



Free Legal Aid is a Human Right

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Abstract

Free and competent legal aid to the needy is very important for the effective survival for social system and its denial will entail a failure of the rule of law. Equal access to law for the rich and the poor alike is essential to the maintenance of rule of law. The Preamble of the Indian Constitution provides that the India to become a Sovereign, Socialist, Secular, Democratic and Republic, that the State provides to secure to all citizens - Justice, Liberty, Equality and Fraternity. Legal service means help or assistance or free service in the field of law. Apex Court of India from time to time asserted that legal aid is not a charity but a paramount duty of a welfare state. Legal aid is a human right because of free and competent legal aid to the needy is very important for the effective survival for social system and its denial will entail a failure of the rule of law. Equal access to law for the rich and the poor alike is essential to the maintenance of rule of law. It is, rightly, said by Francis Beckon that "laws were like cobwebs; where the small flies were caught and the great break through."

Key Words: Free Legal Aid, Human Right, Rule of Law, Basic feature of the Constitution

Introduction:

Law is a means to an end, the being justice. Access to justice and free Legal services are necessary in any civilized society. It is still more important in a democratic setup based on rule of law for safeguarding human rights and assuring dignity of the individuals which is the responsibility of the state. Hence, providing legal aid to the needy persons cannot be vitiated whether it is a professional liability or social liability.

Legal Service

Legal service means help or assistance or free service in the field

of law. Apex Court of India from time to time asserted that legal aid is not a charity but a paramount duty of a welfare state. Now legal assistance from state can be claimed as matter of right, therefore, the legal service is being used in place of legal aid.¹

The term "Legal Service" includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of advice on any legal matter". Now the scope of legal services is increasing day by day. Broadly, legal services include-

- a) Legal Aid or Assistance



- b) Lok Adalat, and
- c) Public Interest Litigation.

Legal Aid – A basic Human Right

Legal aid as human right is implicit in Article 7,8, and 10 of the Universal Declaration of Human Rights. It is also clearly provided in clause 3 of Article 14 of the International Covenant on Civil and Political Rights. Even in article 6(3) (6) of the American Convention of Human Rights, Legal aid is prescribed as a fundamental right. It is rightly said by learned hand that the important commandant for the human right is "Thou shall not ration justice". Right to counsel is also provided by 6th Amendment of the Constitution of US².

Lord Denning has rightly observed that "since the Second World War, the greatest revolution in the law has been the system of legal aid. It means that in many cases, the Lawyer's fees and expenses are paid for by the State and not by the party concerned". The innocent and unassisted persons, obviously, would be at a great disadvantage to fight a legal battle than a legally aided person. The Legal aid system, as such, is a legal technology of peaceful transformation of society so as to ensure equal justice-cum-social justice.

The concept of legal aid is rightly stated to be the spirit of equality and its movement is dedicated and devoted to the philosophy of equal justice to the

indigent. Equal justice is a fair treatment within the purview of judicial process. Equal justice is, therefore, corrective of inequalities which cause social imbalance, without which justice in society cannot be propounded in reality. Equality of law and equality before law is an imperative provided in the fundamental right in the Indian Constitution. With a view to make downtrodden and destitute, dejected and rejected, forlorn and forgotten, lowly and lost, legal service has been a remedy, which is provided in Indian Constitution.

The Protection of Human Rights Act, 1993:

This Act provides for the constitution of National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better protection of Human Rights. Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants³ and enforceable by Courts in India.⁴

Committee for Implementing Legal Aid Schemes (CILAS):

The State Government and Government of India have constituted Committees⁵ from time to time consisting of eminent jurists for submitting reports recommending schemes for rendering legal aid services to the poor, needy and weaker sections of the society in India. On the basis of the above



reports the Committee known as the "Committee for Implementing Legal Aid Schemes (CILAS) was formed by Government of India in 1981.

In 1980 the Government of India appointed the CILAS by resolution to implement legal aid programmes. It evolved a model scheme for legal aid programme and legal aid and advice boards have been set-up in the states and union territories. The Committee is funded by grants from Central Government. As there are difficulties, the Government decided to constitute Statutory Legal Service Authority.⁶ To provide legal aid for this purpose the Legal Services Authorities Act 1987⁷ was enacted. In addition, the National Services Authorities Rules, 1985 and Supreme Court Legal Services Committee Regulations 1996 were made.

