

Access to justice: Role of legal aid in its complete realization

Gurmeet Nehra

LLM, Department of Law, Indian Law Institute, New Delhi, India

Abstract

For a democracy to function equal access to justice is *sine qua non*. For the delivery of equal justice the provision of legal aid is very necessary and prime. It becomes more important in today's time where legal process is very cumbersome and costly. In such situation Legal aid act as a great assistance to the poor deprived and so called unequal member of our society.

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1. Introduction

For a democracy to function equal access to justice is *sine qua non*. For the delivery of equal justice the provision of legal aid is very necessary and prime. It becomes more important in today's time where legal process is very cumbersome and costly. In such situation Legal aid act as a great assistance to the poor deprived and so called unequal member of our society. To get justice is not the propriety of the one who is rich but everyone irrespective of his social status equally deserves it. For a weak poor person it acts as a tool to bridge the gap of socio-economic inequality and enables him to get justice. It also improves the rule of law in a particular society as the efficiency and adequacy of legal institutions and instruments demands so. The provisions of legal aid guarantee the equal status and equal access to justice. Legal Aid also help in fulfilling the constitutional goal set up by every modern constitution wherein equal laws or equality before law is guaranteed and this can only be ensured by means of the providing the equal opportunities for availing the benefits of such laws. By providing legal aid to the poorest of poor, we pull these people to the level of a democratic living which further strengthens our democracy. This present system of legal aid is not a newly born concept but it is the product attained after long care and rear and it has now become a feature of welfare state. If we closely look then this principle is grown on the bed rock of very important concepts, equality and equal protection of laws. Poverty is not limited to developing countries only but the developed countries also do have people who are poor and socially unequal.

The Encyclopedia Britannica defines legal aid as "the professional legal assistance given, either free or for a nominal fee, to some indigent persons in need of such help^[1]." This is also called as *Pro Bono Verito Services*^[2].

2. Legal Aid under Various International Instruments The Universal Declaration of Human rights in Article 8 provides that

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or the law".

An explicit provision for the legal aid is made under the most important instrument of international law, International Covenant on Civil and Political Rights (ICCPR), 1966, Article 14 (3) (d),

India has ratified this convention in 1976 and therefore it is

under international obligation to provide free legal assistance to people who are in need.

The European Convention of Human Rights, 1953 in its Article 6 (3) extends the right to legal aid to a person charged with criminal offence to defend himself^[3].

3. Constitutional and Legislative Frame Work

As we already discussed that after India got independence various schemes of legal aid were developed under the aegis of Justice N.H. Bhagwati, then of Bombay High Court and Justice Trevore Harris of Calcutta High Court. After that the matter of legal aid was also referred to the Law Commission to make recommendations for making the legal aid program an effective instrument for rendering social justice. As a result of which under the leadership of leading jurist M.C. Setalvad it came up with recommendation in its 14th report, where it was opined that free legal aid is a service should be provided by the State to the poor and while accepting the obligation, state must make provision for funds to provide legal aid. Also, the legal community must play a pivotal role in accepting the responsibility for the administration and working of the legal aid scheme. It was further mentioned that it owes a moral and social obligation and therefore the Bar Association should take a step forward in rendering legal aid voluntarily. These would include representation by lawyers at government expenses to accused persons in criminal proceedings who are in jails and also for appeals^[4].

Acting on the recommendations of the Law Commission, the Government of India in 1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals. It envisaged the establishment of committees at the State, District and Tehsil level. However due to the inability of States to implement the scheme because of lack of finances the scheme did not survive.

If we look to the provisions of our constitution then art 22(1) provides for the legal representation in the following manner:

Article 22 (1), Constitution of India.

Protection against arrest and detention in certain cases

"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"

This article provide for right to have legal representation by a lawyer of his own choice. It provides a right to any person whether a citizen of India or an alien. This was put under part three of the Constitution of India as a fundamental right and was an inalienable right, which could be exercised by any person.

