". Article 14 of the Constitution which embodies this theme of justice reads: "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India."

In our submission this principle aims at equality of status and of opportunity for all its citizens including those who are socially, economically and educationally backward, but this constitutional principle may sound hollow to the poor little Indians who under abject poverty conditions, ignorance and helplessness find the door steps of justice like scaling of the Everest. Thus, the law remained totally blind for the poor because the gap between the poor and the courts of law is almost unbridgeable because due to economic disabilities, justice for the poor has remained a distant cry which

makes mockery of their tearful realities. This strikes at the fundamental problems of access to justice which promotes the principle of equal justice as well as an impartial administration of justice. If one litigant is rich and the other is poor, there is no equal access to justice because the poor cannot pay the price for engaging any lawyer. Similarly, Article 21 which has been characterised as the very soul of human liberties has no meaning for a person who has no food, clothing or shelter. Also, right to counsel is specifically guaranteed in Article 22(1) which lays down that no person should be denied the right to consult and to be defended by a legal practitioner of his own choice. To the same effect are the obligations cast by Article 38 where the State has been mandated to make efforts to promote the welfare of the people by securing and protecting, as effectively as it may, a 'social order' in which justice, social, economic and political shall inform all the institutions of national life. This is the pre-1976 position as to what the Constitution promised to the people in explicit terms.

What has been stated above is incorporated in the National Charter of 1950. The explicit guarantee of justice for the poor and rich alike remained unimplemented. When we talk about the poor, it envisages legal assistance to the poor in law courts so as to enable him to defend his case properly. Thus, a nationwide legal aid programme for the poor
could be the only answer for this. One of the reason which seems to have weighed the Central Government in not taking any immediate initiative in the matter is the assumption that legal aid or legal assistance is a part of the 'Administration of Justice' and hence it is the responsibility of the state governments to take the necessary initiatives in this regard. However, the various state governments initiated legal aid schemes for the purpose from time to time suiting their own requirements. It was during the 1970's that the Government of India, for the first time constituted the Expert Committee on Legal Aid, with Mr. Justice Krishna Iyer, who was at that time a member of the Law Commission of India, as its Chairman. Its terms of reference included the formulation of a practical and workable scheme of legal aid and the methodology of its implementation. The Committee suggested the three fold tests

2. In an answer to an unanswered question in the Lok Sabha, the then Minister of law, stated: "Administration of Justice is a subject included in the State List and the grant of legal aid and assistance to the poor, is therefore, primarily the responsibility of the State Governments. . . ." Quoted in Expert Committee on Legal Aid: Processual Justice to the People, (1973), at 4.

3. For more details see Chapter II, Supra
for determining eligibility for obtaining legal aid. The state governments also continued their efforts side by side which ultimately culminated in the constitution of a high powered committee, known as the Central Committee on Juridicare in May 1976 with Mr. Justice P.N. Bhagwati as its Chairman and Mr. Justice V.R. Krishna Iyer, as the member of the Committee. The Committee which submitted its report to the Government of India, on August 31, 1977 made to the Government a number of recommendations including setting up of 'Nyaya Panchayats and 'Lok Nyayalayas, and Conciliation Cells instead of litigation and also the inclusion of legal services on the National Agenda. It also emphasised the enactment of National Legal Services Act, including the infrastructure of the legal services organisation to be set up by the state. This all aimed at providing socio-economic justice and equal justice under law to both the haves and have-nots.

In discharge of its constitutional obligation and the preambulary promises made to the people of India in 1950, the government took a major initiative by making a provision

4. For a detailed account of the recommendations of the Committee regarding the organisational and administrative set up for providing legal aid, See, supra note 2, at 1, 46, 47, 48, 199, 208-221.
for legal aid to the poor by the Constitution (42nd Amendment), Act, 1976. The relevant provision which is contained in Article 39-A of the Constitution reads: "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 legislations 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." This provided a new momentum in accelerating the legal aid process and our judiciary played a very significant role in this context. Though, Article 39-A is included in the chapter of Directive Principles of State Policy and does not create any justiciable right, but the courts through its legal philosophy of poverty jurisprudence, have interpreted that the right to free legal aid to the indigent and needy is a
fundamental right in all criminal proceedings.

