*Fiat Justitia Ruat Colemn*

let heavens fall, justice had to be done
CHAPTER-I

INTRODUCTION
Introduction

1.1 Significance of the Study

In India, legal system is not equally accessible to all. High cost of justice prevents the poor man from making use of the machinery of justice, for vindication of his rights or redressal of his grievances. Consequently, the poor and weaker section of the society continue to suffer speechlessly and have no alternative but to bear with injustice because they cannot pay the price of justice within the frame work of the judicial administration. The result is that the poor people are not able to secure the protection of laws. This results in losing faith in democracy and the rule of law and they get convinced that the legal system is intended to benefit the rich at the cost of the poor and disadvantaged if the poor cannot get equality before the law and equal protection of laws as enshrined in Constitution of India. This trend will certainly pose danger to the rule of law and grave threat to constitutional democracy. Therefore, the right to legal aid as an essential part of administration of justice is designed to protect the individual rights and also simultaneously meet the demand for social justice by protecting the new social rights of citizens, to ensure them economic and social equality.

‘Law’ is an enterprise that seeks to rule the people from cradle to the grave. The citizens are supposed to know the law made by the State, whether they intend to obey or break it. The entire Justice delivery system is based on the presumption that all people are aware of their rights and are able to approach the concerned institutions. The ignorance of law is not only an excuse but also visits one with dreadful consequences. Illiteracy as a lack of acquisition and retention of skills of reading and writing is a wide spread and deeply rooted problem in India, as elsewhere. Illiteracy, constitute constant vulnerability to exploitation and other forms of violent domination and social exclusion. “To the poor the courts are maze”. Today with plethora of legislative enactments, Statutory rules and regulations, and judicial
precedents courts are maze not only to the poor but also to a large numbers of persons who may not be poor financially but so intellectually on account of lack of knowledge of the relevant laws and of the procedure for obtaining benefit thereof. The idea of equal application of law has a rich pedigree. As Cappelletti and Growth observe “The possession of rights is meaningless without mechanism for effective vindication\(^1\). It was rightly observed by Y.K.Sabharwal J.that access to justice will come by spreading awareness both about the rights and remedies; it has to be accessible to all”\(^2\)

**Legal Literacy is essential to one and all for the following reasons.**

- Informed citizenry is a sine qua non of democratic ethos.
- Law changes and it changes often. It is not merely an instrument of social control but it is also an instrument of social change.
- Social change cannot be achieved without the participation of the citizen; they are ignorant of the law and are not informed about the implications of the law.
- It is a fundamental requisite of the rule of law that the law should be made known. The individual must be able to know his rights.
- The preambular aspirations of the Indian Constitution that permeate through fundamental rights and directive principles of the state policy require the extension of the legal knowledge.
- Justice is denied if this right to know the laws is denied.
- It is the duty of the state to inform the law under which the people are governed.
- The onset of globalisation made this mandate more relevant.

### 1.2 Need for the Study

\(^1\) Kamala Sakaran, Ujjwal Kumar Singh: *Towards Legal Literacy an Introduction to law In India*, Upendra Baxi., “why legal literacy? Awake up call” p 1-9

\(^2\) The Hindu *Legal Education*, November, 15, 2006
The reason behind the study is to evaluate the legal services in the light of established legal norms / principles involved. A critical legal appraisal of the legal services under the Act is all the more imperative due to poverty and illiteracy; poor or rural people are unable to avail themselves the fruits of the democracy. They are also unaware of the schemes of the Legal Services Authorities, Welfare Schemes of the Government, which would enable the people to avail themselves the benefits.

One of the most striking features of Indian Legal system is adversary system. Due to Ignorance of law and legal process, unintelligible and inaccessible procedure and prohibitively costly professional assistance, artificial distance prevails between administration of justice and life and living of the people country which has many a times culminated into impediments for needy and indigent downtrodden and destitute, lonely and lost class of people and justice had become virtually immensely difficult. The inability of the poor to access the justice system is attributed to illiteracy, destitution, economic and social bondages, cultural inhibitions and bureaucratic and political corruption resultantly, the poor were denied equal justice. The need for providing legal aid to the poor is to keep the balance steady among the rich and the poor. If a rich man appoints a counsel for his defense, the balance is tilted and the right of the poor man is jeopardized. To keep the balance steady, the assistance of a counsel should be given to the poor persons at state expenses. The provision permitting a suit "informa pauperis" and supplying at the expense of the state an amicus curiae were certainly the potential predecessor of the movement which has in course of time assumed today a constitutional as well as statutory mandate. Statue recognizes the felt presence of a global movement.

3 N.L.Mitra: Towards a relevant legal aid logic and strategy in India, 1989 1 NLSJ p-81
The Poor masses and the down trodden of India, like most of the developing world, are overwhelmingly rural, and 69% of the Indian population live in villages. Poverty is the omnipresent reality of Indian Life. Economic deprivation lack of income is a standard feature of most definitions of poverty. But this in itself does not take into account the myriad of social, cultural and political aspects of the phenomenon. “Poverty” is not only deprivation of economic or material recourse but is a violation of human dignity too. Indeed, no social phenomenon is as comprehensive in its assault on human rights as poverty. Poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water and the right to education. The same is true of civil and political rights such as the right to fair trial, political participation and security of a person.

In India the generally accepted definition of poverty emphasizes minimum level of living rather than a reasonable level of living. The deprivation of a significant society of minimum basic needs makes poverty more glaring. Poverty as a social phenomenon in which a section of the society is unable to fulfill even its basic necessities of life. It means lack of money or material possessions. Poverty is not merely an economic phenomenon and is linked with a variety of complex, social relationships aggravated by a long period of subjugation under colonial rule and it is vulnerability to injustice.\(^5\) It is a condition or relationship to society where poor people are made to feel that the equality, freedom and rights, enjoyed by the privileged few only.

