

JUSTICE, V. R. KRISHNA I.

Minister
PORT OF
A great



REPORT OF THE EXPERT COMMITTEE
ON LEGAL AID

PROCESSUAL JUSTICE
TO
THE PEOPLE

MAY, 1973

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
DEPARTMENT OF LEGAL AFFAIRS

JUSTICE, V. R. KRISHNA IYER.

**NEW DELHI-110001
May 27, 1973.**

My dear Minister,

I have great pleasure in forwarding herewith three copies of the Report of the Legal Aid Committee. The Committee was constituted by an order of the Government dated October 27, 1972, and we were required to submit our Report by the 1st of March, 1973. For various reasons beyond our control, including the absence of any special staff for the Committee, our task took us a longer time than was originally anticipated.

The recommendations made by the Committee would, I hope, receive speedy and sympathetic consideration at the hands of the Government. In order to facilitate their implementation, we have indicated the manner in which they can be given effect to and also the priorities in this regard. The Report, we trust, would be implemented speedily so as to bring about a system by which, through legal aid, justice is made available to the people regardless of penury or social handicaps.

I would like to take this opportunity to thank you on behalf of my colleagues and myself for giving us this opportunity to be of service to the community by formulating a scheme, which, if implemented, would advance social justice and benefit the masses of our country.

With warm personal regards,

Yours sincerely,

V. R. KRISHNA IYER

**Shri H. R. Gokhale,
Minister of Law, Justice
& Company Affairs,
New Delhi.**

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CHAPTER I INTRODUCTION

Terms of reference

This Committee was appointed by an order of the Government of India, dated the 27th October, 1972. The text of the order is reproduced in an Appendix to this Report. Our terms of reference were as follows :—

- (i) to consider the question of making available to the weaker sections of the community and persons of limited means in general and citizens belonging to the socially and educationally backward classes in particular, facilities for—
 - (a) legal advice so as to bring among them an awareness of their constitutional and legal rights and just obligations and for the avoidance of vexatious and unnecessary litigation; and
 - (b) legal aid in proceedings before civil, criminal and revenue courts so as to make justice more easily available to all sections of the community;
- (ii) to formulate having regard to the resources available a scheme for legal advice and aid for the purposes aforesaid; and
- (iii) to recommend the time and manner in which the scheme may be implemented.

The terms of reference postulate that legal aid as a means of justice is a social necessity and, consequently, our main concern has been to formulate a practical and workable scheme in accordance with our terms of reference.

Approach

2. Departing from the usual practice of Committees of Enquiry, we did not issue any public questionnaire or invite evidence from the public. Information was, however, obtained by the Committee with regard to the working of Legal Aid Schemes, in some of the States and Union territories and also in some foreign countries. But, in view of the basic assumption underlying our terms of reference with which we are in complete agreement and which has been elaborated in the subsequent chapters of this Report that legal aid is an indispensable social function, and that our main object was to formulate a workable scheme, we have not considered it necessary to

attempt a historical review of the movement for legal aid or the various enquiries which have been made from time to time on this subject or to set out the material collected by us regarding the functioning of the legal aid machinery in various States of India or abroad, since that would only be of academic or historical interest. Reference has, however, been made occasionally to the views expressed in some earlier reports or the experience of other countries, but only when it was felt that this would illustrate a point or have a bearing on the validity of our conclusions. The omission to refer to a particular statutory provision or scheme in operation in a State or to the services rendered by any particular voluntary agency or the earlier discussions on the subject does not necessarily imply that we were unmindful of their existence or their worth. On the other hand, we are grateful to the pioneering work done in this field by earlier enquiries and also by the writers on this subject from which we have derived considerable benefit, though we do not mention all of them individually or by name. With due deference to the authors of the wealth of reports, papers and publications on the subject, we have struck out a broader path and our perspective is set out in the chapter entitled "Towards a People's Law and a People's Law Service".

3. Since the Members of the Committee worked in an honorary capacity, we did not consider it appropriate that the Committee as such should meet outside Delhi for the purpose of making on-the-spot enquiries or for the purpose of recording evidence. But, in order to assess the need for legal aid of the island territories of our Republic, the Chairman visited the two Union Territories of the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands.

Acknowledgment

4. Similarly, while the Committee did not formally take evidence, the Chairman and the Members had discussions with some persons interested in, or having expertise in the subject. In particular, we would like to place on record the assistance which we derived from our discussions with Mr. Justice P. N. Bhagwati, Chief Justice of the Gujarat High Court, who visited Delhi and was good enough to meet the full Committee on more than one occasion and to make available to it his expert knowledge of the subject and with Shri P. Ramakrishnan, formerly Judge of the Madras High Court, who constituted the one-man Committee, appointed by the Tamil Nadu Government to formulate a scheme for legal aid.

5. At the outset, we had some preliminary discussions as to the scope of the enquiry and the nature of our approach to the problem. Thereafter, we formed Sub-Committees to go into different aspects of legal aid. The recommendations and views of the Sub-Committees were discussed at meetings of the full Committee. On the basis of the conclusions arrived at after discussions, draft chapters of the Report were prepared by several Members and circulated to the others.

Taking into account the views received from the Members on the draft chapters, they were revised and the Report in its present form was finally adopted by the Committee.

6. We cannot conclude without expressing our warm appreciation of the assistance rendered to the Committee in the course of its enquiries by several Advocates, Judges and other interested in the problem of legal aid, and the useful suggestions made by them.

7. The Committee also wishes to place on record its acknowledgment of the assistance derived from Shri Nitiraj Singh Choudhry, Minister of State in the Ministry of Law, Justice and Company Affairs. From the outset, Shri Choudhry evinced a keen interest in the working of the Committee and attended almost all its sittings and gave us the benefit of his views and advice on the several issues considered by it. But, to avoid any scope for misunderstanding, we would like to make it clear that this does not mean that he is a party to the Report or that he necessarily shares all our opinions or concurs in all our recommendations.

CHAPTER 2

THE CONSTITUTIONAL POSITION

We propose at this stage to examine the Constitutional position at some length. The subject of legal aid has been engaging the attention of the Central Government over a quarter of a century. But apart from including the subject of legal aid in the terms of reference to the First Law Commission and formulating a model scheme of legal aid for being implemented by State Governments, no concrete steps have been taken by the Central Government in this regard. It has left the matter largely, if not entirely, to the initiative of the State Governments and the Administrations of the Union Territories.

Legal Aid as part of "Administration of Justice"

2. One of the reasons, or rather the main reasons, which seem to have weighed with the Central Government in not taking any initiative in the matter seems to have been the assumption that legal aid or legal assistance is a part of the "administration of justice" and that, consequently, it is the responsibility of the State Governments to take the necessary initiative in this regard. Thus, in an answer to an unstarred question¹ in the Lok Sabha, the then Minister in the Ministry of Law stated—

"Administration of Justice is a subject included in the State List and the grant of legal aid and assistance to the poor is, therefore, primarily the responsibility of the State Governments....."

It seems to have been assumed that legal aid was a matter which fell exclusively within the State sphere. The role of the Central Government in the matter was considered at best to be essentially advisory in nature.

3. This view appears to be shared in some other responsible quarters also. Certain persons whose views on constitutional issues are entitled to considerable respect, while expressing themselves in favour of a scheme of legal aid, have voiced genuine doubts as to the competence of Parliament to legislate on the fields, and have gone so far as to suggest that it might be desirable for the States to agree to pass resolutions under Article 252 of the Constitution to enable the Centre to legislate on this issue.

4. This point of view apparently held the field at least till 1970, when the discussions² at the National Legal Aid Conference held in

¹. Unstarred Question No. 855 on the 8th November, 1966, in the Lok Sabha.

². Discussions at the National Legal Aid Conference.

March of that year seem to have induced some provisions for legal aid—though in a halting and tentative fashion—in the Advocates Act¹.

Our view of the fact that till recently it has been assumed or taken for granted that legal aid to the poor is co-extensive with administration of justice which is a State subject, falling within entry 3 of the State List, we consider it desirable to deal with the Constitutional position at the very outset; for any recommendation to be made by us would have to be based upon the roles assigned in this regard to the Centre and the States by the Constitution. If legal aid is only an extension of the function of administration of justice, the scope of action by the Centre in this field would be negligible. Hence, the correctness of this view has to be considered.

Legislative competence

5. When examining the question of legislative competence as to legal aid, one must bear in mind the stages and facets of legal aid. For the present purpose, legal aid may be taken to mean 'aid in relation to legal rights'. Such aid may be given in the ascertainment of legal rights, or in their assertion in their *enforcement*. Where litigation is not, as yet, contemplated or is very remote, legal aid concentrates on the ascertainment of rights. Where litigation is contemplated but has not actually commenced, the emphasis shifts to the assertion of the (real or supposed) legal right. Where litigation has actually commenced or is immediately to commence, the legal right has been already ascertained and (in most cases) asserted. The question now becomes one of *enforcement*.

6. The view that "legal aid" falls within the legislative entry relating to "administration of Justice", appears to be based on over-emphasis of the last aspect at the cost of the first two. What the entry "administration of Justice" connotes is the apparatus and machinery for the enforcement of legal rights and liabilities. Justice, as the pithy saying goes, is giving every man his due. But "administration of Justice" is concerned mainly with the nuts and bolts that put in into motion—justice in the dynamic. Even the entire "legal process" is not totally covered by the "administration of Justice". The agency,² the men,³ the mode⁴ and the money⁵, required for discharging this function of the State—which are enumerated in the relevant entry⁶, though illustrative and not exhaustive, bring out this aspect, namely, that the entry mainly deals with enforcement.

¹. The Advocates (Amendment) Bill 1970.

². Courts.

³. Officers of Courts.

⁴. Procedure in rent and revenue courts.

⁵. Court-fees.

Seventh Schedule List II

⁶. State List, entry 3.

7. To put the matter differently, it is "*intra mural*" activities that the "administration of Justice" is concerned with, and, then also, not with all of them. But legal aid is not confined to the machinery and apparatus of the law. It is an integral part of the legal system. The legal system—the framework of rules defining legal rights and liabilities—would be a mere dream, a barren figment as unreal as a castle in the air, if those rights and liabilities remained unascertained, unasserted and unenforced. So viewed, legal aid is a basic, indispensable postulate of the legal system, and not a matter of charity or confined to the four walls of the court-building.

8. Now to co-relate the subject of legal aid with the calculus of legislative powers as given in the Constitution—

There is, in the Legislative Lists not one entry, but a host of entries, touching some areas, or, sometimes only the fringe,—of legal aid. The possible relevant entries are to be found in the Union List, the Concurrent List and the State List. Listwise, they are as follows :—

Union List, entries 77—78.	— Persons entitled to practise before the Supreme Court and High Courts.
Concurrent List, entries 2 and 13	— Criminal Procedure, and Civil Procedure.
Concurrent List, entry 20	— Social and economic planning.
Concurrent List, entry 23	— Social security, etc.
Concurrent List, entry 24	— Welfare of labour,
Concurrent List, entry 26	— Legal profession.
State List, entry 3	— Administration of Justice, etc. court fees.

and, then, there is the Residuary entry (Union List, entry 97).

9. Two comments are in order, at this stage. First, there is no specific entry as to "legal aid", and secondly, the only relevant entry in the State List (administration of justice, etc.) covers only one stage of legal aid and that too to a limited extent namely—the provision of State appointed counsel in conventional civil and criminal proceedings, in the orthodox courts. But, in order to make up the totality of legal aid, much more is required. It is permissible to view legal aid as a part of economic and social planning. But, even apart from that, it can certainly be related to the *entire legal system*, and this would bring it in the Concurrent List, or at least make it transcend the State List.

10. There is yet another aspect of the matter. Any scheme of legal aid is bound to cast certain obligations upon the legal profession. We have in our scheme envisaged a large role for the legal profession itself in administering and giving effect to the comprehensive scheme of legal aid. Any such legislation would be relatable to not only entry 29 of the Concurrent List dealing with the legal

profession but also to entry 77 and entry 78 of the Union List which deal with persons entitled to practise before the Supreme Court and the High Courts. Legislative entries, it is well-settled, have to be interpreted broadly so as to give full scope and effect to the legislative power.

Scope of entry 3, State List

11. It is now necessary to examine in detail entry 3 of the State List. It runs as follows:—

“3. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court, procedure, in rent and revenue courts; fees taken in all courts except the Supreme Court.”

12. The scope of this entry has come up for consideration before the Supreme Court only on one occasion in a case, popularly known as the *Bombay City Civil Court case*¹. There, it was pointed out by Fazl Ali J. that the expression ‘administration of justice’ has a wide meaning and includes administration of civil as well as criminal justice. It was also held that the expression ‘administration of Justice’ and ‘constitution and organisation of courts’ which had been used without any qualification or limitation are wide enough to exclude the power and jurisdiction of courts. The view of S. R. Das J. (as he then was) is also substantially identical.

But it is obvious that however widely one may construe this entry, it cannot cover the provisions of legal aid in the manner in which we envisage it, so as to include pre-litigative and preventive legal aid, including advice on legal issues, in the drawing up of documents and in the provisions of counsel for preparing pleadings and arguing a case before courts and administrative tribunals. The entry does not even deal with the procedure in courts other than rent and revenue-courts.

13. In our view, therefore, a comprehensive scheme for legal aid has many facets and they are relatable to various entries which are to be found, mainly in the Concurrent List (and regarding proceedings in the Supreme Court in the Union List also). The subject of legal aid belongs to a much larger sphere than the mere administration of justice through the courts. It involves the promotion of equality, social welfare and social justice and assistance in the ascertainment, assertion and enforcement of fundamental as well as other legal rights.

¹. *State of Bombay vs. Narothamdas Jethabhai*, A.I.R. 1951 S.C. 69, 70.

14. Finally, if a matter is not covered by a specific entry, the correct approach would be that laid down by Sikri C. J., in *Union of India v. H. S. Dhillon*¹, wherein speaking for the court, he observed:—

“.....We are unable to see why we should not, when dealing with a Central Act, enquire whether it is legislation in respect of any matter in List II for this is the only field regarding which there is a prohibition against Parliament. If a Central Act does not enter or invade these prohibited fields, there is no point in trying to decide as to under which entry or entries of List I or List III a Central Act would rightly fit in.....”

15. It is also open to the Central Government to make grants for the purpose of legal aid, either directly or to any body constituted for the purpose. Article 282 of the Constitution expressly authorises either the Union or the State to make any grants for a public purpose, notwithstanding the fact that the purpose is one with respect to which Parliament or the Legislature of the State may make laws; and the provisions of legal aid to the poor is definitely a public purpose.

Conclusion

16. We are, therefore, of the opinion that it is open to Parliament under the various entries already referred to, to make appropriate provision for a comprehensive scheme of legal aid and to give grants for this purpose.

17. The subject of legal aid to the handicapped certainly bears indirectly on the quality of the administration of the legal system which is the responsibility of the States. Undoubtedly, therefore, a comprehensive scheme of Legal Aid must involve the States financially and, to the extent the judicial and the executive wings of the States have to work it, even administratively. The project will be joint also from the point of view of constitutional competence. Parliament can make the relevant law.

¹. A.I.R. 1972, S.C.1061 at 1075.

CHAPTER 3
TOWARDS A PEOPLE'S LAW AND A PEOPLE'S LAW SERVICE
—A VISTARAMIC VIEW OF A WIDER JURIDICARE
PROGRAMME FOR INDIA

INTRODUCTION

(a) The task of Legal Aid

Juridicare a democratic obligation

Indian law and its instrumentalities, thanks to some lingering colonial hangover, are accused of being out of step with social justice. Where the bulk of the people are of backward social and economic status but the national goal is social and economic justice, the rule of law, notwithstanding its mien of majestic equality, will fail its mission in the absence of a scheme to bring the system of justice nearer the down-trodden. Therefore, it becomes a democratic obligation to make the legal process a surer means to social justice. The major strategy to end the estrangement between the law and the lowly is legal aid in its comprehensive coverage which is what we mean by the expressive, though newly minted word 'juridicare'.

2. The socio-legal landscape of India reveals large valleys of penury, illiteracy and social squalor over which presently blow strong winds of aspiration and change. A strong, though exaggerated criticism has been voiced in some quarters, that side by side, in uneasy co-existence, survives a law administration shaped by the British and enshrining values not wholly indigenous or agreeable to Indian conditions, scaring away or victimising the weak through slow-motion justice, high-priced legal service, long distance delivery centres, mystiques of legalese and lacunose laws and a processual pyramid made up of teetering tiers and sophisticated rules and tools. Our nation, with all its hopes and all its boasts, can never really be free and just till all its citizens, high and low, can claim equal justice through law-in-action.

Consumers of Justice

3. The consumers of justice for whom it is now difficult to secure may briefly be adverted to. Certainly, the large block of poverty comes first. Then, we have those who have been suppressed for centuries, socially and economically, by an elitist culture and have lost their tongue virtually—we mean, the Scheduled Castes and Scheduled Tribes; those, again, who inhabit extensive backward regions and suffer the handicaps of geographical barriers—we mean, the Scheduled Areas, the island regions and inaccessible mountain tracts of our

vast country; those who, in our acquisitive society, remain at the bottom to toil without adequate reward—we mean the working class and the peasantry; and those who are constrained for the country's sake to remain in perilous climes and distant borders—we mean, the Armed Forces—these human areas present a case for legal aid to be provided by the State. Indeed, this socio-legal service is a summons to an interprofessional consortium of lawyers, judges, legislators, social workers, law teachers and students with a view to make law an instrument of social justice for those who are in need.

Object of legal aid

4. And by offering legal advice and counsel in court, by educating people in their legal rights and helping to win them in practice, by reducing or subsidising the cost and delay of litigation, by listening to the grievances of the humble and by identifying where law lags or is injuriously obscure and suggesting suitable action through reform—oriented litigation or legislation, by championing the cause of the worker, wife, consumer, tenant, tiller and victim of wooden officialdom, by sensitising the legal and judicial professions and by creatively injecting into legal studies and research the problems of Law and Poverty, by involving the community in the judicial process at certain levels and through other forwardlooking measures, the legal aid ensemble seeks to make the rule of law a dependable ally of the weak and a liaison between the statute book and the deprived. Law leads to order only with legal aid, and tensions and mass violations are often the syndrome of the malady of Law versus Poverty. Legal aid, if efficacious, creates a vested interest for the poor in the law.

5. The spiritual essence of a legal aid movement consists in investing Law with a human soul; its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order. The political thrust of the movement is that if legality lets down the masses and protects, in actual working, only the upper bracket, anti-law will become a way of life of the numerous poor, the people being prone to seek justice in the streets in preference to the law in the courts.

6. The global norm underlying it is surely implied in Article 8 of the Universal Declaration of Human Rights, which reads:

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law”,

and in Article 14(3) of the International Covenant on Civil and Political Rights which guarantees to everyone,

“the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his

right; and to have legal assistance assigned to him in any case where the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The Fourteenth Report of the Law Commission also echoed this idea :

“.....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.”

7. Such a consummation—a proposition to which we are constitutionally dedicated—is possible only through an activist scheme of legal aid, conceived wisely and executed vigorously. Law and justice can no longer remain distant neighbours if the increasing deficiencies and distortions of the legal system and the challenge to the credibility of the judicature are to be adequately met. The lawlessness of the old original law, judged by the new dharma, can be corrected either by radical reform or by surrender to direct action. The choice is obvious and the hour is late. **Let us begin.**

8. With this background, the Union Minister for Law and Justice appointed the present Committee, in the Silver Jubilee Year of our Independence, to make recommendations for the creation and implementation of a comprehensive programme of legal aid to the weaker sections of the community and to persons of limited means and ‘citizens belonging to the socially and educationally backward classes, in particular’. Such is the commitment of Legal Aid as a catalyst and comrade of the weak and the meek *vis-a-vis* the legal process.

(b) *Legal Aid Planning Goals*

Historic goal

9. The historic goal of Legal Aid being the humanist service of law to the community, a series of questions arise. What is the strategy of delivering justice to the people who will ordinarily be priced out of the judicial market or punched down in the legal ring? What tactics of legal aid will be practical in the Indian socio-economic geography? Who are the people who deserve legal assistance? What changes should be brought into the instrumentalities of law and in legal studies so that they may play their part in the larger cause of

¹Law Commission. Fourteenth Report. Page 587.

social justice? What tools and techniques, what forms of infrastructure, what financial and human inputs should be planned to make Legal Aid effective? What para-legal forces should be harnessed to further the programme? What should be the fighting faiths, activist policies and actual organs of the Legal Aid complex? How far should the organisation be voluntary and how far official? Should the entire project be statutory and, if so, how and to whom should the national institution be accountable? In the remainder of this Chapter, we shall sketch out responses to these questions, leaving the details for treatment in the body of this report.

(c) The Constitution and Legal Aid

Constitutional goal

10. Legal Aid in India has comprehensive constitutional status and ambit, its inspiration, individuality and operation being found in the fasciculus of articles referred to further down. Its jurisprudential roots, socio-legal character and perspective amplitude are evident from the circumstances that "We, the people of India" who are, by and large, poor and backward, are at once the architects and beneficiaries of the New Order. Consistent with this slant and stance, the highlight of the constitutional system is social and economic justice as a rule of life and of law, since the evocative words of the Preamble and Article 38 have to have the ring of sincerity. Logically follows the fundamental entitlement, set out in Article 14, of every person to substantial equality before the law and equal protection of the laws, and in Article 22, of every arrestee 'to consult and to be defended by a legal practitioner of his choice'.

11. Lest Legal Aid be dwarfed into a lawyers' service scheme calculated merely to equalise the rich and the poor at the litigation or pre-litigation level, the expansive social conscience of the programme is accentuated in Article 41 which obligates the State to make effective provision for securing the right of "public assistance.....in.....cases of undeserved want", and Article 46 directs that the State shall "promote with special care, the economic interests of the weaker sections of the community and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation". The I.O.U. in Article 42, providing for "just and humane conditions of work" and in Article 43, assuring "all workers, agricultural, industrial or otherwise,.....a living wage, conditions of work ensuring a decent standard of life" is a mandate for action. Certainly, the social push of Article 39, which directs reorganisation of the economy for the public benefit, the under-current of Article 31(A), (B) and (C) which underscore the importance of land reforms, and the circumspection written into Article 19, which, while granting rights, subjects them to restrictions in public interest, strike a profound note of sympathy for the poor and the frail. The deep concern for

the weaker classes and minorities is again manifest from Articles 15, 19, 29, 30 and Part XVI. Distributive justice, to be effectuated by the State through law, is writ large in the Articles of the Constitution. All these solemn undertakings cannot be honoured without the activist technology and task force of largescale and multi-form legal aid.

(d) Underlying Concepts

(i) State support is essential

A constitutional obligation

12. In shaping our concrete proposals, we have been guided by certain basic structural and philosophic concepts. Let us understand clearly that a free or subsidised legal service is a constitutionally mandated obligation, not merely a philanthropic gesture of largesse. It is a duty, not charity. Therefore, not private benefactions nor voluntary agencies but State funding and statutory incorporation should be the backbone of the project.

13. Private citizens and lawyers have a major contribution to make to a legal aid movement in both money and service, but we know of no country in which comprehensive free legal services are actually provided in *practice* whose programmes are not backed in substantial measure by public funds. The evolution of a philosophy of legal aid and equal justice has been from voluntary charitably motivated assistance to statutorily-mandated but unenforceable requirements of donated service to comprehensive and organised provision of legal aid as a welfare right or an incident of equal protection backed by State support. The quality and scope of actual legal assistance has burgeoned with the philosophic evolution.

14. There is neither time nor need to endure further decades of tepid and inadequate legal representation while bemoaning the limitations of charity and human nature. As too many writers and speakers on the subject in India have concluded, State support is essential.

Legal aid is not charity gift

15. If legal aid is an entitlement of those eligible for it, rather than a charitable gift, then, the mere attempt at assistance is not praiseworthy, absent consistent high quality of service leading to favourable results. This implies that legal aid cannot be left as a part-time avocation of well-intentioned private persons or judicial administrators whose principal careers lie outside the ambit of legal aid. It implies the need for development of specialised skills of advocacy and administration, and recruitment and training of specialised personnel whose knowledge and experience may be systematically perpetuated. There must be people at the Central, State and grass-roots levels for whom legal aid is a full-time crusade and career, around whom the useful part-timers and volunteers may be deployed.

Statute should provide legal aid—an autonomous body

16. Given the magnitude of the organisational task and the relatively small number of people currently experienced in the practice of legal aid, we feel that the mandate, structure and permanence of a legislative enactment on legal aid is necessary. Furthermore, this statute should provide for creation of a national legal aid body which may broadly stimulate, guide and perpetuate organised free legal services in a host of jurisdictions around the nation. However, the State is more than Government and so, any programme of legal aid should not be conceived of as a Government scheme only. The infrastructure must be such that the legal aid agency is responsive and responsible to the nation but statutorily insulated from official or party pressure. Very often, the protection needed by a citizen may be against Government itself or its public officials. Fearless advocacy on behalf of the poor man against the State and its minions emphasizes the need for voluntary agencies in the field and for an autonomous body to organise and co-ordinate legal aid which may stand up to the displeasures of Government and may even expose legislative follies when they hit the poor and the infirm.

(ii) *The need for a benign bias*

A Constitutional bias

17. Secondly, legal aid programmes, loyal to the conscience of the Constitution, must possess a certain bias towards the working class and other vulnerable segments of society, and not only to the poor. The Indian Republic is not non-aligned where group injustice is present and the State is not an umpire between the rich and the poor, the employer and the worker, the landlord and the tenant, the hoarder and the consumer, the upper caste and the harijan, permitting them, with philosophic indifference to fight their legal bouts gladiatorially but throwing in some sort of lawyer's assistance to one side if a case of 'no means' is made out. On the contrary, realising that there is *de-facto* inequality between the conflicting categories mentioned above and anxious to bring justice to the exploited mini-communities, the State organises legal assistance not merely to individuals who are indigent but to blocks of sufferers of social suppression from the system we live in.

(iii) *Conventional Legal Aid v/s. Massive Reform*

Priorities

18. Our societal direction and pattern of progress are bed-rocked on economic justice and the principal criterion in any classification for eligibility to social benefits like legal aid must necessarily be economic. Our proposals, therefore, take care to assure to every poor person, irrespective of caste, creed, sex, race or religion, free legal service. Every other consideration comes next and in the scale of priorities need must come topmost lest the really poor be denied what

belongs to them. But we cannot blink at social realities. The special position of under-privileged categories, like Scheduled Castes and Scheduled Tribes, geo-socially handicapped people as are residents of scheduled areas, the peasantry and the working class for whom constitutional concern has been voiced in Part IV of the constitution and socially handicapped segments like women and children, cannot be gainsaid in this context. Nor can we ignore the jawans and their families for obvious reasons.

19. Sensitive and specialised provisions for such human groups are based on an intelligent and intelligible differentia having a rational nexus with the programme's end of reaching legal justice to the weak and the handicapped. The stress is on economics while wider sociology is also pertinent. When it comes to priorities, certainly, the penurious must be preferred.

20. Thirdly, the dynamics of legal aid have two aspects, although in practice they may overlap. One is what may be called "conventional" legal services—the advice and representation provided by a lawyer and related personnel in individual cases, resolving the problems which clients bring. To create networks of such legal aid groups, centred in court houses, bar associations, law schools, community organisations, a variety of rural private and public agencies, organs of local government and *ad hoc* panels of private lawyers, is a major recommendation of our report. The experiences of existing legal aid efforts in India and our sense of the unmet need convince us that "conventional" legal aid can be effective in helping many deprived citizens. A welfare state which turns out a stream of beneficent statutes too baffling for the lay poor and too rarely implemented by government officials makes lawyers' services indispensable.

Need for creating awareness of the problem

21. There is a second aspect to legal aid, wider and deeper than the first, equally urgent yet harder and less likely of full realisation. This is the need to reform and revise our laws and procedures, courts and prisons, the Bar and the Bench, police and public servants to make them more responsive to all citizens, not only the poor. It is the need to make more citizens aware of their rights, not as abstract and unattainable concepts, but as realities which may be vigorously asserted. It is the need to modify our curricula of legal education to make law training more than a lockstep rite of passage but an intellectual challenge which focuses on the needs of our citizens through class room study and actual legal aid service, and which produces graduate lawyers who are not chained to their lawbooks or the pursuit of wealth. Finally, it is the need to create means of dispute settlement which are rapid, inexpensive, honestly performed and which utilize concepts and a vocabulary which is native to our population.

Legal aid in phases

22. This report is written with one eye on the future and one eye on the immediate practical steps which may be taken in the first year of a national legal aid scheme. But it is not as if the elements of legal and procedural reform are all visionary ideals which must be consigned to the dust-bin of "some-day" implementation. Many steps, such as those suggested in the last section of this chapter, may be quickly taken, and some experiments are already taking place in small pockets of the country. Modification of the Codes of Criminal and Civil Procedure, in the light of drafts already submitted to Parliament, may be early legislative priorities, bringing new sections on the books which will create a mandate for legal aid apart from the scheme we propose. In short, wide-spread modification of our legal system need hardly wait until "conventional" legal aid is fully a reality—both bear upon each other.

23. In fact, the absence of reform of law and procedure will act as a substantial constraint on "conventional" legal aid, as it constrains all who seek the help of law. The legal aid scheme's clients must utilize the same crowded, slow-moving costly courts as their adversaries, and rely on lawyers many of whom are short of work and short of training. Not all judges nor adversaries nor court officials nor government agents will ease the way of the legally aided client, who will have to grind out his victories the same as everyone else. We are however certain that conventional legal services have been and will be effective even under present conditions but the difficulties must be anticipated.

24. Furthermore, a legal aid cannot be a substitute or a panacea for the ills of our system of justice. It can be a watch-dog, it can be a catalyst, it can spur research and reform but it cannot reach every injustice, every client, every cause. Nevertheless, we believe that a commitment to legal and procedural reform is a key element of legal aid, as is its commitment to assistance in litigation and advice, and machinery for both must be implemented. It must dedicate itself to being a movement of Reformation.

(iv) Legal Aid and the caseload of the Courts

25. An apprehension has been expressed in some quarters that liberal legal aid might lead to an increase in litigation, some of it frivolous, which the overburdened courts cannot sustain. In fact, in his address to the National Legal Aid Conference in 1970, the President of India had himself given expression to the risk of adding to the load of the courts.

Practical safeguards

26. Some practical safeguards reduce the danger considerably. First, the legal aid scheme will expand its geographic accessibility and its range of services over a period of years. Its experience in the early years will demonstrate in a controlled and limited setting whether the threatened overload of the courts in fact takes place, and the

gradual pace of expansion will afford an opportunity to devise adequate responses.

27. Second, many poor people today participate unwillingly in the system of justice as civil defendants or criminal accused, not as plaintiffs. To provide these defendants with legal assistance will not increase the burden on the courts by a single case. In fact, equalising the adversarial system through legal aid may deter many a better off plaintiff from pursuing his case in court rather than compromising it.

28. Third, the legal aid scheme will stress advisory services to clients to make them aware of their rights, to help them avoid disadvantageous actions, and keep them out of trouble and out of the courts.

29. Fourth, out-of-court conciliation and settlement will be key tactics of the scheme, dictated by its clients' limited resources of time and money, and the difficulties of successfully negotiating the court system which all litigants face. It is a common experience of lawyers that if parties had been properly advised they would never have had occasion to go or to be dragged to court. Hence, a proper legal aid scheme could also act as a check on the flow of parties to courts by ensuring that proper pre-litigative or preventive counsel is given to them.

30. Fifth, sympathetic but firm screening process with the legal aid scheme, leading to denial of legal aid in unjust or trifling cases, dispels the spectre of an increase in frivolous litigation. Furthermore, many "pauper's suits" are hardly frivolous; the one-man Committee on Legal Aid in Tamil Nadu reports a substantial proportion of success among suits filed in *forma pauperis* there. And these clients do not have State provided lawyers! We can only speculate at how many additional cases would be won if the right of a poor man to come to court embraced the right to a lawyer as well.

31. Those who administer the system of justice also have a role in preventing fruitless litigation, a luxury which, ironically, is available to the rich even today. As Lord Macaulay observed¹:—

"No man hopes to succeed in a bad cause unless he has reason to believe that it would be determined according to bad laws or by bad judges. The real way to prevent unjust suits is to take care that there shall be just decisions."

We have suggested five ways in which the legal aid scheme will minimise an increase in litigation. But we do not accept the motion that an increase in litigation is a un-mixed evil, particularly when the additional cases are just and are brought by a silent and long-suppressed majority. As the insightful Lord Macaulay once said:—

"Litigation is an appeal to the courts of law, and it is a good thing or a bad thing according to whether the laws and the

¹In his minute on the Bengal Registration, 28 of 1795, quoted in the Law Commission Fourteenth Report, Chap. 22, p. 487-488.

courts are good or bad. If what the courts administer be injustice then.....the courts ought to be shut up and the whole expense on the judicial establishments saved to the States. But, if what the courts administer is justice, is justice a thing which the Government ought to grudge to the people? As recourse to the laws is made difficult, men must either suffer wrongs without redress or redress wrongs by the strong hand."

32. To create obstacles of costs and delays in order to close the court house doors to most of the populace runs counter to the law of logic and the law of life. If the institutions of justice cannot accommodate all who falibly seek its remedies, then, the institutions must change. The system of justice is neither inelastic nor inflexible in its structures. Elsewhere in this Chapter, numerous ways of streamlining the system are described. We are confident that the legal aid scheme will hasten this humanising process, without inundating the system.

(e) Learning from Legal Aid work in India and abroad

33. At proper places and in judicious measure, we have sought support for our proposals from learned source material at home and elsewhere. We must place on record our profound obligation to many judicial personages who have shared their thoughts on the subject with us, for we have benefited considerably thereby. We also unreservedly acknowledge our debt to the great constitution makers, judges and jurists whose words, wisdom and statesmanship have been inspirational. We express our sense of enlightenment and confidence derived from many statutes and schemes and reports which have rendered our undertaking a lighter job.

34. Since the epochs of the Sastras, the Bible and the classical civilisations of East and West, men have wrestled with and imperfectly answered the question of how to give justice equally to those unequally placed. Over seven centuries ago, the humble beginnings of equal justice under the law in modern times were marked in the 40th paragraph of the Magna Carta by the seminal pledge: "To no one will we sell, to no one will we deny, or delay, right or justice". Thus, on the green meadows of Runnymede was sown the constitutional seed of legal aid in the modern world, and today this humanist concept has spread to all the continents as part of civilised jurisprudence.

Legal aid movement elsewhere—Earlier enquiries

35. The achievements and experiences of legal aid movements in Singapore, Malaysia, Sri Lanka, Japan, Hong Kong, Thailand, Korea and other Asian countries have informed our work. Equivalent efforts in countries of every ideological hue in Europe, Africa, North and South America have provided concepts and guidelines on which

we could draw. More directly, we have benefited from the work of Indian theorists and practitioners of legal aid dating back to the time of Independence. The reports of the Committee on Legal Aid and Advice in the State of Bombay, the Committee on Legal Aid in West Bengal, the Fourteenth Report of the Law Commission, the schemes devised by the Union Government and several private groups in the early 1960s, the proceedings of the National Legal Aid Conference of 1970 and its predecessors, the more recent reports of official committees in the States, most notably that in Gujarat and the recent Tamil Nadu report, from a proud galaxy which we have scrutinised and consciously drawn upon. Most vital to our work has been knowledge of the actual legal aid services rendered under several legislative acts or court-rule formulations, by organised groups of lawyers and social workers, and by countless private practitioners in the course of their practice. Their work has shed light in two ways : it has brought out the need for vastly more comprehensive assistance and has shown that, even taking the institutions of justice as they now are, legal aid can reach out to hundreds and thousands of citizens who had never before seen the law as a friend.

36. If we have not drawn even more upon the colourful diversity of experiments and experience and the large storehouse of official reports, conference proceedings, legal writings, proposals and schemes, it is because our principal work is to draw an action plan for legal aid to the weak in the Indian socio-legal context. Essentially, we are programme designers and not constitutional philosophers; more plainly, we are humdrum draftsmen of a legal scheme and not historians of a legal movement.

37. To sum up, we address ourselves to the creation of a project for legal aid, informed by what others have thought, said and done, and adapted to Indian conditions, economic, geographical and social.

II. THE MACHINERY FOR LEGAL AID

(a) *Grass-roots organisation*

Nature of machinery for legal aid

38. This brings us to a consideration of the machinery for legal aid. While it is customary to begin with a description of the span in an administrative hierarchy, we feel it practical if unorthodox to begin at the broad base of the legal aid structure. The function of the higher echelons will be to authorise, stimulate, support, guide and evaluate, but the magnitude of the task of assisting thousands of clients across the breadth of this country is clearly a task for hundreds of separate cells created at local levels to meet local conditions with local personnel.

39. Mere Statutory incorporation of a national body as we have recommended does not dissolve all difficulties of organisation. The

infrastructure at the grass roots level, i.e. at the court and block level, has to be well designed and the legal aid procedure simplified, then the whole effort will end up in a proper programme.

40. The regulations to be formulated by the State and Central legal aid bodies will not constitute a uniform format for the entire country but rather a broad range of options covering the forms of local organisation and control, the services and financial assistance that may be given to clients, the personnel that may be utilised and the terms of their affiliation, and the financial and other incentives that may be provided to advocates and legal aid personnel.

Room for divergence

41. Within each jurisdiction, it will be for judges and court officials, rural and urban community organisations, peasants and working class bodies, bar associations, law faculties, and groups of private advocates to design programmes which employ one or more of the range of authorised options (or modifications thereof), assemble governing bodies, and apply to the state legal aid committees for sanction to commence work and receive the backing of the national scheme. Certain local instructions—particularly the courts and block development will be natural centres of organisation for legal aid and it is hoped that either by legislation, administrative regulation or personal solicitation that consistent organised legal representation for eligible applicants will be available in a variety of matters in courts around the nation.

42. Legal aid administration will not be a “closed shop”, nor confined to court house bases. If an *ad hoc* group or voluntary agency can demonstrate a capacity for rendering responsible service, they too may be recognised by the legal aid scheme although not including in their membership the most senior and eminent of the leader of the legal or local community. Where more than one legal aid organisation is formed within a jurisdiction, the co-ordinating directorate will be the official legal aid centre both for proper allocation of funds, creation of individual jurisdictions dictated by geography or type of service, and for centralised determination of eligibility of clients and the pooling of experience. Legal aid is not a monopoly, there will be no shortage of work for all hands, and an element of competition will be a healthy stimulus to legal aid organisations.

Variations necessary

43. It is neither feasible nor practical to suggest the composition of the governing bodies of the local legal aid cells—it depends greatly on local conditions. As a general matter, the governing bodies should include representatives of the potential recipients of service, representatives of those who provide the legal aid and related services, as well as of relevant mass organisations. It is a fact of administrative life—much as we may pretend otherwise—that the full-timers and

actual workers call the tune to a great extent over the part-timers and supervisors, but in legal aid there is yet a third element—the clientele—who should not remain voiceless in administration of legal aid. The checks and balances among these parties should assure that if clients are not being served well enough, or the wrong people are being served or the legal aiders themselves perceive snarls in the format of the programme or in the administration of justice which impedes their work, these grievances will be aired and an appropriate re-orientation sought.

44. Liaison bodies are necessary so that the centres meant to serve the poor and manned by the lawyer, may have contact with the segments in need of advice and aid. Social workers and working class leaders, representatives of women's organisations and services organisations may discharge this role if enlisted into sub-committees in this behalf. The point is that the man in need of law must know where the free legal aid plan functions and get its assistance without bureaucratic barriers and baffling formalities. Mass organisations can be feeding media, provided there is responsive co-operation and understanding.

(b) Organisation at the national and state levels

Autonomy necessary both at national and state level.

45. Turning now to the composition and functions of the national and state legal aid bodies, we note first that the need of autonomy for the institution, so essential to immunise it from extraneous pressures, and for administrative cohesion and permanence, may be best met by the statutory creation of a National Legal Service Authority to administer the complex of legal services we contemplate. Insulation from rigid official controls thus secured also ensures professional freedom and integrity. Of course, he who pays the piper has some right, to call the tune and, therefore, Parliament and Government must have voice in the choice of those who are to formulate, direct and execute the policies of the Corporation. Freedom goes with responsibility and so institutional accountability to Parliament and the public to guard against adventurism and inaction are necessary.

46. The make-up of the governing board at the national level must, we think, reflect the compound of element necessary for the successful chemistry of legal aid, and thoughtful manipulation of its directorate is proper. The ultimate professional guardian of justice is, in a sense, the judicature and it is in the fitness of things that the Honorary President of this National Legal Aid Authority is the Chief Justice of India. Judicial presence in the organisation, down the line, has many wholesome influences. Judges on the governing board will bring prestige, non-partisan spirit and better public confidence and Bar support for the programme.

47. However, it is not fair to implicate the top judicial personage in the day-to-day business of legal aid which will require continuing, full-time attention, and the appointment of a separate executing Chairman or a Director General is desirable. An eminent person in the field of advocacy, with social service and administrative experience and a commitment to the cause of legal aid will fill the bill.

48. The members of the National Legal Aid Authority headed by the Chief Justice of India may not be called upon to spend considerable time in the actual working of the institution but their presence and counsel serves to shape policy and check abuse. The need for professional sensitivity and quality and the enthusiastic involvement of the organised Bar in the direction of legal aid constrains us to propose that the Chairman of the Bar Council of India be *ex officio* a member of the National Council. To benefit, by the views of poor clients and poverty lawyers themselves, we suggest the nomination of one or more representatives of the State Legal Aid Boards. A senior judge of the Supreme Court of India to be nominated by the Honorary President may strengthen judicial representation within the Council. We have already mentioned that the Administration must have a significant voice in the management of the scheme, especially its economics, and it is right, therefore, that the Finance Secretary, the Secretary of the Ministry administratively dealing with legal aid are *ex-officio* members and also some Members of Parliament.

