CHAPTER VII

Critical Appraisal of the Constitutional Mandate and The Provisions Of The Legal Services Authorities Act, 1987
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7.1 Introduction

Today, India with the freedom history of more than 65 years is free, but many Indian’s are not enjoying liberation. Ours is though a Republican India, betrayed, promise unkept, unfulfilled and the India Democracy hijacked. The manifesto of the people of Indian provided in the preamble of the Constitution, justice: social, economic, political still remains a dream. The big question is whether what is provided in the preamble. Still there is no answer. Why this is happening? Answer is not very difficult to find, in more than five decades of freedom. Indian is not one with unity It is having many categories like those people who are rich, wealthy and powerful and the other category those who are poor, downtrodden, have-nots, disadvantaged etc., sections of society Thus the provision provided in the Preamble “We the people of India” is not fulfilled. Gandhi had two dreams in his life. His first dream was liberation of Indians from British and rule. The second dream was liberation of Indians from oppression and injustice, from inequity and inequality, from discord and disharmony, his first dream was fulfilled, but the second was not, and according to Mahatma, the true time for celebration would be when the second dreams was fulfilled.\textsuperscript{485}

7.2 Constitutional Provisions

Preamble: Equal Justice.

The petty Indian, the have-nots, has not only remained invisible to affluent eye but also feel distanced from the democratic agenda of the Indian Republic. It would be everybody’s wish in the free India in the 21\textsuperscript{st} century to at least if not achieved,

\textsuperscript{485} The two dreams of Gandhiji (Washington, D.C Aug 15 1978)
aspire to have some fruits of what is provided in the Preamble of India Constitution, which in human rights terms we call “First Generation Human Rights”. India, with all its thousands of years of cultural heritage and Vedic vintage, has not been able to assure to its people even a pretense of the preambles grand undertaking of justice, liberty, equality and fraternity to every citizen. There are millions of downtrodden, socially and economically backward classes, below the poverty line and they are struggling day in and day out for a loaf of bread.\textsuperscript{486} Still there are many, who do not have shelter, clothing and food, illiteracy has become their wealth.

The Governments are taking steps to make everybody a literate, but it is giving in a slow pace and is likely to take a decade or two to make every one of these classes a literate. Violation of law has become the order to the day leading to exploitation of certain people. The people from these classes prefer to suffer to silence than approaching the courts of law seeking redress for the violation of their rights. People are unable to get justice from courts of law on account of their inability to engage legal experts to fight for their causes in legal battle with equal resistance. There is further comment that the rich and powerful people of the society are escaping the clutches of law. Thus the treatment before the law is not equal to the rich and the poor.

The Courts are protectors of our constitutional and legal rights. Contrary to the philosophy, the actual position is not gloomy. The traditional methods of providing justice has operated to close the doors of Courts to the poor and has caused gross denial of justice to millions of people, who cannot even think, not to talk of knocking the doors of the Courts. The poor, down-trodden, ignorant, illiterate, unorganized millions are crying for justice. Imparting justice to this segment of the people is a great responsibility of the judiciary and it has to discharge it with due care

\textsuperscript{486} Dr. Justice G. Yethirajulu, \textit{OL; Advocate}, Nyaya Seva, Vol. III issue 2&3, p.17-20
and caution, otherwise the people will lose faith and the whole fabric of judicial system will collapse due to its own weight. The access to justice is a foremost human right; for only through such broad access can every right be enforced. The court serves the people best which has the imaginative realism to appreciate the hunger and handicaps and hurdles of the common people and the judicial activism to innovate remedial strategies to reach and remove injustice wherever it is practiced. The problem is not that we do not have enough laws or we are not aware of the human rights. The problem is because of the insensitivity of the people, those who matter in the system. The difficulty is also of the right attitude towards the problems.

**Fundamental Rights and The Directive principles of State policy.**

The fundamental rights provided in the constitution of India and the promises of Human Rights would mean something real to all Indians if the system would respond positively to the demands of the needy, the neglected, the hapless women and the bonded child etc. Humanity is the basis of every civilized society and on this criterion human rights and Fundamental Rights have been declared and efficient enforcement of these Fundamental Rights, one can attain social order. Merely to talk about Fundamental Rights by elitists is not sufficient. In order to make them meaningful, legal aid becomes essential. In India, millions of people who are poor, down trodden, ignorant and illiterate are indeed deprived of social justice. The judicial process is very complicated and cumbersome. They sit in the Court as helpless spectators. They do not understand what is going on in the courts to their cases. They are completely mystified by the court proceeding and this, to a large extent alienates them from the legal and judicial process. Therefore, an opportunity of access to justice is required to be provided to them. Justice Bhagwati rightly observed that undue delay and high cost of litigation are two major evils in the present administration of justice and he warned that it is ‘highly dangerous and

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explosive situation and the earlier realize its gravity; the better it is for all of us in this country.\textsuperscript{488}

The Directive principles enshrined in part –IV of the Constitution are not intended to be merely moral precepts. Dr. Ambedkar said- “It is the intention of the Assembly that in future both the legislative and the executive should not merely pay lip service to these principles but they should be made the basis of the legislation and executive actions that may be taken hereafter in the matter of governance of the country.” He warned- “If any Government ignores them, they will certainly have to answer for them before the electorate at the election time.” \textsuperscript{489} There are many instances where the Governments ignored the Directive principles, nevertheless, they were returned to power on account of illiteracy and ignorance of the masses and sectarian and cattiest considerations. A Government can dupe its citizens a time or few times, but it cannot do so all the times and at all the places. The accountability of the Government to translate the Directive Principles in letter and spirit would be tested by their master, the people, at one or the other stage. If the Indian Nation as idealized by the framers of the Constitution should become a reality, it becomes the duty of all the citizens to nurture and sustain the fundamental rights and liberties guaranteed under Part – III and the egalitarian principles incorporated in Part-IV of the Constitution to develop and sustain a viable and a socially conducive governance wedded to those principles. Only such a condition, when a prevails, would bring about peace and harmony in social relationships of men. Liberty and equality can co-exist and aid each other to establish and maintain public quit, which is the primary intendment of Rule of Law as well as Social Justice.