Legal Aid

The preamble of the Indian Constitution highlights, Justice – "Social, Economic and political" as a core Constitutional value. It serves to remind that the mere possession of rights, as expressed in the Constitution, without effective means for their enforcement and enjoyment, would mean nothing to the teeming million of our country. In the matter of priority, the right of access to justice ought to be viewed as one among the highest.

Conceptually, justice is a virtue which transcends all barriers.

The legal aid movement as statutorily envisioned and associated with Lok Adalats, legal literacy and legal awareness movements – all owe their origin to Articles 14⁸, 21⁹ and 39 A¹⁰ of the constitution of India. The goal of the administration of justice cannot be achieved but for these being there. Justice is threatened by the vice of inequality and unequal justice becomes injustice if a person does not have the means of detaining access to justice. In spite of ours being a welfare state, this inequality has increased. It is a tremendous task, in a vast and thickly populated country like ours, to provide a well-structured and comprehensive legal aid programme within the reach of everyone who is needy. For a large section of society, Courts and justice are meaningless. There are women and children, mentally retarded and disabled, industrial workers, people in remote villages, victims of trafficking in human beings, suffers of man-made calamities like caste atrocities and ethnic violence or victims of natural calamities such as earthquake, drought, flood and to add-the latest in the list – "Tsunami"

It is a constant reminder to the judge and the legal fraternity that legal aid is an essential part of justice dispensation. At the same time, it is an entrustment of the faith of the people of India, as expressed through parliament in the judiciary, that but for legal aid to the needy, justice is not done. It is a mistake to assume that providing legal aid is an outcome of our charitable impulses, but the



realistic view is that it is our sheer obligation to our fellow human beings.

Modes of Legal Services¹¹:

Legal services may be provided in all or any one or more than one of following modes, namely:

- (a) Process fees and all other charges payable or incurred in connection with any legal proceedings except Court fees;
- (b) Representation by a legal practitioner in a legal proceeding.
- (c) Obtaining of certified copied of orders and other documents in the legal proceedings.
- (d) Preparation of a paper book including printing and translation of documents, in the legal proceedings;
- (e) Any other expenses which chairman of Legal Services Committee or District Authority deem fit to grant in special circumstances of a given case.

Legal Services not to be provided in certain cases¹²:

1. Proceedings wholly or partly in respect of ;
 - a. Defamation or
 - b. Malicious prosecution or
 - c. A person charges with contempt of Court proceedings and
 - d. Perjury
2. Proceedings relating to any election

3. Proceedings incidental to any proceedings referred to in sub sections (1&2)
4. Proceedings in respect of offences where the fine imposed is not more than Rs.50/-
5. Proceedings in respect of economic offences and offences against social laws, such as, the Protection of Civil Rights Act 1955, and the Immoral Traffic (Prevention Act) 1956 unless in such cases the aid is sought by the victim. The Chairman may in any appropriate case grant legal services even in such proceedings
6. where a person seeking legal services;
 - a. is concerned with the proceedings only in representative or official capacity; or
 - b. if a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his interest or not likely to be prejudiced on account of the absence of proper representation

Honorarium Payable to Legal Service Advocates¹³

1. The Legal Service Advocate shall be paid such honorarium as may be fixed by the Committee.
2. No legal service Advocate to whom any case is assigned either for legal advice or for legal services shall receipt any fee or remuneration whether in case or in kind or any other advantage, monitory or otherwise, from the



- aided person or from any other person on his behalf.
3. The legal service Advocate who has completed his assignment shall submit a statement showing the honorarium due to him together with the report of the work done to secretary of the Committee, who shall after due scrutiny sanction of the fee and expense payable to him. In case of any dispute on the quantum payable to the Legal Service Advocate, the matter shall be placed before the Chairman for decision.