Coming to its interpretation this right was given a limited interpretation and it was held not to be a guarantee of legal representation so that state would provide legal aid if such a needy person is not able to arrange a lawyer for him.

With the growing legal aid movement in India as we already discussed that this led to a 42nd amendment and article 39A introduced as Directive principle of State policy (DPSP). These principles are enshrined in the part IV of the constitution of India and they casts a duty on the state to apply these principles in making laws and these principles are fundamental in the governance of the country^[5]. One of the major problem regarding the subject matter is solved by the 42nd amendment in which ‘administration of justice’ is shifted from the state list to the concurrent list i.e list III as entry number 11-A. This is considered as a major breakthrough because the real problem earlier is solved now both the state and central government can put their might to strengthen the legal aid machinery. It is important to note here that the entry ‘legal profession’ also falls under the concurrent list.

It reads.

Article 39A, The Constitution of India: 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.”

It is important to note that Justice Krishna Iyer described it as most ‘fundamental directive’^[6].

If we go through the constitutional provisions of article 14 and 21, then these articles along with article 22(1) make it obligatory for the State to ensure equality before law and a legal system, which would promote justice on a basis of equal opportunity to all.

Article 14 reads: Equality before law

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Equality before the law implies the absence of any special privilege in favor of individuals and equal subject of all classes to ordinary law. If we look, then this concept of equality is not absolute but it involves making conscious efforts to heighten the lowliest. Therefore we can say that legal aid further **christens** the concept of ‘equality before law’. **Article 21** is further such article which provides support and strives to ensure that constitutional vision and pledge to equal justice is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

Dr. Upendra Baxi in his Article “Taking suffering seriously: Social Action litigation in the Supreme Court of India^[7]” discusses that the article 32 and 226 carry the benefit of legal aid for the destitute and deprived sons of the India and he said that legal aid does find a connection with these instrumental articles of the constitution.

Legislative Provisions

Section 304, Code of Criminal Procedure, (Cr.P.C), 1973:

Legal aid to accused at State expense in certain cases

1. Where, in a trial before the **Court of Session**, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State.
2. The High Court may, with the previous approval of the State Government, make rules providing for-
 - a. The mode of selecting pleaders for defence under sub- section (1).
 - b. The facilities to be allowed to such pleaders by the Courts;
 - c. The fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).
3. The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

So as is clear from the above mentioned provisions that provides for legal services to be provided to the accused at state expenses. It also provides in sub-section (3) that the State Government may, by notification, direct that these provisions shall apply to any class of trials before other courts in the State as they apply before the Court of Sessions.

If we look on the Civil side then Order XXXIII Rule 9A and Rule 18 of the Code of Civil Procedure, 1908 provide for the duty of the court and the power of the government to provide legal services to the indigent person respectively. Rule 9A provides that the Court may if the circumstances of the case so require, assign a pleader to the indigent person and also provides for rules to be made for facilities to be provided for such pleader. Rule 18 on the other hand provides for a power to the Central and the State governments to make provisions for providing legal aid to the indigent persons. Rule 41, under section VI casts a duty on every advocate of the country to render legal aid and it mandates that free legal assistance to the indigent and oppressed is considered as one of the highest obligation of an advocate towards the society.

The National Legal Services Authorities Act, 1987

It came into force on 9.11. 1995. This legislation is particularly aimed at providing constituting legal services authority in order to provide free and competent legal services to the weaker sections of the society and to organize lok adalats to secure and promote justice on a basis of equal opportunity. It consists of 30 sections. It contains seven chapters dealing with the national legal service authority, the state legal service authority, entitlement criterion for legal services, financial aspect, lok adalat, and the miscellaneous provisions. The institution of lok adalat is aimed at providing the speedier, cheaper and an effective justice at the door step of the litigants and it is one of the key features of this legislation. This legislation also recognizes the role of voluntary organizations in legal aid.