49. Legal Aid, in its dynamic aspects, can strike root in our country only if poverty law, with student legal aid as a clinical component of education, becomes a universal feature in the law schools. You can't reach the student except through the teacher and so it is crucial that we legate law teachers organisationally with the movement. For this reason, the President of the All India Law Teachers' Association may *ex-officio* serve on the Authority. We have already explained that the legal aid scheme we envisage is not merely court-centred but is a social welfare project spreading out into the country. Representation at the National Authority level to an All-India body engaged in social work becomes pertinent, the choice being made by the Union Government.

50. The membership of the National Authority should include additional persons. Feminine humanism has its own value and a woman social welfare worker, as a member, will enrich the National Authority. The stress on curricular inclusion of poverty law and clinical work brings out the futuristic role of the student community in our project. It is reasonable, therefore, that two students office-bearers from law schools which have law and poverty in the syllabus and run legal aid clinics should be on the National Authority.

51. The Scheduled Castes and Tribes—bulk beneficiaries of legal aid—deserve to sit as members on the Authority and a distinguished few, themselves members of such Castes or Tribes, who have rendered

notable service to this disadvantaged group may add to the social credibility of the Authority. Labour, the most clament and organised of the have-nots, are potential recipients of legal aid and two representatives picked by Government, may well be a catalytic addition to the Authority, so also members from each of the Houses of Parliament.

52. The work of the National Authority will be policy making and issuing of directives, apart from drawing up of the budget, preparation of reports and the like. A full-time Secretary, who will be a law man with a social scientists background, may have to be appointed to execute these latter tasks. Responsibility to Parliament and the public can be promoted by the requirements of periodic independent audits and annual reports to the Houses, by assuring the public availability of records pertaining to the work of the whole institution, by the obligation to grant copies of all relevant documents in its custody, and through other measures.

53. The National Legal Aid Authority must have broad authority, subject to the rules that may be made by Parliament to shape policy and be in command of implementation of legal services, to direct related research, training and educational activities, to undertake publicity campaigns and organise communication between the law and the community, to establish eligibility standards and guidelines for legal aid lawyers, to finance all cognate operations and otherwise to function for the people's interest, aid to check irresponsible or adverturist actions. The Authority must have freedom to feed back the results and experience of field work into the legislative system through reports to the Legislatures, so that law reform on poverty lawyer's initiative may become systematised. There is no need, at this stage, to dwell at length on the composition of the State level organs except to state that there must be State branches patterned on the National Legal Aid Authority with necessary modifications and functional emphasis. We wish to indicate that functional sub-committees at various levels are necessary if the *Juridicare Corporation* and its subsidiary organs are to be good going concerns.

III. HUMAN RESOURCES FOR LEGAL AID

A. The Bar

Bar should be associated

54. The anatomy of legal aid, as we visualise it, clearly requires the vascular system to reach out to the needy, the lowly, the distant and the desperate. Such a vast social-legal movement will flop and flounder if we do not harness the services of organs of mass contact. Such a network of liaison bodies are the source of strength and means of communication of the *Juridicare Programme*. Our conception of the machinery and types of service already outlined reflects this thought. However, the soul of the scheme is legal assistance, a specialised know-how of the social technologist called lawyer. Therefore, the human resources for any legal aid scheme should primarily issue from

the legal profession since the central task is to give legal aid and advice, preventive and positive, in litigation and at pre-litigation stages as well as for pursuit of administrative remedies. It follows that the Bar, which is the custodian of legal know-how, must lend its expertise liberally to the poor who now look upon the law as an enemy, not as a friend. Nowhere else is there a body so large, so well trained, so experienced in providing many of the services which legal aid clients will need. If the Indian Bar currently living in twilight has lost some of the lustre it gained during the fight for Independence, legal aid is clearly a movement which will regenerate its sense of purpose.

55. In this Report, we have avoided either a position advocating compulsion or *laissez faire* in regard to recruitment of lawyers for legal aid service although a bit of both is discernible, in the circumstances of our country. The central issue is how to find enough lawyers to render sufficiently good service to enough clients within a given budget. Any other approach seems to us over-simplified and designed to make good rhetoric but bad policy.

56. The fact is, that total voluntarism in regard to legal services has demonstrated severe drawbacks in the countries which have made legal aid the duty of the Bar but have provided no financial or administrative incentive and support.

57. We anticipate that many lawyers will volunteer a portion of their time to staff legal advice centres or interview clients or do simple drafting, but the lawyers who accept complex and lengthy cases or bear the brunt of legal aid's considerable administrative load, must not be out of pocket, if they are to work whole-heartedly. Similarly, those willing to work in, or travel to, out-of-the-way places where clients may be reached, must have additional incentives.

58. If we do not feel there will be benefit in coercing the services of lawyers, neither do we feel an obligation to spread the financial incentives evenly among all lawyers or favour those whose income is lowest. The primary concern is serving the clients adequately and lawyers who can do this must be relied upon.

59. If lawyers stand to be the principal financial beneficiaries in the first instance from legal aid funds, care must be taken to balance the understandable pulls of self-interest with what we perceive to be an equal commitment to client service. Where services may be more economically provided in bulk by a single lawyer working full-or half-time rather than by a panel of lawyers, where circumstances make it desirable to have a standing public defender or duty counsel, we recommend reliance on full-time salaried personnel, a recommendation also made by administrators of several existing legal aid programmes. Of course, the general pattern will be legal aid panels and assignment of briefs through the area offices after the 'means', 'merits' and 'reasonableness' tests or other liberalised schemes process are gone through. Fee scales moderate but not low, will be established for the more conventional services lawyers render, so that lawyers may know in advance the financial incentive for varying kinds of work. Groups

of lawyers will be encouraged to band together into "public interest" firms or service co-operatives whose primary business is low-cost service to legal aid clients and those clients who are slightly better off. A public sector in legal profession is a benignant portent and is part of the legal aid movement.

Legal aid offices

60. It will be the duty of the central or state legal aid bodies to reserve funds to under-write the cost of special legal aid offices in rural areas and other places where the typical lawyer is unlikely to be willing to work. Similarly, the guidelines for location of legal aid offices will encourage branches in poor neighbourhoods even though this is out of the way for most advocates. A certain amount of self-conscious social engineering may fill in where financial incentives are unsuccessful.

61. But administrative guidelines and strictures will have little impact in comparison to the moral and practical example which the leaders of the Bar may set in regard to legal aid and representation of paying clients as well. Their willingness to volunteer for legal aid work and encourage their colleagues to do so, their willingness to limit the fees they charge to even their better-off clients, their willingness to urge action against a colleague known to be unscrupulous will have a powerful impact on other advocates.

Ceiling on fees in legal aid cases

62. Government and the public and private sectors must also be willing to set a ceiling on the fees they pay to advocates drawn from the private Bar. Bar Associations must create panels of lawyers willing to provide services to paying clients at a reasonable set fee. As the climate of the entire Bar changes, the cause of legal aid will flourish in consequence.

63. The Indian poor are the forgotten clients of the All-India Bar which is a quasi-public institution committed to the service of the community. Having regard to this obligation, the Bar Council of India made a rule relating to legal aid which runs thus:—

"39B. Every advocate shall, in the practice of the profession of law, bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for 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 society."

It is hoped that legal aid will give meaning in practice to this moral obligation and begin with a few cases being directed to be done free, when called upon. The doyens must set the pace.

B. Law Schools and Law Students

Legal aid clinics

64. The spawning ground for lawyer, jurist and judge is the law school. It is vital, if we are serious in producing a qualitative change in the legal system and its personnel, that we introduce clinical legal education in our law schools with an accent on socio-economic poverty. Such direct student participation in handling the legal problems of indigent clients is potentially one of mutual benefit to the student, to the legal aid scheme and to the whole system. In India, there are only a few clinics yet started, but the prospects of further expansion are vast and the advantages immense.

65. Either law faculties must run legal aid clinics or the law students must be attached to a 'parent' scheme under the general programme of legal aid. Interviewing applicants for legal aid, meeting an accused in prison, preparing detailed pre-trial reports, drafting pleadings and researching into the legal issues raised, are a social exposure and sobering experience of lasting benefit. This work will also impart practical skills in addition to substantive and procedural rules of law. Having seen slums and rural squalor in their draining impact, the law student, when he becomes a full lawyer, will no longer see clients as mere facts of the case, but living neighbours and friends in trouble. For him, a litigation will cease to be a cerebral cricket match but a human drama in the law. He will be a trained hand in legal aid service who will give a necessary social ideology to the profession.

66. Moreover, law students will become an inexpensive and enthusiastic source of man-power which can be used to serve a portion of the community to which adequate legal services have not been available in the past. Many preliminary items of work of a legal aid office can all be done by the student at the clinic. An experienced researcher¹ in the field has observed:—

“The scope of the quantitative contribution of students to a legal aid scheme depends in large part on the extent of the responsibility the scheme is prepared to place in student hands.”

67. In two separate stages, it must be possible for the legal aid programme to use the student—first in the preliminary processes and later, in the actual conduct of petty cases. The writer quoted above has written:—

“Where students have been permitted to appear in court under supervision, it has been possible for the parent scheme to expand significantly the total number of cases it is

¹Legal aid and the law student in the Developing Nations by Barry Metzger, Law Asia, Dec, 1970.

capable of handling. A senior legal aid attorney who could himself handle 100 cases per year can effectively supervise ten students capable of handling several times as many cases."

68. Several countries like for example, U. S. A. permit senior law students, under proper supervision, to conduct cases of the simpler type and the American Bar Association has made a model rule on legal practice by law students. More than 20 States and the District of Columbia have passed legislation permitting law students some form of supervised practice. There is no reason why in India we should not have experiments in student legal aid work, including representation in court. Our recommendations include such proposals.

Students involvement in legal aid beneficial

69. There is an additional benefit to student involvement in legal aid work. Where a continuing interchange between clinical work and curricular studies takes place, the theoretical equipment of the student from the point of view of law and poverty is enriched. The clinic will broaden the interest of law professors and stimulate increased scholarship in the field of the poor man's problems. The academic cloister of the law teacher will disappear eventually and the classes and the clinics will conjointly focus more attention on the issues which affect the backward segments of the community.

70. However, we stress the need for adequate supervision of their work by practising lawyers as well as law teachers, and caution that only law schools or faculties which are willing to take the organisational and curricular steps necessary to integrate the clinical work into their overall programme should be invited to participate.

71. The creative use of law students in a country with financial and other resource scarcity will reduce the burden on the legal aid institution. We regard the inauguration of a university scheme for conversion of the raw enthusiasm of the law student into a potent resource on behalf of the poor litigant as of import.

IV LEGAL AID'S CLIENTS

(a) The geographically deprived

72. We must call attention to some specific social areas requiring specialised legal aid services. The Indian Republic, in its vast geography, embraces distant islands and high mountains whose inhabitants do not enjoy the fruits of the rule of law, not only because of tribal backwardness, poor communications and like factors but also because legal service in civilised terms is just absent. The Laccadive group of islands, for example, has courts and police stations but no lawyers at all, notwithstanding the application of the Codes of Civil

and Criminal Procedure in substantial measure. The occasional excursions of one or two lawyers from Calicut or Ernakulum can hardly make amendments for this serious draw-back.

The island territories

73. The Andaman and Nicobar group of islands presents a kinder eccentricity from the point of view of legal aid. An inconsiderable population inhabits a cluster of islands, cut off altogether from the mainland, with a mixed demographic composition of aboriginals, 'lifers' and settlers. The judicial headquarters of the islands are in Port Blair and there are lower courts on a few islands and police stations in most of the inhabited islands.

74. A person arrested by the police is virtually denied the right to consult or be defended by counsel for the simple reason that there are no lawyers, except for seven in Port Blair. Inter-island communication is intermittent and even a rich person arrested outside of Port Blair cannot obtain legal help. In civil matters, preparing writ petitions, securing legal advice or making representation to the Administration, the populace is similarly handicapped.

75. These areas cannot enjoy the effective presence of the legal system without legal aid services fashioned for the Islands' geo-social conditions. Provision of advocates and public defenders are apt items to help the backward and largely poor population understand their problems and seek suitable legal remedies. The nyaya panchayats, promising bodies invested with petty jurisdiction, need more training and powers. Subsidised travel for legal aid lawyers, and High Court benches sitting with realistic frequency, are worth considering.

76. The high ranges, particularly the snow-clad Himalayan settlements like Lhaul and Spiti, are not on speaking terms with legal agencies because of total lack of communications during the long winters. The people, be they rich or poor, labour under a special difficulty in the matter of availing of legal remedies, civil and criminal. Indeed, the tribals and other inhabitants of these intractable and inhospitable areas are governed by customary law not easily understood by the lowland judiciary. Some kind of intermediary in the shape of a sympathetic legal aid system has to be devised for such people.

(b) Villagers

77. India lives in her village which are notoriously under-developed. Laws for the uplift of the villagers, protection got from the courts and competent legal advice which gives confidence, wither away in the rural soil. Feudal victimisation, social abuses and denial of the legal process through local tyranny are realities of the countryside. Even as there are rural extension centres for agriculture,

education, etc., block-level legal extension services may carry the hope and light of the rule of law to our mofussil areas. Problems of illiterate women will be taken to the legal extension officer by Gram Sevikas, land disputes between adjacent ryots by agricultural extension officers, caste factions, family quarrels and public legal issues by block development officers or panchayat members. Legal advice by disinterested lawyers employed by Legal Aid centres may prevent litigation, local fights, family discords and worse evils. Legal guidance will help poor villagers who cannot go to towns and buy legal opinion at high cost. Where drafting has to be done or forms have to be filled in with legal skill, before proceedings can be started or administrative benefits secured, the centre can be of service.

(c) *Agricultural Labour*

78. Vulnerable human categories also have to be considered in this context. Agricultural labour is changing its profile, and its aspirations are higher than before. The law has not taken serious note of the needs and demands of this sprawling agrarian population which is restless at the slow passage of welfare laws and ineffective execution of what is in the book. Moreover, agricultural workers are, by and large, unorganised and countrified and, therefore, exploitable in the absence of morale—boosting legal advice and aid. Progressive legislation has proved illusory, as a writer has brought out in a recent study:

“The conclusion is inescapable that the large increase in the number of agricultural labourers is mostly due to rural pauperisation, to distress sales of land and, unfortunately, to share-croppers being dispossessed of their holdings by the machinations of land owners.

How can such things occur when a benign government has fixed minimum wages for monthly and daily rated agricultural labour? How can share-croppers suffer when the Government has amended the West Bengal Land Reforms Act, 1955, both in 1970 and in 1971 to secure their interests?

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Despite such an enlightened approach evidence goes to show the Act and its amendments often tend to remain mere examples of meaningless legislative exercise that are not translated into beneficial action in the field. And, worse, with progressive legislation duly passed and law and order restored all over a once disturbed countryside, the leaders of the Government and the top administrative echelons seem complacently convinced that their duty is done.

A leading daily, in an editorial, wrote on the same theme:

Unlike their better organised and more articulate counterparts in industry and white collar occupations, sharecroppers and landless labourers are for the most part unprotected by laws relating to conditions of work and wages. In addition, the weight of tradition and custom is enormous in the countryside and it always operates to the advantage of the richer and more influential who in addition have access to superior legal resources. Most of the contractual relations are broken with impunity by the landlords and employers of agricultural labour. Recourse to litigation is not only limited for the poor because of its expense but also because of the labyrinthine procedures that daunt most of them. If any amongst them is foolhardy enough to get entangled in them, he emerges from it, if at all, a much bettered man.

A situation like this is socially explosive.....At the very least, a conscious attempt must be made to secure for the rural poor their rights written into the various enactments in the course of the last 20 years. The initiative for this must come from the more enlightened political sections in the country. It is largely a matter of organisation and determined education.....to ensure that these largely illiterate and uninstructed people are told not only of their rights under law but also made to perform their duties to secure these rights. Often it is a simple matter like registering themselves with the concerned authorities as tenants etc. so that the newly conferred rights do not go by default. Politicians who continually profess to be shocked by the appalling conditions of the rural poor could easily arrange to have claims registered, contracts formalised and be vigilant about encroachment of these rights by landlords and others. They could also organise the much needed legal assistance as a form of free social service."

79. We regard these typical phenomena as the disturbing concern of the Legal Aid Movement and recommend remedies accordingly.

(d) Industrial workers

80. Industrial workers, although better organised and urban in taste and outlook are still a weak species, self-divided into many unions and without economic status to stand up against the managements. Legislation on social security and basic amenities is inadequate and the machinery for wage fixation and dispute resolution is rickety.

81. The conciliation procedures, the labour courts, and the industrial tribunals require overhaul and renovation as recommended by the National Commission on Labour. Labour laws, imperfections apart,

are dubious boons today at the level of implementation because of long, unequal and exhausting litigation, biased jurisprudence, erroneous judicial orientation and the gamble of legal justice. Disenchanted unions prefer struggle tactics to laws' distant benefits.

82. Prevention of litigation and promotion of settlements or rapid resolution of disputes, are part of a fair legal deal to workers. Irresponsible expenditure by managements in labour litigation has to be inhibited; unions like employers, must have the use of the industry' resources in industrial litigation when litigation is unavoidable. Legal assistance at State expense for workers and dependents in proceedings under other labour welfare statutes is a 'must'.

83. Rashes of unrest and violence, ubiquitous in the industrial belts, can be cured only by more faith by workers in the legal process and better legal policies regarding labour. The pity is that even the public sector in industry leaves much to be desired in its labour-legal approach.

(e) *Women*

84. Women in many countries are victims of legal inequity and in India too, where Manu and Mohammed are cited against them by the champions of the status quo, biological differences have been invoked to justify social injustice. Of course, the Indian Constitution, taking a more humane view, has expressly permitted benignant discrimination in favour of women [vide Article 15(3)]. But notwithstanding Article 42, provision for just and humane conditions of work and for maternity relief do not exist in many places. Notwithstanding Article 39, equal pay for equal work for both men and women remains to be achieved. Even laws meant to protect women founder for want of adequate legal aid. Divorces of illused wives, maintenance of deserted women, custody of children on break-up of the matrimonial home, rights of intestate succession, discrimination in employment and disabilities in service and socio-economic subordination at home, are subjects of concern for the legal aid movement.

85. Another disturbing feature is that crimes against women are escalating and remedies elude them. A recent letter by the President of the All-India Women's Conference to the Chairman of this Committee is illustrative of how women have been robbed of legal protection against masculine bestiality, she writes:

"In the recent past, assaulting helpless women has become very common all over the country..... Apart from the serious reflection on law and order condition in the country.....we are very much worried about the complacency of the authorities in bringing the culprits to book.....unless offenders of this type are severely punished, it will be very difficult for women and young girls to carry on normal work in the country."

86. Femininity suffers civil wrongs and crimes because of sex difference and even the police lock-up and prison cell speak a harsher language to women. Substantive and procedural legal aid to women as women, in civil and criminal matters, is a 'must' even regardless of the means of the affected persons. Women are socially weak; legal aid must make them strong. And in this work women's organisations must be involved.

(f) *Children*

87. Children and youth have been the darling of the law and the Indian Constitution authorises favourable discrimination having regard to the need for moral and material nurturing at that tender age. We have in this country many provisions showing concern for the youth. On the criminal side, for instance, the Criminal Procedure Code, the Children's Acts and the Probation of Offenders' Acts, are legislative landmarks. From timid beginnings, correctional treatment of first offenders is expanding in the country. Nevertheless, these legislative innovations have hardly made a nation-wide impact because the Bench and the Bar have not shown enlightened interest in these humane programmes and sentencing practices. Nor have come sections of the police taken kindly or intelligently to the proper treatment of young offenders. We need, therefore, a cadre of properly oriented and trained police and judicial personnel.

88. Furthermore, we need lawyers who can protect the interests of minors in criminal prosecutions, family break-ups, partitions and adoptions, beggars, runaways, abducted children, apprentices and even students need more than legal representation. Hopefully, legal aid centres women's organisations and other groups will be able to help with social as well as legal assistance.

89. In short, our children are our immortality and delicate, humanist legal aid for the rising generation must be a specialised service like pediatrics.

(g) *Harijans*

90. Another suppressed social group in need of legal help is the harijan. Article 17 abolishes untouchability and forbids its practice, but it is no secret that the judicial and even administrative processes still remain 'untouchable' and 'unapproachable' to the untouchables and unapproachables of the community. Caste dies hard, statutes notwithstanding. For, 'the wretched of the earth' the long arm of the law hangs limp and the leading strings of Administration sag callously. A recent write-up in a leading paper bemoans laws' failures:

"The overall condition of Harijans in this State is not good and, in spite of the many laws framed by the Central and State Governments, our attitude to Harijans has not changed to the extent desired and needed. The old practices began (forced labour), paying Harijans less than their due

and not allowing them to sit with caste Hindus, forcibly snatching their land, not allowing them to draw water from public wells, are prevalent even today. Beating, caning and murder of poor Harijans by caste Hindus have also been quite common in U. P. and figures of incidents for the last five years will show that such things are in fact on the increase."

These flagrant violations of the Untouchability Offences Act take place because the police and the district administration, instead of helping the victims, connive with the caste Hindus. The police and the Government machinery appears impotent and, consequently Harijans suffer hardships.

91. Sensitive assistance by legal aid lawyers to complainant or accused, civil suitor or defendant or petitioner before the Administration, socio-legal research into the flaws of the relevant laws and the wrongs needing redressal—these, and not the ritual of free lawyer assignment in harijan litigation, are the therapeutic measures to heal the traumatic social lesions of centuries. Positive law, without legal aid, may become tragic irony at times. An excerpt from the 18th Report of the Commissioner of Scheduled Castes and Scheduled Tribes illustrates our point:

".....The mere act of granting constitutional relief to the land-hungry and deprived people is not enough. What is more important is education and organisation of the peasantry in their rights and duties and *assistance to them to assert their rights by constitutional means.....*"

Legal aid activism must relieve the burden on the social conscience. The sombre saga of the under-privileged and unpopular harijans and landless labourers is a challenge to law-in-action. But, by itself, legal aid may not be enough. Many Ministers and Officers in charge of harijan welfare have complained that unless prosecutors and judges, and the investigatory and trial procedures they administer, show more realism and regard towards the tongueless tribal and panchama, and the rules of evidence take cognizance of the utter backwardness of the victims of anti-harijan offences, welfare legislation will remain deceptive decoration on the statute book.

(h) Minorities

92. Democracy is a promise to the minority that the majority will not become a menace. The Indian Constitution protects the linguistic, cultural and religious rights of minorities and our country's history makes what anywhere is a sensitive area, a nervous and even explosive one in India. The panacea is legislative armour which guarantees autonomy, freedom and development of language, education and religion, without hampering social reform and general progress. But

when a religious community is islanded by a provocative majority, or in a hostile situation of clanish or linguistic confrontation, rights retreat unless violators can be challenged by legal orders. Test litigation, group legal action, law reform proposals and legal-administrative measures are the weapons to make the juridical rhetoric a reality of 'minority' life. When passions stoke the fires of wrath against small groups, legal aid activism rises to resist. Unpopular beliefs and tiny groups' briefs are the touchstone of the legal aiders' bonafides.

(i) Prisoners

93. Prisoners, men and women, regardless of means, are a peculiarly handicapped class. The morbid cell which confines them walls them off from the world outside. Legal remedies, civil and criminal, are often beyond their physical and even financial reach unless legal aid is available within the prison as is provided in some States in India and in other countries. Without legal aid, petitions of appeal, applications for commutation or parole, bail motions and claims for administrative benefits would be well-nigh impossible. There is a case for systematised and extensive assistance through legal aid lawyers to our prison population.

V. REFORM OF THE ADMINISTRATION OF JUSTICE

Financial inputs

94. The financial inputs may be briefly touched upon. The fear that nation-wide legal aid will involve huge outlays may easily be allayed. The British and Indian experience in 'civil' legal aid suggests that most of the 'poverty' litigation pays itself because the cases are won and the costs are recovered from the losing party. In the matter of Scheduled Castes and Scheduled Tribes, the State has always been willing to spend on full legal aid coverage. Having regard to the Constitution's anxious concern for those weakest of Indian humanity, this humane investment is to be expected. A Suitors' fund, experimented with in some Commonwealth countries and financed by the profession, must be tried here too in due course. The public sector in the profession and voluntary organisations will receive public contributions and relieve the National Authority *pro tanto*. Labour, as we have explained in a separate Chapter, may be eligible for free legal aid financed by the Industry itself. And under a scheme of comprehensive group legal aid to workers' families, we have indicated measures of self-financing with little injury to the public exchequer. And when the enthusiastic student legal aid clinics become numerous, a proportionate lessening of the legal aid cost will be a consequence. The junior section of the bar will also offer a new army of service-minded technicians at low maintenance cost. As far the criminal process, even now free counsel in sessions cases is provided in some parts of the country, and its extension to warrant cases will not add onerously to the outlay. A grateful community, accepting the law as a way of life, is worth the residuary expenditure. The human budget has social relevance in drawing up the monetary balance-sheet.

95. The processual law is implicitly partial to the well-to-do, though fair in its face, being too complex, prolix, costly and insensitive to poverty. Extensive simplification and early finality are an urgent desideratum both in the civil and criminal jurisdictions if legal aid is to be fruitful. Administrative tribunals are worse sinners in being late and legalistic in disposals. Governments, being indolent in issuing notifications and allotting sufficient judicial personnel in time are often guilty of causing law's delays. Not the Judges alone, but legislators and administrators have to remember the poor in the legal process. Legal aid operators have to bring these faults in the system to the attention of concerned authorities.

96. Something must be done, we venture to state, to arrest the escalating vice of burdensome scales of court fee. That the State should not sell justice is an obvious proposition but the high rate of court-fee now levied leaves no valid alibi, is also obvious. The Fourteenth Report of the Law Commission, the practice of 2% in the socialist countries and the small Standard filing fee prevailing in many Western countries make the Indian position indefensible and perilously near unconstitutional. If the legal system is not to be undemocratically expensive, there is a strong case for reducing court fees and instituting a suitors' fund to meet the cost directed to be paid by a party because he is loser but in the circumstances cannot bear the burden.

(a) Re-orientation of legal personnel

97. Aside from these aspects, some mutations in the instrumentalities may now be discussed. If our aim is to provide legal assistance to those in need, not only legal aid lawyers, but all actors in the system of justice must be in sympathy with this new orientation. This suggests the need for a sociologically relevant recruitment policy of all agents of the law; Judges, prosecutors, legal aid counsel and police officers. The Bench has, by tradition and training, cloistered itself away from the muddy mainstream of national life. Undue judicial aloofness is a doubtful virtue at a time when the rule of law has to be geared to the goal of social justice. Many judges, by their social or economic orientation, may instinctively be aligned against an aggrieved harijan or worker, however, balanced the adjudicatory process may appear to be. Similarly police and prosecutors must be willing vigorously to pursue the just cases of the poor and oppressed if they are to receive the protection intended by law. This can be attained if the process of selection of candidates for judicial and police posts should focus on their social sympathies. For in-service updating and exchange of experience, there should also be recurring seminars, workshops, conferences and courses to orient these lay persons in the theory and practice of legal aid. Professional programmes on law and poverty will enrich the judge, police officer and practising lawyers and help the legal process come closure to the common peoples' causes. If the judiciary, in particular, organises itself on a national basis, and makes itself socially accountable to the people for guidance and assistance in legal aid, what a force it would become.

(b) Simplification trial and sentence procedures

98. Apart from personnel management, institutional innovations should be part of the legal aid exercise. Could we not simplify trial and sentence procedures so as to minimise the damage to those of humbler section in life? Section 110 of the Motor Vehicles Act, to take an illustration, contains a provision by which magistrates can mention in the summons itself that if the accused pleads guilty to the charge, he may remit a fine (a specified amount) and the case is automatically closed unless the accused chooses to appear and contest. Unfortunately, our criminal judiciary at that level, not being oriented properly rarely use this provision with the result that a poor driver or conductor charged for a minor violation while on a trip far away from his permanent home, is forced to come to court foregoing his day's work, and, if the case is adjourned more than once, as is not unlikely, he has to appear every time. Provisions similar to section 110 of the Motor Vehicles Act may usefully be introduced with a view to save police time, judge time and that of the poor accused under other special and local laws also. Who but the poor are normally challenged in cases under the Prevention of Cruelty to Animals Act, the Motor Vehicles Act, the Railways Act, municipal regulations and Police Acts?

(c) Mobile courts

99. Mobile courts for trying minor offences on-the-spot will be a boon to the poor and to all citizens. In cities, a well-publicised scheme of peripatetic consumer courts may work magically to prevent hoarding and profiteerings. If a special police cell received telephonic complaints of violations of pricing or quality regulations, a duty-magistrate, stipendiary or honorary police official and legal aid lawyer might go to the scene, take evidence, hear the accused and proceed to judgement except where complicated questions arise. The presence of legal aid counsel will meet the demands of natural justice if the accused is also poor. Eve-teasing offences and street brawls may be similarly treated. Improvised procedure, informal evidence and immediate sentence will do no harm where punishment is not too severe. Ironically, even a guilty accused may prefer being saved numerous trips to court and the related expenses and loss of work-time which, in conventionally-treated cases, often exact more punishment than the actual sentence.

(d) Summary trials

100. Provisions regarding summary trials will help dispose of petty cases quickly and with less expense. Usually, small men are entangled in small cases, and procedure which will speed up, without sacrifice of justice, the progress of a case will help the poor. If the power to try summarily were extended to all smaller cases and entrusted with lesser judiciary, more than half the number of cases in the courts will have an easy passage, leaving ample time to tackle complicated cases.

(e) Conciliation procedures

101. Experiments with new judicial techniques on the civil side also are worth making, the motivation being to help those of humble means. Our Civil Procedure Code should encourage conciliation processes and settlements of disputes without detailed litigative stages, especially in chosen areas where the poor and the weak are affected. Family disputes and local conflicts threatening good neighbourly relations, pertaining to boundaries of holdings, sharing of irrigation facilities, religious processions and music, are pre-eminently classes of cases which should be settled by mutual understanding and negotiation instead of legal fray. Courts must take the initiative to promote reconciliation and save the poor the expense and bad blood of litigation. There is scope for expanding the operation of this principle in other civil proceedings, stage by stage, where small claims by small men for damages or dismissal actions or for arrears of maintenance, wages and the like are involved.

(f) Small causes courts

102. We have special enactments for trial of small causes but the classes of actions triable by such courts and their power to execute need widening, having the poor in mind. Heavy court costs, delayed adjudication and traditional trial procedures preclude worthwhile assertion of minor causes of action and over-punish poor defendants. Legal formalities must be cut down to the minimum. Pleadings may be informal, standardised forms being filled in by spending a few minutes in the legal aid office. Rough justice readily available and made final with little argument instead of the elusive search for refined, three-decked legal truth, must be the goal. The Judge must be the activist at the trial and not counsel, three-stages examination being avoidable and detailed judgment a superfluity.

(g) Lay advisory groups in the courts

103. Courts and the common people must come closer together in the interests of the poor. It is, therefore, necessary to devise mechanisms whereby popular elements may peripherally be associated with the administrative aspects of court work without interfering with the authority of the presiding officers in any manner. A small experiment in this direction in Kerala by way of an amendment to the Kerala Civil Courts Act, 1957, empowered the High Court to create committees in each subordinate civil court, responsible for disseminating legal advice and publicity to the public, suggesting improvements in the amenities of the court buildings, bringing instances of staff corruption to the notice of the High Court and facilitating contacts between Bench and Bar. It is desirable to expand this idea and establish better public relations between the law courts and the laity.

(h) Initiatives of the administration

104. The indifference of the Administration to the idea of cheaper, quicker redress for the poor man is obvious from the failure of

some states to set up special tribunals such as the one for motor vehicle accidents mandated by the Motor Vehicles Act. The victims of automobile accidents are ordinarily the poor, and the failure to give them an adequate forum is a denial of Justice. Where special tribunals have been created for motor accidents, workmen's compensation or whatever, their object is frustrated by the State not taking timely administrative steps to ensure quick dispatch of cases. Even specific legislation for legal aid has been permitted to slumber on the statute books. The legal aid scheme herein contemplated cannot ignore the injustice of delayed justice even if the delinquent be an indifferent government.

(i) *Dispute settlement by the police*

105. Auxiliary agencies of the administration of Justice also require to be re-oriented so as to respond to the needs of the poor. The police, for instance, can play a helpful role in bringing about local settlements of disputes. The following passage paraphrased from a Kerala report, illustrates the point:

“A large number of poor peoples' complaints or grievances may come under the category of non-cognizable offences. A person bringing a non-cognizable complaint to the police is advised to prefer a case in the Magistrate's court as the police are not empowered to investigate according to the Criminal Procedure Code. In olden days, the police's passivity in these cases did not cause much injustice to the people because there were panchayats village elders and other agencies to enquire into disputes and effect fair settlements outside the normal processes of law.”

106. Today, few poor villagers consult either panchayats or local persons of influence about their grievances, as they suspect their impartiality and sincerity, feel that they have strong political biases and know that they lack powers of enforcement.

107. To file a private complaint in the Magistrate's court is not an effective alternative. This requires money, energy and time, may take one or two years for final disposition and may ultimately provide no redress. During the pendency of the case, the complainant may be subjected to additional out-of-court harassment from his adversary, who resents his going to court.

108. Because law does not obligate public officials to investigate small disputes and because these officials do not informally broaden the scope of their jurisdiction, the aggrieved person is left with no source of redress. He either puts up with the grievance meekly or gathers the support of some political party or village goonda to wreak vengeance on his aggressor. Thus, a small complaint of a non-cognizable offence gives rise to much more serious cases. Apart from denying the poor man a facility for redressing his grievances against a village tyrant or feudal boss, this attitude of the police results in the

incidence of more offences against harijans and agricultural workers. Under these circumstances, it is very necessary to devise a statutory method by which the police will look into such complaints without a detailed process of investigation proceeded by referral of the complainant to the court. The police may undertake an even broader duty and actually assist in the settlement of disputes or cases before they would normally be taken to court. This will speed the resolution of conflicts and save the time and money of the courts, prospective litigants and witnesses. A current experiment in some Kerala Police Stations with a procedure of enquiry of petitions illustrates the potential of this idea.

109. A sub-inspector is available four hours a day in each police station exclusively to hear petitioners, assisted by one Head Constable and three Constables. He hears each petitioner, gives a receipt for the petition, deposes one of his subordinates to make a rapid investigation, hears the petitioner and the counter-petitioner one or two days later and gives a decision on the petition. It is significant that every petition is normally disposed of within two days of its receipt in the station.

110. Of course, statutory sanction for what is now an informal, though official, contrivance is necessary, and vigilance by the judiciary and legal aid lawyers are additional safeguards.

(j) *Nyaya Panchayats*

111. One of the instruments of justice which brings in the people not merely as consumers but also as organisers is the nyaya panchayat. From the Shukra Niti to the Indian Constitution, village panchayats have been commended and if they are to be units of self-government, as directed in Article 40, justice at the lesser levels must be administered by elected representatives of the people in the villages. Decentralisation of the justice administration and entrustment of judicial powers to popular elements may be resisted and elitist eye-brows raised. But, as the famous fourteenth Report of the Law Commission and the Report of the Study Team of Nyaya Panchayats both concluded, there is hardly any doubt that litigation will be reduced in volume, cost and time if these little institutions come into existence all over the country.

112. The Report of the Study Team presented in 1962 has hardly received legislative attention, notwithstanding the statement of the Law Minister in the late fifties that:

“The small disputes must necessarily be left to be decided by a system of panchayat justice.....the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him.”

We whole-heartedly agree with the Bhagwati Report on Legal Aid which argues:

“When we are discussing the question of availability of adequate legal services to the poor and the underprivileged, the question of establishing Nyaya Panchayats at the village level assumes great significance and relevance. The lower courts.....under our system of administration of justice are located almost invariably in taluka towns and since the overwhelming majority of our people live in villages, it always becomes a problem for them to approach the Courts when they get involved in legal disputes with others. They are required to travel.....as much as forty or fifty miles, to go to the taluka towns and there, they have to engage a lawyer by paying him his charges which may quite conceivably be exorbitant and then they have to waste considerable time in going to and fro from their village to the taluka town whenever any date is fixed by the Court and also take their witnesses.....This involves considerable waste of time and money and quite often, it is disproportionate to the stake involved in the litigation. It is, therefore, necessary to examine the nature, organisation and working of the lowest Courts with a view to seeing whether it is possible to eliminate this unnecessary waste of time and money by bringing justice to the door-steps of the people.”

113. The Justices of the peace in England, the people's Courts in the socialist countries and the elected justices at the lowest rungs in many other countries have worked successfully enough to induce revival of the equivalent ancient Indian institutions, entrusted with wider powers, as part of the programme of local and low cost justice.

VI CLOSING

114. The conscience of the Indian Legal Aid Programme remembers 'Garibi Hatao' as its inspiration, not only in its economic import but also in its cultural setting so that through it we vitalise the community's currently sceptical allegiance to law and order and negative the growingly popular cult of law-breaking. Legal action versus direct action cannot be resolved in favour of the former without easy, efficient and sympathetic judicare. In every sense, the free legal service programme is an arm of the war on poverty. In a gentle way, Legal Aid makes over to the masses control over the instrument of law, till now often used against them in a hierarchical social milieu. The judicial gloss of 'classified' equality, euphemistically christened 'reasonable classification', may thus be eroded and the withering irony of Anatole France slowly erased. He wrote:

“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”

...derpinnings, strategy, range and divergence eye contains far horizon'—and the project proves to be a revolutionary use on by the numerous poor through the legal firms that our system vests 'the censorial over the Government and not in the Government

...is a new wave of awareness and interest in a pro- by society can guarantee institutionalised equal justice e access to the law. We have had for a few decades fitful but that is the story of Legal Aid—the light that failed. But a new seriousness, official and non-official, is now showing up and a liberal approach, with wide variations of the basic theme of social justice through law, is being debated. Ideologically, governmentally, professionally and at people's level, we are poised for the breakthrough. We now present the plan and project report, phased feasibility-wise, and expect implementation and legislative action.

117. There can be no civilised life without a legal order and the goal of our jural order is justice, social, economic and political. But there can be no justice unless legal services are used by all who need them. Who need them more than the submerged masses of the poor and the backward? The comprehensive coverage of legal services by the national juridicare project is thus the basis of order through 'law and a high priority component of planned progress imaginatively understood. What development plan has relevance which ignores the rule of law without which destructive discontent will take unkindly care of elitist plans'. So we plead for treating the national legal services programme as a social welfare slice of the National Plan.

118. Our generation, the first Prime Minister of India often reminded, us, are the children of the Revolution. The legal system, to ring true, must tune itself into the wave-length of social justice and befriend the lowly and the lost. Such a transformation is difficult unless our jurisprudence radicalises itself out of laissez faire legal values, our Bar and Bench reform themselves in professional orientation and court methodology and our law schools vitalise their syllabi through clinical legal education with accent on poverty and backwardness. This 'operation overhaul' is part of the tasks of legal aid which, if one may say so, is a mood and a movement and a rainbow of service programmes calculated to protect in the legal process all types of underprivileged, and organised through cross-fertilization of social sciences and socio-legal cadres. Such is the vistaramic view of our juridicare undertaking offered in this, the Silver Jubilee Year of our Independence, as a humble homage of the Nation to its noblest law-breaker-lawyer and Father, whose ambition was "to wipe every tear from every eye" and whose mission was social and political justice.

CHAPTER

THE SCOPE OF LEGAL AID

In the preceding chapter, we have explained how the principle of legal aid, once the *raison-d'etre* of legal aid is understood, to a large extent, become self-evident. The idea underlies that no person should on account of poverty or feebleness suffer an injustice for the redress of which a remedy is provided by the courts of law or by administrative tribunals. Once this principle and the need for it accepted, it would follow that a person should be entitled to all assistance in the form of finance and skilled professional services which is necessary for this purpose. It is a means of realising the assurance set out in the Magna Carta to the effect :—

“To no one will we sell, to no one will we refuse or delay, right or justice.”

Legal Aid and Advice

2. We do not, therefore, envisage legal aid only as a means of enabling persons to have their day in court, though it does include this. It would in the very first instance be necessary for an individual to know whether he has a right and, if so, its extent. In England, the Rushcliffe Committee made a distinction between legal aid and legal advice. According to the Committee,—

“By legal aid we mean assistance in conducting or defending proceedings in the courts, whether by remission of court fees, free legal representation, provision for the payment of witnesses' expenses or otherwise. By legal advice we mean advice on legal matters, drafting of simple documents, and negotiations apart from the conduct of litigation, but we do not include conveyancing or the probate matters or the drafting of wills, although certain of these matters have been dealt with in the past under the heading 'legal advice'.”¹

3. In our view, in a country like ours, legal advice is quite as important—if not more—than assistance in litigation. If persons are aware of their rights under the law, as they should be—and if proper facilities for advice as to their scope and mode of enforcement is available to them, then, there is less danger of the rights being violated by the strong or by the wealthy or even by the State and similarly with knowledge of one's obligations the tendency to ignore them would be minimised. In our view, therefore, a very high priority should be accorded to legal advice which we visualise as an indispensable part of any scheme or legal aid. We see no dichotomy between the two; and

¹Rushcliffe Committee's Report, p. 23.

