CHAPTER - I

INTRODUCTION

A. MEANING OF LEGAL AID

The term 'Legal Aid' is a modern phenomenon which commits Legal Community to the welfare of the poor in the society. In fact, it is a voluntary resource mobilisation of law men of their legal talent, efforts and time in the service of the poor which affords them an opportunity to seek justice from the court with or without little costs. In the traditional sense of the term, legal aid is an assistance rendered by professional lawyers to those who need it and who are unable to exercise and enforce their human and other legal rights for want of money and social backwardness. In the words of Professor Menon, "Legal Aid has been taken to mean the organised effort of the Bar, the Community and the Government to provide the services of lawyer free, or for a

token charge, to persons who cannot afford to pay lawyer's fee." The learned Professor does not stop here and goes a step further when he says, "the concept means not only a representation through lawyer at state expense in court proceedings but will include legal advice, legal awareness, legal mobilisation, public interest litigation, law reform and a variety of strategic and preventive services which

instead of assisting such individuals on a case-by-case basis, will help them as a class to avoid helplessness arising from poverty and promote equal access to justice.  

By giving this broad connotation to the term 'Legal Aid' as covering both conventional and strategic perspectives, the learned Professor has very rightly called 'Legal Aid' as a dynamic instrument of the war against poverty. Though, it may not be possible to attempt a universally acceptable definition of legal aid, but it can certainly be termed as an attempt to give justice to poor who because of his economic or other disabilities is not in a position to obtain the same.

The International Commission of Jurists has also expressed the theme of legal aid in the following words, "Equal access to the law for the rich and poor alike is essential to the maintenance of rule of law. It is, therefore, essential to provide adequate legal advice and representation to all those threatened to their life, liberty, property or reputation, who are not able to pay for it.

3. Menon, Ibid.
4. Ibid.
Thus, the system of Legal Aid is principally designed to help the poor, socially deprived and backward classes of our population, who because of their poverty or illiteracy suffer from legal incompetence, i.e., an inability to further and protect their interests through active assertion of legal rights. Therefore, the idea of legal aid, comprehends within its ambit all those measures which are adopted to reduce the legal incompetence of this handicapped section of our population. In this context, the above observation of Prof. Menon merits attention and necessitates the study of legal aid as a dynamic concept which relates law to 'Social Justice.' Taking Legal Aid as an aspect of social justice would mean that it is not only an integral part of administration of justice through courts but is also related to other aspects dealing with promotion of legal literacy which would help in removing legal incompetence and making the people aware of their legal rights and entitlements.

6. The Expert Committee on Legal Aid (1973) has also attempted to give the widest possible meaning to the expression Legal Aid. See the Report, (1973), at 15-16. For a critique of the Report, See Upendra Baxi, legal Assistance to the Poor. A Critique of the Expert Committee Report, Economic and Political Weekly, (July 5, 1975), at 1007.
B. PHILOSOPHY OF LEGAL AID

According to Aristotle, "Justice is to give everyman what is due to him." Today, unfortunately, the traditional legal system has virtually closed its doors of justice for the poor and thereby resulted in denial of justice to millions of people. A large segment of our population is living in subhuman existence and in abject conditions of poverty. These people have lost their will to resist, to struggle and to fight. Though, the Government has initiated various welfare measures through legislation for their benefit but because of lack of resources to assert their rights, these measures have not produced desired results. The poor has been traditionally oppressed and exploited. For him justice has no meaning because he has become insensitive to wrong and injustice. It is to such millions of people, poor and downtrodden, ignorant and illiterate, destitute and needy, that our legal system denies justice. The situation is very serious and if not controlled timely, the very community may resort to extra-legal methods, which may prove destructive to our democracy envisioned under the Constitution of India.

The preambulary message of justice given in our Constitution carries little significance for the poor and the deprived because they have no access to justice. The philosophy of Legal Aid to the poor primarily underlines the need for equal access to justice for the rich and the poor alike. This equal access to justice, can only be achieved if the weaker sections of the society are provided free legal assistance. It is only then that the constitutional principle of equality before law and equal protection of the Laws can be given a real and purposeful meaning.