It was in the year 1981, that the Government of India, constituted for the first time, a Committee for Implementation of legal Aid Scheme, with Justice, P.N. Bhagwati, the then Chief Justice of India, as its Chairman. The principal object of constituting the Committee was the

5. See e.g., M.H. Hoskot Vs State of Maharashtra AIR 1978 SC 1548. In Hussainara Khatoon Vs State of Bihar, AIR 1979 SC 1377, their Lordship of the Supreme Court observed, "we donot think that it is possible to reach the benefit of legal process to the poor, to protect them against injustice and to secure them their constitutional and statutory rights unless there is nationwide legal services programme to provide free legal services to them." Id.' at 1381. In 1976, the Government also amended the Civil Procedure Code 1908, and provided for legal suits by indigent persons.
formulation and implementation of comprehensive legal aid scheme on a uniform basis throughout the country. In view of its consistent efforts, the CILAS has succeeded in evolving a Model Scheme on Legal Aid programme for adoption by the state governments so as to ensure uniformity in providing legal aid throughout the country. According to the guidelines circulated by this apex body, a state legal aid and advice Board has been constituted as the apex body in every State/Union territory of the country. The Board has been assigned the task of administering and implementing legal aid programme in their respective states. For this purpose, the various State Boards have constituted Legal Aid Committee at the High Court level, District and Sub Divisional level. The CILAS has also constituted a Legal Aid Committee in the Supreme Court of India. The eligibility conditions for obtaining the legal aid varies from state to state in the country depending upon various factors including social, economic and geographical. According to the information provided by the CILAS as on 31.12.90, 12,63,131 people have been provided legal aid through various State Legal Aid and Advice Boards in the country. The CILAS has also given equal attention to the preventive perspective of the legal aid

6. For details, see Chapter II.
which include promotion of legal literacy, organising lok Adalats, establishment of legal aid clinics in universities and law-colleges, creation of Urban and Rural Entitlement and Legal Support Centres, training of para-legals and encouraging public interest litigation for bringing the problems of poor before the court. According to the information supplied by CILAS, the various State Legal Aid and Advice Boards, District Legal Aid Committees in the country have been able to disposed off 24,38,632 cases by organising 4168 Lok Adalats in different parts of the country as on 31.12.1990.

In this connection, it may be mentioned that the experience of some of the foreign countries in the development of free legal assistance to the unrepresented persons has proved more rewarding. For example, in the United State of America the legal services are provided under the Legal Services Corporation Act, 1974. In the Corporation's Report for the year, 1981 it is stated that the legal assistance matters which were settled in courts were only 18.6 percent and the matters which were settled through conciliatory strategies outside the court were 81.4 percent. This aspect deserves emulation in the Indian Context. In the

United Kingdom, the scheme of legal aid is presently administered under the **Legal Aid Act, 1982**. The entire system of administration of legal aid runs under the overall supervision of the Lord Chancellor. In Russia, all indigents are provided the legal aid irrespective of their financial resources. In Australia, the concept of "Flying Lawyers" to serve the unrepresented at their door steps is becoming popular. In Canada, every province has developed its own scheme of providing legal assistance to the needy. In nutshell, in the countries under discussion, the legal aid programme is basically run by the legal profession. Law societies, legal aid clinics, Government Employed Law Professionals and the Public Defender Office. In fact, the voluntary organisations have played a vital role in providing legal aid to the poor. The participation of students in the clinical legal aid programme has proved very useful. In India, this perspective has received little attention. It is submitted that we should adopt such programmes on a much broader base in which the students of law are taught subjects like, Law and Poverty and the education system is designed in such a way that it becomes socially relevant to achieve the objective of legal aid to all the needy and deserving people of the country. Similarly, the role of the lawyers in these countries is more responsive towards community than in India. The main reason for the
Indian perspective appears to be that our basic legal education does not show them the path of poverty jurisprudence vis-a-vis their social responsibilities. The role of voluntary agencies in promoting the cause of the poor and spreading legal awareness has not proved to be as effective as our counterparts in the United States America or the United Kingdom. However, some of these organisations are playing a useful role in taking up the cases of the poor through social action litigation. The CILAS has made a comprehensive scheme for providing grant-in-aid facility to such organisations.