\textbf{Accountability of Officers in implementing welfare Laws.}

\textsuperscript{488} per Justice Bhagwati in People Union for Democratic rights v. Union of India, AIR 1982 SC.1473
\textsuperscript{489} Dr. J.N. Pandey, \textit{The Constitutional law of India}, Central Law agency, 46th Ed. 2007 p 402.
The solemn duty of a welfare state for its very existence, the well-being and progress of the people to strive for the establishment of an egalitarian society, wherein economic, social and political equality and justice prevail. A constitution draws its strength from the support it receives from the public. The sanction behind the Constitution is primarily the public opinion. For various reasons, a strong public opinion has not yet developed in our country, but our Constitution visualizes that early steps will be taken by the state to educate its citizens and develop an intelligent and well-informed public opinion. For gap that remains between the promise and performance, one can legitimately find fault with the instrumentalities of the state. The instrumentalities of the state have failed in performing their duties in operating the apparatuses of the Constitution, which are designed to bring about social revolution to create an egalitarian society where the people and the citizens can live in peace and decent material environment.

There are numerous welfare schemes – some sponsored by the Central Government, some by State Governments and some jointly by Central and State Governments. Likewise, there are plethora of laws enacted by the Parliament and State Assemblies and many subordinate legislations made by the Governments. But the problem is of their effective implementation. It is absolutely necessary for effective implementation of all the schemes and the laws that the appropriate levels there should to be strict monitoring and accountability of officers responsible for non-implementation. In practice, it is often found that the implementation is very tardy and faulty and resultantly the benefits of the scheme and the laws does not reach for whom these are made.\(^{490}\) If the implementations of the human rights in India have to be properly effectuated and implemented the reality of violation of human rights has to be faced with a much more sense of sincerity and honesty towards the other people of India. Otherwise what is engraved in the Constitution in

chapters, thereon fundamental rights and directive principles will always remains a distant dream to achieve. Law would become a teasing illusion and in a state of suspended animation. When legal illiteracy and economic indigence afflict the people, only social action groups can make rights viable and wrongs punishable by instituting litigation on behalf of or for the benefit of the weaker groups.

As a matter of fact the Indian Law system is not standing in the way of implementing socio-economic legislation. The fault is not as much in the system but the fault lies in those who work it. It is always a moot question whether the system corrupts the man, or the man corrupts the system. It is advisable to remove a few defects here and there in the system of administration of justice so that law’s delays may be reduced substantially by making procedure simpler and by advising methods for cleaning arrears. The system requires proper maintenance. We are very poor at maintenance whether it is the maintenance of our power plants or factories, historical monuments or buildings, cities or universities and the same is true of our institution of judicial administration. Basic human rights can never become meaningful for the poor and the down-trodden, if the judges are not sensitized to the right of every citizen, to the fuller enfoldment of his personality.


Legal Services Authorities truly and justifiably acts as the watchdog of our benevolent system of dispensing Legal and Social justice as well as the protector of the poor, deprived, drown trodden sections of our society. In India there is a wider gap between the needs and the practice of legal Aid than it is gauged between its need and available provisions. Legal Aid Schemes have very noble and laudable objectives to achieve social justice. In India, the provisions for legal aid is adequate to meet our needs but their implementation is far from satisfactory. Hence it should

491. N.A. Palkhivala . We the people, (1988) p.7
be emphasized that all legal service programmes and schemes must, therefore work
to remove this impression and to instill in the minds of the disadvantaged sections of
the society confidence that our administration of justice committed to provide equal
justice to all. The legislatures will make indifferent laws, the bureaucracy will be
apathetic to the implementation of the laws, lawyers and judges will not depart from
their hide bound procedures and precedents and legal services to be readily available
to the poor and the needy.

The LSA creates a network of Legal Services Institutions at the Central, State,
district and taluk levels. However, the institutional model of legal service delivery
envisioned by the LSA has its limitations.\textsuperscript{492}(a)The manner of their constitution, the
structure, the funding and the functioning of the legal aid institutions involve a
pervasive control by the executive and a co-operation of the judiciary for a
collaborative venture. The lack of autonomy of the legal aid institutions challenge
their ability to mount a credible challenge to the laws, policies and practices of the
state that may result in deprivation or violation of fundamental rights including the
right of access to justice. This also questions the ability to maintain the independence
of the judiciary vis-à-vis the executive. (b)This also has negative fallout from the
point of view of the assisted person.

Legal aid institutions are part of the institutions of the state and subject to
state control. In effect, those requiring legal assistance have little participation in
designing the legal services programme or in overseeing its implementation. As in
many similar state-administered welfare programmes, the “consumers” are disabled
from demanding quality of services or accountability of the legal aid bureaucracy.
This explains, in part, the reluctance on the part of the indigent person to look to legal

\textsuperscript{492} S Muralidhar , \textit{Law, poverty and Legal Aid : Access to criminal justice} , Lexis Nexis
Butter worths 2004 P 378.
aid for a reliable defense in a criminal. The right of access to justice and to legal aid in the criminal justice system is considered non-derogable and an essential fair trial standard both in international human rights law and in domestic law. This would be relevant to the Indian context as well. The primary responsibility for providing legal services to the poor lies with the state. The Rules and Regulations under the LSAA, which detail the structure and contents of the legal aid schemes in the different states, fail to account for the factors that led to the failure of the earlier schemes. For instance they do not recognize the facets peculiar to the criminal justice system that require a different approach to the question of providing legal aid, barring a few exceptions, there is no system in the states and union territories for making legal assistance available at police stations. The preventive and rehabilitative aspects of legal aid are not built into the programme, legal aid invariably begins and ends with court proceedings and is not made available at the pre-trial and post-trial stages. The legal aid committee are not charges with the responsibility of initiating moves to reform the system of monetary bail, to question arbitrary laws and procedures that discriminate against the poor, or to provide legal aid at all stages of the criminal process from the point of arrest till after the person exits the system.