The Act provides, inter alia for the constitution of a

National Legal Services Authority ^[8], it consists of Chief justice of India as patron in chief, a serving or retired judge of Supreme Court as its executive chairman and other members possessing experience as may be prescribed and nominated by the Central government and an officer of the rank of special secretary shall be appointed as member secretary ^[9]. And *Supreme Court Legal Services Committee e* ^[10], the *State Legal Services Authorities* ^[11] and the provisions in this regard is mutatis mutandis with the provision of the national legal service Authority.

In the *district level* ^[12] the district judge shall be the chairman and the other members shall be nominated by the government and one of the members of the district authority shall be appointed as the secretary ^[13].

In *Taluk or Mandal level Taluk Legal services Committee* provides legal aid to the needy and poor people. It derives its authority from the section 11-A and B ^[14] of the Act. The senior civil Judge of that jurisdiction is the ex-officio chairman. And the members are appointed by the state government with the consultation of the High Court.

Functions

The *National legal Services Authority* also encourages the settlement of dispute through negotiation, arbitration and conciliation and it also monitors and evaluates the implementation of the legal aid programme at periodic intervals. It in consultation with bar council of India develops the programmes for clinical legal education and supervises the establishment and working of legal services clinics in law colleges and universities. It is specifically mandated under section 4 to spread legal literacy and legal awareness among the weaker sections. In terms of finance if we see then it is the central authority who allocates the funds to the state and district authorities and it also directs, coordinates and monitors the functioning of state and district authorities ^[15]. So, if we see then the grants approved by the parliament percolates down to the district and state authority and also these have been permitted to be supplemented by way of grants or donations and the amounts received by orders of the court i.e from costs or from any other source ^[16].

If we go through the provisions of the Act then we find that this act prescribes both of the means or class test as well as prima facie test ^[17]. The condition mentioned in section 12 constitute the class or means test. So, it provides for legal aid to certain category in this which are that if a person is woman or a child, a member of a scheduled class or tribe, victim of human trafficking or beggar, mentally ill or otherwise disabled person, an industrial workman, a person victim of flood, drought etc., or a person in custody or in a juvenile home or in a psychiatric hospital. But if any person does not fall in any of the above mentioned categories than he must attract the qualification of economic poverty to be eligible for legal aid and for this his annual income should be less than nine thousand rupees and if the case is before the Supreme Court then this threshold is twelve thousand rupees ^[18]. After satisfying this criterion under section 12 such person has to satisfy the concerned authority that he has a *prima facie* case to prosecute or defend. This is called as *prima facie* test.

It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings, which he or she is prosecuting or defending. In fact the Supreme Court Legal

Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate.

Also the Rule 46 of the Bar Council of India Rules in part – VI relating to a standard professional conduct and etiquette reminds advocates of the obligation they owe to provide free legal aid to the needy ^[19].

The Legal Services Amendment Act, 2002

A new amendment has been brought out in 2002 and it established the permanent lok adalats in which dispute against the public Utility services can be settled at pre-litigation stage. In this section 22 has been amended and the word “Permanent Lok Adalat” is introduced in place of “Lok Adalat”. All these provisions concerning pre litigation conciliation and settlement as above mentioned has been introduced by the way of introducing a new chapter VI-A.

4. Role of Judiciary in Interpreting Legal Aid

The step was first taken in *Sunil Batra v. Delhi Administration* ^[20] where the two situations in which a prisoner would be entitled for **legal aid** were given. First, is to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities, which were administrative in nature.

In a later case *M.H Hoskot v. State of Maharashtra* ^[21], court set free the accused persons on the ground that there was no provision for making available legal services to an accused that was poor to afford a lawyer and as a reason of which he had to go through the trial without legal assistance. If we see then in this case court speaking through Justice Krishna Iyer held that state is under a duty to provide legal services to the accused persons and article 39 A is declared as *fundamental constitutional directive* and as an *interpretative tool for article 21*. It was further held that the constitutional and statutory right to legal assistance is very much available in the cases under appeal and it is very much implicit under article 142 read with article 21 and 39 A. so in this case it was clearly defined as state’s duty but not as state’s charity. Clearing the legal position in this case it was held that in a situation where the prisoner is unable to engage a lawyer then court can assign a competent counsel for the prisoner’s defense, if the interest of justice so demands and in such situation state shall pay to the assigned counsel such sum as the court may equitably fix.

