

CHAPTER - I

Introduction and research methodology

1.1. Introduction:

Lack of ability to consult, engage or represented by a lawyer during any short of lawful procedures in courts, government workplaces, authorities and departments so on for defending or prosecuting a person's lawful rights and commitments may add up to an indistinguishable thing from being denied of the security and equivalent assurance of the laws. Each one should have an equal right to the most extensive system of basic liberties compatible with a similar system of liberties for all. One need not be a disputant in the court to look for help by methods for legitimate guide. Legal aid or help should be available to anybody on the road, workplace and even in his house. Due to a multitude of factors such like illiteracy, destitution, absence of knowledge of rights and corruption heading the list, disadvantaged groups remain largely invisible to the formal legal system and therefore, continue to suffer the substantive inequalities that epidemic their lives.

The Indian Constitution has set up a legitimate framework which tries to ensure the privileges of everybody. However, one must realize that existence of rules and regulations and law is one thing and its implementation is another. As per the Preamble of the Constitution, the people of India have given themselves a Constitution which constitutes India a sovereign, socialist, secular, democratic republic which secures to all its citizens justice with social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the nobility of the individual and the solidarity and uprightness of the country.

The Constitution has defined and declared the common goal for its citizens in its Preamble. The eternal value of constitutionalism is the rule of law which has three facets, that's means rule by law, rule under law and rule according to law. Under Constitution, it is the essential obligation of the state to keep up lawfulness so the natives can appreciate peace and security.

In the context of constitutional demands and state obligations, legal aid has assumed a more positive and dynamic role which must include strategic and preventive services. Relieving ‘legal poverty’, i.e., the incapacity of many people to make full use of law and its institutions has now been accepted as a function of a ‘welfare state.’ Apart from the social, economic and political requirements on which the claim of legal aid rests, it is now recognized as a constitutional imperative arising under articles 14¹, 21², 22(1)³ and 39A⁴ of the Constitution as well as under different statutes and legislations which also derives their powers from the constitution. The Constitution guarantees ‘Right to Constitutional Remedies’ as a fundamental right.

The system as guaranteed above under Constitution w.e.f. 26 January, 1950 worked satisfactorily in the initial years. However, with the rapid growth and boom in population over the years, it was being felt that the justice delivery mechanism of the Indian society and Indian polity was costly for the poor, the laws a little too complex for the illiterate to understand and the procedure is as slow to bring about instant relief. Article 39A of the Constitution provides that the state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The importance of good, competent and effective legal aid is often overlooked by everybody until a serious need for legal counsel or representation arises. The reasons why people need legal aid can vary as widely as the individuals themselves. Some people need legal representation for civil suits, either as the claimant or defendant. Some people may

¹ **Equality before law**—The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India, constitution of India.

² **Protection of life and personal liberty**—No person shall be deprived of his life or personal liberty except according to the procedure established by law. (Constitution of India)

³ **Protection against arrest and detention in certain cases**----(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.(constitution of India)

⁴ **Equal justice and free legal aid**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.(constitution of India)

need aid dealing with divorce, domestic violence charge, involvement in criminal offenses etc. Many people take services of lawyers for help in writing wills, documents of different nature as well as before signing business contracts. The needs and requirements of legal help and stage when it is needed, in the sphere of life cannot be counted being endless. Whatever the need for legal aid, it is certain to be an important issue and one in which there is no room for mistakes.

The government provides free legal aid to the needy. Legal aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before any authority. However, in a country of continental dimensions and with population more than a billion, it becomes very difficult to provide free legal aid to everyone.

The idea of legal aid originated in medieval period. The legal aid, however, was considered to be hybrid in some form of political right or charity from rich to the poor initially. In the fast changing socio-economic conditions, this view was found not acceptable. In the modern society, legal aid cannot be placed on the lower side. If the law has to play, a purposeful and significant role in a democratic order for the socio-economic reconstruction of the society, legal aid must give meaningful and substantive education to the poor about the law and their rights and provide solution to their legal problems.

The government of India started addressing the question of providing free legal aid to the poor, weaker sex, prisoners, disadvantaged groups and down trodden persons etc. since 1952. The Fourteenth Report of the Law Commission of year 1958 also echoes this concept: "Equality is the basis of all modern systems of jurisprudence and administration of justice. In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice"

To achieve the constitutional goal of ‘equal justice to all,’ a new directive contained in article 39A, has been inserted to enjoin the state to provide free legal aid to the poor and particular categories and to take other suitable steps to ensure equal justice to all.⁵ In 1980, Committee for Implementing Legal Aid Schemes (CILAS) was constituted to oversee, supervise, monitor and implement legal aid programs on a uniform basis throughout the country. The Committee evolved a model scheme and after removing certain deficiencies, it was desired to constitute statutory legal authorities from national level to village level. In 1987, to fulfill the constitutional obligation and to give a statutory base to legal aid programs, Legal Services Authority Act was enacted which came into force with effect from 9 November 1995. The Legal Services Authorities Act 1987 (hereinafter referred as ‘Legal Aid Act’), was enacted to effectuate the constitutional mandate enshrined under Articles 14 and 39A of the Constitution. The object is to provide ‘access to justice for all’ so that justice is not denied to citizens by reason of economic or other disabilities.

However, in order to enable the citizens to avail the opportunities under the Act in respect of grant of free legal aid etc, it is necessary that firstly they are made aware of their rights. Legal aid is an essential part of the administration of justice and must be so implemented. Indian Judiciary in the past six decades has done a remarkable job of protecting citizens’ rights, liberty, dignity and rule of law against all obnoxious odds by controlling the abuse of administrative discretions and arbitrary actions. The administration equipped with rule-making powers overwhelms the “little man” by trampling upon his liberty and property. The judiciary has been instrumental in channelizing the unbridled administrative powers to achieve the basic aim of any civilized society, “growth with liberty”. There are also certain legislations which were challenged on constitutional scale and were subsequently struck down by courts partly or wholly. It is a privilege to the Indian people that the judicial review and scrutiny available

⁵ Article 39A of the Constitution of India inserted by Constitution 42nd Amendment Act, 1976 w.e.f. 03.01.1977

under articles 32⁶, 226⁷ and 136⁸ cannot be barred and fettered by any finality clause contained in any statute. Indian courts are full of admirers who respect their ingenuity and integrity. Among the three organs of the government, people repose more faith in judiciary.

⁶ **Remedies for enforcement of rights conferred by this Part**—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution. (constitution of India)

⁷ **Power of High Court to issue certain writs**—(1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose)

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or the authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

⁸ **Special Leave to appeal by the Supreme Court**—(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

1.2.Statement of Problem:

There are different types of prisoners including such as adolescent prisoner, adult prisoner, casual prisoner, civil prisoner, juvenile, women prisoner and under-trial prisoner. There are some hard core criminal like murderer, terrorist and rapist. The main purpose of establishment of prison is to rehabilitation and introspection or realization to prisoners on their misconduct. In India, we know the prison and prisoners' situation is very difficult as compare to other countries situation of prison. It's should be well function, well established and well secured. But, instead of that, there are many problems to prisoners; they suffered a lot like Overcrowding, under trial prisoner and unknown with their rights, Health care and hospital competence, Food capability, Insufficient of prison staff, Lack of administration, Lack of legal representation and legal aid to inmates.

Therefore, being a human is great gift of God. Human has right to survive, right to live, right to shelter and right to enjoy. Rights are nothing but it's the freedom to live as human in the world. No one can stop you to enjoy ones freedom and rights given by the natural law. It is a natural right and birth right to every citizen of the universe. After so much discussion, debate around the countries, the Universal Declaration of Human Rights has come into existence.

For that reason, effectiveness implementation is required to provide legal aid to trial and convicted inmates in prison with reference to Article 39 (A) and part III of the constitution of India. It is time to provide effective legal aid by expert representation. Different functions to be performed by the Central and State Authorities as well as District and Taluk Legal Services Committee in all is that proper care has been taken to provide legal services free of costs to those who fall in different categories of entitled persons. These categories as prescribed in section 12 of the Act almost covers those persons who due to poverty, backwardness, weakness, victims of circumstances and suffering from different calamities etc. are unable to protect their legal and constitutional rights in the court of law.

1.3.Objectives of study:

1. To study constitutional rights and obligation provided for the prisoners in India.
2. To know the problems and issues of inmates in the prison.
3. To study the historical and philosophical view of legal aid.
4. To analyse the duties and responsibility of prison administration.
5. To analyse of prison act and its facility provided to inmates in prison.
6. To study the role of legal aid services in to prison of India.
7. To study the issues and challenges faced by trial and convicted inmates in the prison.
8. To study the implementation policy and prison manual of legal aid services Authority in India.

1.4. Research questions:

1. What is the reasons behind the under trial crowding in the prison?
2. Is there any appropriate authority to help convicted prisoners with support of legal aid?
3. What are the main issues and challenges on effectiveness of legal representation and legal aid to inmates in prison?
4. What is the importance of central and state legal service authority into implementation of legal Aid services in the Prison of India?
5. What is the role of constitution of India and importance of Legal aid services in prison in India?

1.5.Review of literature:

The literature review on “critical analysis on effectiveness of legal representation and legal aid to under trail and convicted prisoners in India”, review of literature consisted with the different Books, Articles, Reports, Judgments related to issue of inmates, provisions under constitution of India, various online sources and websites.

1. In the textbook on the Constitution of India, first edition 2015 by Prof. S.R. Bhansali, published by universal law publishing. The researcher has study Article 14, 21, 22, 32,226 and 39A part of IV that “equal justice and free legal system to promote justice on basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”, (page no: 287).
2. One case related to legal aid programme was center of legal research v state of kerala, AIR 1986 SC 1322: 1986 2 SCC 706: 1986 3 SCJ 17, A question was raised whether voluntary organization or social action groups engaged in the legal aid programme should be supported by the state government. The Supreme Court, P.N.Bhagwati bench has held that yes obviously that government will help those needy people in free of cost.
3. In the constitution of law of India by Dr. Narendra kumar, eighth edition 2012, published by law agency. “Right to constitutional remedies under Article 32, 226 and 136, a right to move the Supreme Court for the enforcement of fundamental rights Article 32, page no: 443, write jurisdiction under Article 226, page no: 720 and appeal by special leave under Article 136, page no: 617 of the book”.
4. Law relating to Lok Adalat and legal aid by S.K. Sarkar, second edition 2008, published by orient publishing company, “ the book consist with the legal services authorities act,1987, constitution and functions of central and state legal aid services with importance of Lok Adalat”.
5. Criminal manual, 2017 edition published by universal law publishing house, “section 304 of criminal procedure code said that legal aid to accused at state expensive in certain cases”, “the entitlement to free legal aid is not dependent on the accused making an application to that effect and the court is obliged to inform the accused of his right to obtain free legal aid”.

6. In the book of Legal aid, human right to equality by Sujjan Singh, 1st Edition 2011, published by deep and deep publication, “ the legal aid and its importance in India, the concept of free legal aid, historical evolution into legal aid services and judiciary.

1.6. Hypothesis:

With the objectives following hypotheses were formed by the Research Scholar:-

The under trials and the convicted prisoners do not have access to the justice especially the Legal Aid Services. The main reason for this is the prisoners are not aware of the provisions of Prison Manual, Legal Services Authority Act, rights available under the Constitution of India.

The government should educate the prisoners and court should monitor and follow up this education to ensure the access to the justice. For that proper guidance and Legal aid to prisoners, the prison administration has to aware under trial prisoner and convicted inmates with proper care and help with legal aid services.

The prison administration has to work an effectively and proper legal support required to under trails and convicted prisoners through legal aid services in the prison. All the prisoners should get basic knowledge of their rights and procedures of courts on base of their crime.

1.7.Scope of research study:

The main aim of this research is to study status and position of inmates in prison. The present scenario of prison with respect to law, development of administration and infrastructure, roles of inmates in prison, problem faced by under trials and convicted prisoners, role of legal aid services and how it is effective in the prison and protection given under prison manual and constitution of India.

1.8.Importance of Study:

An inmate should be treated with proper care. A prison is correctional and rehabilitation house for the inmates. A prison administration should give them correct legal aid and representation in the welfare of inmates. We have to respect, maintain dignity and equality towards them in all aspects. There should not be any discriminated and disrespected towards inmates in any prison of India. The main aim of this research is to study status and position of prisoner and prison in respect to Law, development of a prison, and roles of inmates, problem faced by inmates in prison and society, protection under prison acts and constitution of India, and different aspects of solution available for inmates through legal aid services in the prison.

1.9. Research Methodology:

In the depth study of the objectives, the researcher has followed *doctrinal research* and *secondary resources* like Reports, Articles, Amendments, Journals, Judgments, Manual and online authentic materials. The Researcher has come to know issues and challenged faced by trial and convicted prisoners. So, an effectiveness of legal representation and legal aid is needed into prisons of India.

1.10. Chapterization:

1. Introduction and methodology:

The Researcher has a study of various problems of prisoners, importance of study, main objectives behind not an effectiveness of representation and legal aid to inmates, different methodology used for the research and review of literature.

2. Historical background of legal aid services:

The second chapter has cover with the historical development of legal aid Services into central and state authority. The researcher has taken different report, manual, judgments and legal aid services authority act- 1987.

3. Legal aid services- its issues and challenges:

The researcher has covered with the main portion of the topic. It has explained the various roles and function of judiciary, central and state legal aid services. It has cover issue and challenges to under trail and convicted prisoners. In depth, it has covered with the importance and implementation of legal aid services in the prison Administration system.