However, it was not until 1976 that in India, this philosophy of Free legal Service was embodied and given a shape of constitutional obligation in Art. 39-A of the Constitution of India. Article 39-A reads: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular provide, for Legal Aid, by suitable legislations 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." In other words, the Directive Principles make it obligatory for the State to provide Free Legal Aid to needy and indigent people so that justice is not denied to them merely because of poverty. So, by virtue of the provision, Free Legal Aid is to be provided by suitable legislation or schemes or in any other way to the needy citizen. This philosophy of Legal Aid has also been
propounded by our Supreme Court in a number of its pronouncement wherein the State has been mandated to provide Free Legal Assistance to an indigent and the poor. The philosophy of Free Legal Service has been accepted as an essential component of 'reasonable, fair and just' procedure. Free Legal Service is thus, a state's responsibility and not a matter of charity. It may be pointed out that this responsibility has received recognition of the state and it was in the year 1981 that the Government of India established the Committee for implementation of Legal Aid Schemes and appointed justice P.N. Bhagwati, the then Chief Justice of India, as its Chairman. One of the principal objective of the establishment of this committee is to create an awareness amongst the poor as to their rights and also to provide a mechanism for the implementation of these rights.

In other words, both the preventive and traditional perspectives of legal aid have received full attention of the CILAS. In pursuance of this objective, the various states in India have devised their own mechanism for implementation of Legal Aid programmes. Thus, the Constitutional philosophy of legal aid movement is gaining momentum in the country and its impact is being felt. On the basis of the information supplied by the CILAS, as on 31.12.1990, 12,63,151 people have been benefited by the Legal Aid Schemes throughout the country. Out of these persons 5,25,046 were scheduled Castes, Scheduled Tribes, women, children and persons belonging to backward classes. Similarly, the institution of Lok Adalat is emerging as an effective alternative Forum for settlement of disputes in a speedy manner. As on 31.12.1990, 4168 Lok Adalats have been held throughout the country where 24,38,632 cases have been settled. Out of these, 81,759 were MACT cases, where compensation amounting to Rs. 196,94, 99, 709 were awarded.

This way, we find that the provision of legal aid has been identified as a constitutional objective, an objective which requires that opportunities for securing justice should not be denied to a citizen merely by reason of his economic or other disability. The weaker sections of our society are also beginning to assert themselves and are demanding justice. To translate this constitutional vision into reality, it is essential that public spirited
organisations, wherever they have been organised will have to play a vital role in making the Legal Aid Movement a success. It is submitted that the entire philosophy of legal aid centres around the concept of social justice and anti-poverty programme. The State will have to create conditions and improve the socio-economic conditions of the handicapped sections of our society so as to eradicate poverty, ignorance and inequality of every type. It is only then that the real task of legal aid, i.e. to make the rule of law and social justice a dependable alley of the weak, shall be accomplished.

C. OBJECTIVES OF THE STUDY

The present study which is basically empirical in nature has the following objectives:

a) to find the level of legal awareness of the people about their rights and remedies vis à vis their knowledge about the legal aid schemes for the poorer sections of the society,

b) to find out the problems of difficulties facing the weaker sections of the community by visiting different parts of the State,

c) to watch experiments with legal aid at municipal and village levels and to find out the actual involvement of the legal aid authorities in the
implementation of legal aid schemes within their respective jurisdictions,

d) to make an appraisal of the value and effectiveness of legal aid schemes and to carry out performance audit of the functioning of these schemes in the State,

e) to make qualitative and quantitative assessment of the extent of the benefits derived from legal aid schemes by the deprived and handicapped sections of our society,

f) to suggest means for further involvement of lawyers, academic and other non-professional groups in the legal service programme; and

g) to find ways and means of making this programme a successful venture and to further make proposals for strengthening the existing infrastructural facilities so that free legal services and social justice reach at the doorsteps of the poor.

The study also aims at bringing on record all those factors which are resulting in denial of justice to the disadvantaged sections of our society because of social, economic and other disabilities.
D. HYPOTHESES

The hypotheses framed and proposed to be tested in the study are as under:

a) whether the administration and implementation of legal aid schemes is uniform and well organised,

b) whether the eligible beneficiaries of legal aid schemes in the State have assertiveness and knowledge or awareness about the existence of this programme in the state,

c) whether the criteria adopted by the State for identifying beneficiaries of legal aid schemes is logical and progressive,

d) whether the professional lawyers who have been associated with the court oriented legal aid programme have shown a keen interest in the operational aspect of the legal aid schemes.

e) whether preventive or strategic legal aid which includes promotion of legal literacy, involvement of legal aid clinics in the programme, training of para-legals, organising Lok Adalats, Co-ordination of the activities of the non-professional organisations and bringing problems of the poor to the court by way of social action
litigation have received priority in the Agenda of the State Legal Aid Board,
f) whether the State Legal Aid Board has adequate, and satisfactory administrative apparatus for monitoring the impact assessment of the legal aid schemes at various levels, and
g) whether there is any nexus between the budgetary allocation/utilization for the implementation of the legal aid schemes and the actual number of persons who have been benefited by this scheme.