The meaning and objects of the Legal Aid has been clearly explained by Justice P.N. Bhagwati in *Hussain Ara Khatoon v. Home Sec., State of Bihar* ^[22] it was held that the right to free legal services is clearly as essential ingredient of reasonable, Fair and just procedure for a person accused of an offence and it was held implicit in the guarantee of Article 21 of the constitution and the State is under a constitutional mandate to provide lawyer to an accused person if the circumstances of the case and the needs of justice so require provided that the accused person does not object to the provision of such lawyer. further in this case court recommended to the government to introduce a comprehensive legal services programme and this was described as a mandate under article 14 and article 21 and a compulsion under article 39-A. Justice P. N Bhagwati described the importance of legal aid as that legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily

accessible and is not out of reach of those who have to resort to it for enforcement of rights given to them by law. Poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts.

In a later case, In *Khatri v. State of Bihar* ^[23] the Supreme Court after quoting *Hussainara's* case again reiterated, right to legal aid as a part of article 21 and noted its displeasure that it is unfortunate that though this court declared the right to legal aid as a fundamental right 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. It held that the provision of legal aid is mandatory obligation of the government and the financial, administrative inability cannot be pleaded by the state. Legal literacy is held to be an important constituent of legal aid. A duty was also carved on the magistrate to inform the accused about the right of legal aid. And the cost of such legal aid is to be borne by the state. But this provision of legal aid is limited to the cases where imprisonment is the penalty.

In a Land-mark and latest case on the subject *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra* ^[24] Supreme Court after discussing various important cases on the legal aid, imputed a duty on the magistrates to inform the accused about this legal and constitutional right and it further moved on to say that if the magistrate fails in his duty then a disciplinary action would be taken against him. In para. 474 court held it in following words:

“We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings”.

So with this analysis of judicial trend we find that in the beginning judiciary stand on the point of providing the legal aid was not that firm enough but with the subsequent judgments it realized the importance of it and focused its approach to protect the interest of needy and poor people and it gave wide interpretation to article 21 and incorporated legal aid into it and a status of constitutional right was given to it. In the absence of complete statutory measures like the 1987 act which was later on enacted, these decisions hold a very significance and show the foresight and wisdom of our country's learned judicial fraternity.

5. Problems and Some Suggestions

As we have discussed above that our legal system has

provided a decent legal aid system but there are certain shortcomings to this we are discussed in this section and certain suggestions are made to meet plug those loop holes.

- **Lack of senior Lawyers:** Lawyers are usually not ready to leave his lucrative practice. They may delegate the job to their juniors but it is a rare case that they take up such cases. It is the apprehension of the lawyers whose practice is still in the **nascent stage**, who take up such cases just for the sake of having more cases so that they can have more cases in future.
- **Poor remuneration:** one of the reason for above mentioned problem is low remuneration, which they get from either the client himself or the legal aid cell concerned. This act as deterrent to many of the lawyers to take up such cases, though the incentive is the large number of cases but when such cases don't fetch the least of money so, they are reluctant to deal with them.
- **Cheap popularity:** Public has low confidence on the system of the legal services provided by the legal services authorities, because they are under the impression that if an individual does not pay to a legal practitioner, then how will they help him? The main problem of this dissatisfaction of the beneficiary is inexperienced quality of the counsels and disinterestedness of these advocates.
- In India under the Criminal Procedure Code it is a sort of right under section 304. But in other statutes it is based on the discretion of the authorities as in various statutes the word 'may' is used. Another problem is that in India that the 'income' (disposable) is the only yard stick used to determine the beneficiary where as in other developed countries the 'means test' which is used, includes the property of the person along with the income, which is more progressive test because by this way the person who is real need of Legal Aid can be identified.
- In India the legal Aid protection is not available during police investigations or when a person is arrested and these are the conditions where a person is in most need of legal help. Legal aid should be made available right from the very beginning that is at the time of the investigation and the bail stages. There is also need to make lower judiciary more sensitive towards the accused right to legal aid.
- Another problem in India is that the most of schemes relies on the government finances and public control whereas the community association and participation is very much missing from our system of legal aid.
- The legal aid centers are mainly **located** in the cities and big towns. So there is a need of liberal free legal aid regime.
- Though our legal aid scheme provides for the donations and contribution but still state is the only main contributor in this field. So there is dire need to popularize this aspect as well.
- The beneficiaries of the legal aid in the states usually complains that in the scheme they are only provided with the service of the counsel but the incidental expenses like expenses of witnesses, typing charges and processing fee to which these people are entitled is not provided to them.
- Though the legal aid clinics are opened by various colleges and universities but the real problem still is that since regular law teacher cannot practice in the courts so they have a very less practical experience. Whereas the part time law teachers who has more practical