115. The philosophy of all our pinnings, strategy, range and diversity, must be clear so that the eye contains far horizon'—and the money spent on this huge project proves to be a revolutionary use of the rupee. Every assistance programme affirmed that our system vests 'the censorial power in the people' over the Government and not in the Government over the people'.

116. There is a new wave of awareness and interest in a programme whereby society can guarantee institutionalised equal justice and effective access to the law. We have had for a few decades fitful effort but that is the story of Legal Aid—the light that failed. But a new seriousness, official and non-official, is now showing up and a liberal approach, with wide variations of the basic theme of social justice through law, is being debated. Ideologically, governmentally, professionally and at people's level, we are poised for the breakthrough. We now present the plan and project report, phased feasibility-wise, and expect implementation and legislative action.

117. There can be no civilised life without a legal order and the goal of our jural order is justice, social, economic and political. But there can be no justice unless legal services are used by all who need them. Who need them more than the submerged masses of the poor and the backward? The comprehensive coverage of legal services by the national juridicare project is thus the basis of order through 'law and a high priority component of planned progress imaginatively understood. What development plan has relevance which ignores the rule of law without which destructive discontent will take unkindly care of elitist plans'. So we plead for treating the national legal services programme as a social welfare slice of the National Plan.

118. Our generation, the first Prime Minister of India often reminded, us, are the children of the Revolution. The legal system, to ring true, must tune itself into the wave-length of social justice and befriend the lowly and the lost. Such a transformation is difficult unless our jurisprudence radicalises itself out of laissez faire legal values, our Bar and Bench reform themselves in professional orientation and court methodology and our law schools vitalise their syllabi through clinical legal education with accent on poverty and backwardness. This 'operation overhaul' is part of the tasks of legal aid which, if one may say so, is a mood and a movement and a rainbow of service programmes calculated to protect in the legal process all types of underprivileged, and organised through cross-fertilization of social sciences and socio-legal cadres. Such is the vistic view of our juridicare undertaking offered in this, the Silver Jubilee Year of our Independence, as a humble homage of the Nation to its noblest law-breaker-lawyer and Father, whose ambition was "to wipe every tear from every eye" and whose mission was social and political justice.

be doubtful whether a legal profession was in existence and the institution of court fees at the time of institution of a suit as distinct from judicial penalties does not seem to have been in vogue.¹

7. It is everyday experience of lawyers that in many cases a little care taken in the drafting of a document or the writing of a letter would have saved considerable subsequent litigation resulting in vexation and financial hardship to both parties. Very often, due to ignorance or inability to pay the fee of a qualified legal practitioner, persons turn for assistance to unqualified document-writers who are little better than legal quacks whose drafting—whether intentional or otherwise—contains the seeds for much potential litigation in the future.

Importance of legal aid scheme

8. If in such cases the work had been entrusted to qualified personnel at the very outset and they had been in a position to advise the parties, much litigation might never have come to court. It is necessary to emphasize the importance of the preventive aspect of legal aid in the form of proper legal advice even more than the litigative aspect. Just as in public health, so in law, prevention is preferable to cure and any well-organised scheme of legal aid must necessarily set great store by it.

9. Turning now to actual litigation, it is clear that every person who goes to court would necessarily have to incur expenditure under various heads. The most important of these are expenditure on account of court fees and also counsel's fees. That apart, money would necessarily have to be expended on process fees, the travelling and other allowances to be paid to witnesses, expenditure on obtaining copies of documents from the court or other public offices. In addition, in appeals, expenditure would have to be incurred on preparation of the paper-book and the like. Besides this, some outlay is also inevitable on stationery, typing charges and other miscellaneous expenses. There is also the additional expenditure incurred by the party himself in attending court, his loss of earnings by his absence from his work and the like, but it would obviously not be possible to take these additional social costs into account.

10. While there might be some reduction in expenditure if the legally aided person is a defendant and not a plaintiff on account of his not having to pay *ad valorem* court fees, yet expenditure on the other items would necessarily have to be incurred, whether an indigent person comes to court as a plaintiff or is brought to it as a defendant. If a scheme of legal aid is to serve its true object, it would necessarily have to exempt the assisted persons from incurring all the above items of expenditure, or in the alternative, advance to him the monies necessary to be laid out for these purposes. Partial or even full remission of the court fee and even provision of the services of a counsel in addition,

¹. Varadachariar—'The Hindu Judicial System', p. 156 and 157.

². *Ibid.*, p. 140.

by itself, would not enable an individual to obtain justice, if he is without sufficient means to pay the process fees for having the summons served upon the opposite party or for securing the attendance of his witnesses. Theoretically, it makes no difference whether the payment of fees in so far as they are due to the State in the form of Court fees, process fees, cost of copies of documents and the like are either remitted by granting an exemption in favour of the legally aided party or he is given the necessary funds provided by the Legal Aid Scheme for making the payments. In either case, the charge on the public revenues is the same. While in substance the two methods might stand on the same footing, we would prefer the adoption of the former method, viz., that of an outright remission.

Economy of Legal Aid

11. There are valid grounds in favour of adopting such a course. In the first place, this is in accordance with the existing practice by which pauper plaintiffs are exempted from the payment of court fees. Remission of other charges would only be an extension of an existing facility. Further, from the point of view of the Exchequer, it does not make much difference whether the fees are remitted or are paid to the assisted litigant from the public funds and are paid back by it. But, if the latter course is adopted, while factually it would not be a case of payment from one pocket to another, it would result in an artificial increase in the figures of the apparent expenditure on legal aid, though much of the so-called expenditure would really consist of transferring of public funds from one agency to another through the medium of the legal aid organisation. The extra administrative expenditure, time and work involved in transferring moneys from one branch of the public service to the other can be avoided. The same amount of money would be shown as having been paid out by the State as a contribution to the legal aid body which, in its turn, would expend it in making payments to the State. The expenditure would in fact appear to be such larger than it is and may create a psychological barrier to any extension of the Scheme on the ground of its cost. Again, though the outcome may be much the same, it is easier mentally to forego an uncertain receipt than to make a payment of an equivalent amount.

12. To the extent to which it is possible for an assisted person to contribute from his means towards expenditure on all or any of these items, he would necessarily have to do so and the making of such payments may well be encouraged and, if possible, made obligatory. The detailed rules which are to be framed for determining a person's entitlement to legal aid would make necessary provision in this behalf.

13. This takes us to the further question as to the type of cases in which legal aid should be made available. At the moment, it is generally speaking available on grounds of indigence alone to those wishing to file a suit or to prefer an appeal as a pauper as the term is understood in the Code of Civil Procedure and also to persons accused of

offence in the more serious cases, who do not have the means to engage counsel. There are of course special provisions with regard to legal aid to persons belonging to particular communities like the Scheduled Castes and the Scheduled Tribes. But, these are not directly germane for determining the scope of legal aid.

Persons entitled for legal aid

14. In our view, there should be no restriction upon the character in which an individual becomes a party to proceedings for determining his entitlement to aid. An individual should be entitled to assistance if he otherwise qualifies for it to institute or to defend any proceedings. If a person and the particular proceedings otherwise qualify for aid, it should not make any difference whether this is to be classified as civil or criminal proceeding or a proceeding before any authority or tribunal other than the ordinary civil or criminal courts. There is no reason why proceedings before a Workmen's Compensation Commissioner, a Rent Controller or a Land Court wherein rights of vital importance are determined should be excluded from any scheme of legal aid. This would include proceedings before the High Courts in the exercise of their constitutional writ jurisdiction.

15. We have considered the question as to whether it would be correct to hold that any particular class of proceedings is not entitled to the benefit of legal aid. For instance, it has been suggested that proceedings against the State—whether by private citizens or Government servants—should not qualify for legal assistance, except when the State is acting in a commercial or non-sovereign capacity. Another view which has been put forward is that persons belonging to a particular social or economic class would not be entitled to benefit of legal aid in some types of litigation having a socio-economic aspect, in view of the underlying policy of Government and the particular legislation in question to give primary importance to the interests of one particular section of the people. To illustrate, a suggestion was made that legal aid should under no circumstances be made available to a landlord who seeks to resume possession of his holdings in the occupation of a tenant, even though he might be indigent and his claim is otherwise justified under the law relating to land tenures on the ground that this would be contrary to the underlying policy of the State.

Legal Aid against State

16. We have given our careful consideration to these suggestions but are of the view that there is no scope for such considerations in the scheme of legal aid as envisaged by us. In so far as claims against the State are concerned, the State before the courts is in the same position as any other litigant. It may also well happen that injustice has been occasioned by a functionary of the State even though he may have been acting in good faith and the only remedy available is recourse to the courts. We, therefore, see no reason to exclude claims

against the State from the scope of legal aid. The persons charged with the duty of authorising legal aid can be expected to exercise the necessary degree of circumspection in such cases.

Legal Aid in other cases—'means Test'

17. In other cases, if a person is entitled to certain rights under the law and he does not have the means to enforce the right and his request for aid satisfies the other tests laid down there would appear to be no valid reason why he should be denied the benefits of a social welfare scheme on the ground that he belongs to a particular social or economic class. If it is felt that a right has unjustifiably been given by law, then, the remedy for it would be to take away that right by a suitable amendment of the law and not by imposing restrictions under the scheme of legal aid intended for the benefit of the indigent generally. While legal aid is an instrument of social welfare or amelioration, it is not to be regarded as an instrument of class war.

Legal aid in industrial disputes

18. However, a few exceptions to this rule may be postulated by reasons of public policy. [Thus, in an industrial dispute, it might be necessary for the State to give legal aid to the workmen and not the employer in view of the obligation laid upon it by Article 39(c) of the Constitution which requires that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, and the further obligation cast by Article 42 on the State to secure just and human conditions of work.] Reference might also be made to Article 43 which requires the State to secure to all workers a living wage and proper conditions of work. Similarly, in maintenance proceedings in a criminal court, it is only the woman or child applicant who would be entitled to legal aid, for the Constitution envisages the making of special provisions for women and children.

Legal aid not to be given as a matter of course

19. It may, however, be appropriate to make it clear at this stage that under the Legal Aid Scheme, as we envisage it, an individual is not to be given legal aid as a matter of course, even if he establishes his indigence. This is only the first of the three tests which would be granted. It would of course in the first instance be essential for the individual to satisfy what we propose to describe in this Report as the 'means test', that is, to establish that he is really indigent. As to the tests to be applied to determine whether in fact the applicant for aid is indigent, this is discussed in detail elsewhere in this Report.

Prima facie test

20. Assuming that the means test is satisfied, it would still be necessary for the claimant for legal aid to satisfy two more conditions.

The first is that the claimant must have a *prima facie* case. This is something more than the test now required from an individual who seeks for leave to use as a pauper—namely, whether his allegations disclose a cause of action. The screening body would have to go much further than this and would have to be satisfied that the individual has a *prima facie* case. No doubt, the question whether an individual has such a case is at times a difficult one to decide, but we feel that this is necessary in order to prevent the funds which are available for legal aid from being used to support speculative or unsubstantial causes. The Legal Aid Committee or the Legal Aid Officer would, after examining the party and the evidence which he has in his support, have to be satisfied that the case is such that a competent legal practitioner would reasonably advise his client to institute or defend proceedings. This is the second test—the *prima facie* case test—which a claimant for legal aid should satisfy.

Reasonableness Test

21. But even the existence of such a case would not by itself be sufficient to enable a person to qualify for legal aid as a matter of course. It may be that a claimant has a good case or even a cast-iron case on merits and has established the fact that he is an indigent person. But, since legal aid is granted to serve a social purpose, it would still be necessary for the claimant to satisfy the authority sanctioning legal aid that a social purpose would be served by filing the suit or defending it. In other words, the sanctioning authority should be satisfied that it is reasonable for him in the circumstances of the case to institute or defend a particular proceeding. This may be described as the 'reasonableness test'.

22. This would necessarily take out of the purview of the legal aid scheme a number of suits as those based upon caste rights, claims for temple honours, suits for breach of promise of marriage wherein there are no aggravating circumstances, petty cases of defamation and the like. The above is by no means an exhaustive list but is illustrative only. No doubt, it would not be possible to apply the *prima facie* test or the reasonableness test in cases wherein legal aid is claimed by an accused person in a criminal case but it could well be applied in cases wherein a person seeks such assistance as complainant.

23. Unless, therefore, a claim for legal aid satisfies all the three criteria referred to above, namely, the means test, the *prima facie* test and the reasonableness test, the applicant would not be entitled to any assistance under the Scheme.

24. We wish, however, to add that the prohibition against the grant of legal aid in disputes relating to caste rights and the like would not extend to cases wherein proceedings are being instituted to enforce laws for the removal of untouchability and other legislation of a similar character.

25. It may also be desirable to deal with two incidental matters namely, whether artificial persons are entitled to legal aid and whether non-citizens should also come within the scope of the scheme. In so far as artificial, juridical persons are concerned, they are not treated as citizens for the purposes of fundamental rights and there would appear to be no jurisdiction for extending the benefits of this scheme to a creature of the law.

Exceptions

26. To this general rule, an exception, however, may be made in appropriate cases in favour of trade unions though they are legal persons, registered trade unions being corporate bodies having a legal personality (vide section 13 of the Trade Union Act, 1926). This exception might have to be made if legal aid is to be effective in industrial matters wherein the trade unions represent the workmen. Similarly, it might be necessary to make an exception in the case of co-operative societies which are often established for a social purpose. Subject to the request satisfying the other requirements laid down by us, the legal aid authorities might be empowered to make an exception from the general rule that legal aid is not to be tendered to artificial persons in the case of trade unions and co-operative societies.

Legal aid to Non-citizens

27. In so far as natural persons who are non-citizens are concerned, we feel that so long they are in this country, they are equally entitled to the protection of the laws and to access to our courts of justice. Alien enemies stand on a different footing. As regards others, while it is open to the State to deport or to expel a foreigner who endangers its security, yet, so long as he is within the country, he would appear to be entitled to redress against injustice done to him, just as much as he is entitled to the protection of our laws against being assaulted or robbed. Our view, therefore, is that subject to the three tests laid down being satisfied, all natural persons resident in India—whether citizens or aliens—should alike be entitled to the benefit of any Scheme of legal aid.

CHAPTER 5

LEGAL ADVICE—NON-LITIGATIVE AID AND PREVENTION OF LITIGATION

Necessity for legal advice

In an earlier Chapter, while dealing with the scope of legal aid, we had emphasized that in a country like ours, it would be a mistake to conceive of legal aid as being limited to assistance in court proceedings and that it should be regarded as being more comprehensive. Considerable emphasis was laid upon legal advice as means of ensuring awareness of rights and responsibilities and of preventing wasteful litigation. The object of legal advice is not only to supplement the scheme for assistance in legal proceedings, but, where possible, to make its use un-necessary. In fact, we envisage a system under which the Legal Aid Committees would take more pride in the number of people they have kept out of court by proper counsel than in the number of successful proceedings conducted by them.

2. It cannot be too strongly emphasized that in a legal dispute the law suit is a last step and that going to courts is an instance of the bankruptcy of diplomacy. Further, the nature of litigation is such that all those who are well advised and can afford it, enlist legal assistance at the earliest stage of a dispute. It is common experience that an incredible amount of harm is done by seeking legal advice too late; quite apart from the bar of limitation, ill-advised and ill-considered letters may have been written; requisite notices may not have been sent or available evidence lost by not obtaining advice—or not seeking it in time. In very many cases, the mischief that would have ensued as a consequence would be of such nature that no skill of counsel can undo the harm which has already been caused.

Absence of legal advice—A source of exploitation

3. A former Chief Justice of India, whose views in this regard are entitled to considerable respect, has been quoted by an Expert Committee as stating that “more than 30 to 40 per cent. of cases so far as mofussil areas are concerned, come before the Court because of want of proper advice. There are either documents badly drafted or correspondence badly carried on or no correct advice given before the litigation is launched upon, with the result that the parties are dragged before the Courts of law and have to suffer in consequence. This is more so in the cases of poor persons and persons of limited means and particularly persons belonging to the backward classes. They are very often subjected to exploitation or even blackmail at the hands of creditors who do not hesitate to take advantage of their position and threaten

them with dire consequences of litigations in Courts of law. Very often, not being properly advised as to their rights, they play into the hands of their oppositor, and enter into compromise or settlements out of Court which are prejudicial to their interest. When correspondence on their behalf, not properly carried on, advantage is taken of their ignorance and a knowledge of their impecunious position, false defences are raised in the correspondence or evasive replies are given by the other side, with the result that very often the poor litigants are prevented from having resort to the Courts of law for want of proper finances at their disposal. They very often do not think it worth their while to have resort to Courts of law and waste their time there in undertaking, what they might consider in the absence of proper legal advice being given to them, doubtful litigation." Hence, we would place in the forefront of any scheme for legal aid the furnishing of competent legal advice.

Legal Advice at Taluka level

4. The first question which arises is the manner in which such legal advice should be made available. Later in the Report, we have outlined the organisational structure by which legal aid is to be given. To anticipate a little, the giving of legal aid at the lowest level would be the function of the Taluka Legal Aid Committee or its equivalent. This Committee would have a Secretary who is qualified in law and would have knowledge of the working of the courts and the nature of the local litigation. We would suggest that all requests for legal advice should be made at the office of the Committee to the Secretary or other person discharging his functions. Social workers and departments of Government who come across cases wherein they feel that a person can benefit by legal aid may usefully refer these cases to the Secretary of the Legal Aid Committee. The Secretary would so arrange the hours during which legal advice is available, that individuals can go to the office of the Legal Aid Committee without having to miss their work and to lose their day's wages. The Secretary should, after ascertaining the facts, tender appropriate advice to the party. Most of the problems would be of a relatively simple nature. If, however, a case is complicated or for some other reason the Secretary of the Legal Aid Committee or other person attending the Office is unable to deal with it, he may refer the party to an advocate practising in the area, who is familiar with or has expertise in the particular problem. The Counsel would be one of those whose names have been placed on the panel of advocates who are in a position to give legal aid. Of course, in giving legal advice, the person tendering it would be required to take into account in a case which may involve litigation not only whether the party has a case which would justify his going to Court but whether at all it would, in the circumstances of the case, be advisable to do so. Further, it may turn out when a case is investigated that a person requires, not legal aid, but some other form of assistance. There might be cases wherein a legal remedy might exist, but which it might be unwise for the client to pursue till all other possibilities have been

¹. Report of the Committee on Legal Aid and Legal Advice in the State of Bombay, Legal Department, Government of Bombay, p. 101.

exhausted. For instance, if a tenant is shamed by some small injustice rather than create intolerable living conditions for himself by going to Court. The person giving legal advice would necessarily have to keep these factors in mind. At the preliminary stage of giving legal aid, it may be possible to utilise the services of senior law students in ascertaining the facts or in interviewing applicants. Similarly, it would be desirable to take advantage of the services of retired judicial officers whenever possible.

Persons entitled for legal advice

5. At the very outset, a question may be raised as to who are the persons who are entitled to legal advice from the Legal Aid Committee. Logically, the 'means test' for aid in civil proceedings should be applied in cases of legal advice also. But such a course would not be practicable. It would obviously not be feasible for the person working in the Legal Aid Office to investigate the financial position of each applicant for legal aid. Besides, even a person who is not in a position to bear the entire cost of legal proceeding may have the capacity to pay a reasonable consultation fee. We would therefore suggest the adoption of the procedure followed in public hospitals wherein individuals are required to give particulars of their means and charges are levied for professional services on the basis of the income of the applicant so stated. A simple form might be prescribed wherein the applicant would be asked to furnish in addition to other details particulars of his income and depending upon the income so stated, he might be charged a fee. An appropriate provision can be made in the statute to deal with cases wherein persons make false statements and are thus able to secure or seek to secure free advice or advice on payment of charges at a lower rate.

Fee to be charged for legal advice

6. There is a natural human tendency not to value that which is obtained gratis. Again, there is a risk of the time of the person who gives legal advice being wasted by those whom we may call 'Legal hypochondriacs'. We would therefore suggest that a fee may be charged from all who seek legal advice except those who are absolutely destitute. The absolutely destitute are more likely to require immediate aid in the form of food or cash rather than legal advice. The minimum charges may vary from area to area, but it may range from 25 p. to cover the cost of the form and the miscellaneous stationery expenses up to Rs. 5 in the mofussil, to Rs. 10 in the bigger cities for each consultation or for consultation relating to a particular problem. The scheme as we envisage it would have features of both the statutory and the voluntary scheme for advice in force in England and Wales.

7. At this stage, it may also be desirable to deal with the question whether those who do not qualify under the 'means-test' should also be entitled to use the services of the Legal Aid Committee for the purpose

of obtaining advice on legal matters. We see no objection to their doing so, but if they do, they would have to pay the normal fees charged by a competent advocate for similar professional services. If this facility is given, this may also help to create a public sector in the legal profession. This would be similar to the practice by which the well-to-do are also permitted to avail themselves of the facilities of Government Hospitals on payment of fees commensurate with their financial position.

8. A question may also arise as to whether counsel who may tender advice should be entitled to any part of the fees received from the person to whom such advice is given. Obviously, when the advice is tendered by an employee of the Legal Aid Committee, the payments would go to augment its funds. The problem would arise only in cases wherein a person seeking advice is referred to a counsel on the Legal Aid Panel. It would, of course, be open to the Counsel to waive any requirement as to fee (which, in that case, would be credited to the Committee) but we see no reason to take the view¹ that if a person tenders only the low fee prescribed by the rules because his means are limited, it would be an insult to Counsel to prefer the fee to him. There might be no objection to the Panel Counsel also, if he so chooses to be paid the proportionate part of the fees charged by the Legal Aid Committee from the assisted person for the services rendered by him. Some may choose to make no claim for any part of the fee—while some others may make a claim as a matter of principle—and we see no reason to object to either course. This may also encourage persons who are of moderate means but are not indigent to seek legal advice through the Legal Aid Committee, in which case Counsel on the Panel could charge a reasonable fee, at the prescribed rates. Such a course may also help the development and organisation of a public sector in the legal profession, the encouragement of which we recommend later on in this Report.

Action in non-litigative aid

9. Non-litigative aid would not stop with merely informing the person of his rights. It may be necessary for a notice to be sent or for some communication to be addressed on behalf of the Committee to another person or to an agency of the Government. The issue of any necessary notice or the carrying on of negotiations should also be regarded as an essential adjunct of legal aid. Earlier, we had referred to the fact that ill-drafted documents contain in themselves the potential for much wasteful and unnecessary litigation. It is, therefore, our view that legal assistance should be available in the drafting of documents. While lack of resources, both financial and in trained manpower, may act as a constraint against the development of an all-embracing scheme of legal assistance in litigation, there is no reason why we should not adopt a scheme of legal advice on a large-scale for this would not only prevent litigation but also thwart the development of

¹. Report of the Committee on Legal Aid and Legal Advice in the State of Bombay Legal Department, Government of Bombay, page 106.

a feeling of injustice. Properly drawn-up documents and advice in drafting are an essential concomitant of any scheme of preventive legal aid.

Drafting of Documents

10. We are, therefore, unable to agree with the view of the Bombay Committee on Legal Aid, that the drafting of even simple documents should not be included in legal advice.¹ The main reason given by the Committee for recommending that such assistance should not be given is the existence of a number of bond-writers or petition-writers who are said to be fairly well-trained and who make their services available on a low scale of remuneration. This conclusion of the Committee would appear to be somewhat inconsistent with the earlier observation that cases come up before the Courts because of ill-drafted documents. In this connection, it may be mentioned that the Gujarat Committee on Legal Aid has, on the contrary, emphasized the drafting of documents as a very important element of legal advice, as properly drafted documents can effectively secure the rights of the clients and also save trouble and expense of litigation.² Since the drafting of most documents necessarily presupposes the existence of some property, it would be open to the Legal Aid Committee to charge a fee depending upon not only the complexity of the work but also upon the means of the individual. In many cases, such as a deed of adoption, or a simple will, a standard form would serve the purpose.

Legal Advice according to means

11. Our view, therefore, is that non-litigative aid should be placed in the forefront of any scheme for legal aid. Provision should be made for making available legal advice to all and suitable charges should be leviable according to the means. Such assistance would be an essential part of the preventive legal service, particularly, if negotiations and the drafting of legal documents are included in the legal Aid Services, as they should be.

12. In the succeeding Chapters, we shall deal with Legal Aid in Contentious Proceedings before the Courts.

PREVENTION OF LITIGATION

Object not to increase litigation

Before dealing with legal aid in contentious proceedings, we would like to emphasise the point made by us more than once in this Report, namely, that the object of a legal aid scheme is not to find work for lawyers or to increase litigation, but rather to diminish it if possible. Our terms of reference themselves make it clear that the

¹. Page 102 of the Committee's Report, *ibid*, p. 3.

². Gujarat Committee Report, p. 152.

avoidance of vexatious and unnecessary litigation is one of the prime objects of the scheme. We are deeply conscious that in a country like ours with scarce human and material resources, nothing should be done to add to the volume of the work of our overburdened courts if justice can otherwise be secured to those who need it. Prevention of litigation by conciliation, settlement or by voluntary arbitration are all measures which require every support and in this and in the succeeding Chapters we have indicated our suggestions in this regard at appropriate places.

The true role of the lawyer

2. Legal aid should be a machinery for promoting love and peace, and not hatred and strike. The message of non-violence so eloquently preached by Lord Buddha and Mahatma Gandhi can be spread by a judicious use of the legal aid machinery. In this connection, the views of the Mahatma, who was himself a lawyer of distinction, on the true functions of a lawyer are relevant. In his Autobiography, he observed :

“I had learnt the true practice of law I had learnt to find out the better side of human nature and to enter men’s hearts. I realised that the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby—not even money, certainly not my soul.”

Similarly, writing in ‘the Harijan’ a few days before his martyrdom he made a strong plea for the peaceful settlement and avoidance of disputes. To quote the Father of the Nation.

“Distinguished travellers from the world came to India in the days of yore from China and other countries. They came in quest of knowledge and put up with great hardships in travelling. They had reported that in India there was no theft, people were honest and industrious. They needed no locks for their doors. In those days, there was no multiplicity of castes as at present. It is the function of the Panchayats to revive honesty and industry. It is the function of the Panchayats to teach the villagers to avoid disputes, if they have to settle them. That would ensure speedy justice without any expenditure.”

Settlement favoured

3. It is this spirit of friendly settlement that we would wish to encourage, particularly in the sphere of family disputes. Elsewhere, we have advocated the establishment of a system of Nyaya Panchayats and also expressed ourselves against two legally aided persons fighting each other in court. We have recommended that legal aid committees

should be authorised to suggest a just settlement and that if a party declines to accept such a settlement, he should not be given legal assistance. Similarly, it has been recommended that it should be made obligatory to try to effect a reconciliation in domestic disputes before the matter is allowed to go up in court.

Arbitration

4. These are only detailed illustrations of the general principles which we would like the legal aid organisation to observe in dealing with claims for assistance, namely, to promote a settlement between the two parties to a dispute by all reasonable means. If they do not agree, every encouragement should be given to the parties to refer their dispute to arbitration. The arbitrator should preferably be a person chosen by the parties themselves as one in whom they have confidence. The Committee should also prepare a panel of arbitrators to whom disputes can be referred for settlement. The Committee may give assistance in drawing up reference to arbitration and also in having the award of the arbitrator made a decree of court if unfortunately that becomes necessary.

5. The voluntary organisations which would work in close cooperation with the legal aid machinery and others participating in the scheme should all be encouraged to promote conciliation and settlement, rather than litigation.

6. Education and persuasion should be directed to this goal. It is only in cases where all reasonable efforts in this direction fail that assistance in actual litigation would become necessary and to this type of cases we now turn.

CHAPTER 6

LEGAL AID IN CIVIL PROCEEDINGS

In considering the nature of the legal aid which is to be extended in civil proceedings, it is essential to keep in mind the nature of the civil litigation in our country. Although the volume of civil litigation in our country might be comparatively large in absolute terms, yet most of the suits related to claims whose value is relatively small. In its Fourteenth Report, the Law Commission observed that while in the year 1954 the number of suits instituted in civil courts exceeded ten lakhs, of these nearly nine lakhs of cases involved disputes relating to sum of one thousand rupees and below.¹

Bulk of litigation of small claims

2. According to that report in 1954, the number of suits whose value was below five hundred rupees was approximately 80 per cent. of the total quantity of litigation. In spite of the considerable erosion in the value of money, the position has not substantially changed since then. Our enquiries reveal that in 1964, the number of suits whose value was below five hundred rupees amounted to roughly seventy-three per cent. of the total number of suits filed in the country. It is, thus, apparent that the bulk of the suits in the country essentially represent claims which are small in value, though they might undoubtedly mean much to the person directly affected. While in a scheme for the grant of legal aid there can be no warrant for saying that the quality of justice which an individual with a small claim is entitled to should be different from that of a person whose claim is large from the monetary point of view, yet, in formulating any such scheme, the smallness in value of the bulk of our litigation has to be kept in mind and also the fact that a trial procedure which might be suitable for investigating complex issues might be out of place in determining disputes relating to small amounts of money which is the problem which confronts the vast bulk of our litigants. Our legal system no doubt provides for a very elaborate mode of trial which is designed for the determination of complicated factual and legal issues involved but by its very quest for perfection, it may tend to make for delay which is not always conducive to justice, particularly for those who cannot afford to wait. In other words, what is needed is the judicial equivalent of a system of rapid mass transportation and not a few custom built Rolls Royce limousines.

Desirability of setting up Panchayat Courts

3. Thus, it may be necessary to provide alternative forums for the disposal of claims of relatively smaller value when it is not necessary to investigate question of title. For this class of cases, we would

¹. Law Commission Fourteenth Report, Page 17.

favour an extension of the jurisdiction of the Panchayat Courts particularly in rural areas. due care being taken to ensure that these panchas who have to act judicially are not influenced by political or sectional considerations and that their work is adequately supervised and they are given the necessary guidance and training for this purpose. Recommendations have been made in this regard, both by the Law Commission in its chapter on panchayat courts in its Fourteenth Report on the Reforms of Judicial Administration and by the Steady Team on Panchayat Courts constituted by the late Ministry of Law. The role of such courts forms the subject matter of a separate chapter.

Importance of special forums-claims Tribunals

4. It may also be possible to establish special forums. One of these, whose importance is increasing day by day, is the claims Tribunals constituted under section 110 of the Motor Vehicles Act. At the present moment, the establishment of such Tribunals is optional on the part of the State Governments. Such Tribunals perform a very useful function in enabling the victims of motor accidents to obtain speedy financial relief. We recommend that it should be obligatory on the part of the State Government to appoint such Tribunals and that *ad valorem* court fees should not be charged in such cases. This could be done by fixing the maximum fee payable on an application for compensation in the Motor Vehicles Act itself and providing that no other fee than process fees and fees for copies of documents etc. shall be levied in proceedings before the Tribunal. Provision shall also be made for the remission of such fees when the claimant is a pauper or indigent person as defined in the Code of Civil Procedure or is an assisted person under the Legal Act statute which we propose. We recommend that the Act should be amended accordingly.

Existing provisions for legal aid in Civil cases

5. The existing provisions for legal aid in civil cases are inadequate in the extreme. In so far as suits are concerned, the relevant provisions are contained in Order XXXIII of the Code of Civil Procedure. This enables a person who is a pauper, *i.e.*, one who is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in the suit or where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit, to apply to the Court for permission to sue as a pauper. On examination, if the Court is satisfied as to the pauperism of the applicant and he has not within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, the Court grants him leave to sue as a pauper unless his allegations do not show a cause of action. It will also have to satisfy itself that the applicant has not entered into an agreement with reference to the subject-matter of the proposed suit by which any other person has acquired an interest therein.

Their inadequacy

6. But, even if leave is granted, the individual is only exempted from the payment of court fees. Other fees, such as the fees payable for service of processes and the like have to be paid by him. There are also provisions with regard to the dispaupering of a pauper plaintiff and for ordering him to pay the court fee. It is not necessary to review these provisions in greater detail for, on the face of it, they are, to put it mildly, inadequate. The amount of Rs. 100 was fixed in 1908. Since then, prices have risen and the value of money has diminished—and diminished considerably—but the provision has remained unaltered. Moreover, the very conception of legal aid has been liberalised and the doctrine of the equal protection of the laws which has been inscribed in our Constitution has given to it a new dimension.

7. We have, in an earlier Chapter, listed the various heads of expenditure which an individual would have to incur in prosecuting or defending a claim. The existing law makes no provisions for exempting the individual from the payment of any amounts, other than court fees, even though these may be due only to the State. As regards the assignment of counsel, the silence of the Civil Procedure Code in this regard is by itself eloquent. The cases wherein provision has been made elsewhere for the assignment of counsel to a pauper are few and far between. Of the few provisions which exist, mention might be made of the Rules of the Bombay High Court which provide for the assignment of a Solicitor or Counsel in cases on the original side of that Court. Similar provisions exist with regard to the grant of legal aid to the members of the Scheduled Castes and Scheduled Tribes in some States. Of these reference may particularly be made of the Kerala Legal Aid to the Scheduled Castes and Scheduled Tribes and to the Poor Rules, 1957. The inadequacy of these provisions has been commented upon from time to time.

Earlier recommendations

8. The need for change in this regard on an All-India basis was pointed out more than a decade back by the Law Commission in its Fourteenth Report on the Reforms of Judicial Administration, wherein it had suggested a modest amendment of the provisions of the Civil Procedure Code with regard to the filing of suits in *forma pauperis*. These recommendations have been reiterated with modifications in the recent Fifty-fourth Report of the Law Commission, headed by Dr. Gajendragadkar, on the Code of Civil Procedure. This report, apart from recommending substitution of the term "Pauper" by a less opprobrious term, namely, "indigent person" has suggested that a person would qualify for remission of court fees as an indigent person if his property excluding that which is not attachable under the Code of Civil Procedure, does not exceed Rs. 1,000. The recommendations of the Law Commission in this regard have been summarised in an Appendix to this Chapter and as such are not reproduced here.

9. We endorse the recommendations of the Law Commission in this regard. In particular, we are fully in agreement with the recommendations of the Commission that when a person is permitted to sue

as an indigent person and is not represented by a pleader, the Court shall assign a pleader to him at the expense of the State. A Tentative Model Order XXXIII and Order XLIV of C. P. C. is at Appendix 'C'.

Defence by an indigent person

10. However, even their recommendations, in our view, do not go far enough. There might be cases where an indigent person is dragged to the Court as a defendant. The Code of Civil Procedure does not contain any provision with regard to such a person. Even a defendant might have to make an application to the Court from time to time. He may require the assistance of the court for securing the presence of witnesses. Equally with the plaintiff, he would be in need of competent professional assistance. In fact, as against an indigent person, who is not legally aided, the machinery of the Court can be used as an instrument of oppression by a wealthy and powerful person. It is, therefore, in our view, essential that a person should also be permitted to defend a suit as an indigent person and for the Court to assign a counsel to him and that the Code of Civil Procedure should be amended suitably.

Objection to encouragement of frivolous litigation

11. At this stage, it might be desirable to deal with a possible objection to the recommendation for enlarging the category of persons entitled to claim the benefit of being allowed to sue as paupers and to have counsel assigned to them on the ground that this would be to encourage frivolous and vexatious suits of paupers.

Unquantified Large percentage of successful paupers suits

12. The annual reports published on the administration of civil justice do not contain figures separately with regard to the number of pauper suits or the success of persons being allowed to sue as a pauper. Statistics in this regard have, however, been collected in so far as the State of Tamil Nadu is concerned by the one-man Committee on Legal Aid constituted for that State. The broad result which emerges from these figures is that about 70 per cent. of the petitions for leave to sue as a pauper were allowed and that of the total pauper suits which were disposed of, 69 per cent. of the money suits and 62 per cent. of the title suits instituted by pauper plaintiffs were successful in whole or in part. These figures are revealing inasmuch as they show that the prevalent impression that a pauper suit is bogus or vexatious is not borne out by the facts. It is not possible to say as to how many of these suits would have been successful if, in addition to the remission of court fees, the pauper plaintiff had been provided with legal assistance in the form of a counsel. It is also significant that under the existing law the Court is now required when granting the permission applied for, only to satisfy itself that the allegations disclose a cause of action and is otherwise not required to scrutinize the merits of the claims.

13. In connection with our scheme of legal aid, it has to be kept in mind that while the test of indigence is somewhat wider and more liberal than the one now contained in the Code of Civil Procedure, yet the conditions for the grant of legal aid are stricter—both the *prima facie* case test and the reasonableness test referred to earlier have to be satisfied by an applicant for legal aid and hence, there is no reason to believe that the percentage of successful suits filed under the new scheme would in any way be less. Indeed, in the first stage, it might be worthwhile to dispense with the merit test and apply only the exclusionary rule now found in order 33 of the Civil Procedure Code, namely, refusal of aid if no cause of action is disclosed or the claim is frivolous or vexatious. The other test of a *prima facie* case and the reasonableness test might be made applicable at a later stage after the legal aid machinery has been fully established and if it is noticed that there is a tendency on the part of litigants to abuse the facilities given. In this connection, a reference might be made to the Legal Aid and Advice Bill introduced in the Tamil Nadu Legislative Assembly in April, 1973 to give effect to the Report of the one-man Committee on Legal Aid.

Impact of Legal aid on the family

14. During the deliberations, a reference was made to the possibility that the provision of legal aid in matrimonial cases might result in the break-up of families and that the State should not be party to any step which would have this untoward result. Any such objection would appear to be based on upon a misapprehension. It is for the substantive law to lay down the conditions under which a marriage might be dissolved. Once it recognises the desirability of divorce by permitting it in certain conditions, such as under the Dissolution of Muslim Marriage Act or the Hindu Marriage Act, it would not be correct for the legal aid machinery to interpose an obstacle in the way of securing a right which the legislature had considered desirable to confer upon the parties in order to avoid suffering and hardship.

Attempt at reconciliation suggested

15. However, in order to allay any misgivings on this account and also to ensure that as far as possible, family matters are not brought to Court, we recommend that Legal Aid should not normally be given for the institution of any proceedings for divorce or judicial separation or for the custody of children, unless an attempt has been made by the Legal Aid Committee to effect, if possible, reconciliation between the parties, and the aforesaid person agrees to a reasonable settlement. For this purpose, the Committee may utilise the services of social workers, welfare agencies and other persons possessing the necessary expertise in this field. In making this suggestion, it is not our intention that the responsibility of the court to bring about reconciliation between the parties in cases wherein it is required to do so should in any way be weakened. Nor do we suggest that the Committee should interpose obstacles in the way of a destitute wife or child seeking to secure maintenance on the ground that it has first to effect a reconciliation between

the parties. All that we wish to emphasise is that the Legal Aid organisation should not be turned into an instrument by which domestic differences, however trifling in nature, are straightaway taken to the Courts.

Proceedings between legally aided parties

16. A question has also been posed as to the course of action which should be adopted if both the parties to a proceeding satisfy the conditions for the grant of legal aid, i.e., when both satisfy the means test, and the facts of the case are such that each has a *prima facie* case which it would appear to be reasonable for him to prosecute in a Court. This aspect of the problem had been considered by the Legal Aid Committee constituted by the Gujarat Government. The recommendations of this Committee in this regard are that the fact that legal aid has been given to one party should not disentitle another from receiving such assistance, but in order to be fair to the defendant, the determination of eligibility in such cases where legal aid had been granted to the plaintiff, should be left to a Committee other than the one which satisfied itself as to the existence of a reasonable *prima facie* case in favour of the plaintiff.

Compulsory arbitration in such cases

17. While we are conscious of the fact that there might be cases of a *bona fide* dispute between parties on questions of law or fact or both, which calls for determination by an impartial Tribunal, we feel that in such cases it would not be desirable to utilise public funds for the purpose of prolonging litigation. Another forum, however, should be provided for the determination of these issues. In our view, therefore, when upon a case coming up for hearing before a Court it is noticed that both parties have obtained legal aid, the Court should not further proceed with the hearing of the case, but should compulsorily refer it to arbitration except when the court is of the opinion that the factual and legal issues are such that it is desirable that they should be decided by the court and not by an arbitrator. The reference may be either to a person chosen by both parties or to one chosen by the court out of a panel of arbitrators prepared by the Legal Aid Committee. Thereafter, it may pass a decree in terms of the award, but the trial itself should not be in the Court. Moreover, parties cannot be compelled to go to arbitration and if any party insists on having his case tried in the Court itself as he is entitled to, then the legal aid certificates given to him should be revoked and he should not be treated as a person entitled to legal aid for the purpose of the suit or the proceeding. We recommend that the law should be modified to give effect to this recommendation.

Aided person to agree to just settlement

18. Reasonable incentives for avoidance of litigation are part of a legal aid scheme. Hence, we would suggest as a condition precedent to the grant of legal aid, that an assisted person should agree to accept

a just compromise as certified by the Legal Aid Committee and if he does not accept the settlement, he will be disqualified from receiving further aid.

Cases not eligible for aid

19. We turn now to the category of civil proceedings which should be excluded from the purview of the Legal Aid Scheme. The basis and the condition precedent to the grant of legal aid is that taking the circumstances as a whole, it is reasonable that the party seeking aid should be given assistance out of public funds in prosecuting or defending his claim. Hence, we would exclude from the scope of legal aid at the very outset certain categories of suits. Reference has already been made in another Chapter to the exclusion from the category of cases eligible for assistance of disputes with regard to caste rights and religious rituals but excluding suits by Harijans to resist the imposition of disabilities arising out of untouchability and similar proceedings. Similarly, disputes arising out of elections and also suits for defamation and for a breach of promise of marriage, unless there are aggravating circumstances, should be excluded. We would also suggest that in order to cover contingencies which may not have been anticipated, the State Legal Aid Board might be empowered to specify by a notification the type of cases which in its opinion should not be eligible for the grant of legal aid. The issue of any such notification should, however, be subject to the approval of the National Authority.