4. Conclusion and Suggestions

5. Bibliography

6. annexure

1.11. Conclusion:

The research scholar has study the problem of under trial and convicted prisoners. It has lots of barriers to an implementation and effectiveness of legal representation in the prison of India. So, here I am come up with some objectives, methodology of research, hypothesis and importance of study. Its need to change mind set towards prisoners and required awareness into public about legal aid services with proper effectiveness of services, programme with help of Government and Non- Government authority, legal Institution and courts.

CHAPTER - II

Historical background of legal aid services

2.1. Introduction:

Judiciary is one of the important parts of any country and independent judiciary which protects the legal, basic and constitutional rights of citizens is respected by everyone. Unless the judicial system is accessible to everyone, no country can progress and develop in effective manner. The rich can approach court of law very easily but poor person should be also given the equal opportunity to get his rights enforced. It is the duty and obligation of the state to provide competent legal aid to every person who cannot afford it due to financial restraint or due to some disability. In India, where certain basic and fundamental rights have been provided to every citizen under articles 14⁹, 21¹⁰, 22(1)¹¹, 39A¹² then at the same time, an obligation is also put by framer of the Constitution to help the needy and poor people to avail the same. Relieving ‘Legal Poverty’ i.e. the incapacity of many people to make full use of law and its institutions, has now been accepted as one of the function of a ‘Welfare State’.

Article 39A of the Constitution of India provides that state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of

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¹⁰ **Protection of life and personal liberty**—No person shall be deprived of his life or personal liberty except according to the procedure established by law.

¹¹ **Protection against arrest and detention in certain cases**—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

¹² **Equal justice and free legal aid**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

economic or other disability. Articles 14 and 22(1) also make it obligatory for the state to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

The putting up of the right to obtain legal aid as one of the directive principles of State policy under Article 39A of the Constitution rather than making it a fundamental right may invite some cynical minds to say that the government and the masters were not sincere in their endeavours and only wanted to provide a lip service to the public at large by making it a toothless tigers by incorporating it as one of the directive principles of State policy. This view, however, is not sustainable in as much as the mandate of Article 39A has been crystallized into a statutory right by the enactment of the Legal Services Authorities Act, 1987 which has got sufficient sanctions behind the activities of Legal Services Authorities as well as behind the awards of Lok Adalats including the setting up of Permanent Lok Adalats and thus this directive principle of State policy i.e., Article 39A no longer remains a paper tiger and a rule without a sanction behind it.

After coming into force of Constitution of India, in order to implement the basic fundamental rights of the citizens and to give effect to the constitution mandate of the right of life and liberty especially in case of poor and down trodden people of the country, government started doing ground work for providing free legal aid to deserving persons and in this regard some discussions took place in various conferences of Law Ministers and Law Commissions but no effective proposal could come forward. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments.

The first major step taken in this regard prior to independence of the country was in the year 1945 when in the State of Bombay, a society named as Bombay Legal Aid Society was set up which invited the intention of the government of India towards Lord Rushcliffe's report regarding legal aid and advice in England and Wales. The post

independence legal aid development was initiated by formation of Bombay Committee in 1949 under the chairmanship of Mr. N.H. Bhagwati, Sir Arthur Trevor Harries Committee in West Bengal in year 1949, initiatives by the state governments such as The Legal Aid Committee formed in 1952 in UP, the Legal Aid Committee formed in Madras in 1954, and so on. Kerala Legal Aid (to the Schedule Caste, to the Schedule Tribes and to poor) Rules, 1957, 14th Report of the Law Commission of India, Central Government Scheme 1960 as well as National Conference on Legal Aid, 1970 also came in existence.¹³

Initially the government was of the view that making provisions of legal aid to poor was the entire responsibilities of the state and states have to make budgetary provisions in this regard. In January, 1956 government again asked state governments to increase the scope of legal assistance to the poor. Though some private societies tried to take initiative in this regard but could not do much due to lack of funds.

2.2. Law Commission Report (1958):

Government of India set up 14th Law Commission under the chairmanship of Mr. M.C. Setalvad, the then Attorney General of India on 5-8-1955 who in its fourteenth report investigated various aspects of system of judicial administration of the country. The Commission consisted of other 10 members also which included two serving chief justices of High Courts, two retired High Court judge, advocates general of two different states and prominent advocates besides co-opted members. The commission suggested broad outlines of some changes to make judicial system speedier and less expensive.¹⁴

In its 14th report, Law Commission dealt with the issue of legal aid. Commission was conscious of the fact that unless provisions are made for assisting the poor person for providing court fees, lawyer's fees and other incidental charges of litigation, he is denied equal opportunity of seeking justice. Legal aid to poor is not a minor procedural law problem but is a question of fundamental character. Commission further held that it is the

¹³ See fourteenth Law Commission Report Chapter – 27, Volume 1, Pages 587 - 624

¹⁴ Submitted to Government of India on 26-9-1958

obligation of the state to provide legal aid and rejected the plea that providing of legal aid would make people more litigious, would increase litigation, put extra financial burden on budget and would invite dishonest and unscrupulous persons to misuse this facility.

Commission further requested the lawyers and legal fraternity to take some moral and social responsibilities for implementing the scheme of providing free legal aid to poor as they have to conduct their cases in the court of law but totally opposed the putting force and compulsion of doing this work. It was suggested that some scale should be made for providing fee structure, though comparatively at lesser rate than normal fee for lawyers who offers to do such service for poor persons. Making of provision of substantial budgetary provision was also recommended for providing legal aid to poor. It was also recommended that N.H. Bhagwati Committee's report given in context of state of Bombay with some modifications be made applicable to each state.¹⁵ Commission recommended for immediate setting up legal aid committees by every bar associations in each state, making some changes in High Court rules etc.

2.3.P.N. Bhagwati Committee report (1971):

The another major step towards providing free legal aid took place when government constituted a committee under the chairmanship of Justice P.N. Bhagwati, Judge Supreme Court of India who observed "even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place poor, as far as possible, on a footing of equality with the rich in the administration of justice."¹⁶ The focus of the committee was the indigent person seeking to access justice. Answering to the question of inequality in the administration of justice between the rich and the poor the report clearly stated that there can be no rule of law unless the common man irrespective of the fact whether he is rich or poor is able to assert and vindicate to the rights given to him by the law. The machinery of law should be readily accessible to all. The poor must be placed in the same position as the rich by means of

¹⁵ Summary of Bhagwati Committee's report was annexed as appendix-1 of chapter-27 of 14th Law Commission report

¹⁶ Committee of Justice Bhagwati on Free Legal Aid constituted in the year 1971

adequate legal service programme. It stated that the inequality between the rich and the poor in administration of the justice can be removed by establishing and developing effective system of the legal aid programme. Legal aid and advice should be regarded not as a matter of charity or bounty but as a matter of right. It is a part of social security programme just as much as medical aid is. Responsibility of the state was fixed for providing legal assistance to the poor and indigent by stating that this obligation is not merely, socio-economic or political but is constitutional by reason of Articles 14 and 22(1).

Committee wanted that state should made rules and legislation while taking into consideration socio-economic conditions prevailing in the country. It also emphasized that legal aid programmes and the organizations implementing the same must be responsive to the poor in giving legal service and must not be mechanical and wooden in its approach and even after introduction of such programmes, there must be continues examination of its utility and its responsiveness to the poor. The report also in detail dealt with the true scope and extent of the legal aid and pressed for setting up legal aid fund for providing cost and expenses of litigations as well as for remitting of court fees in case of an assisted person by making suitable changes in the legislation. The report also in detail stated the constitution and the working of different legal committees such as:

- (a) The Taluka Legal Aid Committee,
- (b) The District Legal Aid Committee,
- (c) The State Legal Aid Committee.

It is recommended that legal service programme be implemented in its entirety but in phased manner at three stages. Committee also suggested for implementation of the preventive legal services programme such as legal research and innovation, institutional changes and organization of the poor etc. may be postponed but there should not be delay in implementation of the items of the legal service and education.¹⁷

¹⁷ Article of Varun Pathak on www.legal service India.com

2.4. Krishna Iyer Committee report (1973):

Justice Krishna Iyer presided over another similar committee set up on 22 October, 1972 and dealt with the question of nexus between law and poverty. He, in his 275 pages report submitted on 27th May, 1973 spoke highly in favour of concept of public interest litigation and emphasized the need for active and widespread legal aid system that enables law to reach the people, rather than requiring people to reach the law.¹⁸

The report of this committee can be said as mark stone of legal aid development in India as it impressed upon the democratic obligation of the state towards its subject to ensure that the legal system becomes an effective tool in helping secure the ends of social justice and an effort was made to classify those categories of persons who are most in need of legal aid and the faith of the poor man in the legal system should be enhanced by providing him with adequate non- governmental as well as governmental assistance. Committee somehow blamed the attitude of the judiciary in the country and professed the resolution of disputes at the grass root level through village panchayats.¹⁹

2.5. Juridicare Committee report (1977):

Another committee of two judges Justice P.N. Bhagwati and Justice Krishna Iyer was set up for providing adequate legal service programme in all the states on uniform basis. This committee in its final report popularly known as ‘Report on National Juridicare: Equal Justice-Social Justice’ submitted in the year 1977 stressed upon the need for a new philosophy of legal service programme to be framed in the light of socio-economic conditions prevailing in the country. It also opined that the traditional legal service programme which is essentially a court or litigation oriented, cannot meet the specific needs and the peculiar problems of the poor in our country. The committee in its report also included draft legislation for legal services in the name of National Legal Services Bill, 1977 and gave it the name of Social Action Litigation. It also recommended that

¹⁸ Committee on Legal Aid titled as "professionals justice to poor" set up in the year 1972

¹⁹ Article of Varun Pathak on www.legal service India.com.

legal service organization should not be a department of the government but an autonomous institution headed by the Judge of the Supreme Court having representations from Bar Associations, the Government, the Parliament and the judiciary as well as voluntary associations and social workers and that would be a multi tier set up for the legal aid organization. The contents of this report clearly point out that it was in continuation of the 1973 report with an extensive revision, updating, reevaluating and adding. The various suggestions made by him can be summarized as under:

“A national legal service authority accountable to the parliament but protected from official control was recommended. Simplification of the legal procedure and an emphasis on conciliated settlement outside court has to be the policy of legal aid schemes”. The report adopted the three fold test laid down for determining eligibility:-

Means test: to determine people entitled to legal aid.

Prima facie test: to determine whether there was a prima facie case to give legal aid or not.

Reasonableness test: to see whether the defence sought by a person is ethical and moral.

Though committee was in favour of regular arrangement for aid and advice to the under trials but was not in favour of habitual offenders or cases involving private claims. A liberalized bail policy, extension of legal services during investigation as well as post conviction stage including providing rehabilitative services, compensation to victims of crimes, making provisions of salaried lawyers was also favoured by the committee. In the report, committee also recommended that the family courts should be established for women and children with women judges especially in slum areas and rural villages besides setting up public defence council in children’s court, legal advice bureau in backward areas. The report encourages the involvement of law students in legal aid schemes particularly for preventive legal services. The report envisaged several modes of delivery of legal services.

The primary mode would be the providing of legal advice through various legal aid offices having both salaried lawyers and assigned lawyers. It also favored the setting up

of Nagrik Salah Kendra at each legal aid office to provide counseling service and also act as a referral body for all kinds of problems for which assistance may be needed. A central concern in this report was the de-centralization of the justice redressal mechanism. A whole chapter was devoted to public interest litigation for bringing institutional and law reforms. This report focused on the orientation of the different actors who would be the participants in the program which included members of judiciary, law universities, law students, voluntary agencies and social workers. There was also an emphasis on the university law clinics and their functions included preventive and positive service at pre-litigation stage by negotiation and conciliation disputes outside the courts, giving postal advice in respect of legal problems of individuals, seeking administrative and legislative remedies against wrongs done and so on. It was suggested that the Advocates Act, 1961 be amended to recognize and permit provision of legal aid by law teachers and students. The report clearly stated that the funding of the legal aid programme was the state responsibility and for this identified sources such as court fees collected from the litigants, legal aid steps, and levy of special cess, donations and many more for the purpose of funding the legal aid programme and so on.²⁰

National Legal Services Authority was made functional under the executive chairmanship of Dr. Justice A.S. Anand, Judge, and Supreme Court of India on 17 July, 1997. The first Member Secretary of the authority joined in December, 1997 and by January, 1998 the other officers and staff were also appointed. By February, 1998 the office of National Legal Services Authority became properly functional for the first time. NALSA is a statutory apex body which has been set up to lay down policies and principles for making legal services available and to frame most effective and economical schemes for legal services and for implementing and monitoring legal aid programs in the country. It also disburses funds and grants to State Legal Services authorities and NGOs for implementing legal aid schemes and programmes.

The Supreme Court Legal Services Committee has also been constituted under the Act. In every High Court also, The High Court Legal Services Committees have been established

²⁰ Article of Varun Pathak on www.legal.service.India.com.

to provide free legal aid to the eligible persons in legal matters coming before the High Courts. The Legal Services Authorities Act, 1987 also provides for constitution of the State Legal Services Committees, High Court Legal Services Committees, District Legal Services Committees and Taluk Legal Services Committees.