Poverty as a matter of fact robs the individual of his dignity and makes it impossible for the poor to share the fruits of freedom and democracy. Poverty is a legal issue, when one consider the rights of the people and their vindication. It is

both the greatest impetus and the greatest impediment to the economic and social progress. Though the poverty is widespread in Asia and Africa, yet our country is really a land of poor masses. It is so horrifying that the economists talk not about poverty but of “below poverty”. According to Kofi Annan, economic deprivation—lack of income—is a standard feature of most definitions of poverty. But this itself does not take account of the myriad of social, cultural and political aspects of the phenomenon a fair trial, political participation and security of a person.

It must be recognized that poverty is itself the greatest disease, the greatest injustice from which the poor suffer and it is the source of manifold diseases such as ignorance and illiteracy, helplessness, hopelessness, weakness etc., which in their turn give birth to innumerable kinds of injustices to the poor. If attention is shown to the plight of the poor and their pitiful condition, in India, it will be apparent the sufferings of poor because they are poor, and they remain poor because they are poor. The socio-economic structure gives opportunity to the rich to become richer but does not provide any opportunity to the poor to shake off the shackles of poverty and to enter the haven of prosperity there is no escape for them from their poverty and its concomitant injustices.

The injustices from which the poor suffer are many and pervasive and exhaustive. The poor are unable on account of their poverty to participate effectively in the political processes at various levels. The direct consequence of this is that though they are in an overwhelming majority, they find it difficult to get legislation which can get rid of their poverty and gives equal opportunity to their development. Even when the poor people approach the courts, they do not always

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succeed in securing redress of their grievances the main reasons is that they are unable to secure the services of good and competent lawyers because of their poor economic condition.

Democratic society is based on the concept of equality. But the members of a democratic society are not equal so far as their economic resources is concerned. This situation may create problems when a legal dispute arises amongst unequal members of the society. In such cases the party who lacks sufficient economic source may find it difficult to face costly, cumbersome and time consuming legal process in order to get justice. In fact this is a perennial question. But in a democratic society the parties to a legal dispute should also be treated or an equal footing. Thus it becomes the duty of the State to give necessary assistance to the economically weaker party. Today equal justice is the watch word and free legal services to the weak is the watchdog in developing democratic societies. In modern world, the touch stone of a civilized society is the commitment to legal aid.  

Faced with such a Socio-economic Scenario, India, as a developing country is in an urgent and uttering need of broad dimensioned legal aid concept. It is for this purpose that India, requiring so dearly the finance and forces for many development objectives, has also adopted the tool and technique of legal aid for her to attack poverty.

Justice is the corner stone and fundamental goal of every civilized nation. The chief purpose of law is justice which reflects in the happy and orderly advancement of a given society. The philosophy embodied in the Universal Declaration of Human Rights 1948 in its very preamble, enshrine the concept of socio-economic justice.

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The Declaration forbids discrimination, guarantees the right to life, equality, liberty and security of person, fair trial, social security etc. Legal aid concept is not expressly but implicitly enumerated in the Declaration to protect the dignity of human beings. Although Declaration is not legally binding instrument as such yet it was more in the nature of a binding moral commitment, yardstick of international standards and path finding instrument. Legal aid as a Human Right is envisaged in Articles 7, 8 and 10 of the Universal Declaration of Human Rights, it flows clearly and inevitably from clause (3) of Article 14 of the International Convention of Civil and Political Rights which reads as under: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law."

The earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organised efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State. Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments.

The movement for legal aid in India, however, got momentum and thrust only after the Rushcliffe Committee’s Report which was an exhaustive study of legal aid.

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10 J.N Bhatt: *Legal Aid As A human right*, Nyayadeep,
11 http://www.aplsa.ap.nic.in site visited on 5.8.2011
The Government of India also took initiative by appointing committees to introduce legal aid schemes. In 1971 Justice Bhagwati had been appointed by the Gujarat Government for suggesting ways and means of providing free legal services to the poor. In 1973 Justice Krishna Iyer presented his report to the Government of India, Justice Iyer has widened the field of legal aid to cover both pre-litigative and post-litigative areas. In a country like ours, where people mostly live in a sub-human level in not only material poverty but also in intellectual poverty understanding the existing system, legal aid cannot be confined in a post-litigative court aid only. Primary concern to be in pre-litigative areas by giving legal advice and assistance. The Government of India appointed a “Committee on Juridicare” under the Chairmanship of Mr. Justice P.N. Bhagwati, Judge, and Supreme Court of India on May 19, 1976 to draw up uniform legal services program for all the states and in 1978 both Hon’ble Justice P.N. Bhagwati and Hon’ble Justice V.R. Krishna Iyer presented a report on Legal Aid Schemes. Both Judges were later appointed by the Government of India as another High Power Committee to examine their own reports or fresh and suggest a plan of action for implementation of legal aid to the poor in the country as a whole.

The Government of India constituted a committee known as “The Committee for Implementing Legal Aid Scheme (CILAS), under the Chairmanship of Hon’ble Justice P.N. Bhagwati to prepare a model scheme of Legal Aid for the states and union territories of India (1980).

In the traditional sense, legal aid included appointment of a lawyer at the expense of state, exemption of court fee, process fee other payable fee. Later on, the scope of the legal aid was expanded and the pre-litigation aid has been covered under

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it. In its wider sense, legal aid also includes public interest litigation, Lok Adalats, Legal Literacy; which are important limbs of legal aid. Legal Aid is not a mere constitutional obligation. In India it is a social imperative. After attaining independence, The Constituent Assembly, which was well acquainted with these social ills, decided to enact a Constitution on behalf of the 'the People of India' inter alia, guaranteeing and securing to the People of India, justice, social, economic and political; equality of status, of opportunity and equality before the law; and providing 'adequate safeguards for minorities, backward and tribal areas and depressed and other backward classes'. The theme of social revolution runs throughout the proceedings and documents of the Constituent Assembly. The chief purpose of a law aims at justice who reflects in the happy and order advancement of a given society. The Constitution of India guarantees “Right to Constitutional Remedies as a Fundamental Right. The Government provides free legal aid to the needy. However, in a country of continental dimensions and with population more than a billion, it becomes very difficult to provide free legal aid to every one. Effective access to justice is the basic requirement of a system which purports to guarantee legal rights to the people at large.