Aid in proceedings relating to eviction

20. The preceding account might give an impression that we are essentially concerned with civil suits. While this is so, that there are certain categories of proceedings which are not tried in Civil Courts but are essentially of the same nature wherein the grant of legal aid would be even more necessary. Of these, we particularly refer to cases relating to the laws relating to the letting of residential premises. As is well known in most urban areas, proceedings for ejection from residential and commercial premises are governed by special enactments and are not subject to the jurisdiction of the ordinary courts. To be turned out of the house wherein he resides would cause far greater hardship to a person of limited means than the passing of a decree against him for a few hundred rupees which he might be able to pay in instalments spread over a period of time. In our view, therefore, the concept of legal aid in civil cases should be extended to cover such proceedings also.

Writ proceedings

21. Similarly, in certain categories of cases, relief can be obtained only by moving the High Court in the exercise of its jurisdiction under Article 226 of the Constitution. This is an original proceeding and we feel that the rules with regard to the grant of aid for the institution of suits should also apply to the initiation of proceedings under Article 226

of the Constitution. It may no doubt be difficult for a local or a District Legal Aid Committee to give a final opinion as to the suitability of any such claim for legal aid from the point of view of its merits, as its members may not possess sufficient expertise with regard to the manner in which the particular High Court deals with such petitions. However, there should be no objection to the local or the District Committee satisfying itself after making the necessary preliminary inquiries as to the means of the applicant and also whether it *prima facie* considers the case to be a reasonable one for being taken to the High Court. In such a case, if the Committee is inclined to take the view that the case satisfies the requirements for the grant of legal aid, it may refer the matter to the High Court Committee constituted for in the nearest Bench of the High Court, which would obtain the necessary opinion as to the suitability of the case for the grant of legal aid from the point of view of the merits. Upon obtaining the concurrence of the said committee the local committee can grant the necessary certificate for the grant of legal aid, and if it had earlier granted a provisional certificate the said certificate can become final. The assignment of counsel, however, would necessarily have to be done from those practising on the Bench of the High Court which would hear the petition and the Committee in charge of legal aid for proceedings in that Bench of the High Court would assign counsel in accordance with the rules prescribed.

Article 32 petitions

22. While in many cases the party can obtain adequate relief by moving the High Court to exercise its jurisdiction under Article 226 and 227 of the Constitution, yet there might be exceptional cases where in redress can be secured only by invoking the original jurisdiction of the Supreme Court by a petition under Article 32 of the Constitution. While normally we are not in favour of public funds being expended in moving the Supreme Court which is situated at a distance, in preference to moving the High Court yet provision has to be made in such exceptional circumstances. Further, it has to be recognised that the right to move the Supreme Court under Article 32 of the Constitution is itself a fundamental right. It would not be possible for the Committee or other authority charged with administering legal aid in the Supreme Court to form an opinion as to the incidence of an individual or the merits of the case. Further, if a person were required to move the Legal Aid Committee of the Supreme Court, it would put him to considerable difficulty. In our view, therefore, if the State Legal Aid Board is satisfied that the circumstances of the case are such as would warrant the moving of the Supreme Court under Article 32 in preference to moving the High Court under Article 226 of the Constitution, it may for special reasons grant a certificate to that effect. In such an event, the Legal Aid Committee of the Supreme Court would be required to grant assistance to the party without any further enquiry as to his means or the reasonableness of his case.

Overlapping of provisions

23. To some extent, the provisions with regard to the ~~grant of~~ legal aid for the filing of suits and those of the Code of Civil Procedure with regard to the institution of suits in *forma pauperis* would overlap. A question, therefore, may arise as to whether it may not be necessary to do away with the provisions for the institution of proceedings in *forma pauperis* and for the defence of proceedings as a pauper, once the legal aid machinery has been set up.

Alternative provision to continue

24. While the legal aid machinery is no doubt a more comprehensive one, yet it has to be kept in mind that once the *prima facie* case test and the reasonableness test are applied the conditions under which legal aid is to be granted would become more stringent than those relating to the filing of suits in *forma pauperis*. The grant of legal aid also casts certain obligations on the assisted person accepting such aid. It would therefore not be correct to thrust legal aid upon an indigent person who does not want it and who elects to appear in person or to make other alternative arrangements for the conduct or defence of his case. It should, therefore, be open to such persons to decline to avail themselves of the benefits of the Legal Aid Scheme. To cover such categories of persons, a provision for prosecuting or defending of a suit in *forma pauperis* or as an indigent person would necessarily have to continue.

Costs to be payable to Legal Aid Fund.—Fee certificate to be dispensed with

25. It is obvious that if a scheme of legal aid is to be at least partially self-financing, the costs, if any, awarded to a successful party who has received the benefit of legal aid should go to the legal aid fund or the Legal Aid Committee. A provision should be made that the decree in so far as costs are concerned, in executable by the Legal Aid Committee in its own favour. Further, since Counsel may choose not to change any fees in cases assisted by them by the Legal Aid Committee, or there may be delay in making such payments, it would also be necessary to make a provision that a fee certificate shall not be required from the Counsel for a legally-aided person as a condition precedent to awarding counsel's fee as part of the costs in the cause.

Costs to be recoverable as arrears of land revenue

26. Since the Legal Aid Committee would be financed largely out of public funds it may also be desirable to provide that the cost awarded in favour of the Legal Aid Committee may without prejudice to any other mode of recovery such as by execution under the Code of Civil Procedure also be recoverable as arrears of land revenue. The National Authority will lay down the guidelines as to the adoption of one or the other modes of recovery.

Legal aid in execution

27. At the present moment, legal aid stops when a decree has been passed in favour of a pauper plaintiff. To our mind, this does not go far enough. It is often said and with justification that in India a plaintiff's difficulties begin after he obtains a decree. It is at the execution stage that a person often requires assistance. We are, therefore, of the opinion that after a legally aided person has been successful, the assistance should be continued at the stage of execution, if the other requirements for the grant of aid are satisfied.

Insolvency making procedure

28. It would also be necessary to make the process of execution simpler at least in so far as simple money claims are concerned. In this connection, attention is invited to the amendments made to the Presidency Towns Insolvency Act and the Provincial Insolvency Act by Bombay Act No. XV of 1939 by which if a money decree is unsatisfied and no stay has been obtained, the decree-holder may serve a notice of insolvency requiring the judgment debtor to pay the amount or to furnish security for its payment. Non-payment would be regarded as an act of insolvency. In its third Report on the Limitation Act the Law Commission had recommended that such a provision should be inserted in the Provincial Insolvency Act. It is a matter for regret that this has not been implemented until now. We recommend that this may be done. It is not necessary to hold up this amendment which is of a relatively simple nature, pending the enactment of a comprehensive law of Insolvency as suggested by the Law Commission in its twenty-sixth report on the Law of Insolvency.

Legal aid in appeals

29. Legal proceedings, however, do not stop short with original decrees or with their execution. Such decrees are liable to be challenged in appeal and the question of grant of legal aid in appeals, therefore, merits consideration.

Existing provisions

30. The existing provision for legal aid in civil appeals is contained in Order XLIV of the Code of Civil Procedure which deals with pauper appeals. It provides that any person entitled to prefer an appeal, who is unable to pay the fee prescribed for the memorandum of appeal may be allowed to appeal as a pauper, subject to the provisions relating to suits by paupers in so far as applicable, provided, however, that the court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to same usage having the force of law, or is otherwise erroneous or unjust. If the applicant had been allowed to sue or appeal as a pauper in the court from whose decree the appeal is preferred, no further inquiry as to pauperism is necessary, unless the appellate court sees cause to direct such inquiry.

Their inadequacy

31. These provisions obviously do not go far enough. In the case of a person who has been legally aided in the trial court, legal assistance in the appellate court might become necessary under any one of the following two circumstances:

- (i) The legally aided person might be successful in the trial court and the opposite party might go in appeal;
- (ii) The legally aided person might be unsuccessful in the trial court and may wish to challenge the adverse judgment in appeal.

Aid when accused person is a respondent

32. In the first case, it would hardly be in consonance with the purpose of the legal aid scheme to allow the benefit which has been obtained by means of legal aid to be lost for lack of further representation in the appellate court. In all such cases, unless there are good reasons to the contrary such as the assisted person ceasing to satisfy the means test, we are of the opinion that the legally aided person should be provided with counsel in the appellate court and also other necessary assistance.

When aided person loses

33. The position is somewhat different when the legally aided person has lost in the trial court. It may be urged that public funds having been spent to enable a person to have his day in court to assert his right which had not been established in the trial court, it would not be worthwhile to provide such assistance in the appellate court also, particularly when heavy expenditure might be called for preparing the record of appeal and the like.

Immediate extension

34. It is true that the fact that one court has decided against a party is not necessarily conclusive that he has no claim or his claim is not just. The percentage of appeals against the original decrees which are allowed is substantial. At the same time, we are not in favour at the first stage of the introduction of the legal aid scheme to give an assisted person a right of appeal against the judgment of the trial court. But in cases where an appeal is permitted under the *forma pauperis* procedure a counsel should be assigned to the accused person.

35. At a later stage, when the scheme has been established, it might be extended to appeals by unsuccessful indigent persons. It may then be provided that legal aid would be given for preferring an appeal, when the Legal Aid Committee which should necessarily be different from the one which originally granted legal aid for the trial certifies that the case is a proper one wherein legal aid should be given at the stage of appeal also.

Printing to be dispensed with

36. One of the reasons for the heavy costs involved in preferring appeals is the expenditure that has to be incurred on the printing of the judgment which is essential in some States. We recommend that

Overlapping of provisions

23. To some extent, the provisions with regard to the ~~grant of~~ legal aid for the filing of suits and those of the Code of Civil Procedure with regard to the institution of suits in *forma pauperis* would overlap. A question, therefore, may arise as to whether it may not be necessary to do away with the provisions for the institution of proceedings in *forma pauperis* and for the defence of proceedings as a pauper, once the legal aid machinery has been set up.

Alternative provision to continue

24. While the legal aid machinery is no doubt a more comprehensive one, yet it has to be kept in mind that once the *prima facie* case test and the reasonableness test are applied the conditions under which legal aid is to be granted would become more stringent than those relating to the filing of suits in *forma pauperis*. The grant of legal aid also casts certain obligations on the assisted person accepting such aid. It would therefore not be correct to thrust legal aid upon an indigent person who does not want it and who elects to appear in person or to make other alternative arrangements for the conduct or defence of his case. It should, therefore, be open to such persons to decline to avail themselves of the benefits of the Legal Aid Scheme. To cover such categories of persons, a provision for prosecuting or defending of a suit in *forma pauperis* or as an indigent person would necessarily have to continue.

Costs to be payable to Legal Aid Fund.—Fee certificate to be dispensed with

25. It is obvious that if a scheme of legal aid is to be at least partially self-financing, the costs, if any, awarded to a successful party who has received the benefit of legal aid should go to the legal aid fund or the Legal Aid Committee. A provision should be made that the decree in so far as costs are concerned, in executable by the Legal Aid Committee in its own favour. Further, since Counsel may choose not to change any fees in cases assisted by them by the Legal Aid Committee, or there may be delay in making such payments, it would also be necessary to make a provision that a fee certificate shall not be required from the Counsel for a legally-aided person as a condition precedent to awarding counsel's fee as part of the costs in the cause.

Costs to be recoverable as arrears of land revenue

26. Since the Legal Aid Committee would be financed largely out of public funds it may also be desirable to provide that the cost awarded in favour of the Legal Aid Committee may without prejudice to any other mode of recovery such as by execution under the Code of Civil Procedure also be recoverable as arrears of land revenue. The National Authority will lay down the guidelines as to the adoption of one or the other modes of recovery.

CHAPTER 7

LEGAL AID IN CRIMINAL PROCEEDINGS

Importance of Counsel in Criminal Proceedings

Legal aid to the poor constitutes society's attempt to eliminate, or at least to minimise, the unequal and often discriminatory operation of the legal system in favour of the rich and powerful as compared to the poor and backward sections of the community. It does not need any profound understanding of the legal process to appreciate how an indigent accused in a criminal proceeding stands the risk of denial of a fair trial when he does not have equal access to the legal services available to the opposite side. In a celebrated case, *Cideon Vs. Wainwright*¹, the American Supreme Court held that the right of an accused in a criminal case to have the assistance of counsel for his defence includes the right to have a counsel provided at the expense of the State if the accused is too poor to engage one at his expense. After reviewing earlier decisions on the point Black J. observed as follows:—

“Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are every where deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him”.

¹. 372 U. S. 335: 9 L. B.J. 2nd page 799, 805.

The adversary system

2 The adversary system of trial based on the accusatorial method which we have adopted in our criminal procedure assumes that the State using its investigative resources and employing competent counsel will prosecute the accused who, in turn, will employ equally competent legal services to challenge the evidence of the prosecution. Challenge constitutes the essence of adversary trial and truth is supposed to emerge from controverted facts through effective and constant challenges. Because of the strong dependence upon what the parties present during trial and because it is, in turn, dependent upon the legal services each party can command in relation to the other, the adversary system tends towards inequality and operates to the disadvantage of the indigent accused when unrepresented by effective counsel. An eminent judge and a former member of the Law Commission characterized the situation in the following words:

“The prosecution is invariably conducted either by able advocates engaged by the Government or by the prosecuting police agency who are also well trained in this type of work. An indigent accused when confronted against them without legal assistance is in a helpless condition, and his plight is indeed pathetic. He either pleads guilty or takes the assistance of the court in putting a few questions to the prosecution witnesses and awaits the result with solemn resignation”.

Disabilities following from poverty

3. Crime and poverty bear a close relationship. And the poor who constitute a disproportionately large number of criminal defendants going in and out of the criminal justice system tend to suffer disabilities in the judicial process. Whether it is in respect of police interrogation during investigation or in the matter of bail, or legal representation at trial, the system discriminates in favour of the more affluent. The poor are ignorant not only of the complexities of legal procedure but also of the language of judicial administration. They are often victims of third-degree methods and consequent humiliation and discomfort. The system of bail operates to the disadvantage of the poor man and, in confinement pending trial, his difficulties get further aggravated. The rights provided under law to every criminal accused have little use to an indigent defendant. The delay inherent in the judicial process leads to further suffering and inconvenience to the indigent accused. The implications of this situation to rule of law and equal justice under law are indeed disturbing to all concerned.

Consequences of delay in proceedings

4. In many criminal proceedings today, the main threat or sanction over the defendant is not the ultimate disposition and sentence in the case. Rather it is the length of time that the case takes from the initial arrest or summons until the challan is presented, and from then until the trial or other disposition occurs. It is the necessity to produce a bail amount and/or sureties—a sum often larger than the

fine levied at the time of sentencing—or face the possibility of a prolonged stay in prison as an under-trial. In effect, such a defendant serves his sentence before he is found guilty, if indeed he ever is. It is the harassment of numerous court appearances, the loss of property seized as evidence by the police, and the cost of retaining a lawyer who charges for each court appearance. The cost of the case may also include various items of miscellaneous expenditure, visible and invisible.

5. But the criminal process affects far more people than those who actually end up in court. A cynical magistrate once observed that the only persons who come before him as accused are those whom either the police or some private individual were deliberately “out to get”, and who were unable to pay their way out at the police station or some other way station on the road to court. Deliberately selective enforcement of the laws creates a shadow—world in which the police rather than the law determine what is right and what is wrong. Payment of a ‘fee’ permits large numbers of minor law breakers to proceed unscathed, yet renders them vulnerable to the full weight of the criminal law should an administrator’s whim so direct. Therefore, whenever this occurs, instead of the criminal process being directed against law breakers, in actual practice it is selectively directed against those who don’t pay off their dues to the powers that be. Furthermore, the punishment in this shadow-system of justice is not the sentence imposed by the judge, but all the harassment and inconvenience of the criminal process itself.

6. However, it is not as if the actual trial of the case is without importance or free from manipulative forces. It has been observed by some defence lawyers’ though with some measure of exaggeration that while a large proportion of their clients were probably guilty of some offence, it was rare that the police proved the real facts of the case against them. Due to the difficulties of investigation, they tend to rely on a concocted case utilising false witnesses and evidence, or evidence obtained in contravention of the Criminal Procedure Code and the Evidence Act. The task of the defence lawyer then is not to prove his client’s innocence but simply prove the falseness of the police’s case. In view of this feeling, an important requirement is the provision for effective counsel to an indigent accused at every stage of a criminal proceeding from arrest to conviction. This is recognised as a legal and constitutional right though its true scope is yet a matter of dispute and uncertainty so far as judicial interpretations go. A restricted interpretation of the right was adopted two decades ago by their Lordships of the Supreme Court in Janardhan Reddy’s case.¹ The present judicial trend, particularly in view of the provisions in Articles 14, 22(1) and 38 of the Constitution which were not examined in Reddy’s case, indicate that the court might reconsider the earlier decision and hold that it is the constitutional right of an indigent accused to be defended at State expense.²

¹. *Janardhan Reddy and others vs. The State of Hyderabad*, AIR 1951 SC 217.

². *Vide Bashire vs. State of U.P.* AIR 1968, SC 1313.

7. It is not enough if we take steps to insure that the poor receives equal treatment under law as the rich and the affluent; it is also necessary to reform the institutions and procedures of the system itself so as to improve the quality of criminal justice, to guarantee the basic fairness of the institutions involved in enforcement of law and to make the best use of the system in social reconstruction according to the declared policies of the Constitution. In all our recommendations hereunder we have tried to keep these two dynamic objectives before us.

Aspects of the problem

8. Four basic aspects in this regard require consideration. Firstly, who are the people entitled to legal aid at State expense in criminal proceedings? Secondly, what are the offences, or categories of offences to which legal aid should be available to indigents? In other words, should there be some offences in which legal aid is not to be given? Thirdly, in what stages of criminal process—pretrial, trial, and post-conviction—should there be legal aid? What are the types and nature of legal services which in each of these stages the scheme should offer? And lastly, what institutional arrangements and procedures are necessary to provide legal aid in criminal proceedings according to the recommendations contained in this report. It is proposed to consider each of the above four aspects of the problem separately and formulate the legislative recommendations towards the end.

Tests to be applied.—Test of indigence

9. Regarding the question of people who deserve legal aid, the three-fold formula usually applied in civil litigation, namely, the means test, the *prima facie* case test, and the reasonableness test, is inapplicable in its entirety in criminal matters. From the jurisprudential and practical stand points the *prima facie* case test is neither desirable nor feasible. Even the test of reasonableness is difficult to formulate howsoever expedient it is on pragmatic considerations. Nonetheless it is generally agreed that the nature and gravity of the offences, the financial burden involved and the requirements of justice should ordinarily tend to resolve the issue of reasonableness or otherwise of an application for legal aid in a criminal case. The majority of cases can be resolved mainly on the basis of the means test. Even here, on principle, one may challenge the policy which denies to a person without means the services of the state to prove his innocence. Lord Devlin once remarked, "It is a crying shame that modern judicial systems require a man to spend his own money to establish his innocence". However, in a poor country like India where the resources are extremely limited and the demands on it are unlimited, certain priorities have to be there however much 'arbitrary and unprincipled' they appear to be. It is therefore imperative that a certain means test which would benefit the poorer amongst the poor ought to be applied at least in the initial phase of the scheme, except perhaps in cases where the accused is charged with an offence punishable with death or imprisonment for life. Whatever income is fixed for legal aid eligibility in the beginning, the standard of indigence can progressively be altered to make legal services freely available to all citizens.

Meanwhile the scheme can provide for partial legal aid to those people outside the means test at a standardized and reasonable fee through the legal aid lawyers. Hopefully in the later phase of the legal aid scheme we are proposing, every person who gets involved in the criminal process will be able to receive effective legal services on a free or subsidized basis depending on the needs of each person.

Cases ineligible for aid

10. A related question is whether legal aid should be restricted to some categories of offences only and, if so, what are those categories which can be excluded from the purview of State-financial legal aid scheme? This is again a difficult question to answer in view of the fact that our criminal jurisprudence operates on the presumption of innocence of every accused even when charged with social and economic offences involving moral turpitude or grave social danger. Nonetheless financial limitations and prudence demand that public money is not utilised to the defence of persons who live by repeated crimes or who take advantage of the system for improper purposes. Instead of listing those offences before hand and thereby foreclosing the discretion of the legal aid committee from giving aid in appropriate cases, we feel that the matter can be left to the Committees constituted under the scheme in the hope that every application for legal aid involving social legislations will be individually examined by the Committee on merits and on social risks involved. However, habitual offenders and those charged with election offences, defamation, adultery and the like in which the matter is essentially a 'Private Claim' stand on a different footing where as a matter of policy or rule legal aid can be refused.

Maintenance cases

11. Maintenance cases under section 488 Cr. P. C. constitute a category of cases mostly involving destitute woman and children who accordingly have neither the means to engage counsel nor the understanding even to prepare and institute proceedings for maintenance. Legal aid in such cases should not only include supply of counsel whenever appropriate but also related services preliminary to institution of proceedings in court.

Aid to Complainants

12. Another category of cases where an increasingly large number of poor and socially backward sections of our people need legal services are those arising out of private complaints either in non-cognizable cases or in cognizable offences where police procedure has been 'unfair' and the outcome 'distorted'. With the frequent use of money, power and influence by unscrupulous members of the privileged sections of our society in interfering with the course of justice it becomes imperative for upholding the rule of law that State invest its resources on the side

of the weaker and exploited sections even against its own agencies of law enforcement. Of course, careful use of the means and merits tests by the Legal Aid Committee would be essential when the applicant is a complainant to avoid private complaints leading to frivolous and speculative prosecutions and wasteful expenditure of public money.

Security proceedings

13. Security proceedings under Chapter VIII of the Cr. P. C. constitute yet another area in which discerning use of legal services can better the lot of the poor in criminal proceedings. Respondents in these proceedings particularly under Sections 109 and 110 are mostly poor and undefended. They are tried by executive magistrates in many cases after long periods of incarceration as under-trials and more often than not sent to penal institutions for failure to furnish bonds with sureties. This situation in some cases leads to appeals from also. While it cannot be said that legal aid should be available in all such cases, it is at the same time necessary to give discretion to the Court/Committee to provide the services in appropriate cases early in the proceedings.

Appeals, revisions etc.

14. It is also necessary that appeals, revisions and other proceedings arising from the class of cases for which, at the original stage, legal aid is given, should also be covered by the scheme. That apart, where a prisoner appeals from jail and is unable to appear in court either in person or through lawyers to argue his appeal, necessary legal services should as a rule be made available to him by the State. There are already rules to this effect in different State jurisdictions. But, as the Gujarat Committee observed, the machinery of legal aid in such cases comes into play only when there is an appeal or revision application preferred by a prisoner from jail and which is admitted by the Court. There is no method whereby he can get assistance in respect of the desirability of an appeal or revision and the preparation of appeal memoranda and documents. Institutional arrangement for regular legal aid and advice to inmates of jail and correctional institutions are therefore necessary to assist indigent persons in imprisonment to seek justice under law. We recommend that if a lawyer has been provided under the legal aid scheme in the original proceedings it should be his duty to advise his client on the desirability of further proceedings and to draw up the memorandum of appeal on petition for revision.

Aid after arrest and before trial

15. Where do we begin and end legal aid in the criminal process? What are the types and nature of legal services the scheme should provide in the various phases of criminal proceedings? These questions take us to the consideration of the various stages of the criminal proceedings and their implications for the persons involved in the system. It is common knowledge that what often irreversible settles the course

of a prosecution is the plastic infancy of an investigation by State agencies of law enforcement, and lawyer participation during this gestation period of a case is crucial in most cases. This first stage of the criminal procedure sometimes consists of a period of police custody prior to the first appearance of the arrested persons before the examining magistrate. During this period the police may be collecting vital evidence against the arrested person either by interrogation or by such means as identification parades, medical examination of the arrested individual discovery of property connected with the alleged offence in pursuance of statements made by him, or by the search of his person including possible seizure of property.

16. As observed by the International Commission of Jurists the needs of the arrested person during this period of police custody are various and vital to prepare his defence or to protest his rights. For example "He may wish to notify his relations of the fact of his arrest to avoid causing them anxiety over his disappearance or to arrange bail. He may also wish to consult his lawyer to be correctly informed of his rights or to begin to collect evidence to be used in his defence at the eventual trial. He may desire the presence of his legal adviser or some other person during the interrogation or identification parade to ensure that he is not treated unfairly, that the interrogation or identification parade is conducted according to the prescribed rules of procedure, that witnesses claiming to be able to identify are not provided with an opportunity of seeing him before the identification parade, that no pressure or undue influence is exercised on him to make a confession or other statement required by the interrogators and that generally no advantage is taken of the confused state of mind which may result from his arrest".¹ Recognizing the needs of arrested people, our Constitution, Criminal Procedure Code, Evidence Act and related laws of criminal procedure do contain a variety of protection guaranteeing rights and privileges to those who are taken in police custody. Many of these legal and constitutional rights often are available in prison custody too. The question for us to consider is how far legal aid can assist an arrested or detained person who cannot afford to engage legal services in protecting his just rights and preparing his legally permissible defences for securing his definitive or provisional release. The idea is to reduce the gap between justice for those who can afford lawyers and justice for the impoverished.

17. We have given serious thoughts to the nature and scope of legal aid in this important stage in a criminal proceedings involving the police and other enforcement agencies of the Government. Since the law has clearly recognised the right of every arrested or detained person to counsel by lawyer of his choice even during the pre-trial phase of criminal proceedings there is every reason that this should be extended to the scheme of legal assistance to the poor.

¹Report of ICJ on "The Rights of arrested persons to Communicate etc.", Journal of ICJ, Vol. No. 1 (1964).

18. During police investigation, a lawyer might greatly assist his client. The Cr. P. C. permits an accused not to answer questions put to him by the police if they would tend to inculpate him. All other questions he must answer. Obviously the determination of incriminatory content is one that a layman under ordinary circumstances is unable to make, and certainly not an illiterate or semi-educated one, ringed by police interrogators insisting that he is in fact bound to answer. A lawyer may not legally instruct his client to remain totally silent but he may certainly advise him on which questions he may refuse to answer and which aspects of police investigation he need not submit to.

19. These niceties of legal strategy apply primarily to the defendant who has been remanded to police custody or whose case depends largely on evidence or testimony that he alone can provide. To provide this sort of legal assistance pre-supposes that the defence attorney will be contracting his client in police or judicial custody or will accompany him to interrogations requested by the police. Unfortunately, this is not a role which many lawyers are prepared to assume; they regard their role as centering on the court and anything that takes place outside of court is not within their purview.

20. Furthermore, it is not easy for a lawyer to have access to an accused who is in police custody or has been detained by the police legally or illegally and not yet produced in court. The accused may not know he has the right to see a lawyer or be too afraid to ask for one. The police may refuse to let the lawyer see the client although technically he has a right to do so, or they may delay his seeing the accused. Therefore, because of the way the lawyer sees his role and because of logistics and procedural difficulties, legal assistance to an accused in the investigative stage is often a myth. The Committee therefore believes that the introduction of the lawyers in this preliminary stage of criminal process will not only help the poor in securing equal justice under law but also will have a redeeming influence in investigating procedures which, in turn might improve the quality and standards of criminal justice in this "low visibility area" of criminal process.

Reform of system of monetary bail

21. A second stage of the criminal proceeding in which radical reforms are called for to ensure equal justice for the poor is the law and practice relating to bail. Continuance in custody of a poor accused simply because he is unable to afford the money necessary for his release is not only putting a premium on his poverty and perpetuating inequality in judicial administration but also tending to prejudice the defence case as well as ruining whatever means of livelihood the arrested person had prior to arrest. It is common knowledge that the present system of bail operates to the disadvantage of the indigent accused in a variety of ways and is neither rationally nor logically related to the principles which ought to govern custody and bail in a

democratic country. The Gujarat Legal Aid Committee has considered this matter in great detail and recommended some changes in policies and practices governing bail. While we condemn the present practice of monetary bail we do not think that any one measure can by itself solve the present malaise or help the weaker sections in the matter of bail. A variety of changes, institutional and otherwise are called for if the poor and the backward are to avail the rights guaranteed by law in the pre-trial procedure. Thus, *inter alia*, we think that a liberal policy of conditional release without monetary sureties or financial security and release on one's own recognizance with punishment provided for violation will go a long way to reform the bail system and help the weaker and poorer sections of the community to get equal justice under law. Conditional release may take the form of entrusting the accused to the care of his relatives or releasing him on supervision. The court or the authority granting bail may have to use the discretion judiciously. When the accused is too poor to find sureties, there will be no point in insisting on his furnishing bail with sureties, as it will only compel him to be in custody with the consequent handicaps in making his defence.

22. Enlarging the category of bailable offences in the Cr. P. C. and insisting on expeditious completion of pre-trial procedures might lead to minimising the period of confinement of under-trial prisoners. Again release on the recommendation of mass public organizations like trade unions, social service and welfare agencies etc., to which the arrested person has institutional links may be considered for the purpose of granting bail once monetary factor is taken out of consideration. It is also worth experimenting whether in security proceedings under the Cr. P. C. the person can be released on his undertaking to extern himself from the area. The conditional release idea will also apply with a variety of modifications in a large number of situations involving the poor with minimum risk to public interest. Thus he may be allowed to continue his normal pursuits but may be asked to return to custody at specified time outside the working hours. Finally when the general level of education and standards of police practices improve, the practice of summons instead of arrests can be resorted to, which will avoid placing persons under custody until they were found guilty. Similar experiments were conducted over a period of time in New York and was found to be working extremely satisfactory both for the purposes of effective law enforcement and for the protection of rights of individuals in pre-trial procedures. Such an alternative to the arrest-bail processes is particularly significant in the context of legal aid in so far as it avoids discrimination between the rich and the poor.

23. It is therefore obvious that provision of the lawyer without accompanying bail reform will not solve the difficulties at this stage. Bail amounts are largely set by the police and the magistrate and there are relatively fixed amounts according to the seriousness of the crime. The types of acceptable sureties are also relatively standard. While an excessive bail amount or harsh condition may be appealed

against the system is not perfect enough at present to fit the bail to the means of the accused or his living situation or his reliability; rather it is geared to the seriousness of the offence of which he is accused. Therefore, it may be argued that a typical lawyer does not have great impact on the bail determination except that, if he does not raise the question and fill out the bail application, no bail at all will be set and the defendant be even worse off.

24. Yet another important stage in the case is when the police decides to prosecute and presents the 'challan' in the case the lawyer is not often in a position to have the case dismissed before the 'challan' is brought in. As a general rule, the magistrate only begins to consider the merits of the case once the police investigation is complete and the 'challan' is presented. Ironically, this prevents defendants even from pleading *guilty* until the police have completed their investigations. As a lawyer once wrongly said, how can you plead guilty until you have been "officially accused"? However, this creates a substantial hardship, particularly for the defendant who cannot meet bail in the interim. He sits in prison, unable to plead guilty and get out and equally unable to assert his innocence.

25. The lawyer theoretically has power to urge the magistrate to inspect the police diaries and prod completion of the investigation but, again, there is a standardised view of what is a sufficiently rapid investigation, and the standard is for more tolerant than that which the accused or the common citizen might feel. The Cr. P. C. does permit adjournments of cases while investigation goes on, regardless of the fact that the accused is meanwhile in jail. Therefore, the typical lawyer may not have much impact in spending the pre-trial stage of the case or securing a rapid determination of the maintainability of the prosecution.

26. When the case is actually sent up for trial, the lawyer begins to take his widest and positive role. But often the substantive and procedural damage will have already taken place. The accused has sat in jail or suffered through numerous Court adjournments. He may have unwillingly incriminated himself in contravention of his procedural rights. Nevertheless, at trial the lawyer's role as cross-examiner and presenter of evidence is vital, as is his expertise in procedural matters and his ability to insist that the State adhere to the rules of trial and evidence. He may also make sure that grounds for later appeal are properly laid and that the special situation of the accused may be taken into consideration at the time of sanctioning.

27. Nevertheless, we feel that the actual penalties visited upon a convicted accused, whether or not he has a lawyer, are often comparatively slight. The damage to his life, his work, his family, are done in the toils of the pre-trial stage, where lawyer's role is relatively slight. Indeed, there are many sorts of cases, particularly in magistrates' courts, in which even a well-off defendant does not appear

with counsel, knowing that the penalties he faces are generally less than the lawyers' fee. While a lawyer is a constitutional right, apparently he is not always a practical necessity.

28. There is no question, as stated earlier, that legal aid in criminal proceedings should include provision of a lawyer to accused persons who could not otherwise have one. Furthermore, a convicted and imprisoned defendant should have assistance in bringing an appeal. But it is our submission that legal aid to be really effective to the poor must include actions which will shorten the duration of cases, lessen the economic and temporal investment which an accused must make, provide an early exit from the system for the defendant, guilty or innocent, reduce the dependence on cash bail, and permit systematic appraisal of police station arrest roles and prison under-trial census to ensure more rapid disposition of cases of those without friends or lawyers to plead for them. In short, lawyers must be provided where needed but institutional changes are also needed for which lawyers are no substitutes.

Recommendation on pre-trial aid

29. Our recommendations in this regard (legal aid in pre-trial phase) are as follows :

1. Police officers at the time of arrest and magistrates at the time of first appearance of arrests must be required to tell an arrested person that he has the right to bail as well as right to consult with and be defended by an attorney, provided by the local legal aid committee and, if the accused so requests, further interrogation of processing of his case should be suspended until he has been brought in touch with a lawyer either engaged by him or provided by the legal aid scheme. In addition, signs on court premises and in court rooms should clearly state the same message as well as the address and office hours of the nearest legal aid agency.

The Committee has noted with concern the existing practice of Commissioners of Police in Presidency towns exercising magisterial powers in respect of remanding persons to police custody. The Committee felt that it has to be abolished in the interest of protecting individual liberty and upholding rule of law. Then other powers units as those of excess of probationary order would remain unaffected.

2. The right of a person to see a lawyer, and the lawyer to have access to him at any stage of a police investigation or whenever the person is in custody of the police through arrest or otherwise, should be legislatively provided. This would be in conformity with the mandate of the Constitution as expressed through several court decisions already. The purpose is to enable the person under investigation or in custody to consult the lawyer, among other things, on the propriety or otherwise of responding

to questions put by the police. Furthermore, a lawyer-client relationship may be assumed if the lawyer is from the legal aid committee and has been sent as a result of request from friends or relatives of the arrested persons, or as a result of scrutiny of arrest records by the civilian review unit of the legal aid scheme (see below about this unit). Therefore, a legal aid lawyer must be admitted to a prison or police station upon request to see an arrested person or police station upon request to see an arrested person or undertrial. As soon as this request is made, whether in person or by phone or letter, all further interrogation of the accused must cease until the lawyer has had a reasonable opportunity to contact his client.

In order to prevent possible abuse of section 161 Cr. P. C. procedure to the prejudice of poor and illiterate persons, we feel it is desirable to make it obligatory on the part of police officers recording such statements to give a copy of the same immediately to such persons.

Grant of bail

3. Our recommendations in regard to bail reform including release on one's own recognizance have already been stated above. To facilitate this determination of these matters by court a point scale should be formulated including the number of years an accused has lived at his present address, whether he is married, whether he has family, whether he is over 21, whether he can produce relatives and friends who know him, whether this is his first arrest, etc. According to how closely he meets these criteria, the likelihood of his being released on recognizance should be increased. (Such a formulation is employed in most jurisdictions in the United States, based on the release-on-one's own-recognizance experiments undertaken by the Vera Institute of Justice in New York City in the early 1960's). This will at least assure that a person who does have reasonably deep roots in the locale will be permitted to be released without cash bail. For those from out-of-state or out-of-station who have no friends to assure their presence, some experiments must be undertaken to see if they too can be released. In the alternative, a bail fund may be instituted by the legal aid scheme for such persons which will satisfy the conventional expectations of the court but will not necessarily go further to guarantee the accused's presence.

Plea of guilty

4. It would perhaps be desirable for the purpose of shortening inordinate delays in investigation and consequent harassment as well as eliminating avoidable expenses in the process that the

Cr. P. C. contain provisions enabling the accused to plead guilty if he so chooses even at the time of assignments instead of waiting for the proper charge after police report. But we are conscious of the fact that such a provision might lead to abuse in police processes and also work unequally in favour of rich persons. Nonetheless we feel that it helps the poor and the weak if every accused is able to plead guilty without inordinate delays in pre-trial processes. Perhaps, to begin with, the following two procedures can be incorporated in the Cr. P. C. to achieve the objective :

- (a) When it appears to the legal aid lawyer who interviewed the accused that the latter genuinely wants to plead guilty, he shall bring it to the notice of the concerned magistrate who may convict the accused on his plea :
- (b) When a person is accused of an offence punishable with fine only or with fine/or imprisonment upto one year the magistrate may be legally required to communicate to the accused through the original summons itself his liability on conviction so that such accused may pay of such fine and get himself out of the formal trial procedure. It may be mentioned that such a procedure is in vogue under section 130 of the Motor Vehicles Act.

The purpose of these apparently radical changes in traditional criminal procedure, it may again be stated, is only to avoid wherever reasonably possible, the delay cost and harassment that are inherent in the customary system. This, to our mind, will help a large number of accused persons who are willing to take the penalty of law but are wanting to avoid the inconveniences in police and court procedures.

We may further add that an insistence on the part of court officials and superior police officers that in every case 'challan' should be presented within a reasonable period would go a long way in ameliorating the existing practice of keeping under trials in prison for long periods when the crimes which they are ultimately charged may not even bring them one week's imprisonment.

5. An arm of the legal aid scheme should be permitted to periodically review the census of under-trials in the local jail and, where an under-trial has been incarcerated for more than a month, interview him, as well as the police about his case, and depute a lawyer who will press the magistrate either for reduced bail or the bringing of pressure on the police to produce the 'challan'. Jail authorities may be asked to co-operate in facilitating this access.

Legal aid in the pre-trial phase should also provide for some rational and expeditious procedures to get grievances and complaints against enforcement agencies; including the police, redressed. Most

of the ills of the criminal justice system at the lower levels where the poor are mostly concerned relate to abuse of authority but petty officials and consequent corruption and injustice to the less privileged sections of our society. If only some system of advice and prompt action are provided for, the relationship between law and the poor will improve avoiding in the process further complications and distortions of the course of justice. In this connection the new experiment for petition enquiry in certain police stations in Kerala deserve attention and development.¹ According to this experiment, when a petitioner goes to the police station he is heard immediately by the special officer appointed for the purpose, who acknowledges the petition and deposes a subordinate officer to enquire and report on the matter. The counter petitioners are informed through a written notice and both parties are asked to meet the officer at a convenient time within a couple of days. On the basis of the enquiry report and after hearing the parties a decision reached in the presence of the parties is entered in the petition register and the matter disposed of within two days of its receipt in the station. It is reported that after the introduction of this scheme the initial experience has been one of public confidence and goodwill, stoppage of private complaints to court, avoidance of harassment, delay and cost in regular criminal proceedings, elimination of frivolous and false institution of suits and proceedings, fall in reported offences and appreciation of police work. Though this is not a matter strictly within legal aid as such, its importance for making the legal process accessible, fair and cheap to the millions of poor in the country is indeed attractive.

We would emphasise that in making these suggestions it is not our intention to weaken respect for law and order or to make the path of the wrong doer easier but only to ensure that safeguards which the law provides to accused persons are not lost by their ignorance or poverty. We have no doubt that the local committee will keep in mind in applying the test of reasonableness.

Post trial acquittance

30. As in the pre-trial phase so also in the post trial disposition of criminal cases legal aid and advice are becoming increasingly necessary to put the impoverished on an equal footing with the rich. Of course in the matter of appeal, revision etc. after conviction legal aid should be available ordinarily when the person otherwise deserves it. But besides legal representation, weaker sections of the community when they come out of the criminal justice system either on acquittal or on conviction may need treatment and consideration from welfare and after-care agencies as well as from society at large. Some psychiatric and rehabilitational programmes will have to be built into the legal aid scheme itself whereby such persons when they come out of the criminal judicial process are given proper counselling, correctional treatment and vocational guidance. For, after

¹Petition Enquiry in Police Station : A New Procedure (1972) T. A. S. Iyer, DIG Police, Kerala (Unpublished Report).

all, these people are still poor and are likely to have developed tendencies not found in a normal person. In this sphere voluntary social welfare agencies have a significant role to play in the successful outcome of the total legal aid programme.

Compensation for victims of crime

31. Legal aid as understood in the larger sense should include assistance of free expert evidence, free copies of evidentiary documents, free laboratory and scientific facilities, exemption of court fee and the like. In all these matters the Legal Aid Committee should exercise their discretion keeping in mind the interests of justice and circumstances of the defendant. Equally compelling sort of assistance that the poor might require from the legal process is reparation for the injury without vexatious and uncertain litigation in a civil court. The Law Commission has recently recommended such compensation in hit-and-run categories of automobile accidents. It is worth examining whether, as in the case of some socialist countries, at the end of the criminal trial the case can be made over for civil adjudication for damages without a *denovo* trial and all the trouble related to the institution of a fresh suit. Telescoping civil and criminal proceedings in this regard may avoid delay and cost and prove to be a blessing to the poor and less affluent. But this necessarily pre-supposes suitable modifications in civil and criminal procedures including a revision of the fundamental principles of our jurisprudence.

Although this may not strictly speaking fall within the terms of our reference, we would like to mention one aspect of the criminal process as it has a bearing upon human dignity which it is the scheme of legal aid to promote. It is the system of fettering prisoners or tying them with ropes in a manner which has been recognised as humiliating by the Police Manuals themselves. A reference in this connection may be made to the Kerala Police Manual.