The First Annual Meet of the State Legal Services Authorities was held on 12th September, 1998 at Vigyan Bhawan, New Delhi presided over by Justice A.S. Anand, in which the progress of on-going schemes which had been initiated by National Aid Legal Services Authority was examined and decisions of far reaching implications were taken with a view to strengthen and streamline legal aid programmes in the country. In October, 1998, Justice A.S. Anand assumed the Office of the Chief Justice of India and thus became the Patron-in-Chief of National Legal Services Authority whereas Justice S.P. Bharucha, the senior-most Judge of the Supreme Court of India assumed the office of the Executive Chairman, National Legal Services Authority. The Second Annual Meet of the State Legal Services Authorities was held at Jubilee Hall, Hyderabad on 9 October, 1999 wherein establishment of counseling centers for amicable settlement of disputes even at pre-litigative stage was emphasized. It was also pressed that legal services functionaries must find out as to whether a person approaching them for legal aid has or not a prima facie case in his favour and legal aid must not be given as a matter of routine and frivolous cases should not be supported by legal aid authorities.

Thereafter every year, such meets are organized in which progress of legal aid and implementations of various schemes for poor and needy persons are supervised and new steps are taken to do more for such people. In pursuance of the call given by Justice A.S. Anand, the Chief Justice of India in the First Annual Meet, 9 November is being celebrated every year by all Legal Services Authorities as "Legal Services Day" and public are informed by various methods from time to time about the important schemes introduced by National Aid Legal Services Authority and state authorities for providing legal aid and the utility of Lok Adalats. State Legal Services Authorities all over the country organize Lok Adalats, legal literacy camps and undertake legal awareness campaign to make people aware of their legal rights.

Justice S.P. Bharucha, Executive Chairman, NALSA while writing in 'Nyaya Deep' and in the course of his keynote address in the meeting of the Member Secretaries held in NALSA office on 19.2.2000 emphasized the need for improving the quality of legal aid that is being given by legal aid advocates. He observed that teeming millions of this country who live below poverty line in tribal, backward and far flung areas looks to Legal Services Authorities for help and support in resolving their legal problems. When involved in litigation they very often feel that they are fighting an unequal battle in which the party that has better financial resources can secure more able legal assistance. Justice Bharucha is of the view that these poor and weaker sections must not remain under the impression that they are getting comparatively inferior legal assistance. He has called upon legal services authorities to revise the payment schedule for legal aid panel advocates and also compress the panels so that panel advocates get more work and better remuneration from legal services authorities and thus get encouraged to render effective legal assistance to aided persons.

Besides that the Act also seeks to devise and give impetus to another mechanism of justice delivery system in the form of Lok Adalats and it notes that for some time now the Lok Adalats are being constituted at various places in the country for the disposal of disputes pending in the courts and even at pre-litigation stage in a summary way. The said concept of Lok Adalat has proved to be very popular in providing speedier system of justice system and it was felt that there was a need for providing statutory back up to the said institution and to give legal mandate to the awards being given by Lok Adalats and it was felt that such a statutory support would not only reduce the work of regular courts but also take justice to the doorsteps to the poor and needy and make justice quicker and less expensive to the less privileged sections of the society. With these objectives in mind, the Act provided for setting up of Permanent Lok Adalats as well as devised a concept of mechanism to set up Lok Adalats at pre-litigative stage so that the requirement of filing a case is obviated altogether. The Legal Services Authorities Act, 1987, therefore, sought to fulfill all these objectives and was thus enacted.

2.6. Conclusion:

The effectiveness of legal aid and representation can come after the so many discussion, judgments, report, committee decisions and establishment of free legal aid services to all. There is need of proper awareness among people about legal aid mechanism and its implementation of Act into every Taluka court and district courts. It is required to established separate legal aid cell in every Talukas and districts. So, the committee report and decision was so much helpful to amendment of legal services act with reference to constitution of India.

CHAPTER - III

Legal aid services- its issues and challenges

3.1.Introduction:

In India, the legal aid services in the general public and in the prison is very few people know. There are many issue and challenges regarding legal aid services in India. The legal aid services is not functioning and implementing properly in the public, prison, state and in India. Most of the general public and prisoners are not much aware with the programme. The challenges involving access to justice has befuddled an entire generation of lawyers, social activists, judiciary, policy makers and executive, who have proposed their solutions to bring out justice within the reach of the people. However, this relentless chase has led to achieving few milestones, though the ultimate result is still a distant dream. The problem of access to justice is not just legal, for it has wide and overreaching social and economic implications which have led to the problem that India faces today. Access to Justice is therefore a manifest reality, and the problem grows with every passing second, with major contributors such as poverty rate, illiteracy rate, and population rate at an ever increasing progression. It is due to all these reasons that major policy decisions which are taken for a certain year fail to address the problem which accelerates at such pace, that the very policy becomes infructuous²¹.

3.2.Responsibility of the Legal Services Authorities:

The teeming millions of this country, particularly those who live below the poverty line in villages, tribal, backward and far-flung areas, look towards the Legal Services Authorities for help and support in resolving their legal problems. When involved in litigation, they often feel that they are fighting an unequal battle in which the party that has better financial resources can secure more able legal assistance and so deprive them of equal justice. It is, therefore, the solemn duty of Legal Services Authorities to ensure that the poor and downtrodden to which it provides legal aid do not remain under the impression that they are getting comparatively inferior legal assistance. Till these are able

21.http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/02._access_to_justice/20._barriers_to_access_to_justice___/et/5645_et_20et.pdf

to remove this impression from the minds of aided persons, the constitutional promise to provide equal justice to all will remain a promise on paper. Right to life as guaranteed under article 21 of the Constitution of India, includes right to legal aid. Legal aid also embodied in the directive principle of state as prescribe under article 39A of the constitution of India.

Article 22 of the Constitution and section 304 of the Criminal Procedure Code prescribes the right of the accused to engage a lawyer of his choice to defend him in the criminal cases. Advocates Act also gives importance to the Legal Aid. Section 9A of Advocates Act provides:—

(1) A Bar Council may constitute one or more legal aid committee each of which shall consists of such member or members not extending nine but not less than five as may be prescribed.

(2) The qualification, the method of the selections and terms of the office of the Legal Aid committee shall be such as may be prescribed.

Bar Council of India also provides rules/ethics for Advocate in providing Legal Aid. Rule 46 of Part VI of Bar Council of India Rules states:—

Every Advocate shall in practice of the profession of law, bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligation an advocate owes to the society. Bar Council of India Rules also cautioned the advocates not to provide legal service in charity to the undeserving persons? Rule 38 of Part VI of the Bar Council of India Rules speaks:—'an advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.'

In order to fulfill the constitutional obligation, the Legal Service Authority Act, 1987 was enacted to provide free and competent legal services to the weaker section of the society.

The Act further meant to organize Lok Adalats to secure the operation of the legal systems to promote justice on basis of equal opportunity. This Act prescribes different legal service committees and also provides for formation of legal aid fund at national level, state level and district level etc. Section 12 of the Legal Service Authority Act provides the criteria for entitlement to legal services. To get legal services, the person filing or defending the case must be:-

- I. A member of a Schedule Caste or a Schedule Tribe;
- II. A victim of trafficking in human being or beggar as referred to in Article 23 of the Constitution;
- III. A women or a child;
- IV. A mentally ill or otherwise disabled person;
- V. A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- VI. An industrial workman; or
- VII. A person in custody; or
- VIII. A person having annual income less than rupees nine thousand or such other higher amount as prescribed by the State Government, if the case is before a court other than the Supreme Court and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

Supreme Court Legal Services Committee has taken a step for providing legal aid to the poor at free of cost but legal aid for middle-income group at a reasonable cost. According to this scheme person having income up to Rs. 10,000/- per month or Rs.1, 20,000/- per annum are entitled to legal aid. Under the Chairmanship of a sitting judge of Supreme Court, a society was formed as Legal Aid Society For Middle Income Group, where a panel of advocates on record is available. A person shall engage a lawyer from among this panel and pay the prescribed lawyer's fees as well as court fee which is very reasonable, practical and self supported.

Mere fact that a person is not falling in the category of poor person on basis of income criteria under section 12 of the Legal Aid Act and relevant rules framed under it is not debarred to get his matter referred to Lok Adalat under section 20 of the Act. The disentitlement of person to get free legal aid has no concern with taking up the matter in the Lok Adalat.²²The status of women and children itself is sufficient to provide them legal aid irrespective of their income and financial position. If such women and children approaches the legal aid authority or committee then they must be provided such aid without going through the question what is their financial position and whether they can engage their own advocates or not or can bear the expenses of litigation or not.²³

A woman being weaker section of the society is entitled to free legal aid. Where a woman approaches to court, first and foremost stand of the court to inform her that she is entitled for free legal aid and where she prays for the same, court is bound to expeditiously deal with the application and provide free legal aid to her or send the application to appropriate authority. It is not only the duty of the court to enforce law or protect the rights of the citizens but also to make them know of their rights also. In this case directions were also given by the High Court that on the notice/summon issued to the litigants eligible for free legal aid, it be mentioned in visible form in regional language so that this category of litigants may know of this right. This be put in the Notice or summons on the top and advocate appearing on behalf of this category give declaration along with his vakalatnama on approach to him he made known to this class of litigant that they are entitled for free legal aid.²⁴

Where despite of having been made known of her or his this legal right under the Legal Aid Act, the litigant of the category enumerated under Section 12 of the Act does not desire to get the free legal service the Advocate concerned to mention and bring it to the notice of the Court concerned in the form of formal declaration of his own or of the

²² Ahmed Pasha v. C. Gulnaz Jabeen AIR 2001 Karnataka 412

²³ Amankumar Lalitbhai Parekh v. Pritiben Amankumar Parekh 2000 (2) F.J.C.C. 356 (Guj)

²⁴ Ashok Kumar Kantilal Rathod v. Bhavanaben Ashokkumar Rathod 2001 (2) R.C.R.(Civil) 47 (Guj)

litigant concerned to be enclosed to the petition, suit, application, revision and appeal etc. as the case may be, which is presented in the Court. The Court, on the first available opportunity to it to ascertain from the litigant concerned whether he or she is desirous of taking the free legal services or not; where he or she desires to get this benefits, he or she may be directed to approach the concerned Legal Service Committee or the Authority. Where the litigant of this category as enumerated under Section 12 of the Act is not desirous to avail of his/her this legal right, the court may proceed in the matter. The court may have to record this fact in the proceedings.²⁵ Even if such eligible person entitled to free legal aid under section 12 of the Legal Aid Act has filed a case through his/her own advocate, the court can exempt such person to pay any requisite court fees.²⁶

Human resources are very vital for operation of legal aid. The skill and competence of lawyers, judges and clerical staffs should be improved and updated. More staffs should be provided to judges for legal aid activities including a permanent Lok Adalat. Computers and other communication facilities should be provided for smooth function of legal aid and required budgetary allocation is to be made.

All the persons involved in promoting legal aid need to co-ordinate properly. The legal aid should not be a responsibility and monopoly of legal fraternity. The corporate sector and NGO should participate in the activity of the legal aid with dedication. Lethargic attitude and red-tapism should not be tolerated.

In *Hussainara Khatoon (IV) v. Home Secretary*²⁷ the Supreme Court emphasizes that free legal services is an inalienable element of reasonable, fair and just procedure. Without it a person suffering from economic or other disabilities would be denied justice. Legal assistance to a poor or indigent accused under arrest and put in jeopardy of his life and personal liberty is a constitutional imperative mandated not only by article 39-A but also

²⁵ Surgeev v. Sushila Bai, AIR 2003 Rajasthan 149

²⁶ Anar Devi v. Chandra Devi AIR 2005 Rajasthan 270

²⁷ (1980) 1 SCC 89 : AIR 1979 SC 1369.

by articles 14 and 21 of Constitution of India. Legal Services Authorities and Committees as well as lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime and arrest or imprisonment, do not know what is arrest or imprisonment, do not know what to do or where to go or to whom to turn.²⁸ Voluntary organizations and social action groups engaged in legal aid programs must be encouraged and supported by the state.²⁹

Accountability of other Authorities towards Legal Services Authorities:-

Legal Services Authority Act, 1987 constitutes the Legal Services Authorities to provide free and competent legal service to the weaker sections of the society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. The expression legal service has been defined in section 2 (c) to include rendering of any service in the conduct of any case or any other legal proceedings before any court or other authority or tribunal and giving advice on any legal matter. The definition is inclusive and does not exhaustively enumerate what would constitute legal services.

The concept of Legal Services Authorities and their role in the context of seeking accountability from the various public bodies performing social welfare functions so as to make them more responsible and more sensitive to the needs of the target groups of the various schemes is inbuilt in the conceptualization of the Legal Services Authorities. The Preamble to the Legal Services Authorities Act provides as under:-

An Act to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok

²⁸ Sheela Bharse v. State of Maharashtra AIR 1983 SC 378.

²⁹ Central Legal Research v. State of Kerala, AIR 1986 SC 1322.

Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

The bare perusal of the said preamble would reveal that one of the important functions of the Legal Services Authorities is to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities. If a person remains financially poor or suffers from other disabilities he has already lost the race before starting it and is severely impaired and handicapped in securing justice for any of the ills and maladies being suffered by him. The preamble to the Constitution of India also strives to secure to all its citizens, amongst other things, justice social, economic and political. Section 4 of the Act enumerates the functions of the Central Authority also called the National Legal Services Authority established under section 3 thereof. These functions, *inter alia*, include laying down policies and principles for making legal services available under the provision of the Act and taking necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society. Section 4 (d) of the Legal Services Authorities Act, 1987 reads as hereunder—

Functions of the Central Authority:-

The Central Authority is also required to take appropriate measures, for spreading legal literacy and legal awareness among the people and to educate the weaker sections of the society about their rights, benefits and privileges guaranteed by social welfare and other legislations as well as “Administrative Programmes and Measures”. It is also under obligation to undertake and promote research in the field of legal services with special reference to the need for such services among the poor. It is supposed to monitor the functions of the State Authorities, District Authorities, High Court Legal Services Committees, Taluk Legal Services Committee and voluntary social service institutions and organizations and issue general directions for the proper implementation of the legal services programmes.