The basic thrust of the present study has been to make an empirical survey of the administration and implementation of legal aid to the weaker sections of the society in Himachal Pradesh. The scheme of legal aid was introduced in the state, as early as in 1973. The relevant rules governing the said scheme were, **Himachal Pradesh Legal Aid to the Poor Rules, 1973** and **Himachal Pradesh Legal Aid to the Scheduled Castes and Scheduled Tribes Rules, 1974**. The first rules were implemented by the Law Department of the Government of the State and second category of rules were implemented by its Welfare Department. However, much information is not available regarding the implementation aspect of these rules. In view of the fragmented perspectives of these rules, the State Government decided to amalgamate
both the rules by framing a comprehensive legal aid scheme in pursuance to the mandate of Article 39-A of the Constitution of India. The Rules are titled as, Himachal Pradesh State Legal Aid to the Poor Rules, 1980. The Rules established an administrative framework for providing legal assistance to the needy with the State Legal Aid Board as its apex body. Further, the rules provided for establishment of High Court Legal Aid Committee, District Legal Aid Committee and Sub Divisional Legal Aid Committees for administering legal aid at appropriate levels. Thus, the State Legal Aid Board functions through its various committees at different levels. The Rules of 1980 were further repealed by the Himachal Pradesh Legal Aid Rules, 1984. The basic objective behind framing of the new rules has been to involve the judicial branch in the administration and implementation of legal aid in the State.

Under the new Rules, the Chief Minister of the State and the Chief Justice of the High Court of the State act as the Chairman and Co-Chairman of the State Legal Aid Board respectively. A sitting or retired judge of the High Court is to function as the Executive Chairman of the Board. The Board comprises of, as many as, 17 functionaries inclusive of the Chairman. Similarly, the High Court Legal Aid Committee is to consist of 6 persons, District Legal Aid Committee of seven persons, and the Sub Divisional Legal Aid Committee of five persons. The actual experience of the
researcher during his visit to the Board, High Court Legal Aid Committee and some of the District/Sub Divisional Committees presents a very astonishing picture. It has been revealed that the rules exist on paper and have not been implemented in true letters and spirits. The composition of these committees has remained a neglected aspect. The State has not paid adequate attention for improving the working of the Board or evaluating the performance of the various legal aid committees. Infact, the State Legal Aid Board has practically two functionaries only. Similarly, in the High Court Legal Aid Committee there are also two functionaries viz., Advocate General and the President of the High Court Bar Association. At the other levels, it is only the Deputy Commissioner or the Sub-Divisional Magistrate who is the sole government for implementing the scheme of legal aid. It is an admitted fact that these bureaucrats are very busy persons and have to perform multiple functions in their respective jurisdictions. How much time they can spare for implementing the scheme is a debatable point. It is submitted that the entire administrative set up requires a thorough overhauling if justice is to be accorded a prime place and Nehru's advice, "to wipe every tear from every eye" is to be given a real shape, so as to fulfill the promise of 'Equal Justice' which we made to the people on January 26, 1950.
According to the information which has been made available by the State Legal Aid Board, 1609 persons have been provided legal aid in the State upto July 31, 1992. Similarly, 5776 cases have been disposed off by organising 31 Lok Adalats at different places in the state upto 31.3.1992. This also includes 356 MACT cases, where a compensation amounting to Rs. 1,46,03,245.00 was paid. Regarding the preventive perspective of legal aid, 224 legal literacy camps are stated to have been organised in various parts of the State during the given period. However, the empirical survey of 64 villages in four district of the State viz., Shimla, Solan, Kangra and Kinnaur conducted by the present researcher shows that the scheme of legal aid, by and large, remained on paper. The funds have continued to be utilised without accomplishment of the desired objective. Though, there have been no shortage of funds, but the agencies entrusted with the task of implementing the scheme have miserably failed to utilise the funds for the purpose and a large part of the money sanctioned remained unutilised.