**Obstacles in availing Legal Assistance**

At present the legal aid movement in India is unorganized, diffused and sporadic. There is lack of co-ordination in it. The ideal of equal access and availability of legal justice has not reached satisfactorily. There is a wide gap between the goals set and met. Illiteracy is also a major obstacle to legal aid. Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more then that are not aware of the rights conferred upon them by law. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

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Despite the fact that our legal system functions on the premise that ignorance of law is no excuse, still the achievement of ‘legal literacy’ in its absolute terms remains a myth. Everyone is “equal before law” but beneath this surface there remains a profound, inequality in the actual working of the legal system by reason of the indifference of the law to the “inequality between the rich and poor”. It is necessary that people not only be aware of their rights and remedies, they must believe that the enforcement of such rights is possible and that they will get adequate remedies within a reasonable time, on a reasonable expense or no expenses. The whole perception must change as there is a direct relationship between the faith the people have in an institution and the success of that institution.

The concept of legal aid embraces both the preventive and remedial aspects. A country where over 70 percent of the population still lives in villages ensuring effective legal literarily must entail that, essential legal provisions which guarantee basic rights must be simplified and translated into the language of the common man. In India there are places so remote and under privileged that local people have no financial capacity to pay the legal fees. There poverty and illiteracy legal them to believe that they are both with no rights and this very perception makes the nation of imparting 100 percent legal aid a myth. These harsh realities convince us that proper dissemination of legal aid can only be done when the “conception of rights” reaches the mass at the grass root level. That is because ‘the deprivations which may be imposed by the state are so severe as to warrant a correlative obligation to eliminate those factors that are irrelevant to just administration of the law. It is also traced to viewing legal aid as a basic social service which a welfare state owes to its citizens.

**Functioning of LokAdalats**

Organising LokAdalats is an important function of the legal services institutions. The third object of the Act, LokAdalat is not effectively bringing an amicable settlement. The object of LokAdalat is lost in darkness which is falsely illuminated by so called number of cases disposed of. In MACT Cases, meetings with the officers of Insurance Companies are held in advance. The matters are discussed on several considerations. There are few cases which be said to be decided justly. But the most of them, in obvious reasons of getting amount of compensation early, are settled not to the advantage of claimants. Thus, the third object is of no consequence in such cases.

It is painful to say that the suits of partition, partnership, trust, contracts, easements or such other family disputes (other than marriage and maintenance) are never seriously considered to be placed in LokAdalats. These are the cases in which the third object is at stake. But such cases to our knowledge are normally not touched.

It is for these reasons, it is ventilated that the cases of technical types are no cases which can be said to be fruitful result of LokAdalat. One should neither take pride on statistical figures thus obtained nor be given trophy for disposal of cases. It should always be kept in mind for taking LokAdalats to be successful not by quantity of cases, but the quality of cases disposed of therein. Till it is thought in this direction, the over loaded Courts will never be relieved and the frustrated litigants will never respite. Now-a-days, it has become a matter of proud to organise the LokAdalats in the form of grand functions with attendance of the dignitaries followed by sumptuous lunch or dinner and photographs appearing in the daily newspapers on the next day: involving expenditure of amount running in five figures. This has no relation with the actual ambition to achieve the commendable benevolent object to re-establish amity and goodwill between the litigants or good disposal Fair and
healthy competition amongst the districts in organising the number of LokAdalats cannot be avoided. But, unhealthy, rivalry appears to be emerging now.

The judges who are by their nature or ideology do not fall in line with their Brother judges in LokAdalats invite apathy and adverse remarks from their superior on their judicial performance, who are otherwise quite competent.

In organising such grand LokAdalats, involving expenditure requires co-operation and assistance in form of preparation and in terms of money, either from members of Bar or other institutions or members of the public, leading naturally to close contacts of the judges which should ordinarily be avoided, to keep and maintain faith and confidence of general public in impartiality and independence of the judiciary. 495

The judges who do not even initiate the conciliation dialogues; between the parties within the Court rooms and wait till the LokAdalats are organised with a view to show that the particular case as disposed of in the LokAdalats which could have been otherwise disposed of in the Court room. The attitude appearing developed to please the superior judge by helping in high-lighting the higher figure of disposal in LokAdalats.

The courts are stopping actual working in advance for about a month or so and naturally as the members of staff would be busy in preparation of list, dockets and many other things for ensuing grand LokAdalats. The actual no. of the settlement of cases is not the indication for the successfulness or for failure of LokAdalat System.

Many of the cases are being settled in advance by pre-arranged meeting between the parties and they are being shown as disposed of during the LokAdalats.

495 Natwars.Bhatt LokAdalat , IBR,vol . 21 (1) 1994 p.181
The result shown in the LokAdalats are generally far-fetched and menovoured. Many judges are acting and co-operating each other to high-light the higher figure of the disposal to be published in newspapers giving boost to the personal popularity of ambitious superior judge.

The system of LokAdalat is not without limitations[496]. Conflicting views have been expressed on the advisability of the new institution of LokAdalats. They are meant to supplement the judicial process and not to supplant it. Also it is being said that when conciliation becomes the norm, people’s attitude to resort to court will change. On the other hand, it is being suggested that with the giving of statutory basis, the informality of LokAdalat will disappear and every technicality that bogs down regular courts will creep into the LokAdalats and a parallel court system under a different label may emerge. The permanent LokAdalats are conciliation-cum-arbitration tribunals to settle disputes between selected public utility service and individuals. Organising LokAdalats is an important function of the legal services institutions. It appears that recourse to these tribunals in preference to civil court is unlikely. Public utility services would rather compel the private parties to have recourse to legal redress instead of, they themselves seeking it and private parties likely to prefer civil courts, to these new institutions Adjudication before a LokAdalat are by consent, if one party does not agree, the case goes back to the court. If there is no consent, there is no decision. The procedure of LokAdalat - organising, conducting and awarding of LokAdalat is becoming rigid especially after the enforcement of the Legal Services Authorities Act, 1987.