Similarly, the functioning of the State Authorities are enumerated in section 7 of the Act, which includes a duty to give effect to the policies and directions of the Central Authority and to perform such other functions as the State Authority may in consultation with the Central Authority fix by Regulations. The Central Government and State Governments, respectively in consultation with the Chief Justice of the Supreme Court and respective High Courts, in exercise of the powers conferred upon it under section 27 and 28 of the Act can frame Rules to carry out the provisions of the Legal Services Authorities Act, 1987. Different State Authorities including Delhi Legal Services Authorities have framed Legal Services Authority Regulations in exercise of the powers conferred upon them by section 29A of the Act read with section 2(ff) of the Act. These regulations inter-alia stipulate the functions which the respective State Authorities have to discharge in addition to the functions to be performed by them under section 7(1), (2) (a) to (d) of the Act. Regulation 4 (2) of the Delhi Legal Services Authority Regulation, 2002 *inter alia* provides that the State Authority may itself file Public Interest Litigation or may finance Public Interest Litigation before appropriate courts in the state, if it is satisfied that such litigation is for the general benefit of a large body or class of persons who cannot by themselves take recourse to law due to penury, illiteracy or other similar reasons.

Section 4 (2) of The Delhi Legal Services Authority Regulation, 2002 reads as hereunder—The State Authority may itself file Public Interest Litigation or may finance Public Interest Litigation before appropriate courts in the State if it is satisfied that such litigations are for the general benefit of a large body or class of persons who cannot by themselves take recourse to law due to penury, illiteracy or other similar reasons.

Similar provisions as above are contained in the Regulations framed by various other States Authorities, which authorize the State Authority to file by itself or to finance Public Interest Litigation for the benefit of the poorer sections of the society who on account of their illiteracy or such other disabilities are unable to do so themselves. The scheme of the Act and the Regulations thus make it clear that the functions of the State Legal Services Authorities are not limited to framing and monitoring legal aid programmes or to encourage and expedite settlement of disputes through Legal Aid and

Lok Adalats and to initiate Legal Literacy and Legal Awareness programmes only. The role of the authority extends to taking steps by way of social justice litigation with regard to the following:

- i. Consumer Protection,
- ii. Environmental Protection and
- iii. Matters of special concern of the weaker sections of the society.

Section 4 (d) of the Act makes it clear that the social justice litigation with regard to the above matters is one of the functions of the Central Authority. In the same spirit, regulations framed by the State Authorities authorize them to file Public Interest Litigation for the general benefit of the poorer and less fortunate sections of the society who are unable by themselves to do so. The State Authorities are by reason of section 7(1) of the Act duty bound to *inter alia* give effect to the policies and directions of the Central Authority which policy must necessarily be such as promotes the objectives underlying the Act and facilitate the discharge of the functions entrusted to the Central Authority.

The experience of the past two decades has shown that the Authorities have done commendable job in the field of providing legal aid to the deserving sections of the society. Despite, the limited resources at their disposal, the Authorities have not only facilitated the disposal of sizeable number of the cases at pre-litigative stage and others pending before the courts, they have also taken pains to spread legal literacy and legal awareness among the people so as to educate them about their rights, benefits and privileges guaranteed by social welfare legislation and other enactments. What however has remained by and large neglected is spreading awareness among the weaker sections of the society about their rights flowing from ‘Administrative Programmes and Measures’, which happens to be one of the areas of concerns of the Central Authority.

Section 4(l) of the Act makes this abundantly clear; it reads:-

“Take appropriate measures for spreading legal literacy and legal awareness amongst the people and in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures.”

There is thus no manner of doubt that in the light of the above specific provisions contained in the legislation, the State Authorities cannot neglect their obligations in the matter of spreading awareness among the people about their rights flowing from legislative and administrative programmes and measures meant for the benefit of the poorer sections. Placed in juxtaposition, the obligation cast upon the Central Authority under section 4(d) of the Act (*supra*) to take steps by way of social justice litigation with regard to specific areas identified in the said provision makes it abundantly clear that not only is awareness about the rights flowing from Administrative Programmes and Measures an obligation but the said obligation is accompanied by a further and more onerous obligation – the obligation to institute legal proceedings to secure social justice for the poorer sections of the society particularly, with regard to “consumer protection, environmental protection or any other matters of special concern to such weaker sections.

Not many such social justice litigations have been instituted by the State Authorities in this country. That is for the reason that the Authorities have remained pre-occupied with the discharge of their obligation to provide legal aid to the deserving sections of the society which is limited to providing free legal counsel to the deserving litigants and holding Lok Adalats, establishing and running mediation, counseling and conciliation centres and holding legal literacy programmes. Time has however come when the Legal Services Authorities should widen the sphere of their activities and make them more useful to the weaker sections for whose benefits such Authorities have been established. It is in that regard important to remember that not only is an awareness regarding the rights of the poorer sections flowing from legislative administrative programmes and measures important but in the event of a failure or neglect of such programmes by the

functionary concerned, filing of a Public Interest Litigation on behalf of the beneficiaries also forms an important part of the duty assigned to the Authority.

Contrary to the common belief that the Act does not empower the State Authorities to take remedial action wherever there is a failure on the part of the State Authorities and other functionaries, the scheme of the Act specifically provides for an effective mechanism and empowers the State Authorities to institute litigation to ensure social justice by particular reference to the areas specified in section 4 (d) of the Act. These areas, it is not worthy, covers not only consumer protection, environmental protection but extends “to any other matter of special concern to the weaker sections of the society” Social welfare schemes for the benefit of poorer sections of the society which the Government of India and State Government have formulated in plenty thus fall within the purview of scrutiny by the Legal Services Authorities. The Authorities can look into the schemes, evaluate the efficacy of the implementation and in case if comes to the conclusion that the authorities and the functionary have not done what ought to be done for the benefit of the beneficiary of such schemes, to institute Public Interest Litigation. This would ensure proper implementation of the schemes.

The concept of accountability and the role of Legal Services Authorities in seeking the performance appraisal from the various welfare bodies of the Government and ensuring that the various welfare measures of the Government agencies reach their target groups cannot be over-emphasized. In fact, the Act enjoins upon the Legal Services Authorities the onerous responsibility to take necessary steps by way of social justice litigation with regard to Consumer Protection, Environmental protection or any other matter of special concern to the weaker sections of the society and thus a duty has been cast upon the Legal Services Authorities to ensure that the interest of the weaker sections of the society are safeguarded and protected especially in areas of consumer protection, matters of environmental protection or of any other matter of special concern to the weaker sections of the society.

The Phrase-‘Special concern to the weaker sections of the society’ is not to be read as ‘*ejusdem generis*’ but has to be given the widest possible amplitude as per the well-set rules of the interpretation since the Legal Services Authorities Act is a social welfare legislation. The areas of the special concern to the weaker sections of the society may include the educational facilities, availability of portable water/drinking water, availability of medical facilities and medical aid as far as possible at the doorsteps of the poor persons, employment opportunities to the persons belonging the poorer sections of the society, availability of subsidized rations to the poor people and persons below the poverty line, crime against women folk including incidence of domestic violence and various other related subjects.

One may appreciate that once the right, power and locus standi of the Legal Services Authorities to file social justice litigation as a representative body of the weaker sections of the society is established and accepted, there is an inbuilt power to seek accountability from various public bodies who are entrusted with the job of providing various reliefs and to initiate the rehabilitation measures so as to safeguard and ensure that the beneficiaries of various ameliorative schemes of the government receive and secure the benefit which is intended for them. It may be noted that Late Sh.Rajiv Gandhi, former Prime Minister of India has once remarked that out of the relief of *One Rupee* sanctioned by the Government only *Fifteen Paisa* reaches the poor who constitute the target group.

It may be further appreciated that the courts are already heavily over-burdened and to file Public Interest Litigations for each and every thing before evaluating the pros and cons of each welfare schemes and drawing a balance sheet of the performance of the public body concerned so as to pinpoint the shortfall areas and to highlight the focus areas as well which require added efforts and more emphatic work performance would not be desirable nor expedient and efficacious. What flows as a necessary corollary from the above is that the Legal Services Authorities would be entitled to evaluate the working of the schemes and ask questions from the concerned authorities, if an occasion to do so arises. It is here that the Authorities have to perform a role of socio legal audit of the implementation of such schemes. Such audit and the process of the evaluation would be not only in keeping

with the spirit of Act but would be absolutely essential to enable the Authority to decide whether the failure, if any, deserves to be remedied by judicial intervention of a competent court in a Public Interest Litigation to be filed by it.

The Legal Services Authority would therefore be acting within its powers and rights if it seeks information from a public body entrusted with the responsibility of safeguarding a public property as to what steps have been taken by the said public body to safeguard a particular property and further the Legal Services Authority is competent to ask for the reasons on account of shortfalls, if any, in the role of that public authority in safeguarding public property. Further, the Legal Services Authority can seek explanation from a public body which is entrusted with maintaining law and order as to what steps have been taken by the public body concerned to prevent the crime against women folk and what are the reasons for shortfalls in the performance of that public body, if any in ensuring that security concerns of the women folk are addressed and taken sufficient care off. There can be so many examples of the schemes and projects which the Legal Services Authorities can take up and all matters of special concern to the weaker sections of the society as well as various facets of Consumer Protection Laws, Environment Protection Laws, crime against women including domestic violence and social justice legislations would form part of it.

In India, the legal services programmes could employ a combination of the duty solicitor and public defender models, along with the juridicare model in seeking to reach the large 'unmet area' in need of legal services. The experiences in other countries where such a combination has been tried out can be usefully adapted to Indian conditions. Normally, government passes a lot of Social Welfare Legislation but no one really cares to find out whether this social legislation is effective or not. This is something which the other Authorities and organizations can do. Lawyers once they acquire the Lawyering skills which help the poor, start minting money and become different kind of lawyers. That is something also which should be done by the organizations providing legal aid. Legal Aid Clinics also serve a very useful purpose and most of the colleges in the country have got Legal Aid Clinics where the final year students participate in Legal Aid Programmes

under the guidance of their teachers. We can take some students in confidence, get them to work up on the brief and actually assist the lawyer in the work and in pleading his case. With these kind of experiments, we can give them practical training apart from sensitizing them. Of course, sensitizing is most important. Otherwise, once they grow to become lawyers and start earning money they forget everything else. Of course, they must come to the platforms, speak about legal aid. It is heard that many lawyers and judges do it. But how many of them have done legal aid work, how many of them have actually argued cases for the poor without charging any fees. It is very easy to sit on or stand on a platform and speak on legal aid but what is required to be done is actual practice of Legal Aid. That is something which will help the people. In fact, In Harvard Law School there is very good Legal Aid Clinic and also in some other Universities in the United States where students actually come and argue cases, of course under the guidance of their teachers. But that is also something that can and should be encouraged by our Bar Councils. Bar Councils must take up this programme in consultation with and under the guidance of Legal Aid Authorities.

There should be some serious efforts by various bodies and departments to inform the public of the existence of the legal services. Electronic Media should be liberally used, aggressive campaigns need to be launched. Rather than wait for the needy to approach Legal Services Authorities, efforts should be made by reputed NGOs to identify people in need of free legal services. Judicial Officers can take the responsibility of sensitizing the marginalized sections of the society to schemes and programmes launched by the legal Services Authorities from time to time during the course of even discharging judicial functions.

The legal awareness can be spread through distributing pamphlets, conducting street plays, making of documentary films, which can be showed on the television and lectures in the legal aid camps especially in the rural areas. Non Governmental Organizations can also contribute and play an effective role towards the spread of legal literacy.

The student lawyers should be involved in the programme of spreading awareness about the Legal Services Authorities Act in both urban and rural areas. It will not only be an invaluable help to the movement but the students themselves will be immensely benefited by their direct exposure to the glaring injustice existing in the so called modern society.

3.3.Role of judiciary and Legal Services Authorities:

Just like the rationale behind providing legal aid has undergone a sea-change, from it being more of a charitable, non-enforceable obligation to one being provided at the State's expense, there has been a tremendous response from the judiciary as far as interpreting the right to legal aid in consonance with the right to life is concerned. After the landmark decision in *Maneka Gandhi v. Union of India*,³⁰ major developments were made in the development of the right to life jurisprudence under article 21 of the Constitution. The linkage between article 21 and the right to free legal aid was discussed in detail in the decision given by Supreme Court in *Hussainara Khatoon v. State of Bihar*,³¹ where the court was shocked by the plight of thousands of under-trials languishing in the jails in Bihar for years without ever being represented by a lawyer. The Court declared that "there can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." The Court pointed out that article 39A emphasized that free legal service was an inalienable element of 'reasonable, fair and just' procedure and that the right to free legal services was implicit in the guarantee of article 21 for a person accused of an offence. This was a case where it was found by Justice P.N. Bhagwati and Justice D.A. Desai that many under-trial prisoners in different jails in the State of Bihar had been in jail for period longer than the maximum terms for which they would have been sentenced, if convicted, and that their retention in jails was totally unjustified and in violation of the fundamental rights of personal liberty under article 21 of the Constitution. While disclosing shocking state of affairs and callousness of our legal and judicial system causing enormous misery and sufferings to the poor and

³⁰ (1978) 1 SCC 248: (1978) 2 SCR 621: AIR 1978 SC 597.