The Criminal Procedure Code also recognises that when a person is arrested, he shall not be subjected to more restraint than is necessary to prevent his escape. It is our earnest hope that this provision would be implemented in letter and in spirit so that prisoners, particularly undertrials who may eventually be proved to be innocent, do not experience a feeling of degradation or humiliation.

The final question which remains to be considered is the institutional arrangement required for the delivery of legal services to those who are declared eligible for it by the Legal Aid Committee according to the formula prescribed. In this regard, the Committee's attention was drawn to the diverse mechanisms which have been adopted in several countries operating legal aid schemes. In the United States four principal methods are used to provide lawyers for indigent defendants. They are: (a) assignment by the court on a case-by-case basis; (b) privately financed defenders; (c) public defenders; and (d) the mixed public private system. There is a great debate going

on in recent years over the respective merits of salaried public defenders and appointed private counsel. The public defender system is less expensive and more experienced for the work as compared to an average private attorney available for legal aid. On the other hand, public defenders because of their possible affiliation with judges, prosecutors and Government are alleged to be less capable of giving good and independent defence to the accused. These differences in actual working are said to be less significant than they appear to be. For example many of the public defender offices in the United States operate with part-time lawyers, especially in similar cities. There are no doubt advantages and disadvantages to each of these systems. It seems to the Committee that the balance of advantage for our country clearly lies with a defender office under public control. When legal aid is organised on a nation-wide basis it cannot depend entirely on an assigned counsel system relying on lawyers in private practice, appointed on *ad hoc* basis. For the scheme to comprehend the geographically weak and culturally backward tribal population in India and to have an even distribution, salaried lawyers or legal service at taluka or block levels might become necessary from administrative, professional and financial view points.

Another institutional mechanism worth examination is the Scottish and Ontario model of Duty Solicitors. The Gujarat Legal Aid Committee has examined in detail this institution and recommended its adoption with slight modifications. The institution of "Duty Counsel" it found, can give legal assistance at the earliest opportunity, *i.e.*, as soon as the accused is arrested.

It is fairly certain that for a long time after introduction of legal aid scheme we have to work with a variety of institutional mechanisms suited to local requirements until we develop a workable indigenous model. The need for on-going research and the utilisation of date for reform of delivery system of legal aid cannot be overemphasised.

So far departing from the usual practice we have laid stress on aspects of aid in criminal proceedings which are generally equated with furnishing an Advocate to an accused after he is brought before the court for trial. This, however, is not to belittle the importance to an accused person of being represented at this stage of his trial by a competent counsel. For that purpose also, it would be necessary to make an appropriate provision.

Since this aspect of the matter has been considered on more than one occasion, we do not wish to elaborate this point. However, it would be sufficient if we state our recommendations in brief.

We recommend that legal aid should be given to all accused persons in cases triable by a court of session. At the stage an accused is being committed to the session's court, the Magistrate should

ascertain whether the accused person is in a position to engage a counsel for defence. If he is not, he should make a report to that effect in the order of committal and thereupon it would be obligatory for the trial court to assign a counsel to the accused person.

Similarly, in appeals against acquittals wherein the accused was not represented by a counsel at the trial stage or was assigned an Advocate through the legal aid machinery, he should be given the assistance of counsel. Similar considerations would apply in revision petitions filed by the State for the enhancement of the sentence which under the new Criminal Procedure Code Bill would be replaced by an appeal against the sentence.

In cases not tried before a court of session, the trying Magistrate should be given a discretion to give legal assistance to the accused whenever he considers that the interests of justice require such a course.

A provision may be made for enabling prisoners wishing to prefer jail appeals to obtain the sources of counsel for drawing up their petitions through the legal aid committee.

A specific provision should also be inserted in the Criminal Procedure Code by which the State Governments can extend the scheme of legal aid to any other category of proceedings apart from those mentioned above.

CHAPTER 8
LEGAL AID FOR THE WORKING CLASS
Philosophical Underpinnings

Economic justice

One of the founding faiths of our Constitution is economic justice evocatively expressed in its Preamble and elaborately enunciated in Part IV. Law, if it is to bear true faith and allegiance to those provisions which are fundamental in the governance of the country, must aid the working class, agricultural, industrial and other, organised, unorganised and those, for strategic reasons, forbidden to organise, in securing rights which belong to them. The toiling masses are the backbone of the Indian Polity and their title under the constitutional provisions to—

- (i) "an adequate means of livelihood" [Art. 39a];
- (ii) "equal pay for equal work for both man and women" (Art. 39d);
- (iii) "Protection of health and other safeguards" (Art. 39e);
- (iv) "Protection against exploitation and against moral and material abandonment" (Art. 39f);
- (v) "Public assistance in cases of unemployment, old age, sickness and disablement and any other case of undeserved want" (Art. 41);
- (vi) "Just and humane conditions of work and for maternity relief" (Art. 42);
- (vii) "a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Art. 43);
- (viii) "equality before the law and the equal protection of the law" (Art. 14); and
- (ix) "freedom to assemble peacefully and to form associations or unions" [Art. 19(b) & (c)]

cannot be questioned. The pre-independence legal system reflecting the values of *laissez faire* economy is no longer 'legal tender' with the people and the New Order which enshrines the rights set out above is summons to law-makers and to the legal process in the directions of State intervention on behalf of the working class. Labour which is poor but is accepted as co-producer of national wealth, needs the aid of the law not merely on the substantive plane for achieving economic

justice but at the processual level for effective enforcement of existing beneficial legislation and for socio-legal research into the failures and distortions of law-in-action and for suggesting law reform. The initiation of new legislation for giving concrete shape to the promises made to the working masses in Parts III and IV of the Constitution is a long agenda. Every unredressed wrong spells, disorder, every social hunger incites agitation and every economic wound cries to be bandaged. These situations breed tensions, protests and break-downs which cannot be wished away by hortative phrases, Socio-legal psychiatry and legislative therapy, organised by Legal Aid in its comprehensive connotation, will go a long way to halt the trend towards actual alienation and potential antagonism between Law and Labour. The rising tide of expectations of workers may trigger off anarchy which is the enemy of peaceful revolution; and so, it is right that we organise, through legal aid, an active, simplified and cheap adjectival system and substantive labour legislation, by feeding field experiences into the prelegislative conveyer belt and by other means. If we neglect the present, as Pandit Nehru once observed, the future will avenge itself. This is our perspective.

Lines of Policy

Law to aid labour

Labour has to be aided by the law in many ways. Industrial disputes bring capital and labour into conflict and there, the weaker, namely, the worker, or his union, has to be helped by the process of legal aid. Apart from industrial disputes, there are other enactments, Central and State, which confer special benefits on workers, individually and collectively. The State is not non-aligned in this confrontation nor is the Constitution a neutral document as between Labour and Private Capital. Unfortunately, there have been short-falls in enforcement of and disabilities in drawing benefits under welfare legislation by the workers. Legal Aid must, therefore, be rendered so that these statutes may become operational. Moreover, workers and their dependents have legal problems unconnected with the industry in which they are employed and being a weaker community, it is fair to give them legal aid comprehensively. Even as medicare is taken care of by the Employees' State Insurance Scheme, judicare must also be covered by the Legal aid programme.

Legal Advisers in Public sector

The Public sector is a model employer and currently, its legal advisers are drawn from the private sector and do not possess the needed pro-labour orientation or socialistic perspective. Again, the manner in which labour disputes are handled and industrial litigation is carried on by the units in the public sector are not very different from the way the private sector operates. Since industrial peace and workers' involvement in production are primary criteria governing management-labour relations, certain guidelines have to be laid down for adoption by the public sector now, and by the joint and private sectors, later. All the facets of legal aid *vis-a-vis* labour need to be implemented in concrete programmes.

Labour Unions and Panel of Lawyers

The ordinary lawyer does not specialise in labour law and so, it becomes necessary to have a special panel if the legal service offered is to be qualitatively excellent. At the same time, the realities of labour organisation must be taken note of in any legal aid infrastructure. So viewed, we must remember that many unions have political affiliations and, indeed, parties, big and small, organise a working class wing, with the result that when lawyers are chosen by unions, political preferences operate. The Marxist-led union, for instance, may not accept a lawyer of competence with opposing political affiliations. To deny freedom of choice to labour unions under these circumstances is to deny legal aid altogether and so, we suggest that the panel may be prepared, of acceptable lawyers and each union given the freedom, subject, of course, to exigencies, to choose from the panel any lawyer that they want to represent them in legal proceedings or advise them in industrial disputes. We have another suggestion to make in this context. Although concern for the working class and change-over to economic justice are accepted in the Constitution, there is a dearth of lawyers duly trained in labour legislation or ready to take up cases of the working class. It is, therefore, necessary for the National Legal Services Authority actively to cultivate a branch of the profession in labour law by organising seminars, workshops and by offering subsidies for under-going courses in that branch of law.

The public policy of legal aid compels us to enter a caveat here. When we read and implement the proposals a sense of priorities must prevail. The most handicapped are the unorganised sector of labour; next comes the weaker wing of the organised working class and last will be the better-off unions. Benefits will go in this order.

Legal aid in Proceedings other than Industrial Disputes

Statutory Rights

There are a number of special Acts on the statute book designed to protect the working classes. They not only confer legal rights but also provide special remedies for the enforcement of such rights. Some of the more important of these Acts are:—

- (1) Workmen's Compensation Act, 1923.
- (2) Employees' State Insurance Act, 1948.
- (3) Payment of Wages Act, 1936.
- (4) Minimum Wages Act, 1948.
- (5) Payment of Bonus Act, 1965.
- (6) Factories Act, 1948.
- (7) Mines Act, 1952.
- (8) Motor Transport Workers' Act, 1961.

- (9) Beedi Cigar Workers' (Conditions of Employment) Act, 1936.
- (10) Dock Workers' (Regulation of Employment) Act, 1945.
- (11) Maternity Benefits Act, 1942.
- (12) Weekly Holidays Act, 1942.
- (13) Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.
- (14) Plantations Labour Act, 1951.
- (15) Industrial Disputes Act, 1947.
- (16) Employees' Provident Fund Act, 1952.
- (17) Industrial Employment (Standing Orders) Act, 1946.
- (18) Bombay Industrial Relations Act, 1946.
- (19) Madhya Pradesh Industrial Relations Act, 1960.
- (20) U. P. Industrial Disputes Act, 1947.
- (21) Shop & Establishment Acts and National and Festival Holidays Acts in several States.

In the legal aid legislation that we visualise, there should be a blanket provision that any worker, certified as such by any recognised Union or Labour Officer (or his dependant or heir) must be statutorily entitled to free legal aid and advice from the legal aid centre having jurisdiction in the area where the worker works or worked in respect of any statute concerning workers before any court, tribunal or administrative agency enforcing it. Legal formalities must be reduced to the minimum and relaxation of formal conditions, e.g. production of succession certificates from court for small payments to known dependants, readily granted. Legal aid must be the lubricant which moves the wheels of the law smoothly.

Legal aid to worker

In all these and other like proceedings legal aid must be given to workers irrespective of their wages. In a case where an individual worker is involved, and in all cases where proceedings are for claims of workers under various statutes, the legal aid committee should issue notice to the employer with a view to bring about a settlement of the claim and try to use its good offices to see if the claim can be settled in a manner which is fair and just to the worker. If, in such a case, it is not possible to bring about a settlement, the legal aid committee may grant legal aid to the worker.

Research and Development

Research and report for redress

Ideologically speaking, the Indian Constitution takes sides with the former as between labour and private economic power. Already, a stream of legislation conferring new rights on, and removing past disabilities, from the workers is flowing from the legislative Houses in the

country. Much more remains to be done in the shape of welfare legislation—new enactments and amendments; and legal aid lawyers, in close collaboration with labour leaders acting without partisan stances and party affiliations, should establish close contact and expose legislative and administrative gaps, and stimulate law reform. Research and development, in close collaboration with the Unions and the labour wing of the Administration, is of seminal import. The State Committee of the Juridicare Corporation of India must have a Research and Development cell working on the lines set out above and the periodical reports must be forwarded to the State and Central Governments in the Labour Department or Ministry for suitable action, and must be forwarded as a part of the annual report to be presented to Parliament and/or the State Legislatures.

Law's Delays

Legal aid to hasten court decision

The worker, without staying power, lives in the short run, while litigation fought by the stronger employer from court to court, with long pauses at each tier, lives in the long run. The expensiveness of legal proceedings with the inordinate systematic delays and guilt-in-gamble, makes justice the first casualty in the process and disenchanted workers militantly resort to direct action as a less expensive, more speedy and surer remedy. Legal aid has to step in on the side of the proletariat to remove these deformities exploited by the "proprietary" with larger resources and make the judicial process a credible route to early justice. It is the general complaint of union leaders that even when workers win a pyrrhic victory, it comes too late to be valid or welcome. Where labour has little to hope for from the law, it has something to fight for against the law. Intelligently planned legal aid, by removing these basic ills of the prevalent legal process, will invalidate the alibi of agitational violence. In short, the legal aid programme must provide efficacious remedies through lawyers' advice and services, through quicker disposals by tribunals and the conferment of quick finality to adjudications or arbitrations.

Legal aid to workers and their Families in non-Industrial Sphere **Legal aid and fringe benefits**

Labour in the organised sector enjoys medical benefits but because of the lack of awareness of the importance of the legal process in securing legislative benefits for workers and their dependents or to prevent dangers flowing from poor defence in courts, judicare has not been provided for as a fringe benefit for labour. But the time has now come when the rule of law must protect the worker and his family. So, provision by way of free legal services must be made not merely in regard to problems connected with labour but also for helping the worker and his family to assert or defend in legal proceedings for their rights. Even drawing up of documents, advice on legal matters, protection against eviction or quasi-legal measures for securing benefits

from the Administration require the services of a lawyer. These should be assured by a collective or group legal insurance as a fringe benefit for the organised working class created and administered through a statutory body. Either the Employees' State Insurance Corporation or the Commissioner, under the Employees' Provident Fund law can take over the administration of this fringe legal benefit. At present there are around 65 lakhs of workers coming under the Employees' Provident Fund Scheme. If only 25 paise per year per worker were contributed together with an equal sum by the management and the State, it would build up into around 50 lakhs annually (increasing as years go) where with all the legal and semi-legal services for workers and their dependents in the entire country can be covered. While funding, accounting and release of amounts from the fund may be entrusted to the Employees' Provident Fund Organisation, the administration and policy regarding legal assistance may be entrusted or administered by the National Legal Services Authorities in consultation with the Central Labour Commissioner and/or the State Labour Commissioners. They will be assisted by the Central Provident Fund Commissioner and his field officers, the Regional Commissioners in the actual disbursement of funds. Central/Regional Committees on a functional basis may be set up by the Authority for administering this programme on which the representatives of Central Labour Commissioner and the Employee's Provident Fund Organisation may be represented as members. And, indeed, as a result of this operation, the worker will acquire a new voice at the legal level and will be able to initiate action for change where the law hurts or does not speak in his favour. We, therefore, recommend steps for a suitable amendment to the Employees' Provident Fund Act to provide for the scheme set out above.

Indian Labour, in large areas, remains unorganised and the pathetic condition in which they wallow cries for legal service, apart from law reform, which itself may be a bye-product of experience gathered in the course of legal aid and advice. We may illustrate our point with reference to the experience of the Safdarjung Hospital in Delhi where, as a result of the increase in mechanisation or agriculture, agricultural labourers wounded in accidents caused while working farm machinery, stream in. Not a few of them lose the use of their limbs, very often necessitated by amputation undertaken to save life. In the period April-June, 1972 alone, over 200 such cases came to the Safdarjung Hospital, and in April 1973 alone, more than 100 cases were brought to this Hospital. If we visualise the number for the country as a whole, we can understand the dimension of the problem of loss of limb and life for agricultural labour, thanks to the new machanisation. Unfortunately, the Workmen's Compensation Act, 1921 does not seem to cover cases of accidents to agriculture labour temporarily employed. While law reform is needed in this direction, making the employer responsible for providing treatment and artificial limbs and giving compensation for loss of limb sustained in the course of employment, legal services agencies must explore the possibility of exploiting the law of torts so as to make the owner of the farm and the machine liable in

damages to workmen handling dangerous machinery in such situations. Obviously, the ignorant labourer is not aware of possibilities in law and the legal aid lawyer has to be his friend, guide and advocate.

We are dwelling on the above aspect to drive home our point that the new frontiers of legal services *vis-a-vis* the working class have to be explored more fully. We recommend that without reference to means and merits tests, wherever there is injury sustained by an agricultural labourer in the course and within the scope of his employment, the legal aid centre must take up the cause and strive to secure for him compensation, by negotiation and by legal action. Other like cases must be dealt with similarly, as a policy.

Industry to Finance worker and Management in Disputes

A conflict situation of worker Vs. Employer calls for statement of National Policy on legal aid *vis-a-vis* labour. Any policy must be pragmatic enough to make an impact on the segment of the community we want to benefit by the programme of legal aid.

Industry to finance litigation of labour also.

Certain basic positions may now be stated. Workers, like managements, are partners in Industry. They are the producers of wealth and not human commodities in the market purchases at a competitive price by capital. Flow from this premise the right of the workers, in the event of an industrial dispute they are to be treated on a par with the management. On principle, worker's participation in management is a right and a process, and so, this must find its expression in the litigation sector. We hold the view that in any dispute between a worker and his employer, a union and the management, on any general issue (that is to say, in all litigations between a worker or workers on the one hand and employer or employers, on the other), legal aid should be given at the expenses of the State only to the employee or union. Moreover, the industry must bear the cost of litigation as much for labour as for management. May be, the properties will differ but the principle is that in a dispute it is not as if the management can use the funds of the industry freely to meet the entire litigation-expenses while labour shall not touch it. The worker or the Union must be eligible for financial support for conducting its litigation from the funds of the industry itself, the actual amount being left to be decided according to guidelines indicated below. A litigation fund in each industry/establishment of over 100 workers may be constituted out of which 2/3rd of the legal costs of the workers or unions incurred by the concerned legal aid centre will be paid.

Ceiling on Litigation Expenses

Pecuniary ceiling in industrial litigation

Again, once it is conceded that the managements cannot play ducks and drakes with the quasi-public funds of share holders for litigious adventures, other consequences follow. India, with its unem-

ployed millions and lop-sided agricultural economy, has vital stakes in successful industrialisation. Therefore, it is of great moment that resources intended for productive purposes are not dissipated in litigation. Quantitative restraints on amounts to be spent on different types of industrial disputes has rational relation to the wholesome prevention of excessive diversion into forensic channels of money needed in the factory or business. The phenomenon of some managements victimizing marked out workers with a view to break the backs of allergic unions or waging legal battles of attrition right up to the highest court, regardless of the cost, has to be checked in public interest. It is somewhat regrettable that the public sector, expected to be a model employer, has, on a few occasions, yielded to some of those temptations. We regard the setting of pecuniary ceilings on both sides to industrial litigation, subject to relaxation by a competent functionary, desirable. The public has a state in preventing avoidable litigation by the two wings of the industry against each other and bringing to a close such litigation as early as possible.

Labour deprived of best legal representation in court

An analysis conducted by the Labour Ministry in 1960 shows that about 550 appeals were filed by employers and workers in the Supreme Court during 1955-59. Of these, 421 (or 77%) were filed by employers and 128 (or 23%) by workers or their unions. The court takes a long time to decide many of these cases and 63% of the 286 employer's appeals decided by the Supreme Court were unsuccessful. Of course, the fewer appeals filed by the workers and not argued by legal luminaries, as in the case employers, met with 96% dismissals. The absence of competent legal service at the Supreme Court level are out-matched by employers, who engaged the best talent in the line, is a substantial denial of equality before the law. In 60% of the cases in which employers were unsuccessful, and for which information is available, the implementation of awards was delayed by 2 to 6 years. In 51% of cases, the monetary stakes involved to employers was less than Rs. 25,000.00; it was less than Rs. 10,000.00 in 32% of the cases. Thus, not only have employers used the legal machinery for filing appeals more often and without merit, they have dragged workers to the highest court even where the subject matter is petty, thus denying workers their dues over long periods.

Public Sectors

No appeal against award

If the public sector is to become a model employer, it is reasonable that these managements do make active efforts to settle disputes even in the bud. Assuming the demands are over-pitched and the temper of the worker refractory, some indulgence considering his economic misery and mistrust is understandable. The public sector must make sincere efforts to settle disputes failing which the matter should be entrusted to arbitration. Once the awards of an arbitrator is given

the Public Sector should not adopt delaying tactics and go to court. Even if the matter is referred to adjudication and the award is in favour of the workers, a convention should be set up that a public sector management does not prefer an appeal against the award. In case an important question of high principle is involved, in such very rare cases, an appeal may be preferred with the prior approval of the Labour Ministry Department. Whenever an appeal is preferred by the management, any amount due to the workers under the award should be paid to the workers immediately as a condition precedent. Hearing of appeals and final decisions thereon take a very long time and workers should not be made to await that long to get their dues. In the private sector also attempts should be made to follow the principles laid down above.

Appeal on question of Law and Policy

A few guidelines in the case of a public sector industries must be enforced by appropriate Governments to make these industries models in the matter of labour-management relations. The first is that no appeal should be filed against awards of tribunals by the public sector managements except in the rare case of wider impact on a question of law or policy. This will bring the list to a close at least at the end of the trial tribunal's adjudication. Indeed, a procedure for screening cases before appeals were filed had been evolved in August, 1964 in respect of Central Public Sector undertaking although breaches by the managements had been frequent. We recommend strongly that, ordinarily, so far as managements are concerned, the trial tribunal's award shall be final.

In the matter of public sector industries, many of the disputes with workers could and should be resolved by negotiations. Legal advisers play a key role in such situations. It is not unusual to find public sector units employing as legal advisers lawyers who treat them as any other private enterprise client. In that event, the type of advice is not likely to lead to concessions, conciliations and fair compromises even if something more is given to the worker than he may be legally eligible for. We, therefore, recommend for the consideration of the appropriate Governments the laying down of a policy that public sector industries should choose their legal advisers from out of lawyers who have a correct social perspective and who are engaged in legal aid work and whose reputation is not solely dependent upon the large income made from the private sector.

General Legal Aid

We now come to industrial disputes which may cover demands made by workers collectively upon managements or disputes between employees and employers as well as individual disputes of some workmen or other with the management. There is also the departmental disciplinary enquiry carried on from time to time by managements with

a view to taking action against delinquents and here also certain principles of natural justice come into play. We would like to emphasize that there should be no case where a worker or group of workers should feel that the law has let them down because they have not the means to get the services of a lawyer either for competent advice or for conduct of legal proceedings. We, therefore, feel strongly that every legal aid centre at the district level must have a panel of labour lawyers prepared by the Committee in consultation with the important labour unions operating in the district.

Individual worker and Union legal aid.

The question arises whether individual workers and unions should be given legal aid, and, if so, in what way. Under section 56 of the Bombay Industrial Relations Act, 1946, an approved union, which is entitled to appear before a labour court in a proceeding for determining the legality or otherwise of a strike, lock-out or change in service conditions, or before the Industrial Court in a proceeding involving an important question of law or fact, is permitted to apply to the court for the grant of legal aid. This includes advice to the union and appearance before a court of a legal practitioner on behalf of a union at the expense of the State. The Act was later amended to provide, *inter alia*, for the exclusion of legal practitioners from appearing on behalf on any party in proceedings, other than penal proceedings under the Act, before the labour court except with the permission of that court. There is, however, no provision for legal aid to workers under the Industrial Disputes Act, 1947.

There is no doubt that union is strength and legal aid should be granted only in such manner that unionism is not impaired, no individualism encouraged. Therefore, wherever there is a recognised labour union in an establishment or industry, an individual worker must seek legal aid only through it. Of course, in special circumstances, the labour officer may certify that a worker may be eligible for legal aid without going through the Union. Secondly where there is a plurality of unions in an industry or establishment and they are all parties to an industrial dispute before a tribunal and lawyers are allowed to appear under the relevant law or in the circumstances of the case, legal aid, in the shape of free services of lawyers, should be made available only to the union which has the largest membership, except where the tribunal feels that any other union has a point of view to be presented different from the largest union. We also feel that legal aid be confined to proceedings before tribunals and labour courts but include expenses connected with the conduct of litigation. Nor should aid be confined to proceedings before tribunals and labour courts but it should also be available in the High Courts, and the Supreme Court as well as in Civil Courts where workers are involved in litigation with employers and even in company courts where in liquidation and other proceedings, workers are interested. In short, legal aid should be co-extensive with the legal needs of workers and unions,

whatever be the nature of the litigation. If the screening Committee set up approves the challenge of an award, legal aid should be automatic except for the means test dealt with below.

The judicature in India has, at its apex, the High Court and the Supreme Court. Whatever decisions are rendered by tribunals are liable to be upset at these ultimate levels, so that legal aid to be meaningful must reach to the highest Bench. A system which is excessively expensive *de facto* denies access, whatever the formal provisions be. The worker, being by far the weaker, is handicapped when the price of justice or the process of justice with heavy professional remuneration, high cost of printing and what not is beyond his reach. Every step taken to bring down the spiral of litigation, every measure to shorten its length and every advice to prevent going to a tribunal, is a positive legal aid to a worker.

The Means Test

No means test to individual worker

Generally, the means test should not be applied when an individual worker having no organised union seeks legal aid. A worker should be presumed not to have sufficient resources to bear the expenses of litigation except where his basic wage or salary is Rs. 500/- per mensem. In case of a union, however, the financial condition of the Union must be taken into consideration. The Commissioner of Labour or Registrar of Trade Unions may be able to certify that in the type of disputes where aid is sought and at the level of the fight in which aid is to be given, the union deserves to be heard or not, a liberal view being taken generally. In selecting the type of disputes where free legal services should be given, we suggest some check.

Miscellaneous

Guidelines to means test

In applying the normal merit test, the legal aid committee should also consider the following factors:—

- (a) Whether the Unions or the workmen have been guilty of any unfair practices in the case under consideration
- (b) If the complaint is against the management about unfair labour practice, the legal aid committee should itself take up the case, or should ask the Government to initiate proceedings against the management. The responsibility of conducting such proceedings should be directly of the Government but not of the Union or the worker. The

prevention of unfair labour practices including trade union victimisation is a matter of public policy and as such the responsibility for such proceedings should be that of the Government.

- (c) If the award is in favour of workman or union and the management goes in appeal, legal aid should be given to the workman or the union. If, however if an award is against the union or the workman, strict merit test should be applied before legal aid is given to the workmen or the union.
- (d) Where under any provisions of law either party to an industrial dispute can refer the matter for adjudication to a tribunal or appropriate court under certain conditions directly without the intervention of the appropriate Government, generally legal aid should be given to the Union or the individual worker. The cost may be met by the legal aid fund or the employer as may be decided.

While these considerations should guide the legal aid Committee in giving legal aid to the workers, there are certain types of proceedings where the State may prosecute workman or his organisation or for the matter, employer, for violating the various labour laws then such proceedings are initiated for violating the provisions of law of the land, it is inexpedient to provide any legal aid to workmen or their organisation in such cases except where the tests of means, merits and reasonableness are satisfied.

Penalty for unfair practice

We also feel that where a management is found guilty of unfair practices, the cost of litigation incurred by the management should not be charged on the industry. Similarly, if a union or a worker is found guilty of unfair practice, the cost of litigation should be borne by the union or the worker, as the case may be.

The Tasks

Legal aid to be pro-labour

Legal aid, in its broader sweep, has a pro-labour personality and responsibility projected by specific constitutional provisions. But the spectrum of labour legal aid covers legislative, legal, research, forensic educative and publicity programmes, some of which, like legislation, may have to be left out for better handling elsewhere and others, like research, may have to come at later stages. Quadrating the whole scheme, phases I and II are nearer us while III and IV may be relegated to a distant day, including them for the present in the perspective plan. Organisationally, an infra-structure functionally sound and a cadre credible and competent at the professional and judicial levels must be created in the first stage itself.

CHAPTER 9

LEGAL AID IN THE SUPREME COURT

Role of the Supreme Court

There is a strong case for inclusion of the Supreme Court of India within the scope of legal aid to the poor. We have heard as in the case of the House of Lords, the insinuation of the Supreme Court being available only to the affluent. Any aggrieved individual, particularly when he is poor and the legal issue affects a large number of poor people, has to spend a huge sum if he is to seek settlement of a controversial question of law from the court of last resort. The law laid down benefits the poor community as a whole but the cost of litigation has to be borne by the private litigant. This is unjust. It deters the impecunious from coming to the highest court and thereby denies the Supreme Court the raw material from which it fashions legal principles in tune with notions of social justice. Unless we minimise the financial disincentives to the backward categories of appellants, we will keep back from the court issues of social importance on which a pronouncement by the highest court may give a big hand towards progress.

Proceedings expensive

2. A look at some of the headings of expenditure in Supreme Court litigation illustrates how costly such cases can be. In virtually all civil and criminal appeals, the record of the case must be printed at the expense of the appellant and constitutes a large expenditure in many cases. As far as Court fees are concerned, they are chargeable in the Supreme Court on *ad-valorem* basis in all civil matters. The Court fee can range between Rs. 250/- to a maximum of Rs. 2,000/-, depending upon the value of the subject matter. However, no court fee is chargeable in the Supreme Court in criminal matters. Even in writ petitions which are filed in the court for the enforcement of fundamental rights which fall under the description of civil writs, the court fee of Rs. 50/- is payable. Above all this, an appellant in civil matters has to deposit by way of security for the cost of the respondent in the Supreme Court a sum of Rs. 2,000/- or any lesser amount that may be prescribed by the Court

3. The scale of taxation fixed under the Supreme Court rules also contemplates taxing of Counsels' fee on the basis of the number of days of hearing. Besides, the advocate on record is entitled to an acting fee ranging from Rs. 250/- to Re. 500/-.

4. There are provisions for proceedings in *forma pauperis*. But the only advantage that a person obtains when leave is granted to

proceed in *forma pauperis* is that he is not required to pay the court fee or deposit security for the cost of the respondent or pay lawyer's fees. All other expenses of litigation will be met by him. The rules do not contemplate any direction being given by the Court for the preparation of the record at State expense.

5. Besides these provisions in the rules, there is always the discretion in the court to appoint Advocates *amicus curae* in all cases where the party is not represented by Counsel. There is a panel of such advocates which is maintained by the Registry for the assignment of counsels in criminal cases and the other counsel are also called upon to assist the Court as and when the Court deems it necessary.

6. In spite of repeated revisions of the Supreme Court rules since they were framed in 1960, the cost of litigation in the Supreme Court has remained fairly large thus placing an ordinary citizen with ordinary means at a disadvantage. The mere facility of a Supreme Court is altogether insufficient to meet the needs of the poor unless legal aid is extended liberally, covering lawyers' services, exemption from printing costs and security for costs as well as the order that the loser pay all the costs. It is assumed that the Legal Aid Committee will satisfy as to the *bona fides* of the claim which will justify the deviation from the normal rule of loser-pay-all regarding costs.

7. In this context, it may be mentioned that legal aid has been extended to House of Lords appeals in 1960, a measure of social reform which has opened the doors of the House of Lords to a much wider cross-section of the litigating population. With few exceptions, a poor litigant, with a meritorious appeal would, otherwise be excluded from the highest court altogether. By parity of reasoning, as well as the exigencies of India conditions, similar provision should *a fortiori* be made here.

8. However, in making our proposals regarding means and merits to qualify for aid, we have to make some changes in the criteria employed in Great Britain. Indeed, even there, some observers feel changes are due. In a recent study of the House of Lords in its judicial capacity two eminent authors (Final) observed, with reference to the House of Lords appeals and legal aid.

“We should like to see a very large increase in the income limit for obtaining legal aid in the House of Lords—or even a total abolition of such limit, accompanied by a provision for graduated contributions up to 100% for the very to healthy litigant.....”

¹The House of Lords is sometimes accused, and not without justification, of being a rich man's court, concerned primarily with the affairs of wealthy individuals and corporations. Until 1960,

¹ Final Appeal by Louis Blom-Cooper and Gaubim Derclory.

impecunious litigants might avail themselves of the archaic *in forma pauperis* procedure. By swearing an affidavit as to their lack of means (and convincing the Appeal Committee that they had a *prima facie* case), litigants might be exempted from the requirements of printing a 'case', from providing security for costs, and from the payment of certain court fees. Most important of all, if unsuccessful, they did not face the usual order to pay their opponents costs.

9. This suggestion may be adopted in our country also. The actual cost of filing or responding to an appeal in the Supreme Court is considerably more than in the lesser courts. It is prohibitive for any but the rich if the party is to come from the States in the South or the North East, thanks to escalating air fares and long distances. Bearing this mind an annual income of Rs. 5,000/- may be set as the limit for qualifying for total aid. This coincides with the minimum income set for taxation purposes and may be a fair indication of the line of poverty for purposes of Supreme Court appeal. Persons with annual incomes between Rs. 5,000/- and Rs. 10,000/ may be required to make a contribution to the extent of half, and persons with income above Rs. 10,000/- must pay a full contribution.

10. It may be noted that even a full contribution under the legal aid scheme will still be a considerably reduced taxation since the norm that we set in regard to legal fees is half the official rates of fee now permissible to senior lawyers. Also, to avoid duplication of expenditure, we suggest that in legal aid briefs, there is no need for an advocate on record, the work being turned out by the legal aid centre itself. The senior, if a senior is engaged by the centre having regard to the complexity of the case, must be permitted to appear, as instructed by the legal aid centre and without an advocate on record. Thus, even when full contribution is levied, the legal costs of a brief handled by the legal aid centre will be considerably less than the open market price for similar services.

11. We emphasise the need for extension of legal aid to the poor to the Supreme Court for an additional substantial reason. The court of last resort does not merely enable litigants to have their private litigious disputes solved; it is concerned with laying down the law in exercise of its powers under Article 141 of the Constitution. Legal aid is clearly a matter of fundamental importance to the community which has to be told what the law is, particularly in relation to 'poverty' litigation. As Blom-Cooper and Drewry observe, "A workman's compensation case is socially as important as one involving sur-tax evasion or the fiscal liability of a huge industrial empire". If such a case is full of intricate points, or riven with conflict of views, it is of great moment to the public interest, particularly the submerged iceberg of poverty that the difficulties are resolved by the court of last resort. If the litigant cannot afford to reach that court on account of

indigence, he should receive a subsidy from the public fund which may be rooted through the legal aid institutions. These questions of socio-legal importance deserve to be considered by the Supreme Court and must, therefore, be assisted in the journey to that court by the legal aid programme.

12. Even on the merits test, the Legal Aid Committee has to be choosy but not strict. There may be cases where a final pronouncement may be desirable in itself so that stability and certainty may be established. Moreover, the broad social importance of several cases already decided by the Supreme Court, which affect the progress of the nation and bear on constitutional interpretation, may suggest that legal aid should not be withheld if the case will not otherwise reach the court or even if a decision has already been rendered adversely affecting the progressive intendment of a statute. There is no need for a merit test to be applied in regard to the appeal to the Supreme Court which are filed only after a judicial scrutiny followed by a leave or certificate. This would eliminate all consideration of merit at least in regard to appeals, civil and criminal under Articles 133 and 134 and Special Leave Appeals under 136. A new approach should be taken regarding the direction for costs when a poor party loses in the highest Court. Under the rough justice of the loser-pays-all system of awarding costs, a loser in the apex Court is faced by the costs of trial and two appeals snow-balling into a back-breaking figure. In such cases, it seems reasonable to adopt the rules of public subsidy suggested by the House of Lords in *Saunders v. Anglia Building Society*¹ (1971)A.C. 1004). To quote Lord Reid:

“I think we must consider separately costs in his House and costs in the Court of Appeal. Cases can only come before this House with leave, and leave is generally given because some general question of law is involved. In this case, it enabled the whole vexed matter of *non est factum* to be re-examined. This seems to me a typical case where the costs of the successful respondent should come out of public funds.”.

13. We suggest that in the practice of the Supreme Court legally aided briefs must receive special treatment and the party, even if he is loser, should not be mulcted with costs throughout. We would also suggest constitution of a suitors' fund referred to in greater detail in this report, to achieve a similar result. The foregoing has suggested provision of legal aid in the Supreme Court through the National Legal Services Corporation, primarily to persons who are genuinely poor or without sufficient means to pay for appeals to the highest Court. The purpose is to assure equality of access to all, with the expectation that some, if not all, of the claims will raise questions having impact on others besides the actual parties.

We venture the view and our proposals flow therefrom—that Supreme Court Justice should not be unapproachable to the poor and

¹ *Saunders v. Anglia Building Society* (1971) A.C. 1004.

the immense importance for socio-economic progress of this great institution will come to light only when the middle and lower income strata, the workers and peasants, the harijans and have-nots appeal frequently for legal-social justice to this august tribunal which is at once the apex and the vortex.

Courts to direct State to bear costs of Appeals involving difficult questions of law raised by Private Appellants

Where an appeal involving a difficult question of law is decided by an appellate court, the amount of costs occasioned by the hearing on the question of law is bound to be considerable. Now, a suggestion often made in this context with some variants, is that the costs of the appeal should be paid by the State. It would be desirable to understand the philosophy behind such suggestions, in order to facilitate their proper consideration.

Several strands of thought can be discerned. First, there is the notice that the administration of justice is a function which the State undertakes to perform a function which constitutes the very basis of the existence of the State.

Therefore, it is suggested, no fees ought to be charged for it, and not only should court fees be abolished, but the litigant should be entitled to be reimbursed for expenses legitimately incurred by him in the assertion of his lawful claim.

The second line of thinking is that a litigant ought not to be made to pay for the mistakes of the trial judge. If the appellate court reverses or modifies the judgment of the trial court, the trial court should be regarded as mistaken. The litigant now defeated should not be made to pay for the mistakes of the agencies of the law.

The third approach is that it is the duty of the State to ensure that the law is reasonably certain or capable of being ascertained with reasonable effort. The fact that the judgment on a question of law has been reversed on appeal, shows that the law was not reasonably certain. The State has, thus, failed in its duty. While specific performance of this duty cannot, obviously, be compelled when its failure is detected and has led to expense, the litigant incurring the expense should be reimbursed by the State.

The fourth approach analogous to the third, is that the proper function of an appeal on law is the clarification of the law,—at least where the appeal is to the highest court in the State. The litigant, when he files such an appeal helps in clarification of the law, and should, therefore, be reimbursed.

One could dispose of the first line of reasoning by pointing out that court fees is a State subject, and, therefore, outside the competence of Parliament. Even then, of course, the question whether its principle ought to be accepted, remains.

As regards the second line of argument, a reply could be given that an appeal is allowed only in response to the deeply felt psychological urge of a losing litigant to have a reconsideration of the matter by a higher court. Once this urge is recognised and given effect to, it inevitably follows that—

- (a) if the losing litigant loses again in the court of appeal, he continues to bear the cost of appeal;
- (b) if the loser in the trial court becomes the winner, then the loser in appeal should pay his costs.

The fact that an appeal is successful, does not, it could be stated, necessarily imply that the judgment of the trial court was palpably wrong.

It is not so easy, however, to dispose of the third line of reasoning.

As has been observed¹

“Many appeals are due to uncertainty in the law. The settling of some rules of common law, and the interpretation of some statutes, has cost litigants vast fortunes. Whenever a new trial or an appeal is due to error of judge or uncertainty in the law, the litigant who suffers should not have to bear the cost.”

It may be that the legislature cannot allow payment out of state funds in every case where an appeal succeeds on a question of law. But, certainly, one could conceive of cases of exceptional difficulty where the question relates to a rule of uncodified law or to the construction of a statutory provision. Leaving aside questions of application of settled rules of law to the concrete facts of a particular case—which are familiar—one could still imagine situations which involve the validity of a proposition of law in the abstract—concerning points relating to the position under a statutory provision or under uncodified law.

Of course, this subject has no unique connection with appeals, because points of law of exceptional difficulty also arise in trial courts. But as is often pointed out, such points rarely crystallise until the appellate stage is reached.

The *raison d'être* for allowing reimbursement of costs of fighting an appeal in such cases is not merely that the trial court's judgment was wrong, or that a litigant ought not pay for the mistakes of the courts. The rationale is, that (i) the appeal became necessary by reason of the need for clarification of the law, (ii) the trial of the appeal has helped in clarification of law, and (iii) the parties should, therefore, be reimbursed.

¹ Jackson, *The Machinery of Justice in England*, (1967) page 334.

CHAPTER 10(i)(a)

LEGAL SERVICES PROGRAMME FOR THE SCHEDULED CASTES AND SCHEDULED TRIBES

Nearly one-fourth of Indian humanity has suffered suppression for centuries having been put outside the pale of the four-fold caste system. Their position, economic, social and cultural—even linguistic—has been pathetic. The Constitution of India, while prescribing equality before the law, has remembered this ancient but continuing inequality and provided specially for the levelling up of these under-privileged people. In an earlier chapter, reference has been made to Articles 15(4) and 16(3), 17, Part XVI etc. which emphasise the grave concern of the founding fathers for the welfare of the Scheduled Castes and Scheduled Tribes. The basic principle of the rule of law makes it obligatory that the writ of legal aid shall run wherever the weak are in need. In our hierarchical society, the Harijans, in the wider sense including the tribals, are at the lowest levels. Justice to the Constitution, therefore constrains us to treat the Scheduled Castes and Scheduled Tribes as a particularly handicapped class meriting sensitive help through specialised legal processes, presuming the poorest as deserving the earliest care. An action-oriented scheme for them is a fundamental requirement of the Indian scene but it must be logistically effective, professionally competent and infra-structurally sympathetic. The whole purpose is to make legal service available to these backward classes not merely in litigation nor to giving advice but in a variety of ways so that social justice may be within the grasp of the socially down-trodden. Mere legislation cannot work social transformation, clearest proof of which is the anti-untouchability law which is hardly credible or operational, judging by results. Any programme of legal assistance to the Scheduled Castes and Scheduled Tribes must take note of the peculiar disability they labour under and antidote them by suitable socio-legal measures. Our recommendations, formulated after some consultations with the Home Ministry and the Commissioner for Scheduled Castes and Scheduled Tribes, are made in this perspective and calculated—(a) to help the Scheduled Castes and Scheduled Tribes in ordinary legal matters; (b) to secure for them the special benefits and protection conferred by welfare legislation; and (c) to enforce laws against social evils like untouchability more sternly. All this, to the extent the scope of legal aid permits.