The anxiety of the litigants to settle their disputes without the vexation of court litigations exploited by the opposite parties and even by some lawyers. It might be easy to make him agree to the payment of ‘contingency fee’ to his lawyer and to

accept an amount which is much lower then his due. After the settlement, the lawyers may take a major chunk of the amount as ‘contingency fee’. Although taking contingency fee is prohibited in our country, it is being practiced by some lawyers. The goal of the LokAdalat is to affect a compromise but in mass scale disposal of cases in LokAdalats, it is difficult to expect that compromise settlements of mutual benefits would be searched for.

The legislation has given the judiciary an almost exclusive role in organising LokAdalat and directed the observance of norms the judiciary adhere to in adjudication. There is little role for people especially trained in negotiation, mediation and conciliation. In the name of the speedy resolution of the disputes the fair interests of the parties are sacrificed. The case of Manju Gupta v. National Insurance Company,\textsuperscript{497} demonstrates the sad state of compromises and settlements in LokAdalats denying the fair minimum claims of the petitioners. The Motor Vehicle Act, 1988 lays emphasis on speedy resolution of the claim but due to inordinate delay the claimants settle at the lowest compensation with the insurance companies. A major drawback of LokAdalats is that its emphasis is on a compromise or settlement between the parties. If the parties do not arrive at any compromise, either the case is returned to the court of law or the parties are advised to seek remedy in a court of law. As far as Legal Aid is concerned, it is a fundamental right and free legal aid has got to be provided through the Legal Services Authorities constituted under the Legal Services Authorities Act, 1987. On one hand, the said law has immense potential and has a wide scope of operation where as on the other; it is the most unused legal machinery. Due to the lack of ignorance and awareness the poor people are unable to reap the fruits of free legal aid under this law.\textsuperscript{498}

\textsuperscript{497} India. Kanoon. Org//Doc //1341044// ACC 1994 242
Knowledge about legal enactments is very scant, not only amongst the poor and illiterate but amongst the educated like executive, teachers, office workers. A victim has to move around to know the sources of legal aid and to find out an efficient lawyer there are women, who frankly admitted that they had become wise after the tragedy, had they known about the law earlier they would have collected ample proofs and would not have been deceived by the culprits. The lack of legal awareness of sources of legal aid was almost nil. A lot of confusion and ignorance was observed. The pressure here is to sink in her felinity and to regard it as handicap. The virtues which are prized in her are not calculated to create any awareness of law in women. The weaker section of society generally do not get to hear of the legislation which is beneficial to them. A large proportion of our female population does not go to school at all and many drop out at primary level and lapse into illiteracy. A revolution in thinking can be brought about by teaching school children about their rights and duties as a future citizen wages earners and home-makers. Thus, a step towards building awareness amongst them can be achieved.

HIDDEN” AND OTHER COSTS: By confining the entitlement of a person to legal aid to filing or defending a case the emphasis in the Legal Service Authorities Act 1987 has remained on litigation oriented assistance. Legal Aid beneficiaries do not get services for free at all.\footnote{Supra note 9 at p 389. For a study pointing to corruption prevalent in the district and subordinate courts in Delhi, see VN Rajan and MZ. Khan, \textit{Delay in Disposal of Criminal cases in the Sessions and Lower Courts in Delhi}, Institute of Criminology and Forensic Science, 1982. The authors point out (p.42). It was seen that those who greased the palm of the readers and peons were able to get adjournments readily while others waited outside the court helplessly to those who were unwilling to part with money, these court officials were not prepared even to tell whether the presiding officer would come and the cases would be heard or not.} One disincentive for a person to avail of legal aid offered is the problem of uncompensated costs that have to be incurred. Legal aid schemes do not account for the “hidden” costs incurred by those
brought involuntarily into the system either as victims or as accused. While the legal aid programme may pay for court fees, cost of legal representation, obtaining certified copies and the like, it usually does not account for the bribes paid to the court staff, the extra fees to the legal aid lawyer, the cost of transport to the court, the bribes paid to the policemen for obtaining documents, copies of depositions and the like or to prison officials for small favours.\textsuperscript{500}

**Legal Aid Duty counsel Scheme**\textsuperscript{501}

It is indeed paradoxical that the legal system requires the services of professional lawyers for its effective use and at the same time keeps such services beyond the reach of the average man. Although normatively the law is the same for all citizens, functionally it varies according to the location and socio-economic status of the persons involved. It is not that the person who needs the services must gets them but that person who can buy the best available legal talents gets maximum services. People living in the far-flung country-side and in locations geographically handicapped including tribal areas have large area of unmet legal need to which the existing professional set-up has little relevance. The monopoly on legal practice granted to the profession has accentuated the problem and marginalized a large section of Indian people in terms of availability of legal services and access to justice. There is no scheme of legal aid systematically administered by the private

\textsuperscript{500} Sujan Singh, *Legal Aid: Human Right to Equality*, Deep and Deep, 1998 P.272 An empirical study of the working of legal aid schemes in Punjab showed that beneficiaries of legal aid complained that they were provided only the service of a counsel and nothing beyond and that they had to spend amounts varying between Rs.100 to 900 for their cases in lower courts.

\textsuperscript{501} Appointment of legal aid counsel and duty counsel: 1. The Secretaries of DLSA with the approval of the Chairman appoints legal aid counsel on the basis of merit and seniority to provide legal aid to all needy citizens, particularly to prisoners. To provide legal aid to under trial prisoners, in remand hour, the secretaries provide legal and services through the legal aid counsel. 2. Duty Counsel: Authorities prepares the panel of Advocates, willing to take up legal aid cases. They will assign the brief of the legal Aid beneficiaries to the duty counsel
bar and individual practitioners if they render legal aid it is at the instance of the court or as a matter of charity. Even the Rules of Professional Ethics adopted by the Bar Council of India require the lawyers to give legal aid subject to their economic circumstances.