³¹ (1980) 1 SCC 89: AIR 1979 SC 1369.

illiterate citizens resulting into totally unjustified deprivation of personal liberty, Justice P.N. Bhagwati (as he then was), made following observations in para 6 of the judgment, which are thought provoking:—

This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programmes, but so far, these cries do not seem to have evoked any response. We do not think it is possible to reach the benefits of the legal process to the poor to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nation-wide legal service programme to provide free legal services to them.

Two years thereafter, Justice P.N. Bhagwati while referring to the Supreme Court's mandate in the aforesaid *Hossainara Khatun's* case, has commented that it is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of article 21, most of the states in the country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state. The State may have its financial constraints and its priorities in expenditure but the law does not permit any government to deprive its citizens of constitutional rights on the plea of poverty.³²

In 1986, in another case of *Sukhdas v. Union Territory of Arunachal Pradesh*,³³ Justice P.N. Bhagwati, once again, while referring to the earlier decision of *Hossainara Khatun's* case and some other cases had made the following observations in para 6 of the said judgment;

Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for

³² *Khatri v. State of Bihar*, AIR 1981 S.C 926.

³³ AIR 1986 SC 991.

the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programmes for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose.

This part of the narration would be incomplete without referring to the other astute architect of human rights jurisprudence. Justice Krishna Iyer in *M.H. Hoskot v. State of Maharashtra*,³⁴ declared that if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice. The rule of law is a basic structure of Constitution of India. Every individual is guaranteed with the right of life and personal liberty which is given to him under the constitution. No one should be condemned unheard. In absence of legal aid, trial is vitiated.³⁵

³⁴ AIR 1978 SC 1548.

³⁵ Indira Gandhi v. Raj Narain, 1975 AIR 1590: (1975) 2 SCC 159

The present Legal Services Authorities Act though was legislated in the year 1987 but came into force with effect in the year 1995. State level and district level authorities are giving legal aid to the lakhs of poor people all over the country. However there is a second aspect of the Act which mandate to constitute Lok Adalats for an out-of-court conciliation and settlement of legal disputes. Delhi High Court has given a landmark decision highlighting the significance of Lok Adalat movement which has far reaching ramifications. In *Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board*,³⁶ the petitioner filed a writ petition before Delhi High Court for restoration of electricity at his premises, which was disconnected by the Delhi Vidyut Board (DVB) on account of non-payment of Bill. Court during hearing of the matter found that the grievances of the citizens are not only confined to the Delhi Vidhhut Board but also directed against other state agencies like Municipal Corporation and other bodies, Court notices were directed to be issued to NALSA and Delhi State Legal Service Authority. Justice Anil Dev Singh passed the order giving directions for setting up of permanent Lok Adalats.

The scholarly observations of Judge given in this case deserve special commendations and are worthy of note. It will be profitable to reproduce the important text and abstract from this judgment, which should be an eye opener. It should also steer the conscience of all, as there is an increasing need to make Lok Adalat movement a permanent feature: Article 39A of the Constitution of India provides for equal justice and free legal aid. It is, therefore, clear that the State has been ordained to secure a legal system, which promotes justice on the basis of equal opportunity. The language of Article 39A is couched in mandatory terms. This is made more than clear by the use of the twice-occurring word "shall" in Article 39A. It is emphasized that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to secure that opportunities for securing justice are not denied to any citizens by reasons of economic or other disabilities. It was in this context that the Parliament enacted the Legal Services Authority Act 1987.

³⁶ AIR 1999 Del 88: 1999 (77) DLT 640: 1999(2) AD (Del) 105: 1999 (2) RCR (Civil) 291

The need of the hour is frantically beckoning for setting up Lok Adalats on permanent and continuous basis. What we do today will shape our tomorrow. Lok Adalat is between an ever burdened court system crushing the choice under its own weight and alternative dispute resolution machinery including an inexpensive and quick dispensation of justice. The Lok Adalat and alternative dispute resolution experiment must succeed otherwise the consequence for an over burdened court system would be disastrous. The system needs to inhale the life giving oxygen of justice through the note. If we closely scrutinize the contents of the decision of Delhi High Court, there has been an alarming situation of docket-explosion and the ultimately remedy is the disposal of cases through the mechanism of Lok Adalat.

3.4. It's necessary an effectiveness of legal aid services in the prison:

Issues to be faced by trial and convicted inmates:

Today, world is shifting fast. The prisoner means a criminal or offender of any law-breaking. It may international or national criminal convict. No one is known about prison and its system or rights of prisoner. Prisons are not functioning properly for inmates. All jails are constructed years ago. There is no contemporary jail developed.

There are different types of prisoners including such as adolescent prisoner, adult prisoner, casual prisoner, civil prisoner, juvenile, women prisoner and under-trial prisoner. There is some hard core criminal who try to escapes the jail through illegal means. The prison is for the rehabilitation and introspection or realisation to prisoners on their misconduct. As we know the prison and prisoners situation is very difficult as compare our country with foreign countries prison. There are many problems of prisoners suffered a lot as given below:

1. Overcrowding:

India has a no new source to kept prisoner during overcrowding of prisoners. This problem was not solved even in 21st century. Due to more prisoners, indiscipline arises in prison. The administrator cannot handle the proper manner of safety in prison. Most of

prisoners who got the imprisonment must transferred to another court like sub jails in helping to reducing overcrowding.

2. Under trial prisoner and their rights:

Furthermore of the prisoners are under the trial. The lack of fast proceedings prisoners are suffering a lot. Crime is alleged by most the illiterate person or due to lack of economic means and International criminal are trained. So, they don't have the knowledge about their rights. Therefore, legal aid service and Human right commission will help them to inform about their rights.

3. Health care and hospital competence:

According to my knowledge, I visited to one central jail. I have observed the whole things and system of jail. In this, we have hardly seen the hospital area. It was facilitate with first aid kit told by the superintendent. There were many prisoners including women. With the permission of superintendent allowed us to visit female's compartment, prisoner's area was not in good condition or clean. The dresses of prisoners should be clean, will protect from the infection or any diseases. The most important issues are about bathroom and toilets facility for prisoners. As per the Swachh Bharat mission or any schemes of Government should be applied in prison. Due to cleanliness prisoners will get fresh and clean environment of prison.

4. Food capability:

Food is limited to all prisoners. As per the prison manual, prisoners have some restriction on time and food. Prisoners have to do work on basis of their skills. From this prisoners will get minimum amount for the work done, which is as per the prison manual. Food must be different for each day. It should not be same for a whole year. Food should be inspected before circulated to prisoners. Drinking water should be clean and cool during summer period.

5. Insufficient of prison staff:

In jail, there are very less prison personal to maintain prisoners in good manner including women staffs for women prisoners. The history ticket and visiting person's registration documents are not maintain properly. The checking of visiting persons and prisoners are required high security during entry/ exist of prison.

6. Lack of administration:

Prison administration department is very weak in to implementing of new training programmer for the prisoners. Prison Administration has to invite some reputed Institution for Vocational programme and Workshop in prison. For that the prison administration is very feeble to give them proper training. Prison system has not changed from many years. Now it's the time to innovative structure for prisoners with added benefits of Human rights.

7. Lack of legal representation and legal aid to inmates:

A Researcher has to come across with the prison. In that many of inmates are illiterate and unknown about the legal provided into prison. There are sentenced by the court after that they loss their hope to fight for a justice. For that every prison administration has to organize such a programme that will help prison to know about the legal Aid.

Precedent and judicial decision:

From ancient time, there were a no rights given to common people. King was to rule over the state. The war that took place between kings resulted to death of lots of innocent people. In the course of king era, poor person or a losing soldier has to surrender and they have to leave the state by order of king. Subsequently, lots of changes took place before the development of human rights. Major role was played by Cyrus, Magna Carta, British bill, French revolution, Mahatma Gandhi's contribution in to expansion of human rights. In addition to that after the cessation of world war, the Genocide Convention was adopted on 9th December, 1948 and thereafter declaration of human rights was adopted on 10th December, 1948.

Beginning from the India's history:

Before independence, there was no fulfilling of rights in India. The British Government has taken such advantages that the human were treated as beggar, inhuman with cruelty. There were no kindnesses on people, who fought for the independence. Freedom fighters like Bhagatsinh, Raj Guru, Sukhdev, Veer Savarkar etc. were ill-treated. After independence, Government of India has developed some reformative jail system. Prisoners are too humans like us. The constitution of India has covered this in the seventh schedule, for jail and state law.

History of prisons and inmates to faced issues and challenges in India:

Before the independence, prisons were developed for the criminal person and against any illegal activity or against British Government. The prisons were very unsafe to inmate. The British Government used to punish most of the prisoner with in humaneness and mistreating. Punishment was developed for such criminal and wrong-doers. It was one of the steps towards controlling the people from any illegal movement or crime or wrong doers. In the world, there was different capital punishment included such as flogging, mutilation, branding, pillories, imprisonment and death by hang. Even today, some countries are following capital punishment. In India the Britishers have developed the first prison in Goa, 1600. It was small lockups for prisoners. Afterwards, a large prison complex construction was started in 1896 to 1906. It was Andaman Nicobar jail.

The British Regime has settled more jails for prisoners. Prisoners were treated like animal in jail and rule by the superintendent of prison. During 18th century, there was no knowledge of human rights. The superior has power to rule the nation. After the changing scenario of the country, Indian Government Act 1935 was developed. After independence, Government of India has reforms "jails" or "prison" system with help from United Nation. It has divided into different level like National level, State level and District level prison system developed.

Rights declared under Universal Declaration of Human Rights:

Rights are established and acknowledged by the whole world under the Universal Declaration of Human Rights. This document has covered all basic rights for the all human being for the world. It is a natural right. The declaration of document was made on 10th December, 1948. There are some provisions and principle under Universal Declaration of Human Rights given which are as follow;

- the right to freedom of speech;
- the right to equality before law;
- the right to equal respect for all³⁷;
- Everyone is entitled to all the rights and freedom set forth in the declaration, without any discrimination as to race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or status³⁸.
- no person should be subjected to cruel or torture, inhuman or degrading treatment or punishment³⁹;
- everyone has to right to life, liberty and security of person⁴⁰;
- no one shall be subjected to arbitrary arrest, detention or exile⁴¹;
- international covenant on civil and political rights,1966⁴²;

The Universal Declaration of Human Rights and protection is developed for the common people of world. It is, therefore all rights are reserved to all human. Here, there is no need to differentiate a prisoner from a common man.

Rights under Indian Constitution:

Constitution of India is like human body. The preamble is heart of all citizens. It is covered with all rights and duties of citizen. Prisoners have fundamental rights-, rights to equality, right to freedom, protection of life and personal liberty, rights to freedom of

³⁷ Gaius Ezejoi, "protection of human rights under the law", London Butterworth, 1964, p-151.

³⁸ Universal Declaration of Human Rights,1948, Article-2

³⁹ Universal Declaration of Human Rights, 1948, Article- 1.

⁴⁰ Ibid, Article 3.

⁴¹ Ibid, Article 9.

⁴² Ibid, Article 7.

religion, culture and education rights⁴³. Prisoner must get all rights within the limitation by court.

Rights of prisoners under prison act:

The supreme court of India has decided to grant some rights and duties of prisoner. In the respect of all India committee on jail reforms during 1980-1983 as given under⁴⁴;

- Right to human dignity.
- Right to basic minimum needs.
- Right to communication.
- Right to legal aid.
- Right against arbitrary prison punishment.
- Right to meaningful and gainful employment.
- Right to release on due date.
- Right to health care.
- Right to education in prison.

Impact and implication is needed in prison system of India:

The prison has to developed in such way that prisoner can feel like a home-based. Itwill help them to rehabilitate. In addition to that terrorist must kept in separate lockup from the all criminal and other prisoners. The Government of India has to reform all jails as per the recommendations made by the Mr Justice A.N.Mulla⁴⁵. It is need to develop work programme as per their skills such as handicraft, tailor machine work, agriculture, gardeningetc.

The Human Rights Commission is set-up in different part of state. There are National Human Rights Commission and State Human Rights Commission. The Human Rights Commission has to develop awareness programmes in jail. There must require legal aid services for prisoners by consultants.

⁴³ The constitutional law of India, 49th edition, Centaral Law agency, J.N.Pandey,2012

⁴⁴ National policy on prison reform and correctional administration manual 2003

⁴⁵ National Policy on Prison Reform and Correctional Administration Part- I,pdf

Let see the prisons health facility and medical treatment, women prisoners and male prisoner's hospital should be different in prison. Women prisoners must get free medical treatment on weakness. During pregnancy, women prisoners need some healthy food for their child. Moreover, the prisoner's clothes and bedding system should be inspected by the staff member at daily routine basis. Moreover, laundry shop should be established. Prisoners can take clothes out of jail with proper law and regulation. The prisons are developed for the introspection and for the rehabilitation. The Yoga, Bhakti and concentration system has to develop. The administration has to develop whole day programme in the prison for the development of the prisoner's. Unique time table is desirable for the vocational training or any other programmes.