experience, they find it very less interesting reason being less remuneration attached to the work. But there are some noted exceptions to this like Dr. Lotika Sarkar, Upendra Baxi, where these academicians played a very important role in doing critical writing on the higher courts judgments and supporting of the newly evolved concept of the social action or public interest litigation.

6. Suggestions

The legal aid movement can be made more vibrant and popular by the increased participation of law students and teachers. Law students offer a ready pool of workers at relatively little cost. Therefore the law students can contribute a lot in this field under the able supervision of their teachers. This would help the students in two ways. First, it would help them in sharpening their skills and they could positively contribute their time and energy in this great noble cause. Secondly, this would develop a culture and habit in them of helping poor, needy and vulnerable section of society. In India where most of the population is rural and illiterate which result into the ignorance, therefore spreading of the legal awareness is the most important task. And this can be very well done by the law students. This would also help in developing a social responsibility factor along with the spirit of service to the society. It will also further cater the need of community education in selected legal issues and is attempt to institutionalize informal, alternative dispute resolution techniques in selected types of cases through *Lok Adalats* or "legal aid camps." These types of legal aid activity also open the mind of law students through direct client representation.

Alternate dispute resolution: In India courts are already overburdened with the litigations. So, conciliation and mediation should be given a primary role as a grievance redressal mechanism. Law clinics in colleges, bar, Village panchayat can play a very important role in this regard. Therefore, it can be said that preventive role is to be more emphasized than remedial role.

Promotion of Legal Aid: as an instrument of Social service should be there so that more and more people contribute monetarily as well as intellectually in the legal aid scheme.

Social responsibility: it should be recognized as a part of mandatory social service for every legal firm and legal practitioner and it should be made mandatory for them to take minimum number of such cases as recognized by the government legal aid panel.

Training One of the problems faced by the legal services institutions is their inability to reach out to the common people. This hiatus between them and the common people was perceived as indirectly defeating the objectives of law. It is in this context that the National Legal Services Authority (NALSA) has come up with the idea of paralegal volunteers to bridge the gap between the common people and the legal services institution. Apart from the paralegal staff there should be involvement of other government servants in the like police personals, Village revenue staff, Panchayat's officials, gram sewaks etc. By this way our work force to spread legal awareness could be increased. It will also help in building up of informed citizenry and society. There are certain law schools like National law school, Beguluru, other law colleges in Karnataka and Haryana are doing good work in this field. The training equips them to identify the law-related needs

of marginalized in their locality. Such needs include assistance to secure legal rights, benefits and actionable entitlements under different government schemes that are denied to them. Coming, as they do, from the same locality, they are in a better position to identify those who need assistance and bring them to the nearest legal services institutions to solve their problems within the framework of the law.