E. LIMITATIONS OF THE STUDY

The present study is proposed to be confined to 4 districts of Himachal Pradesh viz. Kangra, Solan, Shimla and the tribal district of Kinner which are situated in the low, middle and high hill zones of the State. The State has its own peculiar geographical, social and economic problems and income of the people also varies according to altitudes. The State comprises of both the tribal and non-tribal areas. The legal aid services have been in operation in the State since 1973-74 when the first legal aid rules were framed. In 1980, the old rules were repealed and new rules were framed so as to make the legal services more comprehensive in nature and content. Again, the Government reviewed the whole organisational setup of legal aid and framed new rules in
1984 and thereby repealed the old rules. The new rules are titled as Himachal Pradesh Legal Aid Rules, 1984 and involve the judicial branch of the State in the administration and implementation of legal aid schemes. Under these rules the State Legal Aid Board is headed by the Chief Minister of the State who is the Chairman of the Board and the Chief Justice of the High Court who is the Co-Chairman. The Board has also a permanent Member-Secretary who is drawn from the cadre of higher judicial services and is of the rank of a District Judge. For effective implementation of the legal aid schemes, the Board has constituted legal aid committees at the High Court level as well as at the District and Block/Tehsil levels. From 1981 onwards till July 31, 1992, 1609 persons are stated to have received the benefit of this programme.

F. METHODOLOGY

The methodology of the present study has been designed in such a way so that the administrative as well as the socio-legal aspects of the administration and implementation of legal aid schemes in the state can be investigated. In order to examine critically the provisions of the constitution, laws and rules pertaining to the above scheme, secondary information has been used. But the major portion of this research work concentrates on field investigations. The first hand information regarding the
implementation of the legal aid scheme has been collected from three stratas, viz., the beneficiaries, legal aid authorities involved at different levels and the professional lawyers who are usually associated in providing legal aid to the poor in court cases.

In the first strata, the selection of beneficiaries has been made through sampling procedure. In the state of Himachal Pradesh, the infra-structural facilities, educational and employment opportunities as well as the agricultural income of the people varies according to altitudes. On the basis of altitudes, the State can be divided in three zones, viz low, middle and high hill zones. Further, in Himachal Pradesh the total population consist of both the tribals and non-tribals. Therefore, in order to select a representative sample from the geographical, economic and social point of view, a list of select number of districts falling in each zone has been prepared randomly. The tribal population lives in the whole of Kinnaur, Lahaul and Spiti district and in the Pangi and Bharmour tehsils of Chamba district. Out of these three areas of tribal population one district, i.e., Kinnaur has been selected randomly. Thus, a total sample of 4 districts of the State has been selected which constitute 33 per cent sample.

At the second stage two sub-divisional blocks from each selected districts have been selected randomly keeping
in view the population of the respective sub-divisions. Thus, a total number of 8 sub-divisions have been selected randomly which constitute 12 per cent sample in the state.

At the third stage 2 to 3 Gram Panchayats from each sub-divisions have been selected randomly which raises the number of Panchayats to 18.

At the fourth stage, 3 to 4 villages (except Kinnaur) have been selected randomly, thus, raising the total number of villages to 64 covering a sample of about 500 house-holds for carrying out the field investigations.

In the second strata, Professional lawyers who are usually associated with the implementation of free legal aid have been selected from the High Court Bar Association, District Bar Associations and the Bar Associations at the Sub-divisional level. A ten percent sample of the professional lawyers who are actually practising in the courts at various levels have been selected randomly.

In the third strata, the legal aid authorities which include the Member-Secretary and the Deputy District Attorney of the State Legal Aid Board, Advocate General of the State, who acts as a Convenor of High Court Legal Aid Committee and some of the Sub-Divisional Magistrate who act as Chairmen of respective Sub-Divisional Legal Aid Committees

9. In District Shimla 11 villages have been covered for the purpose of present survey.
have been interviewed for the purpose.