Withdrawal of Legal Service¹⁴ :

The Committee may either on its own motion or otherwise withdraw legal services granted to any aided person in the following circumstances viz. –

- a. in the event of it being found that the aided person was possessed of sufficient means or that he obtained legal service by misrepresentation or fraud;
- b. in the event of any material change in the circumstances of the aided person;
- c. in the event of any misconduct, misdemeanour or negligence on the part of the aided person in the course of receiving legal services;
- d. in the event of the aided person not cooperating with the Committee or with the legal service Advocates assigned by the Committees;

- e. in the event of the aided person engaging a legal practitioner other than the one assigned by the Committee;
- f. in the event of death of the aided person; except in the case of civil proceedings where the right or liability services
- g. in the event of application for legal service or the matter in question is found to be an abuse of the process of or of legal services.

Legal service shall not be withdrawn without giving due notice thereto the aided person to showcase as to why the legal service should not be withdrawn.

Every Advocate shall in the practice of profession of law bear in mind that any one genuinely in need of a Lawyer is entitled to legal assistance even though he cannot pay for its fully and adequately and that within the limits of an Advocates Economic Condition, Free Legal Assistance to the indigent and oppressed is one of the highest obligation an Advocate goes to society". Therefore, Bar Councils also play a vital role in the matter of providing free legal aid. Since a more comprehensive Act, titled as "Legal Services Authorities Act 1987"¹⁵, to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.



Courts and Legal Aid

Access to justice and free legal services are essential in any civilized society. It is still more important in a democratic setup based on rule of the individuals as the responsibility of the state. Our constitution has considered the individual as the local point, of all development which is reflected in various provisions of the constitution and more particularly in fundamental rights of citizens. Since rights and duties run parallel to each other, the fundamental duties of the citizens have also been added to the pages of the constitution, making citizens conscious of their legal rights and corresponding obligation for a dignified existence.

For the preservation of Rule of Law and democracy and for making the fundamental rights more effective, the legal aid to the poor and weak persons is necessary. This fact has been considered by the Courts and it has been made clear that the right to free legal aid i.e. Article 39-A¹⁶ is included with in the meaning of right to life and personal liberty under Article 21 of the constitution of India. Thus free legal aid and Lok Adalat are the instruments of speedy justice for the poor and needy. The constitutional obligation of access to justice can be achieved only through these mechanisms which deliver the justice to the door steps of the poor. Legal aid is an essential part of the administration of justice. For providing credibility to the present legal and judicial systems, it is

imperative to provide effective legal aid to the poor and the needy.

It is significant to note that the Supreme Court of India in several land mark judicial pronouncements in Hussainara Khatoon Vs Home Secretary¹⁷, M.H. Hosket Vs State of Maharashtra¹⁸, Khatri Vs State of Bihar¹⁹ and Sukadas Vs Union Territory of Arunachal Pradesh have ruled that right to free legal aid at the State cost is a part of the fundamental right and it is not confined to prisoners only. Since protection of the human rights is of violation thereof, has to be viewed with concern. Therefore, free legal aid and settlement of the disputes of the poor, needy and downtrodden who live in the lower economic margin of the society is an imperative need in a democratic state which aims at an egalitarian social order. Needless to say, that the greatest achievement of the Supreme Court in all these years is the protection of fundamental rights of the citizens and more particularly there has been expanding horizon of Article 21.

Article 39 A of the Constitution of India provides for equal justice and free legal aid. The Apex Court had been very liberal in interpreting Article 39 A in Hussainara Khatoon's, case²⁰ Khatri's case²¹ and Sukhdar's case²². In Gopalachari Vs State of Kerala²³ the right to legal aid was extended even to a proceeding under section 110 Cr.P.C. The U.S. Supreme Court in Johnaon Vs Zerbes²⁴ for the first time had interpreted the right to counsel