It may be useful, at the outset, to state what prevails at present on the legal aid front vis-a-vis the Scheduled Castes and Scheduled Tribes and the features which disclose their shortcomings. The scheme of legal aid has been in operation, in a small way, in many States and

Union Territories since the Second Five Year Plan. However, a few States and Union Territories, like Uttar Pradesh and Delhi, have given up this scheme for reasons difficult to guess. Currently, the scheme of legal aid to Scheduled Castes is in operation in Bihar, Gujarat, Haryana, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Pondicherry and Tripura. For Scheduled Tribes, the scheme is in operation in Bihar, Gujarat, Kerala, Maharashtra, Mysore, Orissa, Rajasthan and Dadra and Nagar Haveli.

The allocations made and expenditure incurred on legal aid to the Scheduled Castes and Scheduled Tribes are far too small to make any impact (vide the table appended). The pity is that even the insignificant amounts allotted remain unspent. The Commissioner for Scheduled Castes and Scheduled Tribes has highlighted the deficiencies in this regard, periodically. One of the reasons for the failure in the legal aid programme is the lack of publicity among the relevant community. Another reason is the usual delay in payment of fees to the lawyers who have served, with the result that they lose enthusiasm in the scheme itself. Yet again, the majority of the persons for whom the scheme had been framed, happen to be uneducated and ignorant of the procedure laid down, which is rather cumbersome. Even a normal person thinks twice before taking his case to a court of law. So, unless the persons belonging to the Scheduled Castes and Scheduled Tribes are suitably guided and the procedure for applying for legal aid is simplified and streamlined, the Commissioner rightly thinks, that the affected persons will hardly avail themselves of the beneficent facility. Another disincentive, in practice, is seen to be the restrictions on the area of aid. For instance, in Orissa, legal aid is given only for civil and criminal cases while litigation affecting harijans and non-litigative aid cover a larger area. The State Government does not give legal aid in cases where the opposite party happens to be Government or a person belonging to the same category of backward class. These limitations inhibit the use of the programme by the handicapped community.

In this Report, we contemplate the creation of a National Legal Services Authority which will take care of legal aid in every sector. Harijans and girijans constitute a sizeable number, economically and socially at the last rung, and legal assistance to them has peculiarities necessitating a special wing to be in charge of such services. Functional efficiency requires the creation of an Advisory Committee which will possess special knowledge of the problems of these backward classes and will be a counselling agency to the National Council in the matter of laying down policies, issuing directives to the subordinate bodies, otherwise helping in the effective implementation of the aid to the categories stated above. Of course, similar bodies may have to be created at the State and district levels also by the State Legal Services Boards and the District Legal Aid Committees. The Advisory Body at the national level, we suggest, must have on its membership, the highest officer in the Ministry who is in charge of the welfare of the Scheduled Castes

and Scheduled Tribes, like the Director-General. Similarly, the Commissioner for Scheduled Castes and Scheduled Tribes must also be there, ex-officio. We have suggested elsewhere that two members from among the Scheduled Castes and Scheduled Tribes should be nominated to the National Council. We suggest that they be included also in the Advisory Body. Corresponding inclusions at the State level should be made.

No organisation, which has to cater to the masses of the socially backward, can work as a purely official body. It must have the benefit of consultation with voluntary agencies in the field and establish contact with the affected community through these agencies. It is, therefore, appropriate that at the national, State and district levels, we have affiliation with, or consultative status for, or liaison through harijan welfare organisations, which have a mass base. Such consultative or associated status will enable these mass organisations to take legal grievances in the field to the legal aid institution and become the conduit pipe for legal services to harijans from the legal aid centres started by the Authority. There is another advantage, namely, the promotion of group action in court through legal aid units. The officers of the welfare agencies may request the legal aid centres to take up in court legal action where the result would be benefit to a class, although any particular individual might have suffered only too slight an injury to warrant his going to court on his own. Even legal conciliations and representations before the Administration on semi-legal matters can be attended to by the legal aid centres when properly fed by the mass organisations. Of course, some safeguards in the shape of regulations may have to be made before consultative status is conferred.

A separate account of the sums spent on the Scheduled Castes and Scheduled Tribes by way of legal aid should be kept for each district, State and the country. Shortfalls and misuse can be identified more easily, if this is done and it will also enhance the Legal Services Authority's accountability.

For tribal areas and harijan habitations, legal welfare officers attached to the Harijan Welfare Department at district levels may be appointed where these backward populations are sufficiently numerous. These lawyers must be hand-picked for social sympathy and deeper concern for these suppressed human categories. They have to be friend, philosopher and guide in socio-legal matters, drafting petitions and complaints, taking them to police stations and courts preparing and conducting their civil and criminal litigation, advising them on legal disputes and settling them without going to court, helping them to get benefits under special legislation and the like.

The cutting edge of any policy or legislation to protect weaker groups is the enforcing executive, police officer or judicial personnel. Our is a government of laws and of men, for without the right type of men to implement good legislation can go awry. Adivasis and panchamas being too passive and unprotesting, can be baulked of statutory

benefits by hostile officials and courts. Activists with the proper orientation must be appointed to the key posts in areas where these ultra-backward brethren live in large numbers or are being harassed. Legal aid cannot otherwise produce results.

In all civil cases, legal aid and advice must be given free for harijans and tribals except where they are income-tax and/or sales-tax assessees. A certificate from any Gazetted Officer/Harijan Welfare Officer or legislator or other specified people's representative must be sufficient proof that the applicant for aid is a member of the Scheduled Caste or Tribe, and his own affidavit that he is not an assessee must be, prima facie, good. Once qualified for assistance, the applicant, like the poor, must be exonerated from court fee, other incidentals and lawyers' fees. The 'merits' test or ascertainment of a prima facie case must be dispensed with for this category, although for appeals as appellants such test may well be applied (justified by the fact that one tribunal has negatived the case). Of course, if from experience it is found that there are frivolous claims, abuse can be arrested by imposing the check of a prima facie good case. The fact is that prior schemes for legal aid for such Scheduled Castes and Tribes have generated very poor response, suggesting the shortcomings of the schemes and the difficulties of reaching this population and enlisting their confidence. If this pattern were continued, the National Legal Services Authority would run up handsome surpluses, in its balance sheets because so few harijan clients would be served. This is far from the programme's intent. Therefore, adequate finances and personnel must be deployed to create a simplified, accessible, generous and well-published effort.

In criminal proceedings, apart from lawyers' services witnesses' batta, cost of getting copies and the like, even travel expenses to the police station or court must also be met. Both complainant and accused, if he be harijan or tribal, must be eligible for aid. A provision for this purpose in the Criminal Procedure Code in section 304 may be appropriate.

It is well known that beneficial statutes have remained paper legislations in the area of protection of harijans and girijans. It is, therefore, proper that the National Authority accepts, as its policy in this area, the responsibility for rendering legal assistance—

- (i) helping in the registration of complaints under Untouchability (Offences) Act, 1955 ;
- (ii) prosecuting of cases under Untouchability (Offences) Act which are cognizable;
- (iii) land alienation cases ;
- (iv) cases under Abolition of Money Lenders Act ;
- (v) cases under Tenancy Reforms legislation.

Going by local conditions, similar extra services may have to be rendered by the grass-roots units.

The Commissioner for Scheduled Castes and Scheduled Tribes has bewailed the operational futility of the Untouchability (Offences) Act. According to him, "...main difficulty is that a vast majority of Scheduled Caste persons who are economically backward and dependent on caste Hindu landlords for their livelihood in the rural areas cannot dare to take up their cases to the court of law or police station, in case untouchability is practised against them. Similarly, there are hundreds of cases under Land Alienation Regulation which are pending in the Courts and instances have come to notice that even if decisions are given in favour of Schedule Tribe persons, the actual possession of land is not given to them. Cases pertaining to proper entries in revenue records and land disputes arising between Scheduled Castes, Scheduled Tribes and other communities also call for special legal service." We are convinced that legal aid policy evolved by the Authority has to take dynamic forms in these legislative areas although it is not possible to set them down in detail in a Report like this. We also recommend for reflection that wherever a legal aid official starts a proceeding, it shall not be invalidated for want of sanction or other formal defect. For instance, a harijan having a case, tortious or criminal, against a public servant must be able to go ahead without procedural bottlenecks if the legal aid centre is satisfied it should be undertaken.

In proceedings for eviction or injunction or involving a Scheduled Caste or Tribe member being rendered homeless, we tentatively suggest — it is not a recommendation — that no court should direct dispossession or issue other process until after the expiry of 6 months of notice of the decree or order to the District Collector or local legal aid unit. This period is necessary for Government to find alternative living space for the evictee. Every State should enact legislation in this behalf. Every revenue and police officer of and above a certain rank must be authorised to restore land or dwelling house possessed by a member of the Scheduled Caste or Tribe, if he moves within one year of such dispossession, and if the immovable property has been given to him by Government or other public body. Legal aid officials must have the power to initiate action for such protection on behalf of the affected victim and must, for the purpose of the processual law, be deemed to be persons aggrieved. Of course, such officials must conform to the canons of natural justice without adopting formalised lengthy proceedings. Speed and simplicity with zeal for public policy must inform the operations. Having regard to the large number of land alienation cases of harijan holdings, innovated legal processes may have to be devised, legal aid organs playing a role.

A few more offerings of processual reform are indicated for fuller consideration so that the judicial process may sensitively serve these under class brethren.

Trial of cases under the Untouchability Act or other notified statutes must be by summary procedure. Neither the Evidence Act nor the elaborate formalities of the Criminal Procedure Code should

apply. Down trodden rustics can never prove their case according to the refined requirements of a sophisticated system. Necessary amendments in this behalf must be written into the law if it is to be credible and simple. Harijan welfare, so much bruited about, will boomerang if pragmatic, though unorthodox, measures are not taken. A classification of criminal procedure confined to special laws for the protection of these extremely backward classes will be constitutionally permissible and socially desirable. Less judicialised process does not mean less truth and justice. Even at the investigative level we must have in areas with a high density of harijan-baiting, cells which will act quick and bear special responsibility for suppression of anti-harijan crime. A flying squad, if the territory covered is large, can be organised by the legal aid centre to suggest remedies on the spot and take the case to the police or the court. If the detection and conviction are quick, crimes come down sooner than if the trial is leisurely, procedures cumbersome and the punishment in the book reads severe. That is why setting up of specially sensitive harijan cells in selected areas by the Legal Services Authority is well worth a trial.

Research and Development are of futuristic import for a young scheme with a humanist goal. We, therefore, propose a Research and Development cell at State level that deals, among other matters, with legal aid to Scheduled Castes and Scheduled Tribes. Their two thematic endeavours will be to discover by socio-legal studies — (a) how far and why in their area law meant to protect and promote welfare fails to hit the target and what reform in the law or administration is called for, and (b) the weaknesses in the working of legal Aid among these classes and the measures needed to potentise the scheme — Empirical, rather than impressionistic, inferences and legal antidotes must flow from these researches. Positive law is sometime the formal homage that a guilty society pays to social justice but the desideratum is law that communicates, overcomes resisting groups and secures results.

Once again, we emphasise that through legal aid it must be possible to deliver social justice to harijans and thereby establish the solidarity of the general community with these weaker sectors. The President of India, recently delivering the first Sanjivayya Memorial Lecture, stressed that the problems of the adivasis needed sympathy, understanding and a total sense of dedication to their welfare and development. Postings to tribal areas and to the Departments of the Tribal Welfare, the President indicated, must be of those with deep knowledge of tribals' problems and devotion to their welfare. We humbly submit that our recommendations have been inspired by this thought.

The general expression "Scheduled Castes and Scheduled Tribes" covers several layers, some less backward than the other. We wish to emphasise that the poorest and the lowliest among these unfortunates must be given the highest priority in regard to legal service and sufficient care must be taken to ensure that the better-off do not sap up the benefits at the expense of the worse off. It is also hoped that the

local units will guard against the few who are very well-to-do from using up resources mainly meant for the socially and economically poor. Since the Committees functioning under the Authority have a discretion in granting aid in particular cases by assessing the reasonableness of the assistance sought, there is no need to dwell further on this point in this Report.

The working of the scheme in relation to the Scheduled Castes and the Scheduled Tribes requires active and coordinated support from the States and so, we suggest that the Union Government do elicit the views and enlist the cooperation of the States in the implementation of these proposals. We give below the small amounts allotted and spent by the various States in regard to legal Aid for Harijans and girijans and expect the Union Government to persuade the States to allot much more in this behalf so that what is done is more than ritualistic and the real impact is substantial.

Statement showing the provisions made and expenditure incurred under the Scheme of Legal Aid for Scheduled Castes and Scheduled Tribes in various States.

Sl. No.	Name of the State/ Union Territory	Scheduled Caste		Scheduled Tribes	
		Provision made in 1970-71	Exp. incurred during 1970-71	Provision made in 1970-71	Expenditure incurred during 1970-71
1	Bihar	0.20	N.A.	0.237	N.A.
2	Gujarat	0.06	0.01	0.12	0.01
3	Haryana	0.25	0.03	No Scheduled Tribes	
4	Himachal Pradesh	0.03	..	..	..
5	Jammu & Kashmir	0.03	..	No Scheduled Tribes	
6	Kerala	0.092	0.024	0.092	Nil
7	Madhya Pradesh	0.10	0.06	..	..
8	Maharashtra	0.595*	0.472*	..	..
9	Mysore	0.10	..	0.01	Nil
10	Orissa	0.10	0.13	0.10	0.15
11	Punjab	0.10	0.04	No Scheduled Tribes	
12	Rajasthan	0.07	0.03	0.04	0.05
13	Tamil Nadu	N.A.	N.A.	..	..
14	Dadra & Nagar Haveli	Nil	Nil	Nil	0.001
15	Pondicherry	0.01	Nil	..	..
16	Tripura	0.01	..	..	..

*Combine for Scheduled Castes and Scheduled Tribes.

CHAPTER 10(i)(b)

THE DEFENCE SERVICES AND LEGAL AID

Special position of the armed forces.

Our nation, in recent history, never owed so much to so few as to our Defence Forces. When the country was in peril and its borders attacked, our Army, Navy and Air Force flung into action and we are free because they fought, risked and died for India's sake. Therefore, national gratitude compels special consideration in the shape of legal protection for these brave men and their families. Many have been crippled and have come back home. Many have left their families in the villages even as they struggle in extreme cold and on high mountains to warn the enemy off or to punish him for intrusion. They remember their homes but they cannot return home for strategic reasons. It behoves the State to extend free legal facilities for the services, ex-servicemen as well as the families of the Armed Forces in ordinary litigation and in other ways. True, benefits and privileges have been extended to Defence personnel, ex-servicemen, war widows and other dependants, but the fact remains that not all have been able to enjoy the good so offered by a benign Government. There are special pieces of legislation, like the Indian Soldiers' Litigation Act, 1925. The Army and the Air Force (Disposal of Private Property) Act, 1950, and the Indian Tolls (Army and Air Force) Acts, 1901. Various special concessions, such as exemption from payment of taxes like entertainment tax, excise duty on certain commodities and from payment of licence fee on private arms, have been granted to these categories. The actual consumption of these legislative and administrative bounties must be assured through legal aid. The average member of the Armed Forces, or his wife, or an ex-serviceman, or a war widow, may not know even to fill up forms or identify the particular administrative officer or understand the nature of the benefits and the conditions for securing it. The legal aider must fill in, process, appear and achieve,—that is the service which will warm the homes and cheer the hearts of our fighting fraternity.

2. If involved in a civil or criminal litigation, they may be baffled by court procedure, handicapped, as they are, for reasons of distance, lack of adequate means and knowledge of legal technicalities. When the main bread-winner is thousands of miles away from the family, the latter, when threatened by litigation or other molestation, are altogether helpless. The men on the frontiers cannot leave their post of duty or engage lawyers to fight their case in the court. Again, competent and prompt legal advice may be necessary for the Defence personnel and their families in ordinary course of life. A small house, a sister's marriage, a mother to be provided for—a hundred semi-legal domestic problems distract the youngman. A legal aid scheme can take care of them. Moreover, military justice itself may involve

defence of the member of the Armed Forces in court or court-martial proceedings. In short, legal aid and advice is a type of social service which the State must liberally make available to the current and former members of our Defence Forces and their dependents for their very fighting fitness.

Liaison between welfare organisations of defence reservist legal aid committees.

3. There is an organisation called the Soldiers', Sailors' and Airmen's Board functioning throughout the country to look after the welfare of the Defence Services, their dependants and ex-servicemen. There are also Boards functioning at State and District levels. At the Centre, the Board is presided over by the Defence Minister. In the States', the Chief Ministers take that place ordinarily, and at district levels by the Deputy Commissioners or Collectors. But this body does not possess a legal wing, as such, to offer legal advice and aid competently or promptly. It is, therefore, of the first importance that the National Legal Services Authority must liaise with the Soldiers', Sailor's and Airmen's Board at its various administrative levels so as to ensure free and ready legal services to these military customers and their dependants. It is useful, therefore, to include the President of the Board or his nominee into the National Council of the Authority, with an equivalent arrangement in the State Boards. It is appropriate that one advocate on the legal services staff in each State specialises in laws and para-legal provisions relating to the Defence personnel, their dependants and ex-servicemen, so that he may, on reference, clarify points to the legal aid centre of the Soldiers', Sailors' and Airmen's Board, whenever questions of law arise. Moreover it is desirable to have a legal officer part-time or full time, in each district Legal Aid Committee, who will be administratively linked to the district Soldiers', Sailors' and Airmen's Board, but remaining under the aegis of the Legal Aid Committee in regard to the exercise of his legal skill and the conditions of his service. Through this advocate, the District Soldiers', Sailors' and Airmen's Board will deal with the Legal Aid Committees at the district level and organise on comprehensive legal insurance for all military personnel, ex-servicemen and dependants on nominal payments to be met either by the Defence Ministry or by the National Legal Services Corporation. In all litigation, for all legal advice and protection, expert services anywhere in the country must be rendered by the Authority or its component legal aid Committees to the Defence personnel, their dependants and ex-servicemen. Such services must be largely *free*, regardless of the clients' means. This much we owe to them. Also, if the officials of the District Soldiers', Sailors' and Airmen's Board certify that a person is either a member of the Armed Forces or a dependant or a war widow or ex-serviceman, *legal advice* on any problem affecting that person, must be given free.

4. *Legal service in court or before a tribunal* must be given *free* to J.C.Os. and other ranks and below, their dependants and ex-servicemen of that category, whatever the nature of the litigation and which-

ever the tribunal, subject, of course, to the merits and reasonableness tests dealt with elsewhere in this Report. Means or absence of it will not be a consideration. However, for *Officers* of the rank of Captain in the army and equivalent ranks and their dependants, a contribution will be levied to the extent of half the ordinary legal charges leviable in such cases from affluent litigants. For others, the reasonable charges prescribed by the Legal Aid Organisations will be payable.

5. In respect of proceedings before any court or tribunal constituted by or under any law relating to the Armed Forces of the Union, the services of a counsel will be made available by the Legal Aid Committee free of charge to J.C.O.'s and other ranks in cases wherein representation by counsel is permissible and a request to that effect is received.

6. Pre-litigative and non-litigative assistance in the shape of negotiations or other action on behalf of these categories must also be rendered by the respective legal aid centres on a certificate of status furnished by the prescribed authority.

7. It some times happens that the power-of-attorney or vakalatnama on behalf of a member of the Armed Forces is not readily available and the court, at other times, declines to wait for communication coming from the officer commanding. All this leads to considerable nervousness and apprehension among the members of the Armed Forces. It is, therefore, proper that when a legal aid centre deputes a lawyer on behalf of a member of the Armed Forces or a member of his family, a declaration by the office of the Centre, as distinguished from a vakalatnama executed by the party, must be treated as sufficient and the court must be required to hold up proceedings for a reasonable time till the Centre is able to get instructions from the man in uniform at his duty post.

Special provision in case of succession to estates

8. We also suggest that a provision should be made for dispensing with a succession certificate or other similar authority in cases of claims put forward by the heirs of deceased members of the Armed Forces on production of a certificate of heirship from the Legal Aid Organisation and the District Soldiers', Sailors' and Airmen's Board in respect of the claims of the deceased arising from his position in the Armed Forces.

9. We would also suggest that free legal assistance should be given to the next of kin of members of the Armed Forces dying in service if the next of kin were wholly dependant on the deceased. Further, it should be provided that in cases wherein a member of the Armed Forces shows that he has applied for legal aid under the scheme for legal assistance to members of the Defence Services, the court shall not proceed with the hearing of the case till a reasonable time

has elapsed for the disposal of the claim for legal aid. Similarly, in criminal proceedings against members of the Armed Forces, we would suggest that except in case of grave offences the requirement of surety should be dispensed with when granting bail. Again, the Legal Aid Committee should be empowered to lodge complaints in the court at the instance of members of the family of a member of the Armed Forces who is absent on duty and that a formal complaint from the service man need not be insisted upon. The Centre should be given the necessary *locus standi* for this purpose.

10. In our view, there is need for such larger legal armour so that the protection of the law may be a source of comfort to those who are ready to lay down their lives for the sake of the country. We make it clear that this programme must apply during peace as in war to military personnel as well as to para-military forces. Even assuming marginal abuse of the scheme, that is a matter for administrative check rather than for denial of the facility. Legal aid must defend the defenders.

CHAPTER 10(i)(c)

LEGAL AID IN RELATION TO WOMEN, CHILDREN AND OTHER DISABLED GROUPS

There are certain weaker segments of society such as women, children, minorities—linguistic, cultural and religious—prisoners and other disabled people. Each group has certain facets of weakness or disability which conditions or shapes the type of legal services to be delivered and the tests of means and merits which may be applied to them before legal aid is accorded. In the general Chapter on the Vis-taramic view of the legal services programme, we have stressed this aspect and here we dwell, at some length, on the special need for adjusting legal aid to the requirements of the affected human level.

Position of women

2. Women are our sacred source and children our line of immortality. But owing to biological disabilities and social ignorance, they suffer injustices, legal and illegal. These vulnerable categories need specialised and sensitive measure of protection through the law. Of course, platitudinous equality of the sexes and constitutional concern for the moral and material abandonment or exploitation of tender age and feminine physiology exists but a functionally intelligent free legal services programme which can deliver the goods is the desideratum. We outline such a broad design informed by the social pathology of these weaker groups.

3. But while women have been victimised by centuries' old load of traditions and mores, their status has been steadily rising in free India. The legal hope that the disabilities of womanhood would be firmly wiped out is embodied in the constitutional guarantee of sex equality. Articles 15 and 16 go further to sanction benign discrimination for women and children since masculine cultural domination is a reality and biological vulnerability to crime is a female fact. Special antidotes, through the legal process, are, therefore, required if equal protection of the law, regardless of sex, is to become a rule of Indian life. Legal aid, as a movement, is very much interested in bridging the substantial gap between law and equality of the sexes. We hope that as the legal aid programme gets into full swing, the 'aware' lawyers (including women) operating within the scheme, will be able to stimulate legislative action in collaboration with women's welfare organisations, and use the judicial process to redress the wrongs against womanhood which still survive. However, it is fanciful to assume that legal aid, by itself, will rapidly put an end to widespread social evils such as the dowry system which dies hard and discriminatory inheritance laws such as persist in certain parts of the country and among certain sections of the community. Nevertheless, a case-by-case or issue-by-issue approach will bring relief to the particular client and extend a promise of betterment and incentive to action to all women.

Rural women are the worst hit and law reform by social-legal exercises should be high on the agenda. Legal aid in this area must be alive to such priorities.

4. We must sound a notice of optimism because an era of confidence on the part of women has begun with the leadership of the nation at a critical hour being handed over to an outstandingly heroic lady fighter. Many minor items of unfairness are receiving administrative and legal attention, such as the removal of the disqualification of married women to appear for the All-India Services competitive examinations. In the processal law also, some changes are coming. For instance, the purdah system, which is a veil forced upon woman by man, is gradually vanishing, thanks to some court decisions¹ and the impact of modern life. Even so, much more remains to be done at the level of the poor women. Equal wages for equal work, regardless of sex, to give best one instance, is still a slogan although it finds a place in Part IV of the Constitution and marriage is a ground for dismissal in some Christian colleges. These changes must come and, perhaps, will come more speedily than expected in our dynamic phase of socio-legal change. The legal aid movement has a catalytic role.

5. The classification of legal aid on the basis that the receiving category consists of women and children, is perfectly constitutional in the light of the provisions of Article 15(3) of the Constitution. The problem is what concrete shape free legal services should take when the consumers are women and children. There are national organisations working for the welfare of women and they have felt strongly that legal aid is one of those urgently needed welfare measures. As recently as May 9, 1973, the Conference of the Chairmen of the State Social Welfare Advisory Boards welcomed the proposals regarding legal aid services for women and children. The Chairman of the All-India Women's Conference was particularly alarmed that womanhood was peculiarly handicapped before the judicial and police process and needed the sympathetic assistance of sensitive legal services organs. Remembering that half of Indian humanity is made up of women, the dimensions of the problem are truly disturbing.

6. It is fair to notice that some institutions have sprung up spontaneously for rendering legal service to needy women not necessarily through litigation but by offering good offices for women in distress. The Jyoti Sangh at Ahmedabad, to cite but one example, is a well-established women's organisation working since 1937 offering a variety of services for the poor, needy and confused women.

7. One of the very important sections of the Jyoti Sangh is the relief and rescue department, which deals in general with all complaints pertaining to family problems. The institution has a good number of paid and voluntary social workers who offer to listen to both

1. *Vas'an Vas'il v. Ummahathi* (1969) K. L. T. 418; 1969 K. L. J. 408.

the parties to the dispute, try to make a compromise and failing which other alternative solutions are suggested. In course of time, this work of Jyoti Sangh has acquired the prestige of a Women's Court. When they send printed post-cards requesting the parties to attend the Centre, the illiterate village people take it to be a "summons from a Women's Court". A good deal of important social work, without any statutory authority or legal status is being carried out at this family concerning unit run by the Jyoti-Sangh. A detailed study of institutions like this reveals a felt need in the country in the sphere of legal aid. Our first recommendation is the creation of family conciliation agencies assisted by lawyers deputed from the legal aid centres which could give practical guidelines to women in distress seeking solution of their family problems of a socio-legal nature. A social welfare organisation meeting with women cannot effectively advise them to help them to get redress through law unless the legal aid centre of the area gets involved in the ameliorative work. It must be possible that in the rural areas where the socio-legal lot of women is the worst, there should be block legal extension officers who will attend the conciliation agency sittings and give constructive suggestions. Such legal aiders must also be available on designated dates at women's welfare centres so that village women may come on that day, relate their difficulties and obtain practical advice. If need be, the legal aid consultant can direct them to the centre for initiation of legal action if conciliation fails. We recommend the creation in the countryside and in slum areas centres for aid and advice where the local legal aid centre or legal extension officer, if any, will supply guidance and attempt reconciliation, failing which, will offer facilities for court action. All this will be done free provided the social welfare organisations concerned is given associate status and recommends free legal service.

Special courts

8. Family courts and children's courts, separate from civil courts, should be set up, particularly in slum areas and in centres of rural poverty. We are aware that this progressive measure has, in a way, been recommended by the Law Commission. In many advanced countries, particularly socialist countries, family problems, such as divorce, guardianship of children, maintenance of wives, are tried in family courts according to procedure which is informal and *in camera* and unfettered by the technical rules of evidence. Indeed, even reports from, and the intervention of, responsible leading citizens may be relied on in an endeavour to bring about a rapprochement or an equitable adjudgement of rights and liabilities. We suggest that at the appropriate stage family courts as such be set up not as part of the civil court infra-structure but on an independent basis. A woman must necessarily sit on such a bench and processual liberty to consult psychiatrists, sociologists and local organisations must be permissible for such courts. Children's courts are contemplated in several enactments on the Indian statute book. In these Acts, wherever a juvenile court has been set up or other court has been authorised to function as a juvenile Court, no

other court is empowered to try such children. However, this is being more honoured in the breach than in the observance. Under the Children's Acts and Reformatory Schools Acts, no child can be sent to the prison as an under-trial or as a convict. In actual practice, however, many children are found in the jails of our States. The separation of children into specialised institutions prescribed under the Children's Act is not being implemented strictly. Nor are there creches or primary schools on the campuses of jails for women so that young babies and tender children who may stay with women prisoners, may be looked after. There is a criticism that taking advantage of the helplessness of children, some policemen arrest youngsters under section 107, Cr. P. C. If the child is unable to produce a bond with sureties, it is imprisoned. This is an area where vigilant scrutiny is required at the legal level by legal aid centres. Again, because of their young age, children are prone to exploitation, by their own parents, step-parents, so-called parents and can be forced to do hard labour, long hours of work, beg, borrow, traffic in illegal goods or used as carriers for illicit traffic. There are special provisions in the Children Acts as regards "Special offences in respect of Children"; however, these provisions are rarely utilized by the police and thousands of such children are seen engaging in activities, not suitable for their age and energies. The legal aid centres should be very watchful to see how the cruelty and exploitation of children can be prevented and the miscreants brought to book.

Legal aid and children

9. The custody of children, the right to property of the children, maintenance, adoption and such other issues are often decided not on the principle of welfare of children but the welfare of the clients or adult guardians due to the cleverness of private lawyers. The free legal aid centres must step in to ensure that the courts are apprised of the suitable background for coming to a just conclusion.

10. The Probation of Offenders Act, 1958, places restrictions on the imprisonment of young offenders below twenty-one years of age. However, the judiciary are not often aware, of the beneficial provisions and operate with a punitive approach, against the spirit of the law. The formalities before sending a juvenile or adolescent to jail, of a pre-sentence investigation report from the probation officer and recording the reasons in writing why a young person is sent to imprisonment are sometimes disregarded by the judiciary. The baneful effects of such imprisonment on children can be imagined. Section 11 of the Probation of Offenders Act, 1958, gives a right to such young offenders, or to probation officers to challenge the order. Free legal aid for such a purpose will be greatly helpful in achieving the objectives of the probation law.

11. Women accused of crime should never be sent to police lock-ups. Women under-trials in local prisons are often very few and solitary. This makes life miserable for the women in isolation. They

are also likely to be exploited. Women convicted of crime due to social pressure such as infanticide, attempt to commit suicide and others, may be released prematurely, after a lapse of some periods, to the care of well-established voluntary women's homes, recognised under section 401 of the Cr. P.C. This has been tried out successfully in former Bombay State and such women learnt and passed examinations, which enable them to fare better in life after release.

12. The deserted women, widows, wives of the jawan-martyrs and others are discriminated by relations due to their ignorance of the law and inability to assert their rights. In matters like separation, divorce, dowry, maintenance, alimony, inheritance, adoption, etc., women have to suffer and this is a very proper field for being looked after by the legal aid centre of the local area. In this context, we may point out that the presence of advocates in the juvenile courts in the various State Children Acts and Central Children Act of 1960, is debarred. The relevant provisions are condensed thus :

13. Section 14 of the Mysore Children Act and section 14 of the Bombay Children Act and section 22 of Saurashtra Children Act, specifically mention that a legal practitioner shall not be ordinarily entitled to appear in any case or proceeding before the competent court, unless such court is of opinion that in public interest the appearance of legal practitioner is necessary.

Section 26(5) of East Punjab Children Act and section 23 of the West Bengal Children Act make provision for attendance of the lawyer on behalf of female guardians of the child.

Section 28(3) of the Central Children Act and section 30(3) of the Draft Andhra Children Bill provide that no legal practitioner shall be entitled to appear before a competent authority in any case or proceeding before it except with the special permission of that authority.

14. One of the recommendations made by a workshop on Children Act, 1960, held by the Central Bureau of Correctional Services in 1969 was all children courts should make provision for a public defence counsel, who can defend the children and protect their interest against unauthorised convictions or detention. While the presence of private legal practitioners is not desirable, the counsel should be a part of the court machinery at Government cost.

15 Young innocent girls, if found unprotected or away from the security of their own homes, are quite liable to be abducted, sold, transported to other States and admitted to brothels, to function for a life-time in a dishonourable career. The Children Acts and the Suppression of Immoral Traffic Act have provisions for rescuing such girls, but

the legal loopholes are exploited by well-to-do defendants so that the victims are often discharged. Free legal aid centres can find enough scope to join hands with the prosecution in bringing the traffickers to book. In these diverse ways, the legal aid movement and organs will become a social force for the amelioration of the conditions of women and children through the legal process.

Need for special facilities

16. We are immediately concerned with assistance of the legal process to women as women and would make the following suggestions to mitigate their present conditions. On the civil side, we would like to regard women as a special category for purposes of legal aid eligibility having due regard to Article 15(3). It is well known that a deserted woman is totally unable to assert her rights in the civil court, even though she may, in theory, have means to pay court fee and meet the legal charges. She does not have the social freedom to defy her husband and engage a lawyer for taking action. When ascertaining the means of a woman who has fallen out with her husband or parents, we must remember that it is possible for the masculine controller to prevent her drawing on the resources which may, in law, belong to her. Therefore, regardless of means, we must provide special concessions for women in civil actions for maintenance or divorce against their husbands or parents. Of course, when legal aid is sought in such family disputes the precondition for aid as attempt at reconciliation or reasonable settlement.

Special exemption from Court Fees suggested

17. In the Kerala Court Fees and Suits Valuation Act, 1959, there is a special provision exempting women from payment of court fees in "suits for arrears of maintenance or for maintenance or for enhancement of maintenance or for recovery of shares of their deceased husbands or parent in the family property, filed by women or minors, where the monthly income of such woman or minor does not exceed one hundred rupees" (section 74(1) (vi)). We would suggest a wider provision whereby actions by women for maintenance or enhanced maintenance or shares in the estate of the deceased supported or in the family property or for divorce on grounds of cruelty or other misconduct will be exempt from payment of the court fee if her income does not exceed Rs. 5,000 a year. Our idea is that in this area, litigation will be few and the extra expenditure out of the legal aid fund inconsiderable while many women may feel a note of hope in the presence of such a provision. We are also of the opinion that whenever a woman claims the custody of her child who is of tender years, legal aid must be extended to her, subject to the liberalised means test indicated above.

Aid in criminal cases

18. We propose that in criminal cases, women must ordinarily be given legal aid, regardless of the three criteria. Moreover, even in

regard to proceedings as petitioners and complainants, women should be given this facility without the meticulous insistence on the three-fold test. The possibility of abuse is minimal, the morale we boost in women by this measure is considerable. The balance is in favour of a liberalised programme of legal aid to women in criminal proceedings. In maintenance cases and prosecutions by women for adultery or bigamy free legal aid without reference to means must be made available.

Bail for women

19. Where women accused are arrested, the police and the courts must ordinarily grant bail even in graver offences, although conditions may be imposed to ensure the presence of, and inhibiting tampering by, the accused. As a practice, it will be proper not to keep a woman in custody except when circumstances are so strong as to need it. The weakness of the sex must be remembered in this regard.

Women police

20. The police is often associated with toughness and when the victims happen to be women, regrettable consequences happen. We would, therefore, suggest, as is already the practice in some States, that there should be a wing of police women in the establishment, who should be put to use whenever women are involved as accused in the police process. It is not happy to see police lock-ups and sub-jails manned by male sentries where women are shut up through day and night. One may leave it to imagination to visualise the lot of a lonely woman, often a poor person lying on the bare floor of a police lock-up at night, with only policemen all round. We are of the view that whenever there is a woman inside a police lock-up, which should happen only if special grounds are recorded she should be removed to any other remand home such as a rescue home or rescue shelter and never kept with the police nocturnally. It is not right to keep her in masculine police company. The same argument holds good for sub-jails. Perhaps even now the objectionable feature above-mentioned is uncommon. It should never occur.

Special Protection

21. Mounting sex crime against women puts the legal process to shame. Motherhood and sisterhood are sacred concepts and yet, the law, through its police arm, has not been sensitive enough to tackle the violent sex criminal on a deterrent footing. We, therefore, recommend that in every city, there should be zones marked out where crimes of sex violence frequently occur. Field studies will easily reveal these areas. In all cities, such sex crimes zones must receive special police attention. Mobile police, with some women police officers among them, may do a prompt job.

22. It may be desirable to start, at least in the leading cities, a department which bears full responsibility for dealing with such crimes. At present, for various classes of offences, e.g., railway offences economic offences, there are separate wings. There is nothing

strange, when a crackdown on a certain type of criminal is contemplated, in organising a separate wing for crime against women and children. It may be noted that kidnapping of children, maiming them to enable them to beg and other kindred crimes are favourites propensities of certain classes of criminals. Likewise, luring young girls into the underworld and red districts.

23. A central cell with a telephone and a 24-hour service and mobile policemen will go a long way in preventing or, at least, tracking down crimes against women. It will be eminently desirable to place a woman circle inspector in charge of such a cell so that masculine vulgarity or indifference may not stand in the way of police activism.

24. Similarly, there are areas where destitute women stay homeless or in hutments. Many vices inevitably travel to such places and if the police have a close eye on those particular areas by mapping them out and alerting every concerned police station, there may be a suppression of crime in those areas. The Committee feels that treating sex crime as just ordinary crime is hardly fair to the weaker sex.

25. The underworld houses of infamy and even some seemingly respectable hotels are scenes of unseemly episodes. Our observation in regard to destitute women and sex crime zones and our recommendations for arresting crimes in these areas apply as much to hotels, houses of ill-repute and the underworld. It is not the least difficult to locate these spots. Indeed, by repute they are popular.

Women in judiciary

26. While it may be out of place to include it as a recommendation, we strongly feel that womanly presence on the judicial bench at the various tiers has much to do with the sense of confidence that women have in the legal process. We would, therefore, recommend that in the nyaya panchayats, there should obligatorily be a woman on the panel. In the recruitment to the judiciary, greater representation for women is desirable. It is well known, although not so readily admitted, that backward communities as such, are given some preferential consideration for appointment to the higher tribunals and we see no reason why at least a similar concession should not be extended to a weaker segment of society, namely, women, other things equal.

Women lawyers in legal aid centres

27. The legal aid centres, particularly offices catering to large women clientele, should employ woman lawyers. Whenever a woman is taken into custody intimation thereof as soon as may be, should be given to the nearest legal aid centre. There must be trained, in each district, at least one lawyer specialising in women's laws to function as consultant or adviser apart from doing regular legal aid

work. Block legal extension officers must be directed to give advice, try to reconcile and, if need be, initiate proceedings in all cases where women are involved.

Legal clinics for women

28. The success of any such scheme as we envisage, obviously depends on the vital links with the affected community through effective liaison bodies working for the welfare of women and children. We feel that as in the case of the Scheduled Castes and Scheduled Tribes, there must be representation in the National Council, State Committees, district level committees and even at lower rungs for women's organisations. The all-India Women's Conference, the Central Social Welfare Board and the Indian Council of Social Work, are organisations whose representatives may be members of a functional committee relating to legal aid to women and children. And, apart from this, representative one of these all-India bodies may be on the National Council itself. At the State level, similar representations should be given. Apart from representations in the Councils and Committees, we suggest consultative status for women's welfare organisations for reasons similar to those set out in the section relating to Scheduled Castes and Scheduled Tribes. The rural woman is now tongue-tied and the general feeling is that at block level, the law man in the legal aid service must be available to help women's organisations. Indeed, as doctors do in clinics run by charitable organisations, if a legal aid lawyer spends a day or two in the local women's welfare office where women with legal problems may come and meet him, it would do a lot of good.

29. We would like to emphasise that such exposure of lawyers to women's problems and women in distress, to legal approach to solutions, will work for mutual good. Apart from that, suggestions for law reform and rectification of practical difficulties in the working of welfare legislation may be important by-products. We hope that when our scheme is thus vitalised, a better legal day for the Indian women will dawn and Article 15 will become a reality.

Special provisions for children

30. Family disputes affect not merely the spouses but their offspring. But our procedural laws omit to or ill-recognise this fact. A child may not be a party to a suit or proceeding in the conventional way under Order 1, C.P.C., but may be affected by the decision as, for example in a divorce case. Even in a maintenance or guardianship proceeding, a minor's voice must be heard even if not a party. We need not spell out all possible situations where the court must consider the little ones except to suggest a provision that these Courts may issue notice to the secretary of the local legal aid committee having jurisdiction and furnish him free of cost, all relevant papers. Thereupon, he shall be deemed to be a party to the proceeding and shall cause to be investigated through associated social welfare bodies the circumstances of the child and bring them to the notice of the

court. The Code shall further provide that the court shall have power to pass such orders as are deemed just to prevent the material and moral abandonment of the minor, as far as may be, consistently with the rights of the parties to the suit. Order 32B, C.P.C. may be an appropriate place to introduce this concept.