G. COLLECTION OF DATA

According to the procedure indicated in the methodology adopted for the purpose of the present study, first hand information has been collected at the three levels, viz., from the beneficiaries, professional lawyers and the legal aid authorities about the administration and implementation of legal aid programme/scheme with the help of a questionnaire in the selected areas. In addition to this, some information has also been collected from the official record which has been made available to the present researcher by the Committee for Implementation of Legal Aid Schemes, New Delhi, Himachal Pradesh State Legal Aid Board, High Court legal Aid Committee and Bar Council of the State of Himachal Pradesh.

However, none of the four Deputy Commissioners who act as Chairman of respective D.L.A. Committee of the areas covered under this study could be interviewed because due to pressure of administrative work, they could not make themselves available for the purpose.
H. INTERPRETATION OF DATA

The Data collected from the various sources, i.e., original as well as secondary sources has been analysed so as to make a performance audit of the legal aid scheme in the State. The analysis reveal that a total number of 1609 persons have been provided legal aid in the state. The number was as low as 33 in 1981 and as high as 484 in 1991. The overall picture that has been presented in Table A shows that during the years 1990, 1991 and upto July 31, 1992 a considerable progress has been made regarding the number of persons who have been shown to have received legal aid.

Similarly, the information regarding holding of Lok Adalats for speedy disposal of disputes pending adjudication in courts, which is presented in Tables C & D show that upto March 31, 1992, 5776 cases have been disposed off by the Lok Adalats held at 31 different places in the State. The disposal frequency has been assessed at 53.64 per cent. Though, out of these about 2000 cases have been police-

11. See, Infra at 266
12. See Infra at 270, 271
challans which if, calculated properly brings down the disposal rate to 34 percent. Regarding allocation of funds the official data presented in Tables E, F and G show that the various Legal Aid Committees operating at different levels have not been able to spend the money allocated for the purpose of providing legal aid. This is a very unfortunate situation. The responses which have been recorded by the present researcher by interviewing the relevant persons in selected sub-divisions, Panchayats and villages in four district of the State, viz., Shimla, Solan, Kinnaur and Kangra indicate a very dismal picture. Out of the 500 beneficiaries interviewed in this context, 8 per cent have been found as having some awareness about this state sponsored scheme of legal aid. The awareness level is so low that it is almost impossible to put it on record.

See Infrat 273, 276, 280, 282.
Those persons who have been found as having some idea about this scheme had practically no knowledge about the details of the scheme vis-a-vis the procedure for obtaining legal aid. Out of the 75 lawyers interviewed for the purpose of their role in the legal aid scheme, only 30 per cent were able to give a specific answer to the questionnaire while others remained non committal in expressing their views openly. It appeared that a majority of the lawyers seemed to be more suggestive and less involved in the implementative aspect of the scheme. The lawyers in fact, expressed divergent views about the implementation of the scheme and were critical of the existing administrative set-up for running the Legal Aid Scheme in the State. They admitted that the general masses lacked awareness about their rights and entitlements. Hence some more concrete efforts were needed at the grassroot level for which the existing set up needed restructuring on more democratic lines. 95 per cent of the interviewed lawyers were of the view that full time advocates should be appointed for providing legal aid to the poor at various levels so that they can devote full time and energy for conducting such cases. It was also suggested that the remuneration of the lawyers should be made attractive so as to encourage good lawyers to come forward for taking up the job. In one way the suggestion merits attention because the ignorant illiterate client will face no access problem for obtaining justice. The official version stated in the
questionnaire appeared just contrary to what the researcher experienced during his field investigations. For example, the Member-Secretary/Deputy District Attorney stated that more than 200 Legal Literacy Camps have been organised in various parts of the State. When confronted with the question regarding the exact location of the place and the actual public participation in the said camps, they were not able to give a satisfying answer. During the field investigations at one or two places where the camps were stated to have been organised, the researcher experienced that the places chosen for the same were not proper and the public participation was negligible. Similarly, it was asserted that a lot of literature has been published and distributed for public consumption. It was quite astonishing that the experience of the researcher was just the reverse. Publications of some pamphlets is confirmed as a few copies of the same were made available to the researcher but its distribution remained unconfirmed from any source whatsoever. The field investigations revealed that no such literature has reached at the grassroot level. Therefore, very little has been done and the vast remains undone. The funds utilization remains a questionable point. It appears that populism is gaining momentum and the Common man's voice remains unheard. The overall picture as presented in chapter VI of the present study is gloomy and calls for a more purposeful and remedial action.