The people fought for access to justice even in the ancient times. Out of such fierce fights, emerged the ‘Magna Carta’ on 5th May 1215. The words “To no one will we sell, to no one will we refuse or delay, right or justice” are of great moral significance and have inspired the universal quest for justice for almost ten centuries. This charter was, thus, the starting point of the constitutional history of England and

the first link in the long chain of correlatives between the constitutional concepts of India and Great Britain.

India unveiled its constitution which contains frame work of socio-economic equality and justice, welfare and progress of the Indian humanity. The spiritual essence of a legal aid movement consists in investing law with a human soul; its constitutional core is the provisions of equal legal services as much as to the weak as to the strong and affluent and the dispensation of social justice through the legal order. Legal Aid as a social instrument must have a democratic vision which illumines its ends and means. The State must strive hard to keep the people on evolutionary process and continue its efforts in wiping out human miseries. The State as guarantor of freedom, justice and rule of law provide legal aid to those who do not have the means to assert their rights. The preamble speaks of justice, social economic and political and of equality of status and opportunity. It points out protecting the interest of the poorer section of the society, with an effective, efficient functions of the legal aid program and legal literacy program as covered in Art 14,21,22,38,and Art 39-A. Under Art 39-A State should promote justice and provide free legal aid by suitable legislation (Legal Services Authorities Act,1987) or schemes, ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Entry III in the State list is to include legal aid which provides for administration of justice. The expression “administration of justice has wide connotations, which include administration of civil as well as criminal justice. Art 21 has been reinforced by 39-A.

The ambit of providing legal aid to an accused at the state expense has been enlarged by the provisions of Sec 304. Legal aid in criminal cases applies at trial and appeal, Special leave to appeal, to Prisoners in jail whether under -trial or convicted prisoners. The Code of Civil Procedure of 1908 was amended by Act 104 of 1976 in
which Order XXXIII, providing legal aid to indigent persons in civil matters was improved and enlarged. In case an assisted person succeeded in his litigation, the cost awarded should go to the "Legal Aid Fund" rather than to the legally aided person. The unsuccessful litigant should also pay the cost so that it would be a contribution towards the Legal Aid Fund in assisting the cases of poor and helpless litigants in State.

In pursuance of 39-A – Legal Services Authorities Act, 1987 has been enacted. The Object of the Act is revolutionary in theme and modern in concept. It is to provide free and competent legal services to the weaker sections of the society and to ensure that they are not deprived of it by reason of economic and other disabilities. It envisages organization of Lok Adalat with a view to ensure speedy justice on the basis of equal opportunity. The State of Andhra Pradesh is leading in implementing Legal Aid and Lok Adalat on the streets, in the entire country. The Act comprises Authority of legal services, administrative machinery, functioning of Legal Services Authorities from the National to the Mandal Level it also includes the Lok Adalats. The definition of “legal services”, under Section 2(1) (c) of the Act, includes the rendering of any services 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. This definition is wide enough to encompass Justice Bhagawati’s aspiration of effective legal services: Strategic legal aid programmes, like promotion of legal literacy and creation of legal awareness amongst the weaker section of the community. It also provides for the organization of legal aid camps and encouraging the settlement of disputes through Lok Adalat. The Act imposed a duty on Central Authority to take necessary step by way of social action litigation for the cause of weaker section and give training to social workers in legal skills. It provides for clinical legal education programme and legal aid clinics in Universities, law colleges and other institutions. The Central Authority, the State Authority and the District
Authority will act in co-ordination with other government and non-governmental agencies, Universities etc. The Act also Made Provision for the grants in aid to social welfare institutions for specific schemes.\(^{16}\)

Before the advent of Legal Services Authorities Act, 1987 the cases that came up for compromise were very few and far between. This beneficial legislation at a crucial time came as a boom to the litigant public and developed new techniques to make the dispute resolution mechanism in quality and quantity. The Act conferred permanent life and legal sanctity to concept of the Lok Adalat as a better alternative dispute resolution system for dispensation of fair justice as per principles of natural justice, equity and good conscience. Access to justice is the most basic human right but the problem of access to justice has many dimensions. In its broader concept access to justice has to cover more than bare country entry and is to include reaching law makers, lawyers, police, enforcement agencies capacity to pay court fees, capacity to bear the costs and expenses, time consuming factor, as also access to legal information. The information concerning the norms of law, is not accessible easily even to those who are affected by law.

Due to lack of awareness on the part of people, for whose benefit laws are enacted, ignorance of rights and privileges under the law, they are unable to identify any wrong or injury caused to them as a legal wrong or injury capable redress through the legal process. Illiteracy, resists in denial of justice. It is therefore, absolutely necessary to create legal awareness amongst the people.

India being a welfare state the benefits of the progress and development of the country must per collate to the remotest village with a view, that the poor masses also have access to the development. The people must be aware of the constitutional

rights. This awareness is necessary, so that the fruits of the development also reach the poorest of the poor. As our legal system functions on the premise that ignorance of law is no excuse, the creation of legal awareness is not only necessary to the illiterate but also it is very essential to the literate people, well-educated persons, administrators and those who implement the law to maintain law and order and to implement the social welfare legislations for providing various benefits meant for the poor and illiterate people.

In the narrower sense, legal literacy means making people aware of their rights, by making the people literate and empowering them to fight for their rights. In the broader approach, it means awareness of rights, but such awareness must go hand in hand with regard to the remedies, the relevant institutions and the procedure required for obtaining remedy.

Programmes for legal literacy launched by Human Rights and social activist preciousy accentuate literacy for the right less people’s, the perennial estate of the constitutional have-not’s this undoubtedly crucial move should not obscure the fact that even the constitutional have’s stand in dire need of such literacy. At present, great respect vest for gross roots activists who produce legal literacy kits (know your rights).

Legal literacy is not about knowing every section of law but the basis of the law and its spirit. Literacy is the prime requisite even to know such rudiments of law. A woman victim, unaware of the projection of anonymity, may refrain from complaining of sexual assault for fear of undue publicity. A person ignorant of legal aid may abstain from law courts for want of resources. Ignorance of law and procedure coupled with inaccessible judiciary results in people meekly suffering injustice without asserting their legal rights.
In a developing nation, especially in India a strong legal literacy programme is very important. There is a need for a social transformation, and this social transformation can only come when there's a class of people who are willing to assert their rights against the present polity. The Indian Legal system is riddled with crisis, that people do not actually have access to the ideal of justice as they need. This crisis can be overcome by the medium of Legal Literacy. For the purpose of advancing Legal Literacy in India the government has established National Legal Literacy Mission. On 9th of November is now celebrated as National Legal Literacy Day.