8. See Appendix I, Infra at 452
9. See Supra at 273, 276, 278.
It is again interesting to point out that of the supplied information of 5776 cases settled by Lok Adalats, around 2000 of them have been police-challans submitted for summary disposal. Should such cases fall within the purview of Lok Adalats? The researcher has not been able to obtain a satisfactory reply in this regard. Though, the disposal frequency of cases in all the 31 Lok Adalats has been shown as 53.64 per cent. But, by taking out 2000 cases out of the figures supplied, the disposal rate immediately comes down to 35 per cent. This clearly shows that there is something wrong in the system of organising Lok Adalats. It is submitted that populism will have to be eschewed if this newly devised alternative Forum for delivering speedy justice is to be made an effective instrument of social justice. One good way, in this regard would be to bring the Legal Services Authorities Act, 1987 into force without any further delay.

To bring further improvements, it is equally desirable that the entire administrative set up which is basically bureaucratic in nature needs restructuring on more democratic lines. The difficulties faced by the present researcher during the course of his visit to the office of the Legal Aid Authorities show that it is almost impossible to obtain the desired information for research purposes and making suggestions to improve the existing set-up for administering legal aid in the State. The researcher felt that the
missionary zeal which is required for the purpose has been found lacking in the discharge of this solemn constitutional responsibility. The most surprising feature has been the ignorance shown by some of the officers entrusted with the administration of legal aid regarding its performance in their respective jurisdictions. Therefore, the overall picture is not very encouraging and calls for more radical reforms.

B. SUGGESTIONS

It is an accepted fact that our Constitution promises equal justice to all citizens. It is also a fact that almost 40 per cent of our population lives below the poverty line for whom the life is a day today struggle. It is also one of the fundamentals of a representative democracy that its citizens should be educated in their legal rights and should be entitled to legal assistance so as to assert or defend their rights. The enactment of Article 39-A has given express recognition to the fact that legal aid is a constitutional objective which requires that opportunities for securing justice are not defined to a citizen either because of economic or other disabilities. The judiciary has even gone a step further and raised this constitutional objective to the status of a distinct fundamental right. Thus, legal aid has been recognised one of the fundamental guarantee of equal justice. The experience of four decades of
the working of our constitution shows that it was only during the eighties that the system of providing legal aid to the poor and the handicapped sections of the community received attention of Government as well as the other State governments in the country. The conclusions drawn in the foregoing discussion shows that the overall picture concerning implementation of legal aid in the country is not very encouraging. Very little appears to have been done and very vast remains undone. This has been due to various shortcomings in the existing set up of providing legal aid. The same picture is true in respect of the State of Himachal Pradesh also, where the legal aid was started during 1973-74. Therefore, to improve upon the existing system of administration and implementation of legal aid in the state of Himachal Pradesh which is principally the main area of the present study, the following suggestions deserve immediate considerations:

1. **ENACTMENT OF A LAW**

In Himachal Pradesh, the experience of past 19 years, when the legal aid was first introduced by framing necessary rules in this regard shows that legal aid has been basically understood as a charity both by the government as well as the needy. This experience has proved true till this date when the latest Rules of 1984 have brought into force but never implemented in letter and spirit. For example,
Rule 2 provides for 17 functionaries of the State Legal Aid Board. The actual experience gained by the present research presents just a reverse picture. Presently, there is only one Member Secretary who is a serving judiciary officer belonging to the cadre of higher judicial service for manning the entire set up of the Board. Besides, one more functionary, i.e. Deputy District Attorney, also sits in the same office, though, he finds no mentions in the latest Rules of 1984. Therefore, there is an immediate need to restructure the composition of the State Legal Aid Board by enacting a suitable legislation in this regard. The new legislation should be titled as, Himachal Pradesh Legal Aid Act, 1992. The suggested composition of the Board under the proposed statute should be as follows:

(a) A retired judge of the High Court to be nominated by the Government in consultation with Chief Justice of the State High Court should act as the Chairman of the Board.

(b) The District Attorney or a retired District Judge should be appointed as Member Secretary of the Board by the State Government in consultation with the Chairman. The tenure of office of the persons mentioned in (a) and (b) should be for a period of five years. Thereafter, the Government should be competent to make new appointments.
This will also include the right to fill up casual vacancy in the intervening period which may arise during this course. The salaries of these persons should be the same as their counterparts in the respective cadre in State Services.

The other members of the Board should include, (1) the Secretary (Finance) to the government of Himachal Pradesh (ex-officio) and one representative of women to be nominated by the State Government and one representing the Schedule Castes/tribes/other backward classes-- to be nominated by the State Government for the purpose.

Thus, the State Board should consists of the five aforesaid persons inclusive of the Chairman. The basic objective behind this is to improve the present system of working of the Board. The members of the Board other than the salaried one shall be entitled to travelling and daily allowances for attending meetings or other functions of the Board according to the rates admissible to grade I officers in the service of the State. Further, the Board should be competent to appoint of minimum number of officers and servants which may be deemed necessary for carrying out its functions under the newly enacted legislation.

The powers and functions of the Board should remain the same as are enumerated in section 10 of the Rules of 1984 except that the Government shall be bound to make a
financial provision in annual budget for carrying out the purpose of the statute. The Board shall also have an Executive Committee for implementation of legal aid schemes. The Member Secretary shall be the Chairman of the Executive Committee. The other members of the Committee should be, the teacher incharge of the Legal Aid Clinic of the Faculty of Law, Himachal Pradesh University or any other teacher having experience in the area, and two social workers who may have acquired a sufficient experience in the field. The members shall be appointed by the State Government in consultation with the Chairman of the Board for a period of five years. The nominated members shall be entitled to the same TA/DA for attending the meetings of the Committee or for its functions. The Executive Committee shall function under the overall supervision of the Board and shall be competent to exercise all the powers and functions of Board which may be assigned to it by the Board from time to time in that behalf.

The Board shall, for carrying out the purpose of the legislation constitute Legal Aid Committees including the High Court, District and sub-divisional legal aid committees, in accordance with the guidelines which may be framed by the Board in this regard. However, the Board while constituting these committees should keep in mind the fact that the persons associated with these committees are those who can spare their valuable time and have a special bent towards the plight of the poor. Further, no bureaucrat should be
associated with these committees at the lower level because these persons, due to their over busy schedule cannot spare time for carrying out the purpose of legal aid. This suggestion is the result of the personal experience of the present researcher vis-a-vis the non-availability of a majority of these officers even for a five minute interview despite the fact they were present in their offices on the respective dates of researcher's visit to them.

The eligibility conditions for obtaining legal assistance should be relaxed further. The new law should provide a minimum income limit of Rs. 12000 per annum from all sources for obtaining free legal services. The income limit so fixed should be reviewed after every three years in view of the current inflationary trends.

The annual reports relating to the performance/expenditure of the Board should be laid before the table of the Legislative Assembly of the State at the end of each financial year.