I would like to add some new topics with innovative arrangement of prisons:

1. To developed high security construction of new prison with proper space.
2. To developed medical administration for 24*7 hours with ambulance service.
3. To provide communication centre with recording base system*.⁴⁶
4. To provide proper education for prisoners.
5. To organize vocational training and work programmes on monthly basis.
6. Legal aid service and human rights commission for protection of prisoner's rights.
7. The under trial prisoner and young offender must kept in separate cells.
8. Women prisoners have provide all private security and facility with proper manner.
9. To encourage in Swachh Bharat Mission and make proper toilet facility.
10. Maintain proper food facility with clean vessels and groceries.
11. Proper inspection for all administration and organization.

The workshop and seminar should be conducted in jail. It will explore the knowledge of prisoners. The recent one of the National Institution of Design has frame a workshop programme for prisoners against theft. Policemen are known to often think like a criminal to solve complicated crimes. Taking one step forward, design gurus at national institution of design are collaborating with prisoners of Sabarmati jail to come up with theft proof designs⁴⁷. There are many institutions that want to make some fun for prisoners and

⁴⁶ * It must be secret and protected by law.

⁴⁷ See, Times of India, by Sarfaraz.Shaikh, 27-february-2016.

happy life in prison. For that administration of prison and prison personnel have to play active role into all programmes.

Prisoners should be given equal rights and opportunity under the human rights. Prisoner must protect and promoted under human rights. Human rights of prisoner are for the care, protection, development and rehabilitation. It will require also effectiveness of legal representation and legal aid to trial and convicted inmates in prison. Therefore, all prisoners are treated as human being and they have the rights under Indian constitution.

3.5.Implementation of legal aid services in India:

Legal aid movement and its statutory recognition:-

As stated and discussed in earlier chapters, Article 39A of the Constitution of India provides that state shall ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22 (1) also make it obligatory for the state to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that this constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

Although, Article 39A was incorporated in the Constitution in the year 1976 and came into operation *w.e.f.* 3 January, 1977 yet the movement of legal aid in the Republic of India had started way back since the Constitution promised to secure to all its citizens justice-social, economic and political which was *w.e.f.* 26 January, 1950. Since 1952, the government 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 government for legal aid schemes. In different states, legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a committee at the National level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of Justice P.N. Bhagwati,

then a judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987, Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9 November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Mr. Justice R.N. Mishra, the then Chief Justice of India played a key role in the enforcement of the Act.

The movement of legal aid in India got crystallized in the Legal Services Authorities Act, 1987 which was an Act to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operations of the legal system promotes justice on a basis of equal opportunity.

Nature of functions and duties performed by Legal Services Authority:

The nature of functions and duties performed by different Legal Services Authorities are describe under the Legal Services Authorities Act as hereunder—

(i) Free Legal Services

- i. Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- ii. Providing Advocate in legal proceedings;
- iii. Obtaining and supply of certified copies of orders and other documents in legal proceedings;
- iv. Preparation of appeal, paper book including printing and translation of

documents in legal proceedings etc. etc.

v. Pre litigation settlement by mediation/conciliation etc.

(ii) Eligible persons for getting free legal services

i) Women and children

ii) Members of Schedule Caste/Schedule Tribes

iii) Industrial Workmen

iv) Victims of trafficking in human beings or beggars

v) Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster etc.

vi) Disabled persons

vii) Persons in custody

viii) *Persons whose annual income does not exceed Rs.50,000/-.*

(iii) Free Legal Services can be availed from

i) Supreme Court Legal Services Committee, 109, Lawyers Chambers, Supreme Court of India, New Delhi for Supreme Court Cases.

ii) State Legal Services Authority constituted in all the States of the country

iii) High Court Legal Services Committee situated at High Court Complex in every High Court.

iv) District Legal Services Authority situated in the District Courts Complex in every District of the country.

v) *Taluk legal services committees situated in sub-divisions and small towns.*

3.6. Constitution and functions of Central Authority:

Section 3 of the said Act talks about Constitution of a National Legal Services Authority and section 4 of the said Act defines the functions of the Central Authority (NALSA) which are as follows:—

“The Central Authority shall perform all or any of the following functions, namely:—

- (a) lay down policies and principles for making legal services available under the provisions of this Act;
- (b) Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- (c) Utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- (d) Take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- (e) Organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- (f) Encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- (g) Undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

(h) To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;

(i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;

(j) Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;

(k) Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(m) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(n) Coordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions and other legal services organizations and given general directions for the proper implementation of the Legal Services programmes.”

3.7. Constitution and function of State Legal Services Authorities:

Section 7 of the Legal Services Authorities Act, 1987 describes the functions of the state authority as hereunder:

(1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in sub-section (1), the State Authority shall perform all or any of the following functions, namely:

(a) Give legal service to persons who satisfy the criteria laid down under this Act;

(b) Conduct Lok Adalats, including Lok Adalats for High Court cases;

(c) Undertake preventive and strategic legal aid programmes; and

(d) Perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

The scheme of the Act formulates the constitution of State Legal Services Authorities in each and every state to be constituted by the state government and further High Court Legal Services Committee, District Legal Services Authority and Taluk Legal Services Committee have to work under the supervision, guidance and control of the State legal Services Authority and all State Legal Services Authorities have to work under the overall superintendent, guidance and control of the National Legal Services Authority. Constitution of India provides that state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

Articles 14 and 22(1) also make it obligatory for the state to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. The constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.⁴⁸

India is a Socialist Republic. Socialism is not a code of belief. It is a philosophy of life. To bring cheer to everyone, to make everyone feel safe and to wipe tears from each eye is the ultimate object of every welfare state. Our Constitution, therefore, has put in place a legal system which endeavors to protect the rights of everyone. Over the years, however, it was felt that the judicial system was a little too costly for the poor, the laws a little too complex for the illiterate to understand and the procedure a little too slow to bring instant relief. To supplement the justice delivery system, the Legal Services Authorities Act was enacted. The central government in 1980 constituted a high powered Committee for Implementing Legal Aid Schemes (CILAS) which worked out a comprehensive legal aid programme on uniform basis throughout the country providing a four-tier legal aid programme at National, State, District and Taluk levels. As a sequel to this, the government of India enacted the Legal Service Authorities Act in 1987 which was enforced with effect from November 9, 1995. Under this Act, the National Legal Services Authority (NALSA) was set up as Central Authority at the apex. Since then, legal aid services have been set up at states and union territories levels, district levels and were being enforced at the Taluk levels all over the country at the moment.

The government has been providing free legal aid services to the poor in two segments. The first segment relates to court oriented legal aid and the second segment covers preventive or strategic legal aid. Legal aid is an essential part of the administration of justice. The goal is to secure justice to the weaker sections of the society, particularly to the poor, downtrodden, socially backward, women, children, handicapped etc. but steps are needed to be taken to ensure that nobody is deprived of an opportunity to seek justice

⁴⁸ Section 304 of Criminal Procedure Code

merely for want of funds or lack of knowledge. To fulfill this object in Delhi, a state authority in the name of Delhi Legal Services Authority was set up in Patiala House court complex. State Legal Services Committee is committed to ensure “Access to Justice for all”.

The Aims and Objectives of the Committee are:

- (1) To provide free legal aid and services for conduct of cases in the High Court, or legal proceedings before any authority or tribunal;
- (2) To organize Lok Adalat for amicable settlement of pending cases in the High Court of Delhi and pre-litigative cases;
- (3) To settle pending cases in the High Court of Delhi and pre-litigative cases by mediation & conciliation proceedings;
- (4) To spread legal awareness.

Entitlement to legal services:

The following categories of persons are entitled to grant of legal services as per section 12 of Legal Services Authorities Act, 1987;

- a) a member of a Scheduled Caste or Scheduled Tribe;
- b) a victim of trafficking in human beings or beggar;
- c) a woman or child;
- d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Right and full Participation) Act,

- 1995, which means persons suffering with blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation or mental illness;
- e) victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster, or
 - f) an industrial workman; or
 - g) persons in custody, including custody in the protective home or in a juvenile home or in psychiatric hospital or psychiatric nursing home or
 - h) Where the annual income of a person “from all sources” does not exceed Rs.50, 000/-

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Legal aid activities of the Delhi Legal Services Authority:

Delhi is itself a mini India and having a cosmopolitan culture, a population which comprises of representatives from each and every state giving Delhi a multi-dimensional polity. The Delhi Legal Services Authority has been working tirelessly performing the onerous duty to ameliorate the social inequalities between the haves and have-nots and achieving great strides.

a) Legal aid counsel scheme:-

The Authority has implemented legal aid counsel scheme in courts of Metropolitan Magistrates, Special Executive Magistrates, and Children Welfare Board etc. Remand Advocates have been appointed to take up and defend the cases of arrested persons. Now, every unrepresented person in custody stands assured of legal representation at different stages of trial. The Authority has also a panel of advocates.

⁴⁹ As per notification No. F.27/3/2003- Judl./CD/07/2260 dated 12th April, 2007.

b) Appointment of jail visiting advocates:-

The Authority had also appointed 22 Jail Visiting Advocates to visit different Jails regularly on fixed days of the week to help the poor and unrepresented inmates in terms of provisions of Section 12(g) of the Legal Services Authority Act, 1987. Any jail inmate can seek aid and advice; file any bail/parole application, appeal(s) etc. through these advocates. Also advocates have been appointed as Legal Aid Counsel in High Court of Delhi for dealing with the cases of inmates of the respective jails as mentioned against each with effect from 9 May, 2005. These advocates shall attend to the bail applications of under trials sent directly or through jail visiting advocates and also file/defend appeals or revision petitions of convicted prisoners before the High Court of Delhi.

c) Rising of income ceiling:-

The income-ceiling limit under section 12(h) of the Legal Services Authority Act, 1987 has been enhanced to Rs. 50,000/- per annum from April, 2007 to extend the benefits of the Act to more people.

d) Emphasis on competent and quality legal services to aided persons:-

The quality of legal services is the need of the hour for providing competent legal aid to the applicant. Delhi Legal Services Authority takes regular feed back of the advocates on its panel and strikes of the names of the Advocates who fail to provide efficient services to the applicants/aided persons. The Authority is always on a look out to bring young, hard working and honest Advocates on its panel.

e) Accreditation of non-governmental organizations:-

The Authority is working collectively with government departments and agencies and has also teamed up with various Non-Governmental Organizations working directly or indirectly in the field of Legal Services. Most of the NGOs are registered.

f) Marriage and family counseling centres:-

Marriage and family counseling centres being run by the authority have become extremely popular. This centre is first of its kind in the country where efforts are made to persuade the parties to sort out their disputes and differences without recourse to litigation. The centres have proved their utility in as much as before giving legal aid to eligible persons, every effort is made to explore the possibility of a compromise between the parties. In many cases, counselors attached to this authority have succeeded in persuading the parties involved in matrimonial disputes to re-unite and live a happy marital life. In those cases where reunion appears to be not possible, the parties are motivated to go in for mutual consent divorce and the issues relating to maintenances, custody of the children, dowry and permanent alimony are settled across the table. The Marriage and Family Counseling Centres are functioning not only from head office but also from different court complexes.

g) Free legal aid centres:-

With a view to educate the general public about their rights and procedure to get free legal aid, the Delhi Legal Services Authority had set-up 28 legal aid centers in different parts of Delhi especially in huge clusters, slum areas and low profile areas. After the setting up of these centers, the legal aid facilities are available at the doorstep of the people of these areas and legal aid programmes have become more meaningful and effective.

h) Observance of legal services day:-

On every 9 November which is observed as LEGAL SERVICES DAY in all the state Authorities, the authority issues press release in leading national newspaper both in Hindi and English spelling out the salient features of the Legal Services Authorities Act, schemes made there under by the authority and the services being provided by it. The

authority organizes many functions and legal literacy camps at various places in Delhi where various Non-governmental organizations and prominent citizens of Delhi participate.

i) Helpline number to needy people:-

The telephonic helpline is functional on all the working days in the office of DLSA, Patiala House Courts and is manned by competent lawyers. It saves time, money and energy of the poor people and prevents them from being financially exploited. This legal aid helpline has evoked tremendous response. On the occasion of Labour Day the authority had dedicated the telephone helpline to the labours/ industrial workers which was made functional on first and third Sunday of the month from 10.00 AM to 1.00 PM for rendering helpline services to labour class/industrial workers. Information, legal advice and mode of seeking legal aid were also available at other office helpline numbers.

Study of Law (Legal Aid) with Special Reference to its Implementation in Union territory of Delhi⁵⁰:-

1. Legal Awareness and Legal Aid Programme

A Legal Awareness and Legal Aid Programme was organised by Delhi Legal Services Authority in partnership with Adharshila on 20 January, 2010 at Adharshila Welfare Centre, GRC-SK, Hauz Rani, New Delhi. Sh. S.S. Tandan, Counsellor, Delhi Legal Services Authority attended the programme and spread legal awareness amongst the community. The counsellor heard the cases of 25-30 beneficiaries and gave appropriate advice. About 450 pamphlets, brochures and booklets of DLSA on Legal Awareness and activities of DLSA were also distributed to the public in general.

Another Awareness Programme was organised by Society for Securing Justice on 23rd

⁵⁰ Based on various Reports, personal knowledge and Annual Reports of Delhi Legal Services Authority

January, 2010 at Jahangir Puri, Delhi which was conducted by Sh. Gautam Manan, Project Officer, Delhi Legal Services Authority and Sh. P.C. Ranga, Retired Addl. District and Sessions Judge, Delhi and Counsellor, Delhi Legal Services Authority. The general public was made aware about the activities of Delhi Legal Services Authority.