The role of the Advocates in implementation of these schemes becomes pivotal due to the fact that legal profession being monopolistic, the various schemes of legal aid under the Act can only be put into operation through Advocates. Assignment of a competent Advocate to take up the case of a poor litigant is the most crucial component in providing effective and purposeful legal aid to the weaker sections of the society. The Advocate is paid by the concerned Legal Services Authority but this payment is generally quite low as compared to the normal fee charged by the Advocate. As such, well established Advocates are generally reluctant to undertake assignment as an Advocate under the scheme of legal aid under the Legal Services Authorities Act. The result is that newly enrolled Advocates or Advocates, who do not have enough cases with them alone opt for taking up such cases with the result that the poor and marginalized person get only substandard legal assistance, which is a serious handicap in successfully implementing the legal aid scheme for weaker sections of the society. The Supreme Court commented on the reluctance of senior Advocates in doing service to the community is becoming a serious constraint in the success of the legal aid scheme in India.

The situation in India is in contrast to the situation existing in Britain. Michael Zander, who studied the legal system of Britain to suggest law reforms records with

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Kishore Chand v State of H.P. AIR 1990 SC 2140 : "Though Article 39-A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practicing in the Court concerned, volunteer to defend such indigent accused as a part of their professional duty."
satisfaction in his book "A Master of Justice" that in Britain, a large number of competent senior Barristers are busy in acting as amicus curiae in courts and in providing legal aid to the poor for which they are paid by the State. The Advocates in India need to take a lesson from their British counterparts in this respect and need to inculcate the spirit of dedication to the cause of justice and for community service so that legal aid movement could succeed in India. Indeed, failure to make justice available to poor may threaten the very existence of the democracy and the rule of law. The members of the legal profession would do well to bear in mind the famous words said by Leeman Abbot years ago in relation to affluent America -"If ever a time shall come when in this city only the rich can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court-room, the seeds of revolution will be sown' the fire-brand of revolution will be lighted and put into the hands of men and they will almost be justified in the revolution which will follow".

There have been many instances where Advocates in India have taken the causes of poor and downtrodden without any reward and have ensured justice to them. Unfortunately, there have also been instances where lawyers assigned by public funds have not faithfully played their role in implementation of the legal aid schemes which cast a serious doubt on the very credibility of a scheme of legal aid available to weaker sections of society in India. The dark side of the legal aid scheme and how the lawyers are swindling the unsuspecting and ever gullible poor litigants as well as petty criminals and first time convicts, most of whom are so because of compelling circumstances, was reported by the Indian Express in a news item under the caption -"Free Legal Aid for a Fee".503 The paper reported how Advocates were

503 Basudev pujari, Free legal aid for a fee., All India Reporter 1990 Dec; 77: J87-8p
abusing the scheme and funds of free legal aid. The modus operandi reported was that the lawyers engaged by the Legal Aid Committee were fleecing money from the parties on whose behalf they had been engaged and holding their cases to ransom by delaying tactics. In the process, many innocent persons were also being compelled to pay large amounts to the lawyers, who are supposed to get their fee from the Legal Aid Committee and to be giving a service for the cause of justice. The phenomenon is not new and has been in existence since the establishment of the institution of free legal aid and has been flourishing since then. Lawyers can always be innovative as any other professionals, in fact much more than that. After all they provide escape routes in people of any hue in trouble. They know how to break laws and get away with it.

Free legal aid undoubtedly is beneficial to poor people and has been instituted with noble purpose. Yet it has become a good ground for breeding corruption. Free legal aid for a fee is common practice. Once a lawyer is engaged through legal aid, obviously the party or his men would come to the lawyer for consultations and it is then that they are asked to fish out some money which they naturally cannot refuse. One factor that may be contributing to this is that the remuneration paid to lawyers by Legal Aid Committee is very low and sometimes even does not meet the incidental expenses what to speak of compensating the labour put in by the lawyer. Beyond that the greed to pocket some easy money out of the helplessness of the victim is always there. But what speaks worst about the system is the fact that entrustment of the cases to Advocates under the scheme has become a case of distribution of largesee amongst the favourites, which is guided by factors other than the capacity of the lawyer to deliver the results. In the circumstances, the quality of legal service provided to poor and downtrodden sections of the society is seriously compromised to the detriment of justice to them. The result is that whole purpose of the scheme gets defeated.
The active participation of lawyers is in need for affective implementation of legal aid. When we deal with issues of poverty and deprivation, it is not possible to expect such classes to be on the same footing as the others. Even though free legal aid is guaranteed, it is not sufficient to put these people on par with the rest. The quality of legal aid plays a very important role.\textsuperscript{504} If any effort is to be made to equalize the deprived sections with the rest, they must have tools that are as effective as those possessed by the rest. There must be a guarantee of not just lawyers but good lawyers. Creative solutions of this problem will have to be thought of. It has been suggested in certain quarters that while appointing lawyers as senior counsel in any court, one must take into consideration the amount of pro bono work that is done by such lawyers. This should ensure that good lawyers also do their bit to assist the social cause by espousing the case involving issues of the weaker sections of society.

Under this Scheme Authorities offer few incentives to the competent lawyer to participate in the legal services programme. In the matter of preparation of panels of lawyers, or in fixing of fees payable for legal aid work or in developing certain measurable minimum standards of performance.

Thus we have a situation where despite the existence of the LSAA and the network of legal aid institutions a large number of persons get routinely arrested, including those who are arrested for keeping peace and good behaviour, others for activities unconnected with crime such as those picked up as the wandering mentally ill and vagrants.