2. ROLE OF PROFESSIONAL LAWYER IN LEGAL AID

Legal Aid and the legal profession is a key subject for exploration. It is an admitted fact that in the State of Himachal Pradesh, the Bar Associations are spread over in all the districts/ Sub-Divisions of the State. However, they are loosely organised and do not possess the necessary
administrative apparatus for running a legal services programme. Though, there is the State Bar Council, but it also does not have any machinery for administering the legal aid programme so as to enable justice to reach at the doorsteps of the poor. Infact, the image of the legal profession has not yet come upto that level where it can inspire complete confidence in the mind of the poor. In this connection, the experiences of some of the foreign countries like the U.S.A., U.K. and Australia are rewarding. In these countries, the law firms or law societies which are run by the members of the Bar have added new dimensions to the delivery of free legal services to the needy. Can't we do something like that here in India or even in a small state like Himachal Pradesh? It may be submitted that lawyers play a vital role in rendering legal aid in court cases and their contribution for strengthening the programme of legal aid is of immense importance. What is lacking is initiative, which to my mind should come from the Senior Lawyers of the Bar. It is they alone who can take a lead in this regard.
At present more than 350 law colleges/departments are involved in the process of imparting legal education to the students. A majority of these institutions are run by private managements. The basic thrust of these institutions is not on the quality of legal education but the quantity aspect looms large. A review of the present set up of imparting legal education shows that the future generations of our law students have not been able to contribute anything substantial in promoting the philosophy of legal aid to the poor. The class tutorials, moot-courts/ court visits which are the part of the approved syllabi have failed in inculcating in them a true professional zeal. Therefore, there is an urgent need to redesign the law course so that we are able to create a cadre of poverty lawyers who may be competent to promote the cause of the poor. In some of the foreign countries the law students are exposed to the practical problems from lecture hall to the world of lawyers, judges, prisoners, police, court-staff and litigants.
some of the law colleges of the country a programme of clinical education is also run. The Legal Aid Clinics affords them an opportunity to develop professional skills vis-a-vis social responsibilities. It is unfortunate that in the Himachal Pradesh University, the Legal Aid Clinic exists on paper despite the fact that funds were released to it by the H. P. State Legal Aid Board as early as in 1989. No work has been done by the said clinic till this date and there are no future proposals in this regard. Can't some accountability be

10. It was in Delhi that the very idea of a Legal Service Clinic in the Law Faculty was born. For an illuminating discussion on this aspect, see N.R. Madhava Menon, Students Legal Services Clinic - The Delhi Experience in (Ed.) Legal Aid and Legal Education: A Challenge and an Opportunity, (1974), at 108-124.
fixed for squandering the state funds? The Audit Report submitted to the State Government shows that a balance of Rs. 751 stands as unaccounted in the name of the said mock clinic. It is submitted that if this task of establishing a Legal Services Clinic is assigned to some energetic and deserving teacher in the university, this can provide a new impetus as well as new orientation to the students of law relation to the poor. This will help in generating in them a new sense of social commitment to those for whom the constitutional bells toll. This will also be an asset for improving the work of implementation of legal aid in the state which may further be accelerated to a desired level. The students under the proper supervision of the experienced law teacher can provide a new orientation to the programme of legal and the Faculty may also feel proud of creating an army of legal aiders and thereby help in promotion of social justice. It is also essential that subjects like Law and Poverty should be a compulsory part of the legal curriculum so that the problems of the poor vis-a-vis the role of law can be understood in the proper perspective by those who have to give their valuable services to the poor and the oppressed.