2. Permanent Lok Adalats for Accident Matters

The Lok Adalat of MACT/JRY (Jald Rahat Yojna) cases were organized in all 4 Court Complexes time to time and the cases of all the Insurance Companies were taken up in these Lok Adalats. In these Lok Adalats of MACT/JRY total 2222 Cases have been settled and in these Lok Adalats an amount to the tune of Rs. 30,09,01,828/- has been awarded to the victims of accident and/or for their families. A Thirteenth continuous MACT Lok Adalat organised on 9 January, 2010 in all the five District Court Complexes in which 58 cases were settled and compensation of Rs. 1,07,14,000/- awarded in favour of the claimants.

3. Lok Adalat for Family/Matrimonial Disputes

Delhi Legal Services Authority organizes special Lok Adalat to deal with matrimonial and family disputes also. It has been the priority of this Authority to settle the disputes between the parties particularly in matrimonial and family matters at pre-litigative stage itself. Considering the huge backlog of the cases in the courts, it is the endeavour of the Authority to minimize the litigation so as to lessen the burden of the courts and also to save the time and money of the parties involved. On receipt of a particular complaint, notice is sent to the opposite party and then efforts are made to make the parties sit across the table and bring them to a mutually acceptable settlement. It is heartening to note that more than 50 per cent cases are settled at pre-litigative stage itself. Seventeenth continuous Matrimonial Lok Adalat organised on 17 January, 2010 in various District Court Complexes of Delhi.

Delhi Legal Services Authority organized seminars, symposium and legal awareness programmes on contemporary social and legal issues like child labour, domestic violence, female foeticide and plea bargaining etc. The Authority has also organized training programmes to equip the Mediators, Judicial Officers, Legal Services Advocates, Protection Officers, Police Officers, Service Providers with skills, attitude and knowledge required for efficient performance of duty *i.e.*, Training Programme on Mediation and Protection of Women from Domestic Violence Act.

3.8. Medium of settlement of disputes/cases:

Lok Adalat is a forum where the disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987. An award made by the Lok Adalat is deemed to be decree of a civil court and is final and binding on all parties and no appeal lies before any court against it as per section 21 of the Act.

(i) Nature of cases to be referred to Lok Adalats

- i) Any case pending before any court.
- ii) Any dispute which has not been brought before any court and is likely to be filed before any court:
Provided that any matter relating to an offence not compoundable under the law shall not be referred to/settled in Lok Adalat.

(ii) How to get the case referred to the Lok Adalat for settlement

- (a) Case pending before the courts:
 - i. If the parties agree to settle the dispute in Lok Adalat or
 - ii. One of the parties make an application to the court or
 - iii. The court is satisfied that the matter is an appropriate one for settlement in Lok Adalat.
- (b) Any dispute at pre-litigative stage

The State Legal Services Authority or District Legal Services Authority as the case may be on receipt of an application from any one of the parties to any pre-litigation stage matter refers such matter to the Lok Adalat for amicable settlement.

3.9. Conclusion:

There are many issues in implementing policy and responsibility towards people. It has to be considered as an issues and challenges for the legal aid services. It's required co-operation form the judiciary and other functioning authority of legal aid services. There is lacking into legal representation and legal aid services to under trial prisoners and convicted prisoners in the jail. So, the prison manual should be an effective and strictly followed by the administration required. The legal aid cell in prison should be regularly conducting any awareness programme of legal help and support in the prison. Therefore, it's required and effectiveness representation and legal aid to under trial and convicted prisoners in India. The National Informatics Centre is committed to bring about new technological advancements so as to eliminate the tedious number of visits of a litigant, once his/ her case has been listed. The Police Stations too, have started the digitalization drive, to do away with the copious amount of paper-work involved in preparing registers, and to only focus on the task at hand, i.e. solving the crime. There are various ways in which Access to Justice is being achieved at every level, yet India is at a stage where it needs to carve out an effective and achievable policy, which speeds up the process of dispensing of justice.

CHAPTER - IV

Conclusion and suggestion

4.1. Conclusion:

In India, majority of people still live below the poverty line. They find it difficult to prosecute or defend a case due to high costs involved. Eminent judges of the Supreme Court and High Courts have many a time emphasized the need for free legal aid to the poor. The central government, taking note of the need of legal aid for the poor and the needy, had introduced Article 39A in the Constitution of India in February, 1977. Thus, in the Directive Principles of the state policy, it is now enshrined that the central and state governments shall ensure that the operation of the legal system promote justice on the basis of equal opportunity and shall in particular provide free legal aid for the poor and ensure that justice is not denied to them for economic reasons or other disabilities.

One of the key issues confronting any lawful framework is access to equity or all the more alarmingly, the inadequacy of minimized or burdened gatherings to get to the lawful framework. It is accepted that equity will be accessible by one means or another, at whatever point and wherever it is required to be abstained from. Notwithstanding, nowadays, with a populace of well finished a billion, incredible difference in legitimate mindfulness even with the idea of equity revered inside the constitution remains converting into the way that the dominant part does not realize what lawful guide is, the thing that a court is, the thing that equity means and how it is managed. The worry of the worldwide network to manage the impediments to access to equity is supported in light of the fact that the persecuted and the wronged that are denied equity may fall back on revolt and savagery or defenselessly confront termination.

By enacting the Legal Services Authorities Act and reiterating the entitlement of legal aid and advice in various other enactments dealing with social justice for example, Mental Health Act, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Protection of Women from Domestic Violence Act, 2005 etc., the state is now under a statutory obligation to make available “legal service” which includes “rendering of any

service in the conduct of any case or other legal proceedings”. Judicial pronouncements have only reinforced this view, in case after case, helping in evolution of the right to free legal aid services as an essential element of “reasonable, fair and just procedure” *vis-à-vis* the poor and needy. To make legal services available to the needy people, efforts should have been made from all four sides and every corner with great force and impact by involving all the concerned agencies and units, and then only the objective and mandate of legislature behind enacting the Legal Aid Act shall be fulfilled.

4.2. Suggestions:

A. Suggestions to State Authority:-

In our country, majority of people still live below the poverty line. Millions have never attended the school and the society still discriminates on the basis of religion, race, caste and sex so the traditional approach of providing free legal aid deserves a change. The state should take necessary steps to deserve a change. The state should take necessary steps to ensure that legal aid services and other provisions aimed at assisting the poor and weaker sections of the society are implemented. It must provide sufficient funds, infrastructures, facilities etc. for setting up legal aid institutions, legal aid service authorities. It must encourage Non Government Organization’s who works in the field of providing legal help to poor, indigent and deserving people. Necessary funds for those Non Government Organization’s who are reliable and genuine must be made available to them but care should also be taken that the same is fully utilized upon deserving persons and not is misused.

Special cell and departments should be set up being managed by senior officers, eminent lawyers and serving judges on its panel to oversee the legal aid activities and functions to ensure that the benefit of legal aid and service should reach each and every corner of the country, to remote villages and slum areas and must not remain only on papers.

State must prepare the panel of advocates who are competent, intelligent and are keen to

serve the poor persons and atleast one such advocate must be attached with every court so that in case of need his services immediately can be taken.. State must also clear the bills of those advocates without any delay who are appointed by the courts as amicus curie so that due to lack of earnings he must not lose interest in the assigned cases.

Due to changed circumstances and passage of time, some of the provisions of Legal Aid Act, other legislation and rules may requires necessary amendments, modifications etc. from time to time and that changes should be incorporated without any delay so that benefit must go on to all for whom such acts and legislations are meant for.

Unless the people are made to know their rights, facilities and beneficiary schemes available to them, till then spirit of Legal Aid Act cannot be fulfilled. Legal aid programmes should emphasize on legal aid camps, promoting awareness, mobilizing law teachers and students in the services of weaker sections of the society by operating legal aid clinics, imparting training especially in tribal and rural areas inhabited mainly by economically and socially backward classes. In the law courses, it must be made mandatory by the state for aspiring lawyers to help poor people by giving them advices and other help by associating with different institutions, legal services authorities, Non Government Organization working under the similar fields etc.

State must not adopt rigid approach and must honour the good decisions of court and must not feel shy to change its policies, rules, law and schemes which are inconsistent with the beneficial tendencies of poor and down trodden people.

B. Suggestions to courts and judges of India:-

Courts should also be more humane in day to day functioning and must come in support of poor persons not only by educating them of their rights but also by providing them necessary legal services in this regard in order to equal the balance of justice. It also must encourage and appreciate those advocates and persons who does legal aid work for poor, jail inmates, women in distress, children etc. even in their judgment and orders. As and

when any case comes before a court, the sincere effort should be made at first instance and hearing to ascertain whether the party is duly represented by his or her lawyer or not and if it is found that he or she had not engaged any lawyer and is not capable to engage due to poverty or other sound reasons then immediately lawyer from legal aid authority or amicus curie should be appointed. While holding Lok Adalats, such judges must also ensure that in the garb of quick disposal of cases, injustice should not allowed to be caused to such needy and poor person and he must get the relief which he requires and is entitled to. Effective and constant touch of judges with great masses (certainly with the permission of higher authorities) especially in legal awareness camps would automatically make them more human and having sympathetic behaviour. This would also provide them firsthand knowledge and experience of the plights of the poor and deserving people.

It is found that most of the people still have great faith upon the judicial system than any other wing of the state but are angry with the judiciary as they are not given sufficient time to express their grievances and are not provided with sufficient and reasonable opportunities to put up their views and stands. Patience hearing of such persons for a reasonable time itself would not only reduce their problems and would satisfy their emotional feelings to some an extent but also would strengthen their faith in the judicial system. Judges while giving patience hearing to the litigants especially poor, women, senior citizen etc. would also sometime realize and find out the solutions of their cases in effective manner. Courts at the first instance should also try to get the matters settled through Alternative Dispute Resolution mechanism then by deciding on merits through long traditional trials.

C. Suggestions to lawyers of India:-

Legal fraternity and eminent lawyers also must spare some time to help such needy persons free of costs. It must be also made mandatory by incorporating some changes in Advocates Act asking lawyers for doing pro bono services by not only giving legal advices to poor persons but also by drafting their cases and defending them in the court of

law. Lawyer's community must also take some stern actions against those fellow colleagues who are found misusing the funds meant for poor persons, do not take effective care for them and negligently handle their cases.

D. Suggestions to State Legal Aid Services Authorities (SLASA):-

To providing legal services to various categories of deserving persons and citizens especially in field of providing legal aid and conducting Lok Adalats. However, more and more things still have to be done till an ordinary citizen feels that nothing more is yet required. Such authorities must work with great dedication, approach persons living in remote areas and create awareness of availability of legal services available to them. Immediate and quick action on coming to know about need of such persons must be taken. The directions given in the Legal Aid Act by the legislature should be strictly and efficiently followed. Human and sympathetic approach of staff working in such authorities, patience and careful listening of the grievances of poor and needy persons itself reduces their burden so the staff must be trained in such manner that no one should feel hesitate or irritate to approach them. The coordination with government agencies, Non Government Organizations, law colleges etc. must be maximum so that such legal services authorities keep on track of the latest schemes and beneficial legislations and to spread them to all. Frequent holding of Lok Adalats will not only reduce the burden of the courts but also would provide free or cheaper legal redressal of the litigations. The strengthening of legal service, making availability of competent counselors, provisions of quick and immediate appointment of lawyers to defend or prosecute cases as well as necessary charges/court fees etc should be the first aim of such authorities. Taking up the important issues to higher courts through PIL to point out the plights and grievances of public at large must be encouraged. Setting up conciliations centers, mediation cell at the doorsteps of each locality and prominent places would encourage more and more deserving people come close to the courts and other institutions for protection of their rights and to avoid injustice.

E. Suggestions to law students and law colleges in India:-

Law institutions and colleges should not feel that by teaching merely legal provisions to students in class rooms they have fulfilled their obligations. Such teachings should be practical in nature starting from the root level and must not be confined in books only. Students under the guidance of their teachers, officials of legal service authorities, Non Government Organization's etc. must be deputed to work in the slum areas, remote villages by providing advices and creating awareness of the rights and beneficial legislations and schemes to the needy persons. Holding of frequent seminars, conferences, workshops in colleges to create impact in the minds of the law students who would be future judges, lawyers etc. would be much better than giving them theoretical knowledge of the availability of legal services. Special marks, incentives and recognition in public to those students who worked in the remote areas for creating awareness of law would certainly help the society as more and more law students would join the mainstream.

F. Suggestion to prison administration in India:

In India, prison administration work as per the prison manual and prison Act. The legal aid Services is the separate cell for the needy people in the prison. Very few prisoners are aware with legal aid cell in the prison. The administration is a government body and not taking such an effective initiative to provide legal representation and legal aid services to prisoners. It will include prison staff, legal aid cell members and administration system. Therefore, the researcher wanted to suggest prison administration of India to abide with your duty and work honestly in the prison. The prison officer has to provide proper suggestion/advices to under trail and convicted prisoners of India. It has duty and responsibility towards prisoners to facilitated and informed about legal aid cell.