31. The situation in the criminal jurisdiction causes similar concern. Every bread-winner about to be sent to prison and every poor or lonely woman facing prison sentence, if a parent, leaves destitute a voice less creature—child. The court, in a humanist system, has to listen to this untold story and provide against unmerited want. The relevant enquiry can be made by the forensic council concerned through liaison bodies like women's associations, N.G.Os' associations, trade unions and even the mukhya sevikas of the block. The court may direct the reception of the child into an institution or commit it to the care of a willing family subject to safeguards and judicial control. Appropriate provision in section 125 of the Criminal Procedure Bill, 1972, may be made.

32. Even in other social situations we may need to rescue children with legal aid. There is a large area where law reform—substantive and processual—is needed to protect the child. Socio-legal studies also will be rewarding where collaboration with social welfare bodies is desirable.

33. Having regard to the substantive law which disables a minor from entering into contracts, the means of such a person have to be considered realistically. So much so, any minor who intends litigating, for *bona fide* reasons, through a representative other than his legal guardian, must be deemed to be without reasonable resources². Any litigation, civil, criminal or other, of this type must receive legal aid without the means test. At the end of the litigation either the opposite party or the minor's estate may be made liable to the Legal Aid Board.

Research in such problems

34. It has been rightly pointed out by the 12th Conference of the Chairman, State Social Welfare Advisory Boards, held in May, 1973, that socio-legal research should be undertaken on the problems of women and children on a continuing basis. Social workers, women's voluntary organisations and voluntary lawyers' agencies should work in collaboration with the Research Wing of the Legal Services Board of the State.

35. Having regard to the particularly backward position in the Indian social system for women in the country-side, there is need for a mass contact programme with a view to instil confidence into, and properly educate, women on their rights and responsibilities and the utility of the legal aid services. Women in rural, tribal and hill regions should be particularly subject to this salutary campaign bringing into operation publicity media with Governmental co-operation.

2. See observations in *Janaky Kuttia v. Varghese* 1969 K.L.T. 953; 1969 K. L. J. 728.

CHAPTER 10 (i) (d)

OTHER MINORITIES AND GROUPS

Special position of minorities

A realistic conspectus of legal aid to the weak must recognise the reality of minorities, cultural linguistic and religious and provide for legal and auxiliary support when they are unable to assert or defend through the normal processes. It is a fact of Indian life that minorities suffer from complexes and, occasionally, are mauled by the majority and legal protection becomes of utmost concern in such times of crisis. In a democratic polity a minority is a group with an identity and claims of minorities qua minorities deserve to be defended not by grace but by right. Otherwise even anti-establishment opinions may for that very reason suffer suppression. When tensions prevail in sensitive areas of inter-communal acerbities, the need of the minority group for legal assistance is real, irrespective of poverty. The factor which makes for weakness in this situation is the very factum of being a member of the minority. The legal process must speak up on their behalf when their rights are trampled upon. When riots break out, their agitated grievances have to be listened to and action taken. Who will draw up such complaints for them and institute proceedings either before the police or before the court? Social conflicts and consequent violent disturbances also can erupt, producing situations of fear. Moreover, cultural and educational rights of these citizens and their children may, sometimes, be denied in institutions and if there is a wave of excitement, it may be difficult for the members of the minority group to present their case or assert their rights at the legal level. Religious denominations, likewise, might be scared of getting into confrontation with a hostile majority and, what is more, if the minority happens to be economically dependent, other complications, such as dismissal from service or discriminatory non-employment may arise. It is true that the Constitution proclaims rights in favour of these minorities but the law in the books must be energised by an effective legal process. That is possible only if the legal aid movement will champion the cause of the minorities in the anxious situations stated above. Here, a man of means and of no means may be equally victimised by circumstances and mere money will not secure the protection of the law for a group in trepidation socially encircled by a minatory majority. Even law-and-order officials may not be impartial in such situations as some States have occasionally reminded the social realist. The legal aid movement must be sensitive to such group handicap in the spirit of fearless justice under the law. Indeed, democracy may be rule by the majority but for the minority, who are a trust if Government is not to become tyranny. A minority, in this context, is of wider connotation and may cover even

rationalists in an obscurantist area, mixed marriage organisers in an orthodox community and the like. To protect democratic dissent is the function of a refined legal aid programme.

Aid to minority qua minority irrespective of means

2. We, therefore, suggest that a member of a well-recognised minority, in an area or a situation where victimisation of that minority is threatened, should be given legal aid regardless of his means, provided the tests of merits and reasonableness are satisfied, viewed liberally. Indeed, later, when the situation subsides, recovery of the legal expenses may be made provided at the initial stage a condition of recoupment is signed up by the seeker of legal aid. Again, where minorities suffer from denials of their rights, test cases may have to be launched in court with a view to getting such rights established. A right is real only if it can be enforced. Therefore, we recommend that where test cases have to be started or class actions launched on behalf of weaker minorities of a locality, legal aid centres must have the authority to do so. In such cases, the cost of these actions should be borne by the centre since no individual member of the minority group may be ready to bear it, and, in some cases, they may not even like to be known as being the sponsors of such actions. For instance, the right of a group to pass through a public street, or to organise mobile music in processions or resist midnight bhajans in an area of mixed creeds, admission of children of the minority group into certain schools, the right to enter temples which are claimed to be private as against certain minority communities by followers of a different religion or upper caste or to reside in places dominantly inhabited—these are sensitive instances where if the legal doors are ajar for seeking forensic decisions or protection, the streets may be spared of violent skirmishes. It must be remembered that in these public encounters, riots and police firings, it is always the poor who get beaten or shot.

Representative proceedings

3. In our view, a legal aid centre located in the relevant area must be directed to show ultra concern for afflicted minorities and take up their cause either to institute action or in defence, without reference to the means test we have laid down in the general category of free legal service. Of course, the sanction of the executive committee, as a whole, may have to be taken where policy questions or differences of opinion arise and if the dimension of the problem so warrants a directive from the State Board may be proper. Care has to be taken to save the legal service institution from acrimonious controversy while being ready to fight for unpopular but just legal causes, beliefs and rights. Legal Aid thereby becomes a vital strand in the fabric of our democratic culture.

Persons in custody.

4. The *raison d'etre* of legal aid to men in State custody is obvious. Often times, the legislation which authorises or the formalities needing fulfilment may require challenge. The official violation of legal pres-

criptions may have to be judicially scrutinised and controlled in the hyper-sensitive zone of personal liberty. In all cases of imprisonment and preventive detention the seekers of law's protection are particularly disabled category. A responsive legal service scheme will not first insist on the means test because the area affected is freedom of person and a confined individual cannot easily mobilise this resources. Rich men may not bother to go before a social service agency either. Of course, later recovery from a beneficiary with means is just and must be made by suitable court orders. The other tests of merits and reasonableness are too imponderable in this region of litigation and while their abandonment may not be wise, a liberal approach may be in keeping with the spirit of the scheme. Certainly only rights of members of minority groups qua such groups will come under the umbrella of protection in this category.

5. For example, the Prison Manual provides minimum facilities in terms of living space and other amenities. Many prisons are grossly overcrowded with the result that prison manuals are not being followed. The Manual casts a statutory responsibility on the authorities to ensure minimum standards. Some independent agency can step in.

6. In some other countries, the 'ombudsman' is competent to visit prisons and receive or hear the grievances of the prisoners. There is no reason why independent bodies like representatives of Legal Aid Committees may not be given powers to visit prisons periodically to ensure the proper enforcement of prison rules. Interviews with prisoners by legal aid officials should, on previous intimation, be authorised so that they may inform, advise and act. After all, legal aid officials are public servants and must be treated as such.

CHAPTER 10 (ii) (a)

SPECIAL AREAS—THE ISLAND TERRITORIES OF THE INDIAN REPUBLIC—THE ANDAMAN AND NICOBAR

Geographical Handicaps

The Andaman and Nicobar group of islands has a total area of about 3500 sq. miles, comprising a cluster of around 300 islands and islets. Only nine or ten of them are peopled, but the populated islands are spread from one end of the cluster to the other with the result that the presence of the law has to make itself administratively felt over far-flung areas. Naturally, we have police stations in the islands where people live and executive magistrates also dot these places. There are fewer regular civil courts but the pattern is for magistrates to exercise civil jurisdiction too. The surprising fact that for certain areas in the Nicobar groups there are no courts at all with jurisdiction to try civil cases, came to our knowledge through the bar association—a case of administrative unawareness which we hope will be set right at once. The only sessions court, which is also the only civil court with unlimited jurisdiction, is situated in Port Blair, several hundred miles from most of the islands, poorly served with inter-island communication.

No Lawyers

2. The more disturbing fact is that there are only seven lawyers for all these few thousand square miles of humanscape and they are huddled together in the headquarters town. Virtually all these backward islands have no lawyer's services except when some litigant at great cost hires an advocate to appear for him in the distant island where he is being tried.

3. The Andamanese and Nicobarese are backward tribes and the long-ago settlers are mainlanders transported for life and later living on the good virgin earth, as well as families attracted from all over India under Government schemes of settlement of ex-servicemen and others. We have a strange amalgam including Punjabis, Keralites, aboriginals, lifers and retired army personnel.

Customary laws

4. The customary laws, the modified versions of the penal laws and procedures applied by regulations and the land allotment schemes of the Administrations, make for a legal system with some peculiarities. The ultimate supervision of the judicial administration

is vested in the Calcutta High Court, separated by an oceanic distance expensive to cover in spite of beneficently subsidised travel facilities. A bench of that Court sits in Port Blair for a couple of months but, in the nature of things, the turnout of work is poor and litigation, civil and criminal, at the higher levels is linked with huge costs and long delays inevitable in these circumstances.

Criminal Courts illusory

5. In criminal cases, the island accused often plead guilty; a pathology induced, we think, by absence of legal service and not indicative of a phenomenon of frankness. The right of summon, examine, cross-examine and re-examine witnesses and to adduce legal arguments without the assistance of counsel is illusory and it is, therefore, disturbing to observe the large number of accused persons readily pleading guilty when delivered by the police into the court. The inference is not that the accused are more honest but that they are more helpless.

6. In the absence of legal services, the magistracy gently lose their vigilance and, over the years, cease to be sensitive to individual freedom. We may mention one instance of an elaborate order of a sessions judge in Port Blair dismissing a bail application without a word on the merits but solely on the abstruse ground that the State assigned counsel could only conduct the case but not move for bail. This is a sad commentary on Andaman justice.

7. Such, in brief, is the backdrop against which our proposals, restricted to legal aid, have to be appreciated. We are strongly of the view that the judicial set-up, the substantive and procedural laws, the problem of lawyer dispersal and other aspects of the juridical system deserve a study in depth and extensive overhaul beyond the limited scope of our Committee if the rule of law is to be respected not only in spirit but in form also.

Requirement of these Islands

8. We are convinced that equal legal facilities cannot be enjoyed by the residents of Andaman and Nicobar, unless we provide under the Legal Aid Programme; (a) legal advice bureaux manned by lawyers in each development block; (b) duty counsel in each court—we are of the view that under existing conditions lawyers able to represent legally aided clients in either civil and criminal powers would be congenial and (c) legal aid committees on the general pattern for each Island and around every court-centre. Our recommendation is that for tribals of both groups of islands legal aid without reference to means must be extended; for others, the general tests already dealt with may apply.

9. It is true that there are not many cases, civil or criminal, in the islands, but this leads to no conclusive inferences. If you have no lawyers, there will be fewer cases even if there are legal grievances just as if there were no courts, there could be no institution of

cases. At present, a man arrested in a far-off island has little hope from bail provisions because he does not know the law and procedure and a lawyer is not to be had for love or money. The lonely island groups of the Indian Republic are low visibility areas from the point of view of the judicial process and legal services. The native inhabitants of these quaint spots suffer special handicaps in securing legal services.

Legal aid Bureau for the Island

10. The need for lawyer's assistance for people needs no argument and so we have to have a legal aid bureau in every island. In the early stages, there may not be enough litigative and advisory work for them. But then, they can be used during that period to give short term courses to Nyaya Panchayat members. We are glad to note that this village justice institution has life in the various Islands. There is a good case, as argued elsewhere in his report, for adding to the civil and criminal powers of the Nyaya Panchayats. Integral to this proposal is the importance of judicial training which can, in the special circumstances of Andaman and Nicobar Islands be carried out by the legal aid lawyers who are otherwise not fully engaged. This blend of functions is feasible, we gather.

Facilities to the Island lawyers

11. It is difficult to induce lawyers with their urban way of life to move into the Islands. At the same time it is necessary for the rule of law to succeed that more lawyers must be persuaded to settle down and make the islanders their clientele. In the early stages, therefore, it is reasonable to give a subsidy to any young lawyer who agrees to settle down professionally in any Island outside Port Blair. It is also proper, taking a practical view, that the fare for travel between any island and Port Blair for lawyer and client should be half the regular fare if the trip is certified by a judicial officer as necessary for filing a legal proceeding in one of the higher courts at the Headquarters. A similar provision must apply to journeys from Port Blair to Calcutta.

Research programme

12. Elsewhere, we have dealt with research and developments as an important branch of legal aid exercises. The socio-geographical features of these islands emphasize the need for legal change which can be promoted by research and field surveys and legislative action as a follow-up, on behalf of the lowlier people. Many legislative provisions which benefit the rest of the country do not automatically apply to these islands for reasons valid at one time. But a continuous process of research to assess whether conditions now do not warrant their extension is desirable so that the people may not be denied their benefit simply because the executive head thinks they are not ripe for it. It is good to organise research as part of legal aid without waiting for agitation to awaken the authorities.

Role of labour unions in the Islands

13. Labour unions which are now being formed in many places in these Islands need legal assistance, and perhaps, other social organisations also may seek such services from the legal aid centres. Therefore, contact with mass organisations, already dealt with in this report, has a useful role to play in these Union Territories and will have to be attended to by the legal aid programme.

14. Strictly speaking, suggestions for reorganising the judicature of these Islands falls outside our purview. Even so, legal aid is inextricably intertwined with problems like separation of the judiciary and the executive, so essential for the preservation of the substance of citizens' liberty, and the proximate availability of the judicial process without which geographical inaccessibility robs rights and protections of their reality. The High Court, with its extraordinary constitutional jurisdiction and extensive civil, criminal and other powers of superintendence and control, of appeal and revision and other forms of relief giving review, is the guarantor of freedom under the law. And the ineffective annual sojourn in Port Blair must, we think, give place to more lasting and 'felt' presence. The demand of the Islanders for a judicial commissioner has to be examined and the force of the grievance appreciated, if we may, in all humility, say so. May be, a Calcutta High Court bench at Port Blair may prove more useful or may not. We need only high-light the validity of the claim for the highest court being available for seeking remedies without disproportionate cost and delay. Let us not forget that the writ jurisdiction is among the great democratic guarantees of our constitutional government which cannot be whittled down by distance and cost without peril.

Separation of Executive from Judiciary

15. The separation of the criminal judiciary from the executive machinery is an old principle and now, a constitutional norm. The new Criminal Procedure Code Bill provides for it, although the earlier regulations of the Andaman & Nicobar Administration does not. We wish to alert Government and Parliament that no saving clause depriving these Islands of the benefit of Art. 40 is warranted or should be introduced. The people are aware enough and the current Island conditions are good enough to exclude executive arguments for retention of judicial powers. We are happy to note that the Administrator and other judicial and executive officials welcome the idea of legal aid and are ready to give full administrative support to the scheme. The history of our Freedom Movement is integrated with the history of Andamans. It is a patriotic gesture in the Silver Jubilee Year that this radical reform of a comprehensive legal aid programme is ushered in and Law, instead of sentencing Indians for demanding freedom, ensures social justice and equal protection.

CHAPTER 10 (ii) (b)

THE LACCADIVE AND MINICOY ISLANDS

Geographical handicaps

16. The Laccadive and Minicoy group of Islands, so varying in their conditions, together constitute a block of islands whose conditions differ from those in Kerala, the proximate mainland neighbour. Nature has made these mini-islands the happiest part of Indian geography from the point of view of beautiful landscape and seascape, but from the point of view of legal institutions, there is much to be desired. Till over a decade ago, feudal system of Amin's justice prevailed, with the top executive of the Islands being an appellate authority. Since 1966, the procedural laws of the mainland have with some modifications been extended to these Islands.

Present legal system

17. A subordinate judge holds court in the main Kavaratti Island, while two munsifs cover the jurisdiction in the rest of the Islands. There are magistrates having jurisdiction in the Islands and the subordinate judge is invested with powers of the Chief Judicial Magistrate. There are no lawyers whatever, and, a few uneducated persons, trained in the old Amin's days, do duty as mini-lawyers. The population is entirely Muslim and their personal law is governed by custom. The appellate jurisdiction over the munsifs is vested in the sub-judge, and the High Court of Kerala situated in Cochin exercises judicial supervision over the Islands. To bring a lawyer from the mainland is beyond the means of most people and so expensive and dilatory that it is ruinous. Similarly, going to the mainland to consult lawyers as to whether a decree is worth being challenged in appeal and to prepare a memorandum of appeal is far too costly for an average litigant. As against a citizen of the mainland the island people suffer a serious handicaps for reasons of sheer geography.

Negligible litigation

18. In refreshing contrast to the rest of India, the people of the Laccadive, Minicoy and Amindivi Islands are, as a rule, quite in their disposition, as William Logan observed, more than a hundred years ago, in his book 'Malbar'. Even so, a new awakening is overtaking the youth and, for the first time within living memory, a murder took place in January, 1973 in the Androte Island. Speaking generally, civil litigation is marginal although the delay in disposal is considerable. This is due to the fact that inter-Island communication during a good part of the year is well-nigh absent and contact

with the mainland for purposes of writ petitions, appeals and revisions, is also hazardous during many months. On the criminal side, the situation is incredibly good because the Pacific people do not even have cases to report to the police station. Very few cases are tried in the criminal court for this reason. Nevertheless, we have been told that this insular state of affairs cannot last along when the wave of unrest and new consciousness among the youth comes from the mainland with which the Islands are linguistically, religiously and culturally bound. We have, therefore, to think ahead and plan for legal aid because the people, while they are not too poor, are unable to meet the heavy expense of hiring lawyers from outside. Having regard to the socio-economic features of these islands, we make the following recommendations, confining ourselves to the legal aid scheme.

Absence of Lawyers

19. The absence of lawyers altogether in the islands produce certain odd problems bearing on legal aid and poverty. In relation to the expenses of importing a lawyer for a particular case from Calicut or Cochin, almost every islander is a poor man. He just cannot afford it. Again, an aggrieved litigant desiring to challenge the adverse decision of the trial court has to carry the judgment with him to Calicut, waiting for the fair season and arrival of the ship. The hardship in criminal matters is far worse because from the stage of bail applications, the presence of a lawyer becomes crucial. Obviously, in a simple case, no party can afford the cost of lawyer in the circumstances already mentioned. It is of the utmost importance, therefore, that we have legal aid centres where advice and aid can be free of cost. We are of the view that at least in the main islands of Kavaratti, Minicoy, Amindivi and Androte, there should be advice bureaux with lawyers to render aid. These lawyers must not only give advice with a view to promoting settlement but should also appear for parties who are unable to conduct their cases. The power to decide eligibility may well be left to the judicial officer concerned, in the first stage of the legal aid programme. Even so, there is likely to be plenty of spare time for these legal aid lawyers which may be utilised for the purpose of training the members of the nyaya panchayats. In our view, a system of nyaya panchayats in every island will be a forward step by way of legal aid to the poor. The main draw-back for such popular justice is insufficiency of legal aid training which can be made up by short courses given by legal aid lawyers. The subordinate judge of the islands is the top judicial officer. He and the two munsifs under him have, and will have, for a long time to come, plenty of time to spare. They may be required to administer the legal aid scheme. In this context, it may be good to remember that in Tamil Nadu as well the legal aid Bill now before the Legislature contemplates the judiciary taking over the administration of legal aid. The islanders hold the court in great regard and a scheme of legal aid, administered by the judiciary,

is likely to carry prestige and credibility. The mandate must be that publicity regarding laws and legal aid provisions, free legal advice to all but the well-to-do, to women regardless of means, service of counsel in court to everyone who in the view of the court is weak and unable to engage one, should become a reality and the judicial officer in the island must be held responsible for the implementation of the programme.

Concessions

20. As scheduled areas—which these backward islands are—a concession of 25% in the matter of court fees is even now granted. We are told that the period of this concession is likely to expire sometime in 1973, but having regard to the present circumstances, there is no justification for discontinuance of the concession. We mention this so that administrative oversight may not cause an un-witting hardship. We feel that apart from general exemption from payment of court fee for indigent persons, the concession of 25% for all the islanders is proper. In regard to court structure, we suggest that the subordinate Judge sitting on Kavaratti be invested with the powers of a sessions Judge, even as his mainland counter-parts are ordinarily invested with the powers of an Assistant Sessions Judge. In the old Travancore-Cochin State, Additional District Judges, who were substantially like the Subordinate Judges, were exercising full sessions Judges powers. We may give those powers to the Kavaratti Sub-Judge also, the special conditions on the islands making granting of full sessions powers more appropriate. This will save an enormous sum of money for the accused and the prosecution when the occasional murder or other serious case comes up for trial. We feel that since the occasion for the exercise of such powers is rare under existing conditions, this step may be taken. At present, the parties and their witnesses from both sides have to transport themselves to Calicut, which is a few hundred miles away across the Arabian Sea and, if a case happens to be adjourned, the entire process has to be gone through over again.

Island accused persons are taken to Calicut

21. It is a negation of justice to take an island accused to Calicut, a place unfamiliar to him, and to compel him to take his witnesses there and to arrange for a lawyer for cross-examination of the prosecution witnesses. On the other hand, the step we suggest will, without any injury to public interest, facilitate easy and inexpensive trials which are satisfactory from all angles, in the Islands themselves. There may even be a direction by the High Court that the Sessions Judge, subject to other exigencies, may travel to the Island where the offence was committed to hold trial. There is no doubt that the impact on the public mind, if such trials are held in the various islands, will be all in favour of the rule of law. Moreover, a Judge who is familiar with the island conditions and way of life of

the community, may be able to understand the motivations and probabilities much better than the far off sessions judge at Calicut who is a stranger to the sociological factors prevalent in the islands.

Recommendation

22. Section 24 of the Civil Procedure Code empowers the district judge to transfer cases from one munsif's court to another. This power can be usefully made over to the subordinate judge at Kavaratti so far as the munsif's courts in the islands are concerned. Such proceedings for transfer are comparatively minor and evaluation of the allegations usually made to get transfer call for an understanding of the social life and the way of thinking of the community, facts which are within the ken of the local subordinate judge rather than of the district judge at Calicut. We, therefore, feel that the State Government must notify the subordinate judge at Kavaratti as district judge for purposes of section 24 of the Civil Procedure Code. It must be noted that the subordinate judge has very little work at present and finds enough time to deal with stray sessions cases and transfer petitions, thereby relieving the over-worked district judge at Calicut *pro tanto*. These measures have a great relevance to legal aid because the islanders will gain considerable sums if they can get relief in these matters within the island limits without having to travel across the sea.

Customary Law and need for research

23. The uncertain customs which come up for adjudication and the obsolescent property owner-ship system, which frequently comes into conflict with the ideas of the younger generation and the general desire of the inhabitants for a progressive and modern family law and property law, justifies an in-depth investigation by the Law Commission or other pre-legislative body. A committee consisting of the then Subordinate Judge and Munsifs of the Islands had made a report regarding the question of inheritance among the people, but it has neither proved acceptable to the community nor received sufficient attention of Government, although it is occasionally referred to by the judiciary.

24. The procedural law itself too sophisticated for the islanders whose level of education, particularly among the elders, still unsatisfactory and whose litigiousness is still conditioned to simpler ways than the Civil Procedure Code will admit of. We would suggest, therefore, revision and simplication of the adjectival law.

Subordinate staff of the Judge should increase.

25. It is regrettable that minor deficiencies cause hardship to litigants and remain unattended to by administrators. There is no copyist nor typist for even the subordinate judge, with the result that his only stenographer has to do other jobs. This results in undue delay in getting the judgments and decrees prepared and their copies

granted. The time for filing of appeals will also give the slip to the party if he has to wait for copies of judgements and take them to the mainland for taking legal advice as to the worthiness for appeal. We, therefore, suggest that a typist-cum-copist be appointed for each court, that carbon copies of judgments taken when the original is prepared, be certified as true and given to the parties so as to save time. Once lawyers come to reside in the islands, either in connection with legal aid or otherwise, there will be a change in the situation. At present, however, the ordinary litigant depends upon the uneducated practitioner, for no better one is available. The view most acceptable to the islanders appears to be that during the transitional period of a decade, these few survivors of the Amin's days may be permitted to appear in courts provided they are able to produce a diploma obtained after a short course in legal training. Such a course can be held by the judicial officers with the assistance of legal aid lawyers. In fact, such persons may be a lasting asset later on to many nyaya panchayats.

26. We have thought it necessary to deal with Andamans & Nicobar Islands and Laccadive, Minicoy & Aminidivi Islands on a separate footing since the conditions prevalent in these areas are basically different and justify such treatment. Our legal aid recommendations should and can be implemented in the short term while the general observations we have made should be taken up by the concerned administrative Ministry, if so advised.

CHAPTER 11

PANCHAYATI JUSTICE AND LEGAL AID

Mini-courts for village litigation through non-judicialised forum

In its wider sweep legal aid must include every form of legal assistance which brings justice nearer to the people, particularly the rural poor. The judicial process must be so re-organised as to make legal relief easily accessible to the indigent and the backward in our villages; for, India lives in her village and most of the countryside is smeared with poverty and social squalor. It behoves the State, therefore, to provide cheaper local machinery for resolution of legal disputes with an eye on promoting settlements and good neighbourly relations. To require parties to small claims or cases to present themselves at the not-too-near tehsil or district headquarters ready with their formalised pleadings, their exhibits, their witnesses and their lawyers and to wait for days or to re-appear on adjourned dates till the dockets are disposed of in their leisurely and expensive course in civil or criminal courts, is tantamount to denial of justice. Having regard to the small subject matter of village litigation and the considerable bad blood that may be generated by unproductive and cantankerous legal battles, and remembering that petty cases are mostly where atleast one party is a small man, we must create mini-courts which save the poor from litigiousness. An eminent proponent of small claims tribunals has observed:—

“If a way can be found for administering justice in small causes, which is ideally prompt and inexpensive, we must adopt it or stand convicted as people who are less concerned with justice than on the litigiousness”

Free legal aid to the parties in such cases does not by itself make justice cheap, and lawyers' presence may formalise and complicate rather than simplify and compose. A radically different non-judicialised forum for conciliation and adjudication involving little cost and less delay is the desideratum. Informal procedures satisfying natural justice are enough and the keynote is justice rather than law.

2. We have therefore to devise a simple practical system of dispensing justice at the village level in regard to small type disputes, civil and criminal, helping compromise and avoiding the severity of a sophisticated urban court process. A combination of preventive and curative legal service, consistent with indigenous conditions and constitutional provisions, is the panchayat court system.

1. Harly on Justice or Litigation.

Nyaya Panchayat system

3. The Bhagwati Report on Legal Aid appointed by the Gujarat Government in 1970 has regarded Nyaya Panchayats as integrally linked with the question of availability of adequate legal services to the poor. We quote some excerpts from the report² to drive home our point.

“The lower courts in fact the lowest in the hierarchy of courts under our system of administration of justice are located almost invariably in taluka towns and since a taluka ordinarily comprises forty or fifty villages sometimes more, sometimes less, and the overwhelming majority of our people live in villages, it always becomes a problem for them to approach the Courts when they get involved in legal disputes with others. They are required to travel quite a long distance, sometimes running into as much as forty or fifty miles, to go to the taluka towns and there they have to engage a lawyer by paying him his charges which may quite conceivably be exorbitant and then they have to waste considerable time in going to and fro from their village to the taluka town whenever any date is fixed by the court and also take their witnesses from the village to the taluka town and back on every date fixed for hearing of the case by the Court. This involve considerable waste of time and money and quite often, it is disproportionate to the stake involved in the litigation. It is, therefore, necessary to examine the nature organisation and working of the lowest Courts with a view to see whether it is possible to eliminate this unnecessary waste of time and money by bringing justice to the door-steps of the people.”

“..... the poor who constitute the vast majority of the people of India are concerned in cases of litigation primarily and almost exclusively with the lower Courts. They cannot dream of going to the higher courts because of the nature of their claims or disputes as also because of forbidding cost of appeal. Their contact is, in the circumstances, limited only to the lower courts even on those rare occasions on which they can gather sufficient means and courage to engage in litigation or they are compulsorily brought before the Courts by their opponents. If, therefore, we really want to help the poor, it is time we cure ourselves of the occupational diseases and devote more thought and attention to the lower Courts and bring their organisation and working under rational and scientific analysis. It is in this context that the question of setting up of Nyaya Panchayats as the lowest Courts easily accessible to the rural population and providing cheap and expeditious justice to them in small cases arising out of their daily lives, requires to be seriously considered.”

2. Gujarat Report of the Legal Aid Committee, 1970, Part 13, pages 204-205.

4. In India these institutions are as old as the hills. From the Vedas to Gandhiji, Manusmurti to the Constitution, there has been recognition of the value of panchayati justice as an aspect of village self-government. Indeed, Art. 40 of the Constitution mandates the State to organise village panchayats and invest them with the necessary authority and power. We regard this provision as more than a sanction—indeed, as an obligation—for organising nyaya panchayats at the grass roots level. A study of the system of justices of the peace in the United Kingdom and the Peoples' Courts in the Soviet Union reveals that laymen may well be entrusted with dispensing legal justice provided certain safeguards are written into the scheme. In our own country, Panchayati Raj, including village courts, is of ancient vintage and the criticism levelled against it is more often elitist and impressionistic and empirical observations have proved the contrary.

5. We are fortunate in having several reports in our own country which have gone into the utility of nyaya panchayats in depth. The Law Commission in its 14th Report has observed that Panchayat Courts are capable of doing a good deal of useful work by relieving the regular courts of petty civil and criminal litigation. As a follow-up of their recommendations, the Central Government set up a Study Team under the chairmanship of Shri G. R. Rajagopaul, then a Member of the Law Commission, to go into the whole question and the report that followed vindicated the validity of organising nyaya panchayats in the country. A whole decade has passed since then and, broadly speaking, the Gujarat Committee Report on Legal Aid also has endorsed the case for village courts. We must reluctantly record that no serious legislative attention has been paid to the reports referred to above notwithstanding the clear policy statement made by the Law Minister in Parliament in the late fifties³.

“There is no doubt that the system of justice which obtains today is too expensive for the common man. The small disputes must necessarily be left to be decided by a system of panchayat justice—call it the peoples' Court, call it the popular court, call it anything—but it would certainly be subject to such safeguards as we may devise—the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him.”

6. The failure to implement a programme of nyaya panchayats is a sceptical note on our democratic commitment and a shortcoming in looking to the needs of the poor for justice at once cheap and quick and, in a certain sense, productive of social good. The Study Team:

³ Rajya Sabha Debates, 1959 Vol. 27 No. 3 col. 388 quoted in the Report of the Study Team on Nyaya Panchayats, 1962, p. 122.

also emphasised election in the administration of justice. They observed⁴:

“The process of democratic decentralisation envisaged by Art. 40 of the Constitution and already ushered in, to some extent, has resulted in the general awakening of the people in the village . . . Nyaya Panchayats, wherever they are in existence, are serving a real felt need of the village by disposing of cases more expeditiously and with minimum of inconvenience and expense to parties . . . To avoid the baneful effluence of factions, unhealthy rivalries, a nyaya panchayat may be set up for a group of villages and the grouping may be made having regard to factors like area, population, contiguity, compactness, means of communication, etc.”

The Study Team further stated :—

“Villagers must be given a free hand and the choice lies between the system of direct elections and indirect elections. The method of indirect elections seems to afford for the time being the best solution and of the various possible methods of indirect elections, the best seems to be the type in which each of the gram panchayats in the nyaya panchayat circle elects a specified number of persons to serve on the nyaya panchayat.”

In this context, we may excerpt a few recommendations in the report⁵ which commend themselves to us:—

- “(8) It is not desirable to allow the same person to serve on both the gram panchayat and the nyaya panchayat.
- (9) All *bona fide* attempts to secure unanimity in the choice of personnel to serve on panchayats deserve encouragement.
- (10) The chairman of a nyaya panchayat should be left to be elected by the members of that body from amongst themselves.
- (11) In order to provide for continuity, the terms of office of nyaya panchas should be staggered.
- (12) It would be extremely desirable to associate women in the trial of cases by nyaya panchayats and provision should be made for the co-option of at least two women if in the ordinary process of election they do not find a place therein.

4. Report of the Study Team on Nyaya Panchayats, 1962, p. 28.

5. Report of the Study Team on Nyaya Panchayats, 1962, pp. 125-126.

- (13) It is necessary to make provision for the co-option of members of scheduled castes to serve on nyaya panchayats so long as they require special protection under the Constitution.
- (14) A minimum age of 30 years and ability to read and write the regional language fairly fluently may be prescribed as qualifications for a person to be eligible to serve as a nyaya panch. No property qualification need be prescribed. Relaxations of this minimum qualification may be necessary in backward areas.
- (15) To ensure the successful functioning of nyaya panchayats, it is essential that the panchas should be properly trained. A training programme centering around a comprehensive but easily understandable manual and consisting of an initial training course, followed up by refresher courses and supplemented by radio programmes and periodical literature will serve the purpose. For getting the best results all efforts in relation to training programmes may be made on all-India basis."

The words of Lenin adverted to by the Study Team are pertinent at this stage and so we extract them here⁶:—

"Every representative of the masses, every citizen must be placed in conditions which would enable him to participate in the discussion of the State laws, in the election of his representatives and in putting the State laws into practice."

"The court is an instrumentality to attract every individual member of the poorest classes to State administration."

Social Harmony and Preventive Justice—the object

7. It is absolutely essential, as the Study Team has clarified, that one of the likely functions of a panchayat court must be to strive for social harmony and preventive justice by which we mean avoidance of litigation and settlement of disputes.

8. We would like to highlight the preventive role of legal aid a little more. The parties to a dispute who appear before a Panchayat Court should be persuaded, in a civil case to see if they can resolve the conflict, guided by the Judge. After all, "it is the duty of a judge to remove causes of litigation."⁷

The conciliation system if extensively applied in all courts, will mark a new epoch in the administration of justice in our country. The advice of Abraham Lincoln may be heeded by Indians, with profit when

6. Report of the Study Team on Nyaya Panchayats, 1962 p. 28.

7. 1628, two Institutes, 306.

he said "Discourage litigation, persuade your neighbours to compromise whenever you can, point out to them how the nominal winner is often the real loser—in fees, expense and waste of time."

Proposals relating to Nyaya Panchayats.

9. We may summarise our principal proposals relating to panchayats which are a 'must' in the scheme of legal aid to the rural poor.'

- (1) Panchayat Courts must be manned by persons from a pool indirectly elected i.e. by members of Panchayat Samitees in the manner set out in the Study Team Report. They must be given short courses in relevant law and procedure.
- (2) Intelligent informality consistent with natural justice, must inform the methodology of these lay courts. Powers of interim relief and inter-locutory procedure exercised by Civil Courts must be available to them.
- (3) A Secretary who has a prescribed diploma in law must be available for each Court, the cadre itself being provincialised to antidote parochialism.
- (4) The Indian Evidence Act should not be applied although the Tribunal must be guided by a sense of relevance and come to findings only on facts and not rumour.
- (5) Elaborate reasons need not be given in the judgments to support the conclusions but brief grounds may be indicated.
- (6) Any questions of law on which the tribunal feels the need for light may be referred to the District Registrar of Nyaya Panchayats referred to below; before whom advocates may appear.
- (7) The jurisdiction must be both civil and criminal. On the civil side it must be comprehensive enough to cover all litigation where the subject-matter is relatable to a value of 1,000 rupees or less.

We endorse the recommendations regarding wider powers recently made by High Level Committee on Panchayati Raj in Gujarat which we extract:

"In addition to the existing powers of Nyaya Panchayat, further powers as shown below should be given.

Under Section 227(1) of the Gujarat Panchayats Act, suits are triable by Nyaya Panchayats where the amount or value of the claim does not exceed Rs. 100. This limit should be increased to Rs. 1000.

Under Section 227(2) with the written consent of both the parties to suits, the value of which does not exceed Rs. 250 are triable by it. This limit should be increased to Rs. 2000.

Under Section 227(3) the State Government can increase the limit upto Rs. 250. This should be raised upto Rs. 2,000.

Under Section 229(f) the Nyaya Panchayat can try such compoundable offences under any law for the time being in force as the State Govt. may specify in this behalf by notification. It is suggested that Govt. should examine these details and publish necessary notifications in gazette pertaining to such types of offences under the various Acts and thus enlarge the scope.

At present the financial limit for offences under Section 379 and 426 of the Indian Penal Code assigned to Nyaya Panchayats under Section 229 of the Gujarat Panchayats Act, 1961 is of Rs. 20 (twenty). It should be raised to Rs. 250.

It is recommended to assign special powers under the following sections of the Gujarat Panchayats Act to the proposed Nyaya Panchayat⁸:

Sr. No.	Section	Item
1.	Proviso to 37(I)	All the powers of an arbitrator regarding determination of compensation.
2.	93(2)	Appellate powers over the orders of Gram/Nagar Panchayat refusing sanction to erection of building.
3.	101	Powers of enquiry and of decision of claims to landed property in case of dispute between the Panchayat and an individual.
4.	178	Appeals regarding assessment of taxes and fees of Gram/Nagar Panchayat.

Moreover jurisdiction and powers under relevant sections of other Acts as detailed below should also be assigned to Taluka Nyaya Panchayat.

It is the recommendation of the Committee to assign the powers under following sections of the Land Revenue Code to the proposed Nyaya Panchayats⁹:—

Sr. No.	Section	Item
1.	37	Formal inquiry into and decision regarding the rights of ownership in land.
2.	119	Finalisation of disputes about the boundaries of fields.
3.	125	Fine for injury or damage to the boundary marks.
4.	Sub-section (2) of 133-L	Appeal regarding the entries in record of rights.

8. Report of the High Level Committee on Panchayati Raj, Gujarat, 1972, pp. 266-267.

9. At Pages 263-264.

(But we do not agree with the Gujarat report in its suggestion that the permanent Panchayat judge should be a law graduate as this reduces them into Munsifs aided by popular assessors and considerably adds to the cost of the administration of village justice apart from deflating democracy through many judicial bureaucracy)

Land reforms litigation and legislation regarding agriculture and agricultural workers creating rights, duties and offences and requiring judicial enforcement must also be disposed of or enforced by these tribunals except where the State Government otherwise directs. On the criminal side the court must also have the powers of a Third Class Magistrate as well as jurisdiction to hear maintenance cases of destitute women and children. Civil and criminal cases under local laws with limited rural impact must be left to these village judiciary.

- (8) These courts should not be allowed to be by-passed, and so must have exclusive jurisdiction.
- (9) No *ad valorem* court fee in civil actions should be levied; only a small standard filing fee, the poor being exempted.
- (10) Execution of decrees and orders and sentences must be made by the panchayat court itself except where immovable property on the civil side and imprisonment on the criminal side are involved. In such cases the District Registrar for Panchayats Courts shall execute them, he being a functionary of the status of a civil judge Class II or munsif.
- (11) The Panchayat court shall have the discretion to suggest a just settlement to the parties and if what they regard as fair is rejected by one party or the other, there must be power to impose penal costs on the refractory party.
- (12) Lawyers will not ordinarily be allowed to appear except before the Registrar and verdicts will be final except for a revision, *suo motu* or an application by the Registrar, and judicial review by the High Court or Supreme Court under its constitutional powers which we hope will rarely be exercised.

10. It is helpful that the Rajagopalan Study Team has appended a draft bill to their report. We recommend that in the light of our modifications the said bill may be revised and brought into force as legislation. At the present stage of our experiments in panchayati justice we must exclude lawyers from appearance save in criminal cases punishable with imprisonment, although advocates who have retired from practice and super-annuated judicial officers may be prestigiously considered for election as panchayat judges.

11. It is our earnest hope that in the Union Territories this new law will be enacted and applied so that, guided by this model, the States may follow our proposal for justice of the people, by the people, for the people at the rural level. Gandhiji's India, gripped by the 'garibi hatao' mood, will not, we hope, delay or dismiss the project.

Conciliation be the main aim of Nyaya Panchayats

12. Before parting with the subject we would like to emphasise one constructive fact of these organs of legal justice. Even when there is contest or a legal issue, the nyaya panchayat must remember its first love, namely, bringing about a compromise and restoration of good relations, involving, if necessary, in the conciliation process other respected members of the community and out-of-court attempts at settlement. The adversary system of legal justice is not an unmixed blessing and nyaya panchayats must go humanistically to the socio-economic causes and seek to remedy them and not be content with disposing of cases.

13. Traditionally, notwithstanding homage to the Father of the Nation, this country's administrators, regardless of party labels have not adequately trusted village institutions alleging factions and incompetence and even when legislative lip service has been rendered to the concept of village courts, they have been emasculated in their powers and authority so that the members of this court have suffered from a sense of humiliation or have filled these offices decoratively. If the purpose we have in mind is decentralising, democratising and vitalising the judicial instrument for the sake of the small man, we have to add to the powers, civil and criminal, of these tribunals and invest them with ability to execute their own orders. In these two regards we feel there is a strong case for widening the jurisdiction beyond the limits set by the decade-old Rajagopal Committee.

14. We believe that the Union Territories must, to begin with, implement this recommendation so as to make credible to the sceptical States and of course, if there are two or more States passing resolutions to invoke the exercise of the power of trial under article 252 of the Constitution, a common legislation may be undertaken by the Centre as part of the package programme on legal aid.