In their operation, the legal services programmes under the LSAA and its subordinate legislation have been unable to envision effective access to justice. The

\textsuperscript{504} http://legal aid services . com/1396/ Role of Advocate in implementing Legal Aid Scheme/html.
mere provision of legal services may not alter the way in which the poor are treated within the criminal justice system, without fundamental changes in the behaviour of the personnel manning the institutions that comprise the criminal justice system.\textsuperscript{505} While acknowledge that one should not over-estimate the capacity of legal aid to the poor to produce change in the general social or economic status, Roger Cram ton points out that are both political reasons (increased respect for the law) and economic reasons (improved efficiency in the dispute-resolution process) that justify provision of services whose cost may often exceed what a middle-class litigant would pay for the services. He points out that representation of the poor often reduce the workload of government agencies by putting the claims of poor people into a comprehensive form so that they may be handled easily and cheaply. Even if the increased costs exceed the savings, the government’s compliance with the rule of law enhances its legitimacy, which is itself of substantial value. Further, in a society that values the dignity of the individual, the role of legal services in helping the poor to help themselves must remain the basic justification.

The Legal Profession in India is passing through a crucial phase. The declining standards of the Bar is the talk of the day. The Social Engineers themselves are in the dark as to whether they are able to discharge their duties as Social Engineers or not. The Profession which is basically for rendering Social Services is changing into a trade and business and the lawyers are confining themselves to earn more and more money. Upendra Baxi rightly said that quality control over legal services is impossible, because legal profession area sellers market. In recent times we have crossed all limits in charging the highest fee and Social Service now is no longer goal of most of us nor we are thinking what would happen to the nation if the lawyers shall come forward to serve the nation at this curious juncture for rendering Social Services. The moral values in the society are declining fatly and that is

\textsuperscript{505} Supra note 8at , p388.
affecting Justice delivery system. Gandhi\textsuperscript{506} was very critical about the lawyers particularly in their relationship with the clients. “Lawyer will as a rule, advance quarrels instead of expressing them. Moreover, men take up that profession, not in order to help others out of their miseries, but to enrich themselves. It is one of the avenues of becoming, wealthy and their interest exist in multiplying disputes.”

The State sponsored legal aid schemes have not yet made any substantial improvement in the condition of the poor in need of legal services. There are complaints that the schemes are not picking up at least partly because of the unhelpful attitude of some sections of the Bar. In a system of administration of justice where legal services are founded on free enterprise, lawyers are not interested in spreading legal literacy among the people. Again in a society of free enterprise lawyers are not interested in advising the poorer sections of the people either about the availability and the potential of legal services or upon the legal problems actually thrown up by the conflicts in society because that is not where the money is a serious comment against Lawyers. But judges likChinnapa Reddy say that, Over the generations, lawyers as a class have been ranged against them and the justice delivery system has always been used as a tool of exploitation to harass them.\textsuperscript{507}

If equal justice under law is to become a more realistic goal there is need for a rational reorganization of the private Bar. In England and the United States the problem appears to have been tackled to a large extent by a massive programme of state-funded legal aid scheme. In socialist countries it is tackled by greater social control of the profession and by statutory creation of lawyers' collectives for defined

\textsuperscript{506} M.K.Gandhi, \textit{The Law and Lawyers} (ed by S.B.Kher) 236 (G 962)
regions with pre-determined service charges. In some other places legal insurance is being attempted.\textsuperscript{508}

In a country like India, if the legal system is proposed to be used as it has to be, as part of the weaponry to break the chains of poverty, it is necessary to bring on the scene highly motivated, well-trained, State-salaried lawyers, who offer their services wherever needed and operate without charge.\textsuperscript{509} It must be the duty of the State-salaried lawyers not merely to take up the causes which come to them, but also the causes which will never come to them unless they look for them.

It has to be the duty of the State-salaried lawyers to propagate social welfare legislation and educate the people on their rights, to convince them about the uses to which the legal system may be put to their advantage and to convert apathy into enthusiasm, indifference into courage and finally to act as pressure groups to secure law reforms wherever they notice during the course of their activities that the existing system is working injustice to the economically disadvantaged. The magnitude of the problem is so great that it is now universally recognized that legal aid programmes and schemes offered by organizations funded by private resources are unable and will never be able to touch even the fringes of the problem.\textsuperscript{510}

It is true that \textbf{Legal aid programme promotes industrial peace}, harmony and quick adjudication. Industrial laws have provided for adjudication machinery. But they have not yet succeeded in achieving the ultimate object of maintaining peace and harmony. This may be due to various reasons: Failure of Reference by the

\textsuperscript{509} Ibid at p. 4
\textsuperscript{510} N.R. Madhava Menon, \textit{Profession at cross roads: What Next ?}, I.B.R. Vol 22 (2 & 3) P. 175
appropriate Govts at the appropriate moments, Biased attitude of bureaucrats towards employer’s or employees when they belong to any political group, Incapacity of the representation in adjudication on the part of employees, Ignorance of the concerned parties about their rights.

**Nyaya panchayat**

Gandhi had suggested as early as in 1946 that panchayats, the rural self-governing units, be entrusted with the task of dispensing justice and subordinate judges asked to go to the villages and assist panchayats in deciding cases. The Indian judicial system constantly exposed to new challenges, new dimensions and new signals and has to survive in a world in which perhaps the only real certainty is that the circumstances of tomorrow will not be the same as those of today. To make justice real, affordable and physically accessible, larger and closer associations of the primary institutions becomes essential thereby, the role of nyaya panchayat gains prominence in order to bring about a positive change in the imparting of legal aid, judges must be sensitized to the problems of the poor, they can then assist the nyaya panchayat to render speedy justice at the door steps.

**7.4 State Funding:** The most important handicap of the Indian concept of Legal Aid is that it does speak of the need for community association in its programmes but our schemes recognize this essential requirement much as a lip-appreciation of academicians and the jurists having contributed voluminous and meaningful reports to the Government. The concept of legal aid adopted by the Indian schemes, largely (if not totally) relies on Government finances and public control. They also do not encourage the participation of a wider base of legal service

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providers like paralegals, law academic and students. In order to make the slogans about equal access to justice effective, State action, and in particular, State funding is indispensable.