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Coming, as they do, from the same locality, they are in a better position to identify those who need assistance and bring them to the nearest legal services institutions to solve their problems within the framework of the law. They can assist disempowered people to get their entitlements from government offices where ordinary people often face hassles on account of bureaucratic lethargy and apathy. Sensitization of lower judiciary towards legal aid, the course of legal aid should be included in the judicial officers training and time to time refreshers course and seminars should be conducted for them.

Separate cadre: there should be a separate recruitment for the cadre of legal aid lawyers with in every state as is done for the prosecution lawyers and they should be provided with good salary, training and promotion schemes.

Scheme of Legal Insurance a provision for the legal insurance should be made available to member of organizations and unions and also to other individual members at very reasonable costs.

Promotion of Legal advice: under this a legally informed person who may be law student, teacher or advocate listens to the problem faced by the person and then advises him that how to tackle such a problem. One of the main benefits of this that pre-litigation advice helps in avoiding unnecessary litigation and it also counsels a person to take proper course of action like drafting of application or telling about the proper forum to file a case. We can summarize this as that a competent legal advice saves uncalled for litigation.

Adoption of a local area for legal Aid: It is suggested by the researcher that a particular area should be adopted by a particular law school or university. So that legal aid and advice can be provided to these people. It is providing justice to their doorstep and it will make people more confident and conscious about their rights and will ultimately guaranty them access to justice in a real sense. We can see it as a social duty of every person having knowledge to enlighten and help other downtrodden people to whatever extent he can. So, providing legal aid is a step towards realization of this social duty.

Involvement of NGO's: There are various organizations which can help in this regard in spreading legal awareness. These organizations have a very good penetration in the society and they really know the usual problem faced by the people so these organizations can also play a very good role in the conciliatory process. Usually some of the public spirited lawyers are attached to these organization and they use their rich legal experience in order to help the society. 'Naaz foundation' and 'Lawyers collective' are some of the

noted examples of such organization. These organization works in a particular field like woman rights or child rights and they are doing really excellent job.

Lok Adalat: these acts as perfect forum for the speedy disposal of the cases and the judge of the particular area where it is organized act as the presiding officer of the lok adalat there are certain other non-judicial members. In this researcher suggest that there should be active participation of the law teachers as the nonjudicial members because these people have a very good knowledge of law and can really help in the process of lok adalat. Lok adalat should function as permanent body at each district and sub-divisional level and the jurisdiction of the lok adalat should be clearly defined and in criminal cases it should extent to all compoundable offences. A lok adalat should be made competent to take cognizance of a case where even one of the two opposing parties facing a court trial opts for a decision through lok adalat.

Involvement of Local Bodies: Bodies like gram panchayat are at the grass root level of our democratic set up and people are very much attached to these bodies. So these bodies should be engaged in spreading the legal awareness. These bodies can act a very good platform to impart conciliatory justice and also in easy verification of the means test. This can be done by providing various study material and pamphlets to the village panchayats. Further the panchayats officers like BDO and the village headman should be made member of the District legal aid committee. These people should be trained as paralegals and they should also be associated in the lok-adalats. Even the law commission of India stressed on the role played by them in the administration of justice ^[25].

Contribution: There should be a provision made for the contribution of money in the legal aid fund and such contributions should be given some tax exemption. Law teachers and advocates contributing their service in the legal aid programme should be given some tax exemption in the tune as is given to the women.

Change in curriculum: Legal aid should be included as compulsory topic in the syllabus of every law school. And there should be mandatory participation or visit of law students to a lok adalat and legal aid clinic. In every law college and school there should be a mandatory legal aid clinic. And academic credit must be given to the students for doing such legal aid service. This point has already been mooted by the *Expert Committee Report* ^[26] and *Juridicare Report*. In both of these above mentioned committee the point of enabling student to practice in court has been put forth but till date no action is taken in this regard. For every senior advocate there should be some minimum number of legal aid cases should be attached. These services in legal aid should be given additional weight age for the promotion in bar or in judicial services. On this point it is important to note that in seven states ^[27] of USA law students are even allowed to practice so that they can represent the indigent person whom they are helping ^[28]. There are legal aid clinics settled up in the University of Maryland and University of Minnesota which are very good example of this concept in which students are given cases by the legal aid society and in this way they are very much involved in this process of learning and doing human service ^[29].