11. For the structure and operation of the Legal Services Clinic, See Chapter V, Supra.
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11. For the structure and operation of the Legal Services Clinic, See Chapter V, Supra.
4. **ROLE OF VOLUNTARY AGENCIES**

The functioning of the State Legal Aid Board cannot be strengthened unless it has a sound support system at the grassroots level. In India, a number of voluntary organisations are playing a very useful role in this regard. These associations/groups have been expressly recognised by the CILAS as well as the respective State Legal Aid and Advice Boards. The Role of these agencies in organising legal aid camps, training of para-legals, promoting conciliatory strategies and organising Lok Adalats have received the wide support of the CILAS/State Boards. It is unfortunate that in Himachal Pradesh, we do not have such type of recognised voluntary organisation. The State Legal Aid Board has so far not been able to obtain any kind of assistance from the so-called voluntary agency. The programme of promotion of legal literacy which is stated to have been carried out by the State Board has not been able to reach its logical conclusions. The experience of the researcher as narrated in the earlier part of this discussion, shows that such camps have not been able to achieve the desired objective. Though, 31 Lok Adalats have been held in different parts of the state as on 31.3.1992, but no voluntary Agency has come forward in participating in the said adalats. The experience of the researcher revealed that by and large it is an affair of judicial officers with the help of some administrative/other
officers. One of the drawback of disposal of cases by the Lok Adalats in the state is that nearly 20 per cent of the cases referred to these adalats are police challans meant for summary disposal. Further, the Advocate's fee stand already paid by the concerned clients in such cases. Therefore, it is just a give and take formula where the lawyers are never the losers and the burden of courts is also not lessened in real sense of the term because on the appointed day the concerned judges participating in these adalats do not sit in their courts and so the normal court work suffers for a full day. What is the remedy? It is submitted that Lok Adalats should become a part of the statute and the suggested composition of the Board in the proposed law can act as Lok Adalat. Further, co-operation from administrators /social workers of the area as well as including the Legal Services Clinics established for the purpose can also be sought to achieve the desired objective.

In the proposed law a provision can be made that in cases which are in the initial or middle stage and later transferred to the Lok Adalats, lawyers shall have to refund 50% of the fee already charged by them from their respective clients. This will make justice speedy in real sense of the term and inspire more confidence in the institution of Lok Adalats. Efforts for establishing / creating some voluntary organisations should be made so that they can also contribute for achieving the ultimate goal of justice.
5. **CONCILIATION CELLS:**

Chief Justice P.D. Desai of Himachal Pradesh High Court gave the idea of conciliation court, as early as, in 1984. Infact, conciliation is a Forum of Justice not based merely on the evidence and legal knowhow, but an approach to the problem from human perspective in the legal sense of the term. Rule 5-B of Order XXVII and Rule 3 of Order XXXII-A of the Code of Civil Procedure, 1908, as amended in 1976 contains special provisions calling upon the Government to render its assistance to the parties before it in arriving at a settlement in certain categories of suits/proceedings such as litigation by or against the Government and litigation relating to matrimonial matters including guardianship, etc. This statutory mandate for conciliation imposes a duty on the courts to take a positive initiative in the cases of these categories posted for trial before them, at an appropriate stage, so as to bring about final settlement of the case by all possible efforts. This is the conciliatory strategy. Conciliatory strategy provided under this statute caught sight of Chief Justice Desai and it was this scholar judge having a pro-active approach who used it as an instrument of Social Justice by issuing necessary guidelines to all the courts of the State functioning under his jurisdiction. According to a published information, the conciliation courts at Shimla during the period from 1.9.1984
to 30.6.1985, i.e., in nine months finally disposed off 468 pending cases. It is submitted that after the transfer of Chief Justice Desai about four years back, the

12. The instructions issued by the learned Chief Justice provided that the concerned court shall work for six hours a day for conciliation purposes. For details, see Legal Literacy Project, (A Report of the three day regional workshop on Legal Literacy through universities, Colleges held at H.P.U. Shimla on September 19-21, 1986, published by I.U.A.C.E., 17-B, New Delhi), at 18.