In the year 2005 the Prime Minister launched the National Legal Literacy Mission. The motto for which is “From Ignorance to Legal Empowerment”. The primary objective of the mission is to lift the veil of ignorance through knowledge and to spread awareness people are informed about their rights and their enforcing machinery to protect their rights as well as how poverty is not an obstacle in having free access to justice. National Legal Services Authority paved way to provide access to justice for the people in villages to set up a Legal Aid Clinic (LAC) in every village recently. To facilitate the indigent applicant at rural areas to approach Legal Services Institution, to create awareness of his rights, NALSA brought out an important National Legal Services Authority (legal aid clinics) scheme, 2010, which aims at the village level to be manned by para –legal with support from panel or retainer legal aid lawyer. Legal Aid Clinic will function from Panchayat offices in villages and its main objective is to help to solve disputes without allowing them to mature into litigation in courts. The lawyer and para-legal workers would also render

18 Justice Amar Saran : Law Reaching out to the poor- The Legal Aid Clinic Nyaya Deep, vol XII Issue Apr2011, p,22-30 at 27,
other services like preparing applications for job cards under the National Rural Employment Guarantee Act (NREGA).

Today law is not viewed merely as an instrument of social control but also an instrument of social change. We must have a legal education which can fulfill the need of the society and country as well. It is the legal education that plays a prominent role in promoting social justice. The aim of legal education should be not only to produce good lawyers but also to create cultured and law abiding citizens who can serve humanity in various capacities such as social activist, paralegals’, administrators, jurists, legislation and judges.

Legal education is an important constituent of professional education. Vision of legal education is to provide justice oriented education essential in the realization of values enshrined in the constitution of India. The Bar Council of India has mandated for all Indian Law schools four "practical papers". These papers require the teaching of a variety of lawyering skills and a certain level of legal aid work which can serve institutionalize social justice based clinical education in India. Clinical methodology is most described as "learning through doing". The unique aspect of the clinical method is the active participation of the students, under faculty guidance and supervision. Clinical Legal education has wider goals of enabling Law students to understand and assimilate responsibilities as a member of public services in the administration of the law. In the protection of individual rights and public interest and in upholding the basic elements of 'professionalism. The procedure of implementing the design of clinical methodology is the form of social justice and

21 w.w.w Frank s. Bloch and M. R. K. Prasad: Institutionalizing a social justice mission for clinical legal education: Cross-national currents from India and the united states
equality. The word legal aid assumes different types in various countries. But the delivery of legal aid in equal propitiation still remains imbalanced.

Legal Profession in a wider sense includes Judges, Advocates, and Academicians Para-legal etc. It is a social obligation on the legal luminaries to provide legal services which include legal advice and create legal awareness to the public.

The strategic arm of legal aid programme is the Public Interest Litigation (PIL). The purpose and object of public interest litigation and liberation of the traditional rule, relating to locus standi is to render socio-economic justice to the poor and weaker sections. The Supreme Courts and High Court have permitted public spirited citizens and organizations with known credentials to invoke the extraordinary jurisdiction on behalf of the deprived sections of the society for the enforcement of legal and fundamental rights.

The role of voluntary organizations in a democratic society is very significant for achieving socialist goals also for restructuring the social and economic institutions. The concept of justice includes within it not only human justice, but also socio-economic and political justice. Para legal services may thus serve as a viable alternative to the formal court system at a pre-litigation stage. They can render assistance to rural masses to resolve their disputes or differences at the pre-litigation stage through amicable settlement instead of approaching the law-Court for justice. Well trained para-legal workers can educate the masses about the various social welfare laws and other legislations dealing with, landlord and tenants, and those

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22 per Justice Bhagwati in People Union for Democratic rights v. Union of India, AIR 1982 SC.1473
related to untouchability, bonded labour, marriage and divorce, succession, adoption, and so on.  

Due to the impact of modern forces certain changes have also occurred in the political sphere of the Indian society. Regulation of court, laws, establishment of village panchayats and expansion of local autonomy have changed the traditional social structure. In villages caste panchayats are declining and their functions are being transferred to the law courts. On the recommendation of 114th Law Commission Report, the Govt. enacted the Gram Nyalaya Act, 2009, to make judicial reforms and to achieve the goal of access to justice. The institution of Gram Nyalaya occupies one of the most important places in the scheme of Legal Aid. The object of the Act is to provide for the establishment of the Gram Nyalayas at the grass root level for the purpose of providing access to justice to the rural people at their door steps. The salient features of the Act is to provide inexpensive justice to the people in rural areas at their door steps. Gram Nyalaya shall be a court of Judicial Magistrate of the First Class presided by NyayaAdikari, appointed by the State Government, in consultation with the High Court. The jurisdiction to try criminal case is for which imprisonment is one year or fine or compoundable, to be in summary trial as specified in First Schedule of the Act. In civil cases, matters relating to land, water and those specified in second schedule of the Act by applying the principle of Natural Justice. The Act, in civil cases makes provision for conciliation to settle the disputes amicably. The Advantages of Gram Nyalayas are simple procedure, speedy disposal within 90 days, and reduction in the cost of litigation, to provide legal aid and to create faith and confidence in the judicial system.

23 Dr.N.V.Paranjapee: Public Interest Litigation, Legal Aid & Services, lokadalat and para-legal Services, Central Law Agency, Allahabad 2006 p.312.
Social justice is a generous concept, which assures to every member of the society a fair deal of remedial injury. The expression ‘social justice’ means justice to all including the deprived and weaker sections of the society. The expression social justice is best explained by Sri Pt. Jawaharlal Nehru uttered on the eve of attainment of India’s freedom: “The services of India means the services of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation (Mahatma Gandhi) has been to wipe every tear from every eye.”