as inclusive of appointment of counsel to an indigent person in federal criminal proceedings. In *Zeve powell Vs State of Alabama*²⁵, it was held that failure of according benefit of counsel would amount to denying the "due process of law, it was again reiterated in *Belts Vs Brady*²⁶ and *Robert Galloway white Vs State of Maryland*²⁷. The Economic Opportunity Act, 1949 and the Equal Access to Justice Act, 1941, Legal Aid and Advice Act, 1949, as per the recommendations of Rushcliffe Committee of 1946 and Criminal Justice Act, 1972 are certain enactments concerned with this aspect. Under section 37 of Criminal Justice Act 1972 before imposing custodial penalty on an accused, Magistrate is bound to provide him legal aid. Legal Aid movement in India had gained momentum after Rushcliffe Committee Report in England. The Legal Aid and Legal Advice Committee in state o Bombay under the Chairmanship of Justice N.H.Bhawathi in 1949 was the first of its kind in India and it was followed by Government of West Bengal in 1949 and subsequent thereto the gradual evolution was through legal aid programmes by law Commission's Reports, law Ministers Conferences and the Committees for implementing legal aid scheme in India. In Civil cases, provisions are made for indigent persons. Section 304 of Cr.P.C. deals with legal aid to an accused at State expenses in certain cases. The Human Rights and International Covenants also recognize the free legal aid.

Eligibility and Procedure for Legal Services:

To acquire the legal services from the Advocates under the Legal Services Authority Act, 1987 the following aspects must be followed by the persons.

(a) Eligibility for Legal Services

The National Legal Services Scheme is framed for downtrodden masses of our country, therefore, free legal service are not available to all persons. They are meant only for eligible persons. There are three tests for the determination of eligibility, which are: Means test, Prima-facie case test and reasonableness test.

Means Test

Legal services under the Act²⁸ are not provided to all persons who apply for it but these are rendered to those who actually need it. A person who possesses ample means to meet out the cost of litigation is not a deserving case for legal aid. Before providing legal services the annual income of the applicant is always taken into consideration. Initially the income limits was Rs.9000 and 12,000 for the cases in other than Supreme Court and the cases in Supreme Court respectively. Now this limit has been raised to Rs. 25,000 and Rs.50, 000 respectively.

Prima facie case Test: Obviously, the State cannot afford to give financial support to those cases where the chances of success are very dim



and assistance to applicant proves useless. The underlying idea behind this test is that public fund should not be allowed to be misused in the supporting or defending litigation where no prima facie case is made out. This test should be applied strictly with due diligence and care.

Reasonableness Test: Sometimes, it may appear that applicant's case satisfies means test and *Prima facie* test but it is otherwise not reasonable to provide free legal services, for example, in the cases of defamation, election, economic offence, untouchability, immoral traffic, food adulteration etc. It is not reasonable to render legal services at the cost of State of state exchequer.

(b) Eligibility under the Act

Section 12 of the L.S.A. Act²⁹, 1987 provides that every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) A member of the Schedule Caste or Schedule Tribe
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23³⁰ of the constitution.
- (c) A woman or a child.
- (d) A mentally ill or otherwise disabled person.
- (e) A person under circumstances of underserved want such a being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) An industrial workman; or

(g) In custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause(j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause(g) of section 2 of Mental Health Act, 1986 (14 of 1987); or

(h) At the time of passing the Act legal aid could be available to the person who was in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court. And less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. Now the ceiling of income has been raised to Rs.25,000 if case is before Court upto the level of High Court and Rs.50,000 if the case is before the Supreme Court of India.

Application for Legal Aid or Advice

Any person desiring Legal Aid or advice may make an application addressed to the secretary of the concerned Authority/Committee or the Chairman of the Taluka Legal Services Committee, as the case may be. An affidavit shall accompany the application for Legal Aid, which



shall be regarded as sufficient to decide the eligibility to legal aid, unless the concerned District Authority/Committee has reason to disbelieve such an affidavit.

The District Authority/Committee shall maintain a register of application wherein all applications for legal aid and advice shall be entered and the action taken on such applications shall be noted against the entry relating to each of such applications.

The application shall proceed as early as possible and preferably within one month.

No application for legal aid or advice shall be allowed if the District Authority /Committee is satisfied that:

- (a) The applicant has knowingly made false statement or furnished false information regarding case or his means or place of residence; or
- (b) In the case of contemplated Civil, Criminal or Revenue or any other matter proposed to be initiated in a Court of law, the applicant (in case of plaintiff, complainant, or petitioner only), there is no prima facie case to initiate such proceedings, or
- (c) The applicant is not entitled to the same under section 12 or any other provision of law or the Act and the rules framed, thereunder,
- (d) Having regarded to all the circumstances of the case it is otherwise not just and reasonable to grant it.