**FINANCIAL ASPECT: PAUCITY OF FUND**  

The root cause for failure of implementation of legal aid programme is lack of adequate financial support for implementing it. The State Government has shown their inability to implement this (nayalaya) programme on account of paucity of funds. If some meaningful efforts are to be made to confer benefits to the poor litigants, the government has to spare substantial money for its effective enforcement. The Central Government is already spending crores of rupees for removal of poverty as its economic policy, passing various legislations to remove exploitation of the women. Legal assistance to these marginalized sections of the society is nothing but a device to remove evil, affect of poverty on the administering of justice. The Central Government must undertake full financial responsibility for implementing it. Extra expenditure on legal aid on All-India basis would be necessary so that machinery of law may work alike for rich and poor.

**Funds can be increased in the following way:**

Levy of special surcharge on court fee or special stamp on Vakaletnama. This amount has to be paid into a fund called “Benefit Fund” which is utilized for providing an efficient legal service to the poor especially the women. Donation in respect of legal aid may be allowed, the amount donated under the head shall be free from Income-tax under the Income Tax Act, 1961 (as amending upto date).

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513 *Legal status and Remedies for Women in India* p181-182
Legal insurance schemes may be introduced. There shall be compulsory contribution from the employer and the employees. This fund may be made available to the women and their concerned families. Allocation of funds of grants to be made in annual budget of the Government in the same manner as for any other purposes are made.

7.5. Lack of Clinical Education

Changes in the law syllabi\textsuperscript{514} have been made at the behest of the Bar Council of India and the University Grants Commission so as to incorporate practical training component in to the law school curriculum, which for the most part grew out of the clinical education movement. Moreover, the recent reforms in legal services delivery in India, such as community based informal alternative dispute resolution forums, known as “legal aid camps” or “LokAdalat” warrants substantial support from law school clinics for their effective functioning. Despite its growing importance, clinical system is not getting much support and encouragement from law schools, universities, law faculties and the legal profession. This indifferent attitude is mainly attributable to the lack of proper understanding and misconceptions about the role and content of clinical legal education among the legal educators, law students, law faculty and legal profession.

. Many law schools faculty have no familiarity with the new subject sand, due to the no-practice rule, the majority of faculty members do not have the necessary practical knowledge or experience. In effect, the Bar Council washed its hands of the

\textsuperscript{514}A. Lakshminath, Legal Education, Research and Pedagogy- Ideological Perceptions. J.I.L.I. Vol.50(4). 2008, P. 607-628 From 1998 - 1999 the BCI has introduced new syllabus for LLB of 5 year course and 3 years course with 28 subjects. The inclusion of practical papers PT-I Moot court, pre trial preparation and participation in pre-trail proceeding ,PT-II drafting ,Pleading and Convenancying , (PT-IV) Public Interest Lawyering , legal aid , para- legal services is based on social justice mission. The new syllabi gave more emphasis to practical training and directed the Universities to adopt semester system.
matter by simply passing the obligation on to law schools – and the law schools have, in turn, relinquished their responsibility by assigning the four papers to the faculty without providing necessary support\textsuperscript{515}.

Further, the Bar Council did not assume any responsibility for implementing its new directive. The responsibility for training law students in practical matters was simply passed on to the law schools. Because Bar Council directives are mandatory, law schools did not make halfhearted attempts to fulfill their obligations – despite having the expertise in skills training nor the infrastructure and financial resources needed to implement these papers. Even to the extent that some meager resources were made available, law schools failed to execute these directives because they were viewed as an additional burden on the faculty. Simply put, law faculty neither had a vision for, nor properly understood, the value of these papers.

Law schools are now in a position to accept responsibility for the practical training called for in the four Practical Papers. What is needed to make these papers meaningful is a combined effort from the law schools, the Bar, and the bench to implement them finally through a model of social justice-based clinical legal education – and to do so keeping in mind the principles behind the fundamental values and skills set out above. The purpose of legal education is not simply to encourage the lawyer’s function as champion of his or her client’s cause; lawyers are also educators, policy makers, and counselors. Lawyers can make people aware of their legal rights and duties and they can bring public opinion to bear on law making, thus helping make the law more responsive to national concerns. By producing such lawyers, law schools can begin to serve India’s social justice needs.\textsuperscript{516}

\textsuperscript{515} http://law.gsu.edu/Future of Legal Education Conference/ Papers/Bloch-Prasad.pdf

\textsuperscript{516} Institutionalizing a social justice mission for clinical legal education: Cross-national currents from India and the united states, Frank s. Bloch* and m. R. K. Prasad

Ibid at 197
Clinical legal education must shoulder the burden of preparing law students to meet these expectations for Indian lawyers. As noted earlier, this will not be easy as clinical education in India faces several serious challenges – including the fact that neither full-time faculty nor law students can represent clients. Further, stringent rules for qualifying as a law teacher discourage many advocates from becoming involved in clinical teaching. Since India is a vast multilingual and multiethnic country, a single model for clinical teaching is not possible. Particularly in providing legal aid, students are required to have sufficient knowledge about the local culture, living conditions, ethnic problems, and most importantly the local language. Further, significant differences between urban and rural lifestyles require different approaches to urban and rural social issues.

In spite of these high expectations, only limited efforts were made to transform legal education in India to meet the challenges of the profession. The momentum gathered by the legal aid movement was confined at most law schools to student extracurricular activity, with a few exceptions. Delhi University, for example, established a legal aid clinic in the late 1960s. Faculty participation was purely voluntary and no attempts were made to integrate clinics into the curriculum. None the less, and in spite of the fact that the students were offered no credit, the legal aid clinic attracted many students.

Although these efforts were encouraging at the time, no serious efforts were made by academics or members of the legal community or by the Bar Council of India, the primary body regulating legal education to institutionalize legal aid clinics. The main reason for this failure was that law schools were neither physically nor professionally ready to undertake such a huge responsibility.
In order to implement law school-based legal aid programs at the national level, the first task should have been to prepare law schools to shoulder the responsibility. Several factors that have marred law school education in India over the past several decades also help explain why law schools have failed in their mission of providing legal aid. **First and foremost, most law teachers have no practical knowledge in conducting legal aid because the Advocates Act prohibits fulltime teachers from practicing law. There is also no provision for licensing law students to practice.**\(^{517}\) Moreover, no efforts have been made to provide financial assistance to law schools in order to meet the expenses of providing legal aid and there are no incentives – such as reducing teaching hours – for teachers to engage in legal aid activities. Another fundamental problem comes from the fact that for some time there has been a general feeling that legal education in India is not “meaningful” or “relevant”\(^{518}\).