It is recognized through the free world that the State must, as a guarantor of freedom, justice and rule of law, provides legal aid to those who do not have means to assert their rights. Thus the legal aid programme aimed at revamping the socio-economic structure by way of removing the socially unjust institutions and creating a new order based upon the ethos of human liberty, equality and dignity of mankind.

The provision of Legal Aid therefore essential in accomplishing equality in society and ensures justice in every walk of life. Bhagawati, J. emphatically said on the importance of legal aid: “Let it not be forgotten if law is not only to speak justice but also deliver justice, legal aid is absolute imperative. Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. It is intended reach justice to common man. It is interesting note that the Supreme Court with the help of Article 39-A is endeavoring at dispelling the common belief that the Courts in India are not only Courts of law rather Courts of Justice.

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The growing use of Law as an instrument of social change is one of the characteristics of modern society. Sociological jurists look upon law as a social phenomenon. The Predominant theme of the Sociological jurisprudence is to promote Socio-economic good of society through law. Legal aid services are treated as judicial arm of the War on Want and campaign for social justice. Equal protection by law to all rich and poor, weak or strong is basic tenet of constitutional philosophy of India. The Constitution of India, not mere Democracy as a Political Project but a Socio-Juridical process which opens up through a humanist radically social order, the opportunity to unfold the full personhood of every citizen. The policies of state should be to protect the weak against the strong and the poor against exploitation by rich group and to formulate laws to provide equal opportunity and social order. To express in the words of President Roosevelt, the state should strive to establish social order which would ensure "Freedom from Wants and Freedom for All". The rule of law, with an equal eye and even hand, is a categorical imperative and inviolable feature of our Constitutional Order. The State has heavy social and economic obligations and the Court must invigilate and enforce these duties. The judges themselves must be free from pressure and prejudice and be sensitized to act, be the violator ever so high in office or ever so powerful in any other way.

Equality is the basis of all modern system of jurisprudence and administration of justice equality before the law necessarily involves the concept that all the parties to proceeding in which justice is sought must have an equal opportunity of access to the court. But access to the courts is by law made dependent upon the payment of court-fees, and the assistance of skilled lawyers is in most cases necessary for the proper presentation of a party's case in a court of law. In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending

27 Dr. S.R. Myneni: Jurisprudence (Legal Theory) Asia law House Hyd. P.483
himself against a criminal charge, justice become unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. The rendering of legal aid to the poor litigant for assisting payment of court fee and lawyer’s fee and other incidental cost of litigation is a fundamental character of the state by providing equality in the opportunity to seek justice.

One of the prerequisites of a successful democracy is to make the machinery of justice so effective that every citizen shall have belief and benefit its impartiality and fairness. Only the rich enjoy the fruits of law, and the poor who need of it cannot have the privilege of legal aid. the threat to democracy is a reality. Legal Aid is undoubtedly one of the most important devices by which the benefits of the "Rule of Law "are be made available to the poor. The legal system must mean the same thing to the poor as it means to the rich. The availability of Legal services to the poor helps society itself legal aid to the poor is in a sense vital to the very survival of our democratic system and its denial implies a failure of the Rule of Law.

Justice in India has become unusually costly which becomes a prohibitive factor for poor persons to register their case for entry in the courts. As the social Justice is a signature tune of our constitution, all are equal before law no one should be denied justice on the ground of economic disability. Besides food, clothing and shelter, every individual in society should get justice free of cost. The time has now come when the courts must become the courts for the poor and struggling masses of this country. It is solemn duty of the judiciary to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realization of constitutional goals. The Orissa High Court held\(^\text{29}\), that Legal Aid is meant for the purpose to assist the poor persons, not to suffer them injustice for lack of funds or Legal assistance.

\(^{29}\) Ramamani Devi v. Benduhar Pradhan 1999 (2) ALT (1)P-154.
Legal aid and advice is indeed a part of social security programme in the same way as medical aid. In this regard, father of the nation Mahatma Gandhi said to lawyers: “The first thing which you must always bear in mind, if you would spiritualize the practice of law, is not to make your profession subservient to the interests of your purse, as is unfortunately but too often the case at present, but to use your profession for the services of your country”.

In most western countries legal aid programme is confined to one aspect, i.e., providing financial assistance to the poor so that he can go to the Court to get his grievance redressed or to defend himself. In India we view it differently. Its various aspects are: (a) Financial assistance Court cases or cases before administrative tribunals or departments (b) Lok Adalats (c) Para-legal training and legal awareness campaigns and (d) Pre-litigation adjudication\(^{30}\)

1.3. **STATEMENT OF THE PROBLEM AND LIMITATION**

This study being under the legal discipline, the precise questions under investigation are: What is social justice? Whether schemes of Legal Services Authorities were effectively implemented? what are the legal principles that are applicable to the legal aid under the LS Act? What are the other means for speedy disposal of cases? Is the Act effectively implemented, and can the legal aid to be a solution to poor to have access to justice in India? These questions in turn, would include in their scope various problems in rendering Legal Services. The most significant aspect being the quality of legal aid, legal empowerment to literates and illiterates, Alternative Disputes Resolution techniques for speedy disposal of cases by Lok Adalats. The Legal provisions in both national and international legal perspective, physical, economic, social administrative facets also form an important

and integral part of services. These imposed certain limitations on the study. The entire study is made in relation to Indian situation with reference to the Legal Services Authorities Act, Legal Services rendered by the Andhra Pradesh Legal Services Authorities. International provision relating to legal aid in United States, United Kingdom, Canada are made. The researcher in her endeavour to provide a historical perspective of Legal Aid has confined only to incidents which have paved the way in the above stated countries for the enactment of Legal Services Authorities Act. Firstly it is a maiden attempt to analyze the sections relating to Legal Services under the Legal Services Authorities Act. Secondly, the research is significant in making a contemporaneously relevant study with the legislative provisions that are available to provide legal aid to poor and needy.

The provisions relating to Legal Aid in Other Enactments, has however been touched in nutshell as a prelude to the main analysis. Services to be rendered by Governmental Agencies in general is a separate theme for a separate research of this type. One of the important dimensions of the present research study is to highlight the legal Services in upholding the constitutional mandate and legislators approach towards the attainment of socio-economic justice.