13. At present Justice P.D. Desai, is the chief Justice of Bombay High Court.
conciliation strategy seems to have died down. On the other hand, the strategy has shifted to the Lok Adalats. It is further submitted that both the strategies are good but, can't we devise a system under the law where judges are to do justice in the Court for which conciliatory strategy has a statutory sanction? On the other hand, the work of Lok Adalat with the reconstitution of State Legal Aid Board can be assigned to the retired judges who may be serving in the State Legal Aid Board or otherwise, because the basic idea is to give justice which may be both cheap and speedy. It is, therefore, suggested that special conciliation-cells should be created in every court including the High Court and some para-legals or social workers should be associated for the purpose of mobilisation of the two opposing parties so as to bring them on a common platform, for effectuating the true purpose of cheap and speedy justice.

G. FUTURE OF LEGAL AID

It is an accepted principal in all the democracies of the world that the State must as guarantor of freedom, justice and rule of law, provide free legal aid to those who by reason of economic or other disabilities are not able to protect and assert their rights. In a country like India, the duty of the State to provide free legal services is not only social, economic or political but it is also a
constitutional imperative as enshrined in Articles 14, 21, 22(1) and 39-A of the Constitution. Thus, the emerging constitutional jurisprudence has recognised the urgent necessity of providing legal assistance to the socially and economically handicapped sections of the community. Raising the status of legal aid to the level of a distinct fundamental right in criminal cases by the apex Court through its numerous decisions has further added new dimensions to the constitutional philosophy of legal aid in India. Though, this constitutional mission is still incomplete but the organised system of providing legal aid started by the CILAS which is a decade old in the country has, to some extent succeeded in finding solutions to the problems of the poor in matters relating to matrimonial disputes as well as the resolution of problems relating to the implementation of land laws, abolition of bonded labour, eradication of rural indebtedness and enforcement of laws relating to minimum wages vis-a-vis the laws relating to prisons/protected homes etc. Therefore, the question that may be asked today is: what is the future of legal aid in India vis-a-vis the State of Himachal Pradesh? To this, it may be submitted that the future of legal aid cannot be studied in isolation and has therefore to be interlinked with other socio-economic developments that are taking place in the country. Some of
such developments, as pointed out by Mr. B. P. Pande, are "egalitarian politics, emergence of social legislations, touching the weaker sections, reforms in the legal system and creation of adequate structure for the delivery of legal services." Mr. Pande feels that these developments will have an impact on the future of legal aid movement and would also thereby help in the development of the system of legal aid as a whole.

It is submitted that whatever has been stated by Mr. Pande is true as all these developments are crucial in nature and are affecting the present socio-economic structure of our democratic system of government. Similarly, the ameliorating legislations enacted by the Union and State Governments for improving the lot of the poor and deprived have certainly helped in accelerating the cause of socio-economic justice to the people. It is further submitted that though the legislation is there on the statute book but its beneficial aspects vis-a-vis the low level success rate achieved in this behalf necessitates an enquiry into the socio-legal problems of the legally incompetent and deprived


15. Ibid.
sections of the community. To make justice a realism, it is essential that we must devise a mechanism and encourage socio-legal research so as to identity the legal aid needs of the poor. This is a tremendous responsibility which the State must discharge at its own expense. It is only then that the programme of legal aid can be taken to the doors of the poor. Though, the journey may seem to be difficult because of various constraints but it is by no means impossible. The immediate need is the enactment of a suitable legislation which makes legal aid as an instrument of social justice and provides the poor free access to law and make them feel that law is not a dead letter but live letter for them. The Legal Services Authorities Act, 1987 is one such legislation which envisages a comprehensive scheme to provide legal aid on a uniform basis throughout the country. The legislation has not been brought into force till this date. Though, there are many shortcomings in the legislation but the same can be rectified by making suitable amendments in the law. In our submission, it is highly desirable that the legal aid should be given statutory base failing which half-hearted attempts to accelerate the process may not be able to give the desired results and the State funds may be wasted for a purpose which may never be achieved in real sense of the term. Therefore, the future of legal aid
depends to a great extent in providing this programme a statutory base. The earlier we do it, the better it would be in the interest of justice which is the message enshrined in the Preamble to the Constitution of India.