The curriculum was neither helpful in shaping aspiring lawyers in their traditional role of problem solver nor in their expanded roles of arbitrator, counselor, negotiator, or administrator. The dominant teaching approach was lecture, with little or no attention paid to underlying principles or social intricacies that resulted in shaping the particular rule.

Students had no exposure to the policy underlying the law, the function of the law, or the needs of the nation and the expectations of the people\(^ {519}\). Although there were exceptions, most law schools failed to attract highly qualified students to the

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\(^{517}\) *See* Advocates Act, 1961 Sec 29, 33 providing that only enrolled advocates are entitled to practice law.

\(^{518}\) *Handbook on Clinical legal education*, at 18-20.* *See* Advocates Act, 1961 §§ 29, 33 (providing that only enrolled advocates are entitled to practice law).\(^ {18}\) *See* The Law Commission of India, Report on Reform of Judicial Administration 523 (1958). These remarks were made by the Commission when there were only forty-three law institutes training 20,159 students. I.P.Massey, *Quest For ‘Relevance’ in Legal Education*, 2 SCC (JOUR) 17 (1971).

\(^{519}\) Supra note 29 at 177
legal profession\textsuperscript{520}. The situation was exacerbated by meager salaries paid to law teachers; because of low salaries, the teaching profession did not attract many brilliant persons to law teaching. Further, the teaching faculty was over burdened by heavy teaching loads. Many colleges had large numbers of part-time teachers, which resulted in overloading the full-time teachers with additional administrative and committee duties.

A review of the functioning of various authorities connected with legal education amply demonstrates that there is neither a harmonious coordination nor an effective determination of standards in law schools because of multiple controls.\textsuperscript{521} The present inspection and accreditation processes do not ensure quality assessment or transparency. The composition of legal education committee should be so changed as to adequately provide representation to eminent law teachers, law scholar and educationists. Law teachers do need exposure to some better teaching techniques to help build their capabilities. The universities must develop the law curriculum taking into consideration the needs of alternative dispute redressal mechanism. The traditional universities should give as much freedom as possible to the law faculties to introduce the changes in the curriculum without losing much time.

The law faculties in the universities should pay an important role in introducing new courses and implement them immediately. The traditional universities must come forward to revitalize the practical training programme and to introduce clinical legal programme and effectively monitor the implementation of these measures by introducing credits for active participation in the programme.

\textsuperscript{520} Taylor Von Mehren, \textit{Law and Legal Education in India: Some Observations}, 78HARV. L. REV. 1180, 1186 (1965). full-time teacher is required to take eighteen lectures a week.
\textsuperscript{521} Supra note 30 at P. 607-628
The legal education imparted earlier did not provide social education. Therefore they do not understand or accept their obligation to do so, also the members of the profession do not regularly come into contact with members of the community who need legal assistance. “Legal Education” as “Justice Education” in the new millennium has to prepare the law students to become the ‘frontier men’ of Legal Education. On them lies the responsibility to liberate legal education from its shackles. We have to prepare them to place their skills at the service of the people. Hence, the law schools have to make constant endeavor for preparing sensitized advocates who are dedicated servants of humanity and are, in the words of justice Krishna Iyer, “Development Lawyers.

7.6 Judicial Reforms

The need of the hour is to erase misconception about the Justice by making it more accessible by utilizing the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.

At the micro-level, the process of "Judicial reforms" shall starts from the "Bench". Bench is the beacon light in the ocean of judiciary and it plays a major role in bringing reforms in the judiciary in as much as it is reposed with the responsibility of not only assuring justice, but also doing justice to the needy reforms in the Bench shall be in the following aspects, (i) Speedy Justice and Expeditious disposal of pending cases. (ii) Impartiing due justice and enforcement of justice. the extraordinary complexity of modern litigation requires a judge not merely to declare the rights but also to mould the relief to the suitable given facts and circumstances even by commanding the executive and other agencies to enforce and give effects to the order, Writ or Direction or Prohibit to do unconstitutional Acts. Judicial office is essentially a Public Trust. The role of the judge not merely to interpret the Laws but also to lay new norms of and to mould the Law to suit the changing Social and

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522 Supra note3 at p 82
523 Dr. K.C. Joshi, Our Judicial System is an Trail, AIR1983 journal p.79.
Economic scenario to make the ideals enshrined in the constitution meaning and reality. The society demands active judicial rules which for merely considered exceptional but a rout.

Justice cannot be achieved by the poor who cannot afford to purchase it. For accessibility the Court we are to keep the streams of justice pure and clean* while addressing seminar on "Access to Judiciary", former president of India Sri A.P.J. Abdul Kalam, advised the judges to be noble in the following words: "The Profession of a judge is very noble and divine and the member of judiciary thereof become inviolable role models, the perfect in corruptible ideals of a civilized society.  

7.7 CONCLUSION

State is primarily responsible for providing legal services to the people of India the instrumentalities of the state should strive hard in performing their duties in operating the apparatuses of the constitution, for effective implementation of welfare schemes of central and state Government. All legal services programmes and schemes must inspire confidence that our administration of justice committed to provide equal justice to all. It is the need of hour that people to be aware of rights and remedies. The active participation of lawyers is in need for effective implementation of legal aid. The central Government must undertake full financial responsibility for implementing various schemes of legal aid. Bar council, Law Schools should assume responsibility for implementing new directive of clinical education

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525 Justice B.D.Agarwal, Ethical Deiminination in legal profession Nyaya Deep Vol. X. Issue to April 2009