To overcome these limitations imposed and in view of their indispensability for arriving at a cogent answer to the research problem they have been discussed briefly wherever relevant with these limitations, the researcher has taken proper care not to deviate from the topic chosen for present study and to confine her study to “Evaluation”. Poverty is the mother of all evils. Today one of the greatest evil rampant in society is that the poor do not have easy access to the courts and are deprived of justice. Poverty is the cause of inequality and origin of social injustice. The twin legal maladies of injustice in the Indian Legal System are lack of purchasing power and the illiteracy of those in whose name the basic law and all laws
are supposed to be made. The presently costly adversarial from of administration of justice is not quite suitable to the present condition of our Indian Society. The British judicial system introduced complicated procedures and formalities. Lawyer’s fee made litigation a costly affair. Moreover, the technicalities made litigation time consuming. The formal legal system is unsuited to needs to the poor. To majority of people, who are living below poverty line, justice has become a costly luxury. There is no justice unless there is a sure uniformity about it. Legal provisions, procedures are also very complicated and cumbersome. In these circumstances the downtrodden and the vulnerable masses of our society hardly have an easy access to the court of law. In a country like ours where the poor are unable to engage lawyers, justice ends up becoming a rich man’s indulgence.

In the absence of legal assistance, injustice may result. Every act of injustice corrodes the foundation of democracy. The most striking features of the Indian democracy is the complete ignorance of the constitutional and other legal rights, ignorance of the availability of lawyers and the system of justice delivery. No one takes the initiative in educating the poor and illiterate regarding this availability. The selfish motive of the legal intermediaries has further deprived the masses from securing the necessary legal services. This has to be eradicated for the better implementation of free legal aid. Indian legal system is that it is too dependent on Anglo-American Common Law system. Too much dependence on it, created literacy problems in two opposite directions. It has created legal literacy problem not only concerning illiterate people but also for the most literate persons, too. It has created a huge ignorance among the educated people about the types of non-formal indigenous methods of arbitration that exist even today in many parts of the country, besides the accumulated darkness of the people about the implanted judicial system. Thus we require twin programme of literacy campaign, one to bring up the quantum of knowledge about the present legal facilities and laws involvement in people’s life,
and the other to make our literate urban people knowledgeable about the rural life in the distant areas in the backdrop of their respective conventions and friction-management. Since law and life are intimately connected, perhaps legal literacy shall remain incomplete unless the programme is made double way traffic. Whereas the urbanized educated people have to know the life and living conditions of our own vast sheet of people living in vast and varied conditions, their social habit, dispute settlement technique, their social custom, culture, tradition and the life pattern, the people in general have to know the rights and liabilities of them under the present legal order.

Robert Kennedy generalized the poor man “Legal” has become a Synonym simply for technicalities and obstructions, not for that which is to be respected. The poor man looks upon the law as an enemy, not as a friend. For him law is always taking something away. Kennedy emphasized that “Unasserted, unknown, unavailing rights are not right at all”. Due to lack of awareness on the part of people, for whose benefit laws are enacted, ignorance of rights and privileges under the law, they are unable to identify any wrong or injury caused to them as a legal wrong or injury capable redness through the legal process. Illiteracy, resisted in denial of justice. It is therefore, absolutely necessary to create legal awareness amongst the people

1.4 Review of Literature:

As the present study is a doctrinal one, Literature in connection with the present problem is reviewed from Various sources. The Secondary source material in the nature of law text books, commentaries, articles in the journals relating to Legal Services Authorities Act, 1987 is referred. Standard text books on legal services, legal aid and public interest lawyering are collected. Relevant materials also

downloaded from Internet, www.nalsa.gov.in, www.aplsa.ap.nic.in, www.legalservices.com, www.bar councilofindia.org, www.lawmin.nic.in, used as starting point for the present research. The researcher for understanding contemporaneous thinking on the subject has hunted for historical development of legal aid from various sources. In order to have first hand information on legal services, litigants, are consulted to understand their reactions and their opinion on the available provisions of legal aid programmes. They are found to be the basis for the present research on which the superstructure built upon through the researchers evaluation analysis. The researcher has referred the works by the noted jurists, Justice V.R.Krishna Iyer, Justice P.N.Bhagawati, Dr.N.R.Madhva Menon and others. The Expert Committee Report V.R. Krishna Iyer & P.N.Bhagwati, Processual justice to the people :, Report on National Juridicare Equal justice : Social justice, Delhi, India Ministry of Law Justice and Company Affairs, Report of the Preparatory Committee for legal aid scheme, Bhopal, Madhya Pradesh, Report of the Legal Aid committee, Gujarat’s proved to be very valuable source material for the research. Articles written by many Academicians, Members of Legal Services Authorities are much preferred because they deal with specific areas in depth. (The news item in daily newspapers like “The Hindu”, “Eenadu” are collected) to through light upon the correct developments relevant to the present study. On the whole, the researcher tried to follow the “Best Evidence Rule” but sometimes owing to non-accessibility to original materials, extracts from others works are collected and made use of and are duly acknowledged. The present research is justified in attempting analysis of Legal Aid under the Legal Services Authority 1987. The present study tries to assess the legal services rendered by the Governmental Agencies and also legal Aid provisions under Other Legal Enactments.
Justice P.N Bhagwati is the father of the Legal Aid concept. In his book “Legal Aid as a human right” he recognized legal aid as a human right which is inherent in every human being.

Justice V.R.Krishna Iyer, in his book “Justice at Cross Roads” discussed about the concept of social justice and points state duty to execute the promise of justice as in the preamble in favour of the people.

Dr.Upendra Baxi, “Law and Poverty critical essay” is compilation of different Author’s presenting topics on law and poverty. N.R.Madhava Menon, in his article “Legal Aid and Justice for the poor” has explained poverty, historical perspective of Legal Aid in India elaborately and need for publicity and promotion of Legal Aid Schemes by Para Legal Services.