Honorarium payable to legal practitioner on the panel

The concerned Committee/District Authority shall prepare a panel of legal practitioners who are prepared to represent or plead the case on behalf of the needy persons. In the first instance endeavour shall be made to arrange services of the legal practitioner on honorary basis. If such services cannot be so arranged or cannot be so arranged without providing assistance by another legal practitioner, the concerned Committee/ District Authority may appoint a legal practitioner and pay the fee at the following rates:

- (a) Court of Tehsildar, Executive Magistrate, Civil Judge (Junior Division) cum Judicial Magistrate, Sub-Divisional officer, Assistant collector and other similar Courts etc. Rs 40/- per cases;
- (b) Court of Collector-cum-District Magistrate, Additional Collector – Cum-Additional District Magistrate, Civil Judge (Senior Division) cum Chief Judicial Magistrate and Civil Judge (Senior Division) cum Additional Chief Judicial Magistrate, Revenue Appellate Authority and other similar Tribunals Rs.600/- per case.
- (c) Court of District & Session Judge, Additional District and session Judge Rs.900/- per case.
- (d) High Court Rs.1100/- per case.



(e) In any case for reason to be recorded in writing to is considered by the chairman to be to such nature/important requiring payment of higher fees to the legal practitioner, may pay higher fees as it deems fit.

Fee shall be paid in two installments as under:

- (a) Half of the fee on engagements of the legal practitioner after first hearing of the case.
- (b) Remaining fee after final decision of the case.

The NALSA³¹ is of the view that the honorarium of Lawyers should be raised to improve the quality of services by legal aid Lawyers. Such legal practitioner to whom any case is assigned either for legal advice or for legal aid shall not receive any fee or remuneration whether in cash or in kind from any other person on his behalf and he shall submit a certificate to that effect.

Such legal practitioner on the panel, who has completed his assignment, shall submit a statement showing the fee due to him in connection with the legal proceeding conducted by him on behalf of such person to the secretary of the District Authority/Committee. The secretary shall, after due scrutiny obtain sanction of the chairman and on such sanction being given the remaining amount shall be paid by the secretary to the legal practitioner. It shall however, be open to such legal

practitioner to waive the remaining fee in whole or in part.

Legal services in certain cases

Before passing of the legal services Authorities Act, 1987 legal aid could not be provided in the cases, which involve fully or partially the following matters:

Defamation,

1. Malicious Prosecution,
2. Contempt of Court,
3. Breach of Oath,
4. Election Proceedings,
5. Cases of offence where pecuniary punishment is not more than Rs.50/-;
6. Any matter under Civil Right Protection Act, 1955;
7. Any matter under Immoral Traffic (Prohibition) Act, 1956;
8. Any matter under social and economical offences.

In special cases the chairman of the Supreme Court legal services Committee can provide legal services even in the above cases. Usually legal aid is not refused in the cases where a question of public importance is concerned. Where legal services are provided as a special case, reasons are required to be recorded. Where the Authority or the Committee has assigned a legal services Lawyer he cannot get any case or kind or other benefit from the person aided by the Committee. The assigned Lawyer is



entitled for his honorarium as decided by the Committee.

After passing of the Act there is no ban to provide legal services in mentioned cases, therefore, the scope of legal services should not be restricted.

Duties of aided person

There are the following duties of the person who has obtained legal services from any authority or Committee:

- (1) The aided person will reap the fruit of services provided by the Authority or Committee in accordance with directions given by the chairman or the secretary of the authority
- (2) He will execute a bond in which he shall undertake to make payment of all expenditure made by the Committee in representing his case when the Court passes the decree in favour and also make an order for the payment of cost.
- (3) He will disclose all the material facts to the assigned Lawyer and remain present before the Committee or Advocate as and when required at his own expenses.