7. Conclusion

If we analyze then we find that there is no real equality in any political society or system of governance. People differ in money power and various other resources. In the modern society the system of justice in itself is very costly, complex and cumbersome. In such system legal representation is the first need of a person whose name, fame and liberty is at stake in this process of justice. The difference in between the economic status of opposite parties is nothing but a reality of life. The remedy of this as we discussed in this paper lies in the legal aid. The preamble of our constitution aims at securing social, economic and political justice to all citizens. This scheme encapables and creates a sense of confidence in the mind of the weak and the lost and it encapables him to stand in front of his adversary with confidence and can match him. In India, it also acts like a step towards the fulfillment our constitutional obligation to cater the special needs and to provide the protection to weaker sex and low caste. Since the statutory recognition of the legal aid has been provided from the very beginning in the case of criminal trial but with the development of a strong legal aid movement in the country this concept got a constitutional recognition and this change is very well appreciated by our judiciary also. Keeping in mind the abject poverty and illiteracy in our country both the remedial and the preventive model has been adopted in the legal aid scheme. But looking towards the huge back log in the courts it is suggested that preventive aspect should be given a lee way and alternate dispute resolution mechanism should be strengthened up in the country. On this we can say that the introduction of the concept of lok adalats is a very welcome step in this direction. Further, our scheme requires more community-based volunteer's participation that is selected from villages and other localities to provide basic legal services to the common people. In the end it worth to mention the words of J. Brennan where he mentioned the importance of the legal aid as "When only the rich can enjoy the law, as a doubtful luxury and the poor, who need it most, cannot have it because of the expense puts it beyond their reach, the threat to the continued existence of free democracy is very real because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe it and benefit by its impartiality and fairness" ^[30].

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3. Article 3, European Convention on Human Rights Everyone charged with a criminal offence has the following minimum rights....
(c) to defend himself in person or through legal assistance of his own choosing or, if has not sufficient means to pay for the legal assistance to be given it free of cost when the interests of justice so require".
4. Law Commission of India, 14th Report on Reforms of Judicial Administration (Vol. 1) (September, 1958).
5. See The Constitution of India, Article 37.

6. V.R Krishna Iyer J., Law and Urban Poor in India, 36 (B.R Publishing corporation, 1988, Delhi).
7. Taking suffering seriously: Social Action litigation in the Supreme Court of India, The Review, Dec. 1982.
8. See The Legal Services Authorities Act, 1987, Sec 3.
9. *Id.*
10. See the Legal Services Authorities Act, 1987, Sec. 3 A.
11. See the Legal Services Authority Act, 1987, Sec 6.
12. Introduced by way of amendment in 1994.
13. See the Legal Services Authority Act, 1987, Sec 9.
14. See The Legal Services Authority Act, 1987.
15. See The Legal Services Authority Act, Sec 40 (c).
16. See The Legal Services Authority Act Sec. 15, 16, 17.
17. See The Legal Services Authority Act Sec 12, 13.
18. *Id.*
19. R. 46 of the Bar Council of India Rules:
“Every Advocate shall in the 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 obligations an advocate owes to the society”.
20. (1978) 4 SCC 494.
21. AIR 1978 SC 1548.
22. AIR 1979 SC 1360.
23. AIR 1981 SC 928.
24. (2012) 2 SCC 186.
25. *Supra* note 36.
26. Expert Committee Report at pg no.164.
27. Florida, New Jersey, Connecticut, Texas, Wyoming, Massachusetts and Colorado.
28. *Supra* note 2 at 23.
29. *Id.*
30. Available at: <http://www.brennancenter.org/justice-brennan-quotations> (visited on 20.10.2013).