Hence the researcher in the present work concentrates on the

Dr.N.R.Madhava Menon, “Clinical Legal Education” which explained the clinical methodology, training Skills etc. in clinics. The Author has mentioned its importance in National Law Schools Level. The feasibility of clinical teaching in traditional colleges is untouched area.

Dr.S.S.Sharma, “Legal Services Public Interest Litigation of Para Legal Services” is a book on Legal Services. He has explained the present Act and its implementation in Rajasthan. The importance of Public Interest Litigation is well projected but the provisions of Legal Aid in other Legislation which are necessary to accept the importance in a right way is not dealt with.

J.P.S. Sirohi and Anel Sirohi in “Public Interest Lawyering Legal Aid and para Legal Services” authors explained the present Legal Services provided in states,
but this work is silent about para-legal services which are necessary to render voluntary free legal services.

* S.Muralidhar, in his book “Law Poverty and Legal Aid Access to criminal justice” explained right to equal access to criminal justice and Legal Aid provisions in criminal justice and legal aid provisions in criminal justice system. The book explains interaction between the criminal justice system and the poor and pleads for a better legal aid system for vagrant’s sex workers and mentally challenged person. The book is confined to Legal Aid in criminal justice.

* Dr.S.R.Myneni “Public Interest Lawyering, Legal Aid and Para Legal Services” is a book which to a convincing extent covering statutory provision of legal services provided by authorities. This work failed to explain the implementation of schemes by Authorities. Legal Aid provided by the Governmental Agencies was not covered.

* O.P.Tewari “Public Interest Lawyering, Legal Aid and Para legal Services” is a book on scope of public interest litigation. The area on which the authors concentration was primarily jurisdiction of Supreme Court and High Court in relaxing locus standi in modern perspective. The author also made an attempt to know, model of a law school. Legal Aid clinic framed by the Central Government. The author fails to explain the provisions of existing legislation. Legal services authorities Act, which is the primary source of legal aid.

* Dr.N.V.Paranjapee in his book on “Public Interest Litigation Legal Aid & Services, Lok Adalats & Para-Legal Services” described role of public interest litigation in protection of life and liberty of persons and for the protection of the rights of women, child in detail. Legal Aid as Human right was explained and also at
international perspective. The provisions of Legal Aid was analyzed. Role of Para-Legal Services in Legal Education with specific reference in other countries were elaborated.

The researcher felt that earlier studies did not cover all the aspects on this problem in a comprehensive way. In view of this, the researcher has selected this topic to provide a comprehensive and detailed account of Legal Services and implementation of various schemes.


An Introduction to the Constitution of India by Durga Das Basu,(18th Edition) is a precise Commentary on Constitutional Provisions with some cases.


K. Tripathi – in his book “Some Insights in to Fundamental Rights” (1977), which is a book on Mahajan Memorial Lectures provided the discussion on concept of equality guaranteed in the Constitution.

Granville Austin in his famous study, The Indian Constitution: Corner stone of Nation (1966), has very effectively explained how an agreement on the need for having fundamental rights for the Indian people was arrived at.

Dr. J. N. Pandey in “The constitutional Law of India” (2005), explains the judicial interpretation of rights guaranteed and duties vested upon the citizens as well
as the state. This is very helpful to understand the judicial pronouncements on various constitutional provisions.

_B.P. Dwivedi_ – in the “Changing Dimensions of Personal Liberty in India”, (1998), dealt with the dimensions of personal liberty in detail, which includes the rights fall under personal liberty and emerged as new rights.

_M.K. Bakshi_ – “Constitutional Law of India”, (Seventh Edition -2006). This book provides the provisions and case laws on Indian Constitutional Law in a very brief form. This Book also gives a brief statement regarding the judgments.


_ R.V.Kelkars_ authored a book on “Criminal Procedure”. The author made an analysis of features of Trial procedure, accused person right expeditious trial through counsel and provisions of legal aid to accused at state expenses in certain cases. The author explained equal justice and free legal aid referring to case-laws.

_Sanjiva Row’s “The Code of Civil Procedure” presents orders, Rules and Procedures to be followed by civil courts in administration of justice in three volumes. Case Laws, State and High Court Amendments were added to give clear picture of procedural laws. Right of indigent person to Sue is elaborately enumerated to understand its scope._
S.K. Sharma, “Distributive justice under the Constitution” in his work the author explained the concept, theories of justice. The constitutional scheme of distributive justice is mentioned to understand the philosophy of distributive justice.

M.G Chitkara., P.C Mehta. Wrote on “Law and the poor.” The authors made an attempt that Legal Aid to poor is imperative of law and is indispensable postulate of the Legal System. The authors expressed state obligation to introduce a dynamic and comprehensive Legal Services Programme irrespective of Fund. The importance of Free Legal Aid Cells in colleges was first pointed by him.

P.S. Narayanas in his book on “Public Interest Litigation” discussed at length public interest litigation launched by Advocate, Social Activists and Voluntary Organization as a strategic arm of legal aid movement. The author provides valuable guide lines for “bar, bench and social bodies in protecting rights of weaker sections of society through public interest Litigation.


Hrudaya Balla Das, in his article “Legal Aid, Rule of Law and social justice” explained about rule of law, rule of equality, object of legal services authority, the right to have a counsel referring to case laws, ADR Techniques to resolve the disputes amicably were discussed. The presentation of the author was not descriptive of legal services authority act and various schemes under the Act.
Dr. B.R. Sharma, in his article “Justice At the door steps of the poor; some reflections on India Legal aid Programme” discussed the purview of legal aid programmes implemented by Central Govt. and State govt. The author expressed the necessity of preventive legal aid through promotion of legal literacy, Lok Adalts, legal aid clinics, para-legal services.

Dr. Kailash Rai in his book on public interest lawyering, Legal Aid and Para Legal Services (Central Law Publications, Allahabad Law Agency 2009) explained public interest litigation elaborately. The author analyses the powers of the Legal Services Authorities as per laid down under the Act. The author failed to mention schemes adopted by the Authorities to provide legal aid and legal services. After reviewing the above said literature the Topic selected by the researcher has not been attempted by said authors. Therefore the attempt made by the researcher in this direction is a new and innovative thing that has prompted me to select the topic. Although these books and articles covered relevant issues and they have been treated in a fascinating manner, the present theme with the given approach has not been tried hitherto to the best knowledge of the researcher hence the rationale for the present study.