In this aspect the state and district legal services authorities while providing legal services to the aided persons should ensure that competent Lawyers are engaged to defend the case of indigent persons as more often, on behalf of the adversary, senior counsels are engaged, who are of unequal strength and are qualitatively superior. In

Kadra Pahadiya Vs State of Bihar³² the Supreme Court directed that the prisoner would be provided legal services of a fairly competent Lawyer at state cost. It will not be out of place to make a mention that initially the legal aid programme in India could not succeed as was thought of because of the employment of relatively junior Lawyer to take up legal aid cases.

To achieve this purpose, in view of the recent direction of the National Legal Services authority (NALSA), the fees structure of the Lawyer appointed by the legal aid Committee, needs rethinking, so that there would be healthy competition amongst the members of the Bar to take up the cases where the legal aid has been provided.

As highlighted above, the drive should be for establishing more number of counseling and conciliation centre's so as to persuade, guide and motivate the litigants to resolve the dispute amicably by way of compromise, so that nobody will be loser and nobody will be gainer which ultimately brings about credibility in administration of justice.

Legal aid and legal profession

According to Mahatma Gandhi³³ litigation would ruin the plaintiff and the defendant and this is to no advantage of either party. Even in advanced legal system litigation is advised to be avoided indeed, litigation may be considered as advanced from the quarrel. It is



sometimes alleged that due to involvement of pecuniary interest, Lawyers encourage litigation instead of repressing them. They feel themselves happy when men have disputes so they may enrich themselves rather than help poor people to come out of their miseries. Therefore the litigation is not the trump of morality but weakness of it. Though litigation is criticized on various grounds, yet we find that it is inevitable in our society. An individual is a nature's creation having his own mental faculty, thinking power and view point, therefore, he may not agree upon all matters with other individuals. Whom there are disputes that cannot be reconciled by amicable means; the litigation is the only appropriate method of solving them.

The profession of law has been recognized as a profession of high calling and of the noblest order since time immemorial it is an honorable profession as ancient as magistracy, as noble as virtue and a necessary as justice³⁴. But today, we find that the law of supply and demand operates in all its naked fury in the legal profession. There is practically no limit to the fees, which a Lawyer may charge from his clients. This directly leads to an inequality in the equality of legal representation as between the rich and the poor. Litigation is still "trail by battle under another form"³⁵ counsel being the champions purse the weapons. In any dispute between the rich and the poor, between the haves and the have nots, the former

has direct advantage over the latter since he can afford the best Lawyer while the other cannot. Therefore, for lack of means to retain an able Lawyer, the impecunious litigant may be disadvantaged³⁶. When Medical profession is nationalized in order to provide adequate medical services to the community, the idea of nationalization of legal profession will also be considered in future if it fails to cope with the need of our society.

The most remarkable thing to be noted in legal aid rules framed by Bar Council of India is that an Advocate is held directly responsible for giving legal aid to the poor. The rule 15 provides that it shall be duty of every Advocate of at least five years standing to conduct at least five years standing to conduct atleast six cases free of his professional charges. No such Advocate shall be entitled to refuse to conduct such cases if so asked for by the legal aid Committees. Under these rules the students of final years of law may be given opportunity to appear in a Court of law in legal aid case of the discretion of State Legal Board or District legal Aid Committee. The Bar Council of India Legal Aid Committee is empowered to frame out necessary rules and regulations.

Conclusion:

Advocates Act 1961 is a law relating to legal practitioners and to provide for the constitution of Bar Councils and All India Bar. Section 6 of the Advocates Act 1961 speaks about the functions of the State Bar



Councils. Apart from admitting persons as Advocates on its Role, preparing and maintaining such role, entertaining and determining cases of misconduct against Advocate on its role, organization legal aid to the poor in the prescribed manner is also one of its functions. In this regard the State Bar Council of constitute a fund for giving legal aid or advice in according with the Rules made in this behalf.³⁷ The State Bar Councils empower to constitute one or more funds to the prescribed manners for the purpose of giving legal or advice in accordance with the rules made in this behalf.³⁸ Whatever is being done by legal profession it not enough. Legal Aid is primarily the responsibility of the Bar. The Scheme sponsored by the Government cannot be operative without full support of the Bar and such support cannot come unless Lawyers come forward voluntarily. The poor litigants in India are looking towards the members of the Bar that they will give a helping hand to implement free legal aid scheme and will uphold the noble tradition of the profession.