CHAPTER - V

Bibliography

Statute and reports:

1. Prison Act, 1894.
2. Prison Act, 1900.
3. Report of the All India Jail Manual Committee, 1919.
4. Govt. of India, Model Prison Manual.
5. See, K.P. Saksena, Human rights and The Constitution-Vision and the Reality, 2003.
6. See, D.D., Basu , Human Rights in Constitutional Law, 2008.
7. Model prison manual for the superintendence and management of prisons in India prepared by bureau of police research and development ministry of home affairs government of India, New Delhi, 2003.
8. Report of the All India Committee on Jail Reforms, 1980-83.
9. United Nations International Covenant on Civil and Political Rights.
10. Universal Declaration of Human Rights, 1948.
11. Indian Constitution of India, J.N.Pandey, 49th edition.
12. Code of Criminal Procedure
13. Constitution of India
14. Legal Services Authorities Act, 1987
15. All India Reporter
16. Delhi Law Times
17. Supreme Court Cases
18. Supreme Court Reports
19. Nyayadeep magazine published by NALSA
20. Nyayakiran magazine published by Delhi Legal Services Authority
21. Annual Report 2008-09 of Supreme Court
22. Annual Reports of Delhi Legal Services Authority
23. Law Commission of India- 14th Report
24. P.N. Bhagwati' Report, 1971

25. Krishna Iyer's Report, 1973
26. Juridicare Committee's Report, 1977
27. Report of High Powered Committee For Implementing of Legal Aid Schemes, 1980

Online sources:

1. http://shodhganga.inflibnet.ac.in/bitstream/10603/12650/10/10_chapter%206.pdf
2. [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf)
3. <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>
4. <https://barandbench.com/wp-content/uploads/2017/07/Legal-Aid-watermark.pdf>
5. <http://lawmin.nic.in/doj/justice/undp/WorkshopReport.pdf>
6. <http://www.in.undp.org/content/dam/india/docs/DG/equitable-access-to-justice-legal-empowerment-legal-aid-and-making-it-work-for-the-poor-and-marginalised.pdf><http://www.hrln.org/hrln/images/stories/pdf/prisons-legal-aid-090114-1.pdf>
7. http://shodhganga.inflibnet.ac.in/bitstream/10603/7785/9/09_chapter%202.pdf
8. http://nhrc.nic.in/documents/LibDoc/Prisons_Prisoners_A.pdf
9. www.dlsa.nic.in
10. www.faculty.law.ubc.ca
11. www.hrsolidarity.net
12. www.hslsa.nic.in
13. www.goforthelaw.com
14. www.kslsa.kar.nic.in
15. www.laoc.org
16. www.legal service India.com
17. www.nalsa.nic.in
18. www.tnlegalservices.tn.gov.in
19. www.upslsa.up.nic.in

Annexure A

(The prisons (amendment) bill, 2016)

AS INTRODUCED IN LOK SABHA

Bill No. 54 of 2016

THE PRISONS (AMENDMENT) BILL, 2016

By

SHRI MULLAPPALLY RAMACHANDRAN, M.P.

A

BILL

Further to amend the Prisons Act, 1894.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and com-mencement

1. (1) This Act may be called as the Prisons (Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint

Amendment of section 3

9 OF 1984 2. In the Prisons Act, 1894, (hereinafter referred to as the principal Act), in section 3,— (i) after clause (8), the following clause shall be inserted, namely:—

“(8A) "prescribed" means prescribed by rules made by the State Government under this Act.”.

(ii) after clause (9) the following clauses shall be added at the end, namely:— “(10) "rigorous imprisonment" means imprisonment combined with manual

hard work for not less than eleven hours in a day in such manner as may be

prescribed;

(11) "simple imprisonment" means imprisonment with normal or routine

work for not more than seven hours in a day in such manner as may be

Prescribed.”.

Amendment of section 9

Section 9 of the principal Act shall be re-numbered as sub-section (1), and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) No officer or other employee of a prison shall provide or make available prohibited articles relating to means of communication like mobile phones, wireless, i-phones, laptops or other modern digital means of communication to any prisoner.".

Insertion of new section 26A.

Special Provisions with respect to pregnant prisoners.

In Chapter IV of the principal Act, after section 26, the following section shall be inserted, namely:—

"26A. (1) In case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.

(2) A pregnant prisoner shall be entitled to grant of conditional parole for thirty 15 days from the expected date of delivery or thirty days from the date of delivery if the delivery takes place while she is in prison."

Amendment of section 29

5. In section 29 of the principal Act, the following proviso shall be added at the end, namely:—

"Provided that the Jailor shall ensure that the cell used for solitary confinement 20 is maintained with basic hygiene, light and air.".

Amendment of section 39

Maintenance of Hygiene

6. In Chapter VIII of the principal Act, after section 39, the following section shall be inserted, namely:—

"39A. The Jail authorities shall be responsible to ensure basic hygiene in the jail premises and precincts of a prison by putting the prisoners on the job of maintaining hygiene and in the absence or unavailability of prisoners, by appointing temporary workers in such manner as may be prescribed."

Amendment of section 41.

7. In Chapter IX of the principal Act, after section 41, the following section shall be inserted, namely:—

“41A. No visitor shall take inside or be permitted to take inside a prison any prohibited 30 article relating to means of communication like mobile phones, wireless, i-phones, laptops or other modern digital means of communication with a view to provide or make available such article to any prisoner.”

Amendment of Chapter XII., Establishment of separate prisons, Review and inspection of prisons, Measures to prevent mental and physical conflict,

8. In Chapter XII of the principal Act, after section 58, the following sections shall be

inserted namely:—

"58A. The State Governments shall establish separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes.

58B. The Superintendent or other officer of prison shall inspect and review periodically on a regular basis the condition of prison and submit a report in this regard to State 40 Government in such form and manner as may be prescribed.

58C. The Superintendent shall take all necessary steps to ensure that prisoners do not indulge in mental or physical conflict either individually or in groups

Prisoners not to have access to electronic equipments or digital means of communication., Skill training in Prisons, Workshops and seminars,

Appointment of profession- als, educators or counsellors.

58D. (1) The officer of a prison shall ensure that prisoners of cybercrimes, treason or anti-national activities do not have access to any electronic equipment or digital means of communication.

(2) The prisoners referred to in sub-section (1) shall not be entitled to the facilities referred to in sections 58E and 58F.

58E. The State Government shall provide skill training including computer classes, tailoring, carpentry, cooking, gardening, and language classes, in such manner as may be prescribed, to the prisoners.

58F. (1) The officers of a prison shall conduct workshops and seminars on such subjects as would be helpful for rehabilitation of and for educating the prisoners.

(2) The officers of a prison shall ensure active participation of prisoners in attending such workshops and seminars.

58G. For the purposes of sections 58E and 58F, the State Government shall appoint adequate number of professionals, educators and counsellors in such manner as may be prescribed."

STATEMENT OF OBJECTS AND REASONS

The provisions of the Prisons Act, 1894, are almost a century old, which are not only obsolete but also not in tune with the principles of the Constitution or the policies of the Government. There is a need to provide rules and regulations for the management of the prisons in the present context.

It is also essential to reform the environment of the prisons and to ensure humanitarian consideration of prisoners so as to ensure that prisons do not create hardened criminals. It is also essential to create an atmosphere to rehabilitate and socialize prisoners to enable them to re-enter the society.

The Bill seeks to achieve the above objectives by amending the Prisons Act, 1894 with a view to:—

- (a) prohibit making available means of communication to prisoners;
- (b) make special provisions with respect to pregnant prisoners;
- (c) ensure maintenance of hygiene in prison and surrounding areas; (d) establish separate prisons for different types of offenders; (e) ensure review and inspection of prisons at regular intervals;
- (f) prescribe measures to prevent mental and physical injuries among the prisoners;
- (g) provide skill training to inmates of prisons;
- (h) conduct workshops and seminars for prisoners; and
- (i) appoint professionals, educators and counsellors for the rehabilitation and welfare of prisoners.

NEW DELHI; MULLAPPALLY RAMACHANDRAN

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the appointment of temporary workers for maintenance of hygiene in the jail premises and its precincts. Clause 8 provides for establishment of separate prisons for separate types of offenders. It also provides for providing skill training and appointment of professionals, educators or counsellors for conducting workshop or seminars in prisons. The expenditure relating to States shall be borne out of the consolidated Fund of State Governments concerned. However, the expenditure relating to Union territories shall be incurred from the Consolidated Fund of India. The Bill, if enacted, is likely to involve expenditure from the Consolidated Fund of India. A recurring expenditure of about rupees two hundred and twenty crore is likely to be involved.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill provides for the appointment, in such manner, as may be prescribed by rules made under this Act, of temporary workers for maintenance of hygiene in the jail premises and its precincts by Jail authorities. Clause 8 provides for providing skill training and appointment of professionals, educators or counselors for conducting workshop or seminars in prisons by the State Government in such manner, as may be prescribed by rules made under this Act. As the rules will relate to matters of details only, the delegation of legislative power is of normal character.

LOK SABHA

A

BILL

further to amend the Prisons Act, 1894

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and commencement

2. (1) This Act may be called as the Prisons (Amendment) Act, 2016.

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"26A. (1) In case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.

In Chapter IV of the principal Act, after section 26, the following section shall be inserted, namely:—

(2) A pregnant prisoner shall be entitled to grant of conditional parole for thirty 15 days from the expected date of delivery or thirty days from

the date of delivery if the delivery takes place while she is in prison."

Amendment of section 29

5. In section 29 of the principal Act, the following proviso shall be added at the end, namely:—

"Provided that the Jailor shall ensure that the cell used for solitary confinement 20 is maintained with basic hygiene, light and air."

Amendment of section 39

Maintenance of Hygiene

7. In Chapter VIII of the principal Act, after section 39, the following section shall be inserted, namely:—

"39A. The Jail authorities shall be responsible to ensure basic hygiene in the jail premises and precincts of a prison by putting the prisoners on the job of maintaining hygiene and in the absence or unavailability of prisoners, by appointing temporary workers in such manner as may be prescribed."

Amendment of section 41.

8. In Chapter IX of the principal Act, after section 41, the following section shall be inserted, namely:—

“41A. No visitor shall take inside or be permitted to take inside a prison any prohibited 30 article relating to means of communication like mobile phones, wireless, i-phones, laptops or other modern digital means of communication with a view to provide or make available such article to any prisoner.”

Amendment of Chapter XII., Establishment of separate prisons, Review and inspection of prisons, Measures to prevent mental and physical conflict,

8. In Chapter XII of the principal Act, after section 58, the following sections shall be

inserted namely:—

"58A. The State Governments shall establish separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes.

58B. The Superintendent or other officer of prison shall inspect and review periodically on a regular basis the condition of prison and submit a report in this regard to State 40 Government in such form and manner as may be prescribed.

58C. The Superintendent shall take all necessary steps to ensure that prisoners do not indulge in mental or physical conflict either individually or in groups

Prisoners not to have access to electronic equipments or digital means of communication., Skill training in Prisons, Workshops and seminars,

Appointment of professionals, educators or counsellors.

58D. (1) The officer of a prison shall ensure that prisoners of cybercrimes, treason or anti-national activities do not have access to any electronic equipment or digital means of communication.

(2) The prisoners referred to in sub-section (1) shall not be entitled to the facilities referred to in sections 58E and 58F.

58E. The State Government shall provide skill training including computer classes, tailoring, carpentry, cooking, gardening, and language classes, in such manner as may be prescribed, to the prisoners.

58F. (1) The officers of a prison shall conduct workshops and seminars on such subjects as would be helpful for rehabilitation of and for educating the prisoners.

(2) The officers of a prison shall ensure active participation of prisoners in attending such workshops and seminars.

58G. For the purposes of sections 58E and 58F, the State Government shall appoint adequate number of professionals, educators and counsellors in such manner as may be prescribed."

STATEMENT OF OBJECTS AND REASONS

The provisions of the Prisons Act, 1894, are almost a century old, which are not only obsolete but also not in tune with the principles of the Constitution or the policies of the Government. There is a need to provide rules and

regulations for the management of the prisons in the present context.

It is also essential to reform the environment of the prisons and to ensure humanitarian consideration of prisoners so as to ensure that prisons do not create hardened criminals. It is also essential to create an atmosphere to rehabilitate and socialize prisoners to enable them to re-enter the society

The Bill seeks to achieve the above objectives by amending the Prisons Act, 1894 with a view to:—

(a) prohibit making available means of communication to prisoners;

(b) make special provisions with respect to pregnant prisoners;

(c) ensure maintenance of hygiene in prison and surrounding areas; (d) establish separate prisons for different types of offenders; (e) ensure review and inspection of prisons at regular intervals;

(f) prescribe measures to prevent mental and physical injuries among the prisoners;

(g) provide skill training to inmates of prisons;

(h) conduct workshops and seminars for prisoners; and

(i) appoint professionals, educators and counsellors for the rehabilitation and welfare of prisoners.

NEW DELHI; MULLAPPALLY RAMACHANDRAN

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the appointment of temporary workers for maintenance of hygiene in the jail premises and its precincts. Clause 8 provides for establishment of separate prisons for separate types of offenders. It also provides for providing skill training and appointment of professionals, educators or counsellors for conducting workshop or seminars in prisons. The expenditure

relating to States shall be borne out of the consolidated Fund of State Governments concerned. However, the expenditure relating to Union territories shall be incurred from the Consolidated Fund of India. The Bill, if enacted, is likely to involve expenditure from the Consolidated Fund of India. A recurring expenditure of about rupees two hundred and twenty crore is likely to be involved.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill provides for the appointment, in such manner, as may be prescribed by rules made under this Act, of temporary workers for maintenance of hygiene in the jail premises and its precincts by Jail authorities. Clause 8 provides for providing skill training and appointment of professionals, educators or counselors for conducting workshop or seminars in prisons by the State Government in such manner, as may be prescribed by rules made under this Act. As the rules will relate to matters of details only, the delegation of legislative power is of normal character.

LOK SABHA

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BILL

further to amend the Prisons Act, 1894

(Shri Mullappally Ramachandran, M.P.)

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