1.5. Objective of the Study:
The following are the objectives of the study.

2. To study the significance of Legal Education and Legal profession to provide Legal Literacy and Legal advice.
3. To Evaluate Judicial System which provides expeditious and effective resolution of disputes by adopting alternative dispute resolution.
4. To study the concept of “Access to justice” and justice delivery system at the door steps of the people.

5. To analyze the Role of paralegals to educate the poor about substantive Legal provisions as well as Legal Institutions for the enforcement of legal rights.

1.6. HYPOTHESIS

A tentative generalization is always not essential is analytical presentation like the present work. Yet when the work is started after having the preliminary understanding and awareness of the subject one cannot resist but to have tentative conclusions in the mind, which in fact help as working hypothesis. The following hypotheses are framed in order to test them after scanning through the theoretical orientations of the work.

1. Due to ignorance of law and technicalities in Legal procedures, preamble aspirations of constitution are not reaching the poor.

2. Lack of State fund is resulting in not extending Legal Services Schemes by Authorities to implement effectively.

3. Under the Rules of Advocates Act, they are not implying Bar to promote Legal Education and Legal Services.

4. Lack of Incentives, Gradations and Course evaluation resulted in Passive participation of students in Legal Aid matters.

5. Lack of Awareness about Alternative means of Dispute Resolution Techniques, people is unable to interact with Justice System effectively.

1.7. METHODOLOGY

The researcher has opted to pursue the study with doctrinal research; doctrinaire method of research has been adopted based upon secondary source material in the nature of books, periodicals, reports, articles and the like.
In order to test the veracity of the hypothesis to meet the objectives of the study and to arrive at fair conclusions, the following methodology is adopted by the Researcher. The Researcher adopts doctorial study to analyze the effectiveness of the provisions relating to legal aid services, involves collection of data, (Legal Services Authorities Statistics) and testing of hypotheses on the data collected.

The various dimensions of the present thesis can be best studied by Analytical method. Analytical method is resorted to in most of the work to analyze the provisions relating to legal aid and others, strategic arm of legal aid (PIL) to enforce the legal rights. A critical analysis of provisions relating to Legal Services Authorities Act also calls for an analytical approach. Historical perception as a tool of analytical method is made in tracing the evolution of Legal Aid. Critical evaluation is the exclusive premises of doctoral study and the researcher made use of this technique in the core chapters of the research. The conclusions are arrived on the basis of data collected. As the researcher is not satisfied to confine herself to literary resources, senior advocates, academicians, Chairman, Secretary and members of the of the Legal Services Authorities in field of Law are consulted by prior appointments to pool opinions on Legal Aid. Standard Pattern of giving footnotes and Bibliography has been followed. Due acknowledgements are made to the authors and their work for using their extracts for the research purpose.

1.8. Scheme of the Study

In furtherance of the study, the researcher has divided the whole of the thesis under seven chapters. The entire research is planned in the following chapters.

Chapter one “Introduction”: Is introductory in nature. It highlights the importance of the topic of research and the need for undertaking a study of this nature. This chapter also deals with the introduction, problem, and limitation,
objectives of the study, hypothesis along with methodology adopted and the review of the existing literature relevant to this research work,

**Chapter two “Concept and Development of Legal Aid”**: carries the core elements of study. It traces out the concept of legal aid, the historical evolution of legal aid and various aspects of legal aid. An elaborate analysis is made by the researcher on the distinction between pre-litigation legal services (Preventive Aspect of Legal Aid Programme) and post-litigation legal services (Legal Aid).

**Chapter Three “Legal Aid a Constitutional mandate”**: analyzes the Constitutional provisions providing social justice and access to justice. The adversary legal system essentially involves the need for a study of fundamental rights conferring legal aid and directive principles co-related factor influencing the enactment of Legislation to protect the weak against strong. The judicial attitude to the constitutional mandate was scanned through analysis is being attempted on procedural laws relating to legal aid.

**Chapter Four “Legal Aid as Human Rights – International Perspective – Analogous Provisions in Other Countries”**: deal with the international perspectives, analogous provision in other countries providing free legal aid. The recognition of Legal Aid as a Human Right Universal Declaration of Human Rights is analyzed. The right to equality and justice as incorporated in the International conventions are also examined. Legislations relating to rendering legal services in foreign countries were also examined.

**Chapter Five – 'Statutory Provisions Governing Legal Aid”** covers legislation, Legal Services Authorities Act which deals with Legal Aid. The Researchers evaluates various schemes of Legal Aid, List of enactments providing Legal Aid. The importance of Governmental Agencies providing access to justice,
the researcher analysis the “Gramnyalaya Act”, 2008 which aims at providing justice at the door steps of the people.

**Chapter Six "Legal profession and Legal Education"** covers the role of Bar Council to promote legal education and academicians in promoting legal education. The researcher evaluates the role of para-legal in promoting legal literacy to make legal services meaningful. The importance of Training programmes to voluntary organizations members are also explained.

**Chapter Seven “A Critical Appraisal of Constitutional Mandate and Legal Services Authority Act.” 1987.** The researcher studies the limitations under the Legal Services Authorities Act.

**Chapter Eight “Conclusions and Suggestions"** is the concluding chapter in which the entire thesis is summed up in nut shell and observations are made. The research questions are addressed and hypotheses are tested in the light of conclusions drawn. Suggestion is made.

Though tentative conclusions are given at the end of each chapter based upon the analysis there for, an attempt has been made under chapter eight to present a complete set of conclusions. These comprehensive conclusions are drawn in order to give necessary suggestions on the deficiencies found and problems faced in implementing the Legal Services Authorities Act, 1987.

In a work of this type naturally the opinions of other authors or quotations are given. The researcher dutifully acknowledged the source material and has given at the end of the thesis the select bibliography in which the books, articles, and other material relied upon is presented as per the standardized norms.
In its advance the present thesis work become a meaningful research and a social commodity in terms of the knowledge to be shared and discussed by the people concerned in the interest of justice.