¹ Section 2(1) (C) of the Legal Services Act, 1987.

² Justice J.N.Bhatt: "Right to Legal Aid – A basic human right" Nyaya Deep. The official journal of NALSA, Volume VII, issue 4, October 2006, p.50.

³ Section 2 (f) of the Protection of Human Rights Act, 1993, International Covenants means the International

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the General Assembly of the United Nations on the 16th December, 1966.

⁴ Section 2(d) of the Protection of Human Rights Act, 1993 defines Human Rights.

⁵ Following are the Reports submitted by such Committees from time to time –

1. P.N. Bhagavathi Report, Guj. (1971)
2. Krishna Iyer Report, Central Government (1973)
3. Dr. L.M. Singhvi Report, Raj.(1974)
4. Nayak Report, MP (1974)
5. P.N. Bhagavathi Report, Central Government (1977)
6. Ramakrishna Report, TN,(1979)

⁶ Legal Services Authorities as per the Legal Services Authority Act 1987 – (a) The National Legal Services Authority (Sec.3), (b) The State Legal Services Authority (Sec.6), (c) High Court Legal Services Committee (Sec.8-A), (d) District Legal Services Authority (Sec.9), (e) Taluk Legal Service Committee (Sec.11-A)

⁷ Act No.39 of 1987.

⁸ Article 14 of the India Constitution provides right to equality – the state shall not deny to any person equality before law and equal protection of law.

⁹ Article 21 of Constitution provides personal liberty.



¹⁰ Article 39 A of the Constitution declares Free Legal Aid

¹¹ Ibid, Regulation 13

¹² Ibid, Regulation 14

¹³ Ibid, Regulation 16

¹⁴ Ibid, Regulation 18

¹⁵ Act No. 39 of 1987.

¹⁶ Article 39-A incorporated by way of 42nd amendment of the constitution provides "the State shall secure that operation of the legal system promotes justice, on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in other way, to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities.

¹⁷ AIR 1978 SC 1548: 1978 Cr. L.J. 1678

¹⁸ AIR 1981 SC 928

¹⁹ AIR 1986 SC 991: 1986 Cr.L.J. 1084: 1986 All L.J.774

²⁰ AIR 1979 SC 1360

²¹ AIR 1981 SC 928

²² AIR 1986 SC 991

²³ AIR 1981 SC 674

²⁴ 304 D.S. 458 (1938)

²⁵ 247 U.S. (1932)

²⁶ 316 U.S. 455 (1942)

²⁷ 373 U.S. 59 (1963)

²⁸ Legal Services Authorities Act, 1987

²⁹ Legal Service Authorities Act, 1987.

³⁰ Article 23 of the Constitution deals the Right against Exploitation. Beggar is one kind of forced labour in means involuntary work without paying remuneration.

³¹ NALSA – National Legal Services Authority is established under the National Legal Services Authority Act, 1987 for the purpose of to exercise the powers and perform the function conferred as per the Act.

³² AIR 1981 SC 939 = 1981 Cri. LJ 481 (ar p.941 of AIR)

³³ Hedge V.S.Gandhi's : "Philosophy of Law", Concept Publishing Co, New Delhi (1983)62

³⁴ Gaur, K.D.: "Professional Responsibility of Lawyer", Cochin University.

³⁵ Madhva Menon, N.R : "Gujarat Legal Aid Committee"- Consumer Confrontation Vol.5 No.7, September, 1985 p.26.

³⁶ Jerome, Frank, Courts on Trial, Princeton, New Jersey (1973)

³⁷ Section 6 (1)(eee) of Advocates Act 1961 speaks about organizing legal aid to the poor in the prescribed manner

³⁸ Section 6(2) of Advocates Act 1961, The State Bar Council may receive grant or donations or gifts or benefications so received will have to be credited to the appropriate fund/s for the purpose of giving legal aid or advice.