CHAPTER 12

MISCELLANEOUS ASPECTS OF LEGAL AID

PART-A

In earlier Chapters we had broadly indicated the scope of legal aid including non-litigative aid and assistance in proceedings before civil and criminal courts and also proceedings under the law relating to the welfare of labour etc. Legal aid in the Supreme Court forms the subject-matter of a separate Chapter as proceedings there fall in a class by themselves.

Legal Aid to cover Tribunals etc.

2. But these by no means exhaust the spectrum of legal aid even with regard to proceedings before Courts and Tribunals. It is a trite but true saying that today in a large number of matters, the rights of individuals are determined by bodies or Tribunals other than ordinary civil or criminal courts. A programme of legal aid which does not cover them would necessarily be incomplete and be of limited social significance as the enforcement of much welfare legislation is entrusted to such bodies.

Disputes between landlord and tenant—A civil proceeding

3. Of these, disputes between landlords and tenants in respect of which the jurisdiction of the civil courts is often barred by some special statutes are by and large the most important. In the Chapter on Legal Aid in Civil Proceedings, we have recommended that suits for the ejection of tenants from urban residential and commercial premises and for the fixation of rent of such premises may be treated as civil proceedings and legal aid provided accordingly.

Land Reform litigation

4. But besides these, there is a vast area of essentially rural litigation which is fought out in what may be called agrarian courts. These courts deal with disputes arising out of what may generically be described as land reform legislation which are not dealt with by the ordinary civil courts. The claim of a tenant to be declared a protected tenant or for enforcement of a right to purchase the land or a claim for the fixation of fair rent fall under this category. Similarly there may be proceedings instituted by landlords for resumption of lease land for personal cultivation or for eviction on grounds of non-payment of rent, injury to the land and the like.

5. There are also statutory provisions intended to protect agricultural labour which fix their wages and provide for their reinstatement in

cases of wrongful dismissal. At the same time, the law establishes a special forum to settle such disputes. By way of illustration, reference may be made to the Tanjore Pannaiyal Protection Act 1952 (Madras Act XIV of 1959). There are also enactments conferring special jurisdiction such as those under the Mamlatdar's Court Act of Maharashtra and Gujarat.

6. To a certain extent, the scope of legal aid in proceedings before these and other Tribunals is restricted in view of the increasing tendency of the legislature to bar the appearance of legal practitioners before such Courts and Tribunals.

7. To a large extent, the prohibition would appear to be based upon the apprehension that the appearance of counsel would result in the proceedings being unduly prolonged and also that if appearance by counsel is permitted, the wealthier and powerful sections of the community who are in a position to engage the services of competent counsel would be able to defeat the rights conferred on the under-privileged classes for whose benefit the laws have been passed as they would generally be unrepresented by counsel.

To bar the appearance of lawyer not feasible

8. But, if a proper scheme of legal aid is drawn up and implemented, the last apprehension would be baseless. In fact, to give to an under-privileged person proper legal advice and adequate representation through a counsel would be a more effective way of securing his rights even though the other party is represented by counsel than to deny the right of representation equally to both parties. On the other hand, the fact that both parties are equally denied representation by counsel does not necessarily improve matters, for generally, the wealthier class are better educated and are able to put forward their case more effectively through their employees or agents. These facilities would be lacking or at any rate, would not be available to the same extent to a tenant or an agricultural labourer. The same criterion applies in other areas also.

Legal Aid Scheme the best panacea

9. We would therefore suggest that the provisions barring representation by a legal practitioner should be progressively removed simultaneously with the introduction of a legal aid Scheme or its extension to proceedings before a particular class of Tribunals. A scientific solution to the problems of ineffective communication and enforcement of welfare legislation is better legal aid to beneficiaries, not a total ban on lawyer participation. We recommend free legal aid to those and only those weaker categories for whose amelioration the legislation is enacted. This should be written into each law taking note of the special features thereof.

10. But, even pending the enactment of appropriate legislation removing the restrictions on appearance by legal practitioners there would appear to be scope for the Legal Aid Committee or the counsel

assigned by it to perform a useful function. The Committee or its counsel could assist persons not only in advising them as to the existence of their rights but also in drawing up their claims or petitions for the consideration of the special agrarian Court or Tribunals, besides helping them as to the nature of evidence, both oral and documentary, which they would have to adduce in support of their claim. Educating potential beneficiaries on special laws is a necessary social service.

Income less than Rs. 2500 per annum eligible for legal aid

11. Since *ad valorem* court fees are normally not chargeable in these proceedings (not presented as suits) the test laid down for determining whether a person should be treated as an indigent person for the purposes of civil proceedings would not necessarily be applicable in these cases. In such cases, a simpler test would be whether the individual is in a position to pay the fee prescribed by the Legal Aid Committee for appearances in the particular type of proceedings and also to afford the necessary out-of-pocket expenses. If he is not in a position to make such payment, the Legal Aid Committee may assign a counsel for him. Alternatively, if his income is less than Rs. 2500 a year, he must be eligible for aid on a whichever-is-less basis.

Aid for Revenue Court litigation

12. There is also a certain volume of litigation before what are described as the 'revenue courts'. The problem in this regard varies from State to State; both with regard to the hierarchy of the revenue courts and the nature of the proceedings that they may entertain. But where there is no ban on legal representation, legal aid should be afforded if the party affected is poor. Indeed we recommend that every welfare legislation may be notified by the appropriate Government to the National Authority whereupon it will issue directions to its units to extend legal aid facilities to parties affected by such legislation subject to such conditions as it may lay down. Such a general provision will meet every quasi-judicial proceedings.

Departmental enquiries and Legal Aid

13. Mention may also be made of certain forms of domestic Tribunals wherein also legal aid can be usefully made available. In departmental enquiries against Government-servants, the accused officer may with the permission of the disciplinary authority avail himself of the assistance of a legal practitioner. Similar assistance might also be possible in enquiries conducted by employers against their workmen. In case of such domestic enquiries wherein an individual is allowed the right of representation by a counsel, the Legal Aid Committee might be authorised to provide the services of a legal practitioner, subject to the usual conditions of reasonableness and the existence of a *prima facie* case being satisfied. In so far as the means test is concerned, family might be available if the salary or subsistence allowance paid to the individual during the enquiry is below Rs. 2500 per annum. Of course,

if the matter relates to an industry or business wherein there is a recognised trade union, the relief should be granted through the Union channels as has been explained in another Chapter. Otherwise, aid to the government-servant or the workmen might be provided directly. We recommend accordingly.

14. In the view which we have taken of the scope of legal aid, its role is not necessarily limited to giving advice to individuals or assisting them in the drafting of documents or in the conduct of litigation. Such services are covered. But it has a much wider role to play and we now turn to those aspects.

MISCELLANEOUS FORMS OF LEGAL AID

PART B

The scheme of legal aid outlined by us so far contemplates the establishment of a machinery which would ensure that legal services are made available to the indigent and the needy whether for purposes of litigation or otherwise so that they may not suffer injustice. Though legal aid is thus designed to be of service to individuals, yet this service, as pointed out by us, has to be regarded as part of a movement for benefitting the community as a whole.

2. If this concept is accepted, it would follow that there might be occasions when the legal aid organisation would have to step in to assist, not one individual, but a class of people needing assistance or even the community as a whole. Such assistance can take various forms. One of the most important of these is that of educating the lay public on legal issues, which are of direct and vital concern to them. It is a matter of every day experience that many a measure of social legislation fails to be fully effective because among other things, of the ignorance of the persons concerned as to the legal provisions designed to benefit them.

Most people ignorant of Common Law

3. Even the relatively well-off have often difficulty in ascertaining what the law is particularly in fiscal and allied matters. The Departments of the Central Government in charge of levying and collecting taxes or what is euphemistically called the raising of resources have considered it necessary to take measure to educate the tax-payer and refer to the need for educating the tax-payer of bridging the confidence-gap. If this is so, with regard to enactments touching only the relatively affluent sections of the community, such need would be even more keenly felt by those who are less well-off and well-informed. It is common knowledge that even on matters affecting one's personal laws, there is considerable ignorance and uncertainty on fundamental matters particularly in the rural areas. Even today in the villages, people are ignorant of the provisions of the Child Marriage Restraint Act. Instances have come to the notice of some of us wherein even

Government servants in responsible positions were unaware of the total prohibition of bigamy imposed by the Hindu Marriage Act, as evidenced by the requests made by them for permission by Government to marry a second time while the spouse by the first marriage was living. The Dowry Prohibition Act is yet another instance in point. The Gold Control Act was also a source of perplexity to the ordinary un-informed person at one time. It would be easy to multiply such instances.

4. In such cases, the legal aid organisations can play a useful role. The legal aid centre as we conceive it would be a place to which persons could go when they have any doubt or difficulty whether their conduct may cross the lines laid down by law. The National and the State authorities charged with administering legal aid can avert a good deal of unnecessary anxiety and possibility of harassment by petty officialdom by printing and publishing in the regional languages a clear account of the impact of legislation in so far as it affects the ordinary man. Such publications, if they are periodically issued and kept up-to-date, would serve to disseminate information as to the law among the vulnerable sections of the community and thus not only save them from harassment but also make the enforcement of law more effective.

Kerala Court fees and suits valuation Act, 1960

5. Educating the public at large in general as to their rights and the potential beneficiaries of special laws in particular is a very necessary social service which can be performed by the Legal Aid Organisation. In this connection, attention is invited to the provisions of section 76 of the Kerala Court Fees and Suits Valuation Act 1960 providing for the constitution of legal benefit fund which was to be utilised, not only for providing social security measures for the legal profession but also for the purpose of providing an efficient legal service for the people of the State which would necessarily include educating the public at large on legal matters which concern them.

6. This however does not exhaust the various forms which legal aid can take. Since it is difficult, and not now necessary, to visualise all aspects of it, it is doubtful whether a scheme which is fully comprehensive can be drawn up in the abstract. But we would like to mention certain other forms which legal aid can take and to which it could be extended, though not perhaps immediately.

6A. One of these relates to the problem posed by appeals. An appeal by its very nature is presumed to be from a Tribunal of lesser competence to one of greater competence and authority and it often happens that a decision is reversed by the appellate court. Such reversal might be on question of fact and also on questions of law.

Suitors Fund

7. In one view of the matter, a suitor should not in such a case be penalised by being made to pay the costs of his opponent for it could well be said that he is being made to pay the costs not for any fault of his, but that of the Tribunal provided by the State. This is especially so, if the suitor has succeeded in one Court but loses in the first or second appellate court. In other words, an error on the part of the State's Judicial machinery should not cast an extra burden upon the citizen. It could be said that while the State may not be responsible for epidemics and famines—though this view is now being increasingly questioned in the era of total planning—it is at any rate responsible for the courts through which it seeks to administer justice. However we do not visualise at least in the immediate future a situation where in every case a party who loses in an appeal is reimbursed the costs which he has thrown away and is relieved of the responsibility for paying his opponents costs.

8. But even today there are cases wherein an appeal has become necessary or has succeeded not due to any fault of the individual or even of the court but because of the uncertainty of the law which has rendered an appeal necessary. In this connection, reference might be made to the legislation obtaining in one of the States of the Commonwealth of Australia viz. New South Wales—and the Suitors Fund Act in force therein. This Act provides for the payment of costs of both the parties out of a special fund, when an appeal succeeds on a question of law and the court grants to the respondent an Indemnity Certificate.

9. The question of introducing such a fund in the United Kingdom was considered by the Evershed Committee on Supreme Court Practice and Procedure, but it did not make any recommendation on it since it was considered to be outside its Terms of Reference.

Court Fees Act, 1870

10. There are somewhat analogous provisions in Indian Statutes providing for the refund of the court fee to a successful party in certain cases. Of these, reference might be made to Section 13 of the Court Fees Act 1870 which provides that if an appeal or plaint which has been rejected by the lower court is ordered to be received, or if a suit is remanded in appeal on specified grounds for a second decision by the lower court, the appellate court shall grant to the appellant a certificate authorising him to receive back from the Collector the full amount of fees paid on the memorandum of appeal. Reference might also be made to the similar provisions for refund where the court reverses or modifies its former decision on the ground of mistake contained in Section 15 of the Court Fees Act 1870 and Section 68 of the Kerala Court Fees and Suit Valuation Act 1960. What we suggest is an extension of this principle to the other costs incurred by a party subject of course to a prescribed maximum. For instance

except in Kerala a second appeal lies only on a question of law and from an order passed in second appeal, a Letters Patent Appeal is possible only with the leave of the Judge deciding the issue. This would necessarily imply that the case is of such a nature that there was uncertainty about the legal position which called for its determination by a superior judicial body. It would only be in the fitness of things if in such cases a suitor is reimbursed his costs for the litigation and his lack of success is due not to any fault of his or even of an individual public functionary like the Judge, but the Legislature itself, arising from the uncertainty in which it has left the law.

11. If necessary, in the early stages, such reimbursements can be made conditionally only if the court grants a certificate to that effect and the appeal is successful.

12. These considerations particularly apply to proceedings in the Supreme Court. At the present moment, in so far as civil matters are concerned, excluding appeals by special leave, appeals lie to the Supreme Court only by certificates granted by the High Court or by special leave of the Supreme Court. An appeal lies only when the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution or in other cases that it involves a substantial question of law of general importance and that in the opinion of the High Court, such question needs to be decided by the Supreme Court.

13. On the basis of such a certificate an individual might be dragged to the Supreme Court as a respondent, and in that process, lose the benefit of a decree passed in his favour by the High Court. In such cases, whatever order for costs the Supreme Court may pass is likely to be unfair to one or the other of the parties. The case has come up before the Court in view of its general importance and the fact that the public interest requires the matter to be decided, by the Supreme Court. Whatever order has to be passed, it would result in one party being made to finance litigation which was needed to serve a public object, namely the ascertainment of the law. It would therefore, only be proper if the costs of the parties in such cases are ultimately financed from the public funds because it was in the public interest—namely, the clarification of the law—that the matter went up to the Supreme Court.

14. An alternative or additional provision might be to empower the Attorney-General or the Advocate-General to certify that the case is of such a nature that it requires to be decided by the Supreme Court in the public interest and in such a case, the use of public funds for the costs of both parties may be allowed. This is very necessary as the costs of litigation in the Supreme Court are prohibitive, more so to parties residing at a distance from Delhi. Suitable provisions can be made for restricting the fees allowable to counsel in such public interest litigation and for dispensing with the engagement of an advocate on record. This would tend to cut down the burden upon the legal aid fund in such cases.

15. That there might be cases wherein costs should appropriately be given out of public funds has been recognised even in such a conservative legal system as in England. Thus in *Saunders Vs. Anglia Building Society* (1971, A. C. 1039) Lord Reid observed that it was a typical case where the costs of the successful respondent should come out of public funds. (at 1048).

16. Perhaps, a beginning can be made by extending this facility of full reimbursement to persons whose income falls below Rs. 5000/- which is now the limit for making them liable to pay income tax. Persons with an income between Rs. 5000/- to 10,000/- might be reimbursed one-third of the costs. As regards the others, at least for the time being, the principle of reimbursement may not be extended to them.

17. There are also certain other changes which could be usefully made in the institutional framework in order to safeguard the litigant public against certain forms of hardship. Legal practitioners by virtue of their office necessarily have to handle their client's money. As in other professions, so in the legal profession, there might be individuals who, out of weakness, temptation or lack of moral fibre, show themselves unworthy of the confidence reposed in them, with the result that the client loses his money. Such loss might also arise out of the negligence of the legal practitioner dealing with the funds of his client.

18. In such a case the practitioner makes himself liable to disciplinary action by the Bar Council. He may also render himself liable to prosecution in the courts. But it is poor consolation to the client who has lost his money that the guilty person has been punished though this may assuage his feeling of wrath. It is true that the client has a right of suit but apart from the time and money which a suit may take, it may well happen that the advocate does not have the wherewithal to reimburse his client for his loss.

19. It would only be in the fitness of things if a scheme is devised by which the client, particularly the client of small and limited means, is assured of indemnification and a return of the money lost by him. The profession itself can organise a scheme of insurance on this basis. The legal profession in other countries has not hesitated to come forward and make appropriate provisions in this regard. Thus, in England, the Law Society is required by Statute to maintain and administer a Compensation Fund. Compensation is awarded out of this fund when it is proved to the satisfaction of the Law Society that a person has sustained a loss in consequence of the dishonesty on the part of any Solicitor or his clerk or servant in connection with his practice as a solicitor or in connection with a Trust of which the Solicitor is a trustee. In such a case, the Society is subrogated to the rights of the party whom it

has indemnified¹. Similarly in Victoria, one of the States of the Commonwealth of Australia, there is a Solicitor's Guarantee Fund to indemnify persons who might suffer financially as a result of defalcation by solicitors.

20. There is no reason why such a Fund should not be set up in India also. In fact we would suggest that an obligation might be laid upon the Bar Councils to do so. The Scheme might provide for full indemnity for persons who have suffered a loss upto a certain amount, say Rs. 1000/-, and proportionate compensation for higher amounts. This would be somewhat analogous to the provisions contained in the Deposit Insurance Corporation Act 1961, by which bank deposits are insured upto a particular sum by the Corporation established under that Statute.

21. Such a provision would be self-financing and would ensure that the genuinely needy do not suffer any hardship by reasons of the defaults of professional men who have been given a monopoly by law of certain kinds of work.

22. The creation of a national network of legal service, although primarily as a programme to cater to the poor, yields secondary blessings in the long run for others in need but who can afford to pay. Accessibility to the legal system may thus be provided through the Corporation on reasonable payment which will be less than the market price. The Corporation would be a responsible instrument reaching out to all parts of India and communicating with the client, wherever he be—adding a new dimension to *juridicare* and equal protection of the laws. Indians abroad have legal affairs to be attended to. Airlines staff, sailors, students abroad, embassy officials, are other categories who may utilise the facilities. Even foreigners who may have legal business in Indian courts may look for a dependable agency. Inside the country, small corporations, co-operatives, firms and other organs may sue or be sued or be prosecuted in far off venues or may need pre-litigative assistance in distant places. The Corporation comes in handy to service legal problems even if the parties are not poor. In short, a big public sector accountable to the Parliament and the People, staffed by responsible officials and national in jurisdiction will at once be an event and portent with phenomenal impact on the rule of law.

¹. Halsbury's Laws of England, Vol. 36, 3rd Edn., p. 246.

CHAPTER 13

LEGAL AID AND LAW SCHOOLS

In many countries around the world law schools have played an important part in the provision of legal services to the poor. Experience in the United States, Canada, Zambia, Chile, Indonesia and Ceylon indicates that law students, given adequate supervisory assistance, can assume a responsible role and contribute significantly to the success of any legal aid scheme. Quite contrary to popular assumptions, student legal aid clinics in these countries have distinguished themselves by the high level of professional services they provide and by their dedication to the cause of legal aid. In India where half a population live below the poverty line and where a large of legal need of the poor are unmet, the law schools can fulfil a useful role to themselves as well as to the community by getting involved in the legal aid scheme herein proposed.

Students Legal aid clinics

2. This is not the first time in India that law students are introduced in legal aid schemes. The Gujarat Legal Aid Committee felt that "the association of law students with the work of providing legal services would not only help the cause of legal service but also give to the young students a sense of identification and involvement with the cause of the poor". The Tamil Nadu Legal Aid Committee (1973) also observed in its draft scheme for legal aid in the State that student legal aid clinics should be started wherever there are facilities of law colleges. A similar suggestion also emerged from the deliberations of the National Legal Aid Conference held in New Delhi in 1970. Again in 1972 the XIIth All India Law Teachers Conference discussed the question of legal aid and legal education decided to take an active role in the legal aid scheme and set up a committee on clinical legal education with the express intention of promoting and standardising legal aid clinics in Indian Law colleges.

3. The concept of legal aid at least for this report is not confined to the narrow limits of providing counsel to indigent people. It is envisaged here as a socio-legal movement bringing justice to the poor and spearheading peaceful change under law towards the constitutional goal of a just, egalitarian social order. To prepare the cadres for such a movement, it is very necessary that we give adequate consideration to the objectives, content and methods of legal education which still retains much of the colonial inheritance without any justification whatsoever. While this is a stupendous task for the legal education in our country, we discuss here only one aspect of the problem relevant to our term of reference namely, the nature, scope and mechanics of student involvement in legal aid as an educational experience and as a public service.

4. While discussing legal aid in the context of legal education several issues emerge that are of abiding concern to the legal aid administrator, to the legal educator, and to the profession at large. To man the legal aid, the problem is three-fold: (a) a constant supply of trained men with a social commitment and endowed with a new concept of professional responsibility for the successful implementation of the programme; (b) an on-going research and reform process in respect of the policies and institutional mechanism of judicial administration in general and legal aid in particular; and (c) an informed community support at various phases of the programme. To the legal educator the primary concern is in making use of the legal aid scheme to build up a system of better legal education that is professionally meaningful, intellectually challenging and socially relevant. To the profession at large the problem is one of maintaining higher professional standards, equitable distribution of available services and directing social change under rule of law and according to the democratic process. A proper appreciation of these related objectives of the concerned parties in legal aid and legal education would persuade one to give law schools their due position in any legal aid scheme.

Advantages of law school's participation in legal aid

5. What then are the real and potential advantages of law school's participation in legal aid? On the basis of experiences elsewhere a great deal of literature is now available on this question¹. It is gratifying to note that a few institutions in our country have already started experimenting with different models of student legal aid work with varying degrees of success.² The following are some of the obvious benefits to the student, to the profession and to the cause of legal aid which a student legal aid clinic can impart:

5. (1) The existing system tends to distribute legal services disproportionately in favour of the rich as against the poor and in favour of the urban population as against the rural. Further the nature of existing legal practice heavily inclined towards the rich business corporations and propertied individuals is bound to get a re-orientation with the advent of legal aid. An expanding clientele drawn from the poor, the oppressed, and the under privileged will generate new demands upon the legal profession including new skills, a value system favourable to the weaker sections, and a sensitivity to injustice. Properly channelised and co-ordinated, the idealism and zeal of enthusiastic youth in our law schools can meet these new demands and help transform our society to desirable goals³.

1. For an informative assessment on law students in Legal aid, see generally, Barry Metzger, *The Law Student As Legal Aid Lawyer*, National Legal Aid Conference, Delhi (1970).

2. Soo, "A Legal Clinic for the poor", *Hindustan Times*, Delhi, January 23, 1973.

3. "According to reports, Legal Aid movement has captured the imagination of many of the brilliant products of American Law Schools who would have ordinarily joined the ranks of highly remunerative corporate or private practitioners. This tendency has even redounding influence on law firm which today set apart some of their resources for "Public Interest law". It is to be hoped that student involvement in legal aid will have a similar effect in a much larger scale in India resulting in the development of a 'public sector' in the legal profession conscious of their social responsibilities and competent to deal with the legal needs of the poor.

5. (2) If experience is any guide, the popular apprehension of students, relatively untrained or under-trained, appearing in courts and creating a mess of it is wholly unjustified and contrary to facts. Of course it would always be preferable to have a large number of experienced lawyers available to the poor but this have not and perhaps may not come to pass in the foreseeable future. Given proper supervision, law students can give excellent legal aid and advice at much cheaper cost and with minimum of the law school clinics to remote villages in the country where official and professional agencies often fail to serve.

5. (3) The legal aid clinic is an excellent medium to teach professional responsibility and a greater sense of public service. Faced with real challenging problems and conflicting value choices the student develops necessary perspective, a sense of relevancy and proportion and skill to articulate and apply rules of professional ethics in concrete situations. This is neither so easily possible nor always achievable in the cloistered and pressure-filled atmosphere of a lawyers chamber.

5 (4) The law school clinic is indeed a visible and effective instrument for community education and a wide variety of far-reaching preventive legal services programmes. This is a very attractive proposition in a country like India where the majority of people are illiterate and live, so to say, outside 'the law'. The channels of communication that law students may establish with the community cannot only help to reach the benefits of law to the ignorant millions of our countrymen but also tend to generate valuable social data and meaningful proposals of reform in law and legal institutions so as to achieve the ideal of equal justice to the poor. This is a potential method of making the law school as an institution to serve the needs of the society.

5. (5) An important by-product of inducting law students in legal aid is its potential contribution towards a better legal education, socially relevant and professionally valuable. With the abolition of the apprenticeship system, clinical legal education has assumed importance in the professional training of a lawyer. And there is a hardly any substitute to the clinical experience that a student acquires from dealing with real legal problems concerning living people in the setting of a clinic. Of course it is important to remember that in order to sustain his interest and get the best out of him it is necessary to entrust him with responsible work including appearance in court and not merely to assign peripheral duties to him. A variety of skills not otherwise available to the student in the traditional legal curriculum are provided by the law school clinic. These include interviewing and counseling, negotiation and management of human relations, fact gathering and sifting, fact-consciousness and a sense of relevancy, legal research and writing, handling crisis-situations and intelligent decision-making and above all an appreciation that law is only one method of solving problems and not always the best method.

The teaching mission of the legal aid clinic is much wider in scope than giving a few additional skills. By exposure to the approaches of other disciplines, the student begins to fully understand that law often deals only with symptoms and not the causes of social malice. The experience in the legal aid clinic often reveals to many for the first time that an understanding of the social sciences cannot only enable a lawyer to function better as a lawyer, but also illustrates clearly the nexus of relationship between antisocial behaviour and the status of poverty. Further more clinical experience will give a new dimension to legal research which will be less abstract and more inter-disciplinary and directed to the problems of law reform in relation to the poor and under-privileged.

A no less important function of legal aid clinics will be to provide the student with the necessary exposure to conditions in society, to bridge the 'alienation gap' between the educated youth and the community and to moderate his idealism and zeal with what is practicable.

5. (6) The benefits to the law school from student involvement legal aid work are equally promising. Besides enhancing the standing of the law school in the community and making the faculty informed of social realities and involved in social reconstruction, the law school clinic can plough back into the legal curriculum and gold mine of information that can make learning and teaching of law stimulating, challenging and productive. The potential feedback can provide an essential empirical and socio-legal dimension to legal inquiries and also help to remind one the human aspects of the legal process which tends to forget in the course of specialisation in the profession.

6. An examination of the various models of student legal aid clinics that are now in vogue in different parts of the world is helpful not only to understand the mechanics and operational problems of such clinics but also to evolve suitable strategies and institutions in our own country for maximising the benefits arising out of student involvement in the programme. Of course, a great deal of experimentation with a variety of models may be necessary before suitable working schemes, not necessarily uniform are developed to serve the needs and conditions in India. Certain common elements that are of fundamental significance to most of these student legal aid schemes may be noted at the outset. Experience elsewhere has clearly shown that student participation can contribute both quantitatively and qualitatively to legal services only if they are given responsible work including appearances in Court. Given menial tasks they naturally will respond like menials. Secondly, proper and adequate supervision particularly in the initial stages of the programme is very essential for the success of students legal aid clinics. This is significant not only to ensure competent service to the clients but also to make the best educational use of the clinical experience. Thirdly, law schools must develop a curriculum that sustains, stimulates and challenges the

students' clinical experience while giving the students maximum scope for self-development.

Location of Law Schools clinic And Law agency clinic

7. In the United States one finds a large variety of models for law school clinics some of which are directly involved in legal aid work while others are engaged in related community programme.¹ One common type is the *clinic located at the law school* where students handle cases for indigents under the direct supervision of a practitioner (often part time teacher in the faculty) who may also teach related courses like trial practice, poverty law or consumer problems. Students interview clients and follow up their cases, some times handling the trial in court if local practice rules permit. This type of clinic is found to be an excellent source for study of family problems and the efficiency of the law and institutions established to deal with them. Court-sponsored clinics are usually for indigent criminal and juvenile matters which third year law students defend or prosecute under student practice rules of some State jurisdictions. Cases are assigned by the Court and supervised by a public defender (who may or may not have law school status) or by a law school staff member assigned to act as attorney on record or by a district attorney in the case of a student prosecutor programme. Court sponsored clinics raises problems for law school supervision though they give excellent opportunity to learn trial practice. The *neighbourhood law office* set up under the Economic Opportunity Act of 1964 and operated under several staff attorneys (some of whom have law school teaching positions) offers yet another mode for student participation in legal aid work. The greater variety of complex legal issues including test litigation and group representation that come into neighbourhood law office constitute a rich source for learning law in action. Yet the severe case load problem in neighbourhood offices threaten the adequacy of student supervision and sometimes force the students to adopt short-cuts. Then there are *clinics sponsored by a law agency* to help solve the individual problems of its members or other poor people. Here there is the advantage or disadvantage of a specialised sample of clients and problems due to the agency's particular concerns. Yet another model is the *law reform institute* with a selective case load on problems such as public welfare, civil rights, and consumer protection specially financed to undertake test litigation, propose legislation, and represent groups. A law school legal aid clinic can be converted to this model by eliminating the general service function. There may be a good opportunity here for students to become involved with the intricacies of high level litigation in areas especially worth studying because of the law reform sought. Then there are *law student internship pro-*

¹. A description of these clinical programmes in U. S. is found in J. M. Ferran, "Goals Models and Prospects for clinical Legal Education." In *Clinical Education and the law School of the future* (University of Chicago Law School Conference Series No. 20(1970),93-104. The summary given here is largely drawn from this paper.

grammes with a governmental or private agency like a municipal board, a consumer council, a state department of food and drugs, a local social welfare agency etc. where students undertake specific tasks including field investigation, written work and participation at decision-making levels. The chief purpose of such internships is to discover how various organisations work. An agency internship may be the most fruitful way for students to study official policy-making and rule-making and the responses of organised community groups to government action or inaction. It is desirable in this context to have an inter-disciplinary faculty and student group since the lines between legal, sociological and political science inquiry are vague and arbitrary. In addition there are *task force investigation groups* studying specific institutions like the Harvard Law School student team which studies prospects for decentralisation of municipal services in Boston and *legislative drafting units* giving research and drafting support to legislative departments in Government and private bodies. Each of these clinical programmes can be used to pursue a number of specific objectives that serve the larger goal of public service coupled with legal education for professional responsibility.

Students Legal aid Programmes in other countries

8. Two important reasons for the quick expansion of diverse student legal aid programmes in the United States are the statutory adoption of student practice rules in most State jurisdictions enabling law students to appear in court on behalf of indigents and a vigorous curricular support by law schools giving academic credit to student participants for legal aid work. In 1970, twenty-two States, the District of Columbia and Puerto Rico allowed court appearance by law students. Every State has its own student practice rules and statutes which describe the range of services students may perform, the extent of supervision required and the standards of eligibility which students, school and supervisors must meet to take part in a student legal aid practice programme. The American Bar Association in 1969 came forward with a Model Rule or student practice which has the declared purpose of "providing competent legal services for all persons including those unable to pay for those services and of encouraging law to provide clinical instruction in trial work of varying kinds."

9. Most Canadian law schools also have today some system of legal aid either as an accredited course of the law schools or on a voluntary basis, usually with both student and faculty participation. In at least six of the provinces, law students are now actively engaged in legal aid clinics and there are very few law schools that do not facilitate practical student involvement with the poor in one form or another. The Canadian government give substantial grants to law school legal aid clinics not only to develop the law school's role in legal aid work but also to assess the type of service and legal aid delivery system most attuned to the needs of the poor.¹

¹. David R. Lowry, "A plea for Clinical Law", *The Canadian Bar Review* Vol. 1 No. 2(1972) 212.

10. In Ceylon the student legal aid programme assumed a significant role in the Administration of the Government-supported national legal aid scheme. Students interview legal aid applicants at the main Colombo Legal Aid Centre (Conveniently located near the law college) or at one of the four prisons in the Colombo area. They submit a report on the interview which is reviewed by the supervising teacher of the college and an officer of the legal aid scheme before being assigned to a practitioner who will handle the case on behalf of the Scheme. Students are associated by the practitioner in the conduct of cases in the court.

11. In Costa Rica students are compulsorily to work for the legal aid programme towards the end of their law school career for about 22 months. Student responsibility in an individual case is identical to that of normal practising attorney. Their duties include receiving and interviewing the clients, gathering factual data, researching and preparing necessary legal documents, negotiating and, if necessary, fully representing the clients in court. There is continuing supervision by the Director of each clinic. There are proposals to diversify the student legal aid programme so as to include a *Community Education Project* designed to inform and educate the people of their legal rights and the methods how they could be usefully exercised for solution of their problems. This project is also expected to involve students in social research which will encourage them to view individual legal problems within a broader social context and hopefully lead them to utilize a much greater variety of legal and social tools in the resolution of specific problems.

Students legal aid clinics in India

12. In India law students' involvement in the delivery of legal services to the poor is not completely unknown though the attempts so far have been sporadic and unorganised. The Students Legal Services Clinic in the Faculty of Law of Delhi University did create during the short period of its existence more than academic interest in the usefulness of legal aid clinics. The Delhi Clinic operates more or less in the same way as the law school clinic in the U. S. excepting that neither the students nor the teachers participating in the programme can appear in court on behalf of the indigent. Despite this disability, public response and student enthusiasm have been encouraging. Besides giving legal advice in several individual cases, the Clinic is now providing free legal services in court through a large number of practitioners who are empanelled with the Clinic. The Clinic is now engaged in a research survey in the magistrates' Courts of Delhi to ascertain the Legal needs of the poor and the nature and extent of legal services required in the criminal judicial process. A related development in the Delhi Law School is the introduction of courses like "Law and Poverty" and "Law and Society" in the LL.B/LL.M. curriculum which is expected to give academic support to the clinical experiments there

There are reports of students legal aid clinics now functioning on an optional basis in Renukacharya Law College, Bangalore and Government Law College, Calicut. While it is gratifying to note this new awareness on the part of some law schools in the country which deserve financial and other support from government, one may have to wait and watch the operational efficacy of such programmes for quite a number of years before a particular clinical model can be recommended in the setting of Indian legal education. Meanwhile the Committee feels that law colleges and law departments should be encouraged to start student law clinics engaged in a variety of programmes ranging from community education projects to actual representation of cases in court on behalf of indigents according to what local conditions permit.

13. However much we desire to involve the law students in a big way in the legal aid scheme we are proposing, we cannot overlook the deplorable conditions in which legal education is now being imparted in several parts of the country. Perhaps most of the law students are not keen to join the profession and they do law only to improve their academic qualifications or to better employment prospects. Many of them are therefore less devoted to institutional teaching of law and manage to get a degree by attending part-time classes and preparing from cheap guide books. Many institutions giving instruction in law have also become mere "teaching shops" run on business lines with marginal social utility and negligible professional value. Questions such as full-time faculty Vs. Part-time instructors, day classes Vs. Evening classes, theoretical instruction vs. practical training, professional education vs. liberal education, traditional courses vs. interdisciplinary courses etc. are now agitating the minds of legal educators in India and one cannot foresee how things are going to shape up for the future of legal education in this country. If the present interest in clinical legal education as evidenced from the resolutions of the XIIth All India Law Teachers Conference and the instructions of the Bar Council of India were to get institutionalised as we anticipate, then student legal aid clinics would become a very significant instrument for public service and professional education. This, of course, may take some time during which law schools which are better placed in terms of organisation and finance should introduce voluntary legal aid clinics, and optional courses of instruction in poverty law with a view to create student interest, to perfect the tools and techniques of clinical education and to prepare a cadre of clinical law professors.

Involvement proposed in phases

14. The nature and extent of student involvement in the scheme proposed by us can be given effect to in phases starting from a few selected law schools where clinics are in operation and progressively bringing others into the scheme. The criteria for determining eligibility of a law school for inclusion in the scheme must consist of the organisational and financial stability of the institution, the extent of competent supervision available for the students, the scope of legal

services available outside the clinic in that region and the nature of curricular support and academic credits given by the institution for the clinical programmes. The Bar Council of India and the Legal Aid Organisation (Committee) can jointly determine questions of eligibility and formulate such rules in consultation with the law schools for the control and supervision of the law school clinics. Subject to the above, law teachers and law students must be given representation in the policy planning bodies and executive committees of the legal aid scheme both at the central and at the local levels. The "research and training division" of the Central legal aid authority can profitably employ law schools individually or collectively to conduct research studies and training programmes on its behalf. Temporary assignments for teachers and students including some form of internship programme for fresh law graduates on stipendary basis in the legal aid and related organisations are worth experimenting with in the interest of perfecting the policies and techniques of legal aid administration. Law schools can also produce legal aid literature for mass circulation and employ the media for necessary publicity and community education in matters of legal aid.

Law Schools legal aid manual

15. In order to develop student legal aid clinics on proper lines it is necessary to prepare a legal aid manual for the law school incorporating organisational and administrative matters as well as the role and responsibility of the students in it. This should be taken upon a priority basis by the legal aid authority as soon as it is constituted. After the publication of the manual the activities of the various clinics should be co-ordinated, standardized and published through regular news letters and occasional seminars and conferences. The legal aid authority should even consider the possibility of giving the services of clinical law professors on a temporary basis to those law schools wanting to establish legal aid clinics.

16. In respect of the delivery of legal services, particularly of preventive and educative nature, to the rural and tribal poor the law colleges have a special role to play. It is worth while examining whether at least a six-month period of compulsory public service in a rural or tribal legal aid agency towards the end of three-year academic instruction in a law school can be insisted upon those graduates who intend to join the profession as legal practitioners. A monthly stipend of Rs. 250/- during the period and a possibility of being admitted to the collegium of legal aid lawyers might give the student the necessary initiative and confidence for starting his professional career with legal aid work. Such a step is desirable now when the Government is embarking on a national legal services net work particularly in the context of the known reluctance of medical personnel to go to the rural areas under the national health services programme even when additional incentives are offered. If this proposal is accepted the Bar Council Rules governing the eligibility for enrolment as advocates may have to be suitably modified.

17. In the later phases of the legal aid scheme when law schools will have established legal clinics as part of their academic programme of professional instruction it will be necessary to make suitable provisions in the Advocates Act enabling senior law students and clinical law professors to represent indigent clients in court. We recommend that suitable amendments may be, made in the Advocates Act for this purpose. To prevent any possible abuse of such an enabling provision and at the same time to provide maximum opportunity for law school clinics to participate in the legal aid programme the Committee feels that a provision some what on the following lines may be added after Section 33 in the Advocates Act:—

SECTION 33-A: LEGAL AID BY LAW TEACHERS AND STUDENTS :

Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any court or tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:—

- (i) Teachers of a law school which provides full time instruction for the professional LL.B. degree and which maintains a legal aid clinic as part of its teaching programme where poor persons receive legal aid, advice and related services ;
- (ii) Students of third year LL.B. class of law school as aforesaid who are participating in the clinics activities and who have been certified by the Dean/Principal of the law school under rules made therefor by the law school.

Provided such representation in the case of students shall be under the supervision of lawyers associated with the said legal aid clinic and with the approval of the judge in whose court the student appears.

Explanation.—The supervising lawyer who shall be an Advocate under this Act is presumed under the last preceding provision to assume personal professional responsibility for the nature and quality of the students' legal services.

CHAPTER 14

RESEARCH, LAW REFORM AND EVALUATION

Law Reform-movement

The philosophy and the rationale of legal aid are rooted in the objective of equalizing the opportunities of law and legal remedies for the indigent and the disadvantaged in society. Pre-litigation advice as well as assistance in the process of litigation form an important part of the functional framework of legal aid but far more important is the larger role of legal aid in the continuous formulation and implementation of the agenda of reforms in the *corpus juris* of the country on behalf of the indigent and the weaker sections of the society. The movement for legal aid was essentially a law reform movement. In its turn, legal aid itself should serve as a source and a fountain of law reform bringing to bear on the legal processes the authentic stamp of genuine concern for the problems of the poor and a deeper and a more realistic understanding of those problems based on research and on an informed analysis, evaluation and interpretation of the legal system in actual operation in relation to the indigent and the disadvantaged. The growth and operation of legal aid and advice on a national basis would provide a vast laboratory for purposeful research and law reform from the point of view of the poor and the disadvantaged. We feel that research and law reform functions should be built into the national scheme for legal aid and advice and a suitable apparatus should be provided to undertake and promote research, to examine and work out law reform proposals, to scrutinize legislation and judicial decisions, to identify the real and crucial problems of the poor and to suggest remedies, and finally to study and evaluate the working of legal aid programmes and institutions carrying out performance audits on a continuous basis so as to steer the legal aid movement safely, steadily and speedily.

2. Before making specific recommendations on the research and audit apparatus in the legal aid plan, we may proceed to identify and elucidate the possible roles and objectives of the research arm of the proposed legal aid organisation.

Role and Objective of research and law reforms in legal aid

3. We have mentioned the significance of legal work for law reform from the point of the indigent and the disadvantaged. There is no philosophical or practical objection to such a role being played by State aided legal services, for we have accepted the principle of selective and corrective discrimination in favour of the poor and the disadvantaged in the scheme of our Constitution. Legal aid will not only

provide the sinews of strength to the poor and the weak, but would in the same sweep bring laws and the legal system face to face with the legal problems of the poor. An inter-disciplinary study of the problems of the poor and of their legal aspects and implication should be the pre-occupying concern of legal aid research which could lead to informed, purposeful and well-conceived law reforms. It is true that a great number of law reform measures in the past proceeded from the generous impulses and the general impressions of a handful of articulate and dedicated reformers in our country. But it seems to us that the time has come when social sciences should be effectively harnessed in the service of rational and meaningful reforms.

Research will provide system of evaluation

4. Research will provide a system of evaluation as well as a testing ground for reform ideas and proposals; it would serve simultaneously as a weighing scale, a sieve and a furnace. Research would subject existing social legislation and judicial decisions to close scrutiny and systematic appraisal. We have, in our country, made great strides in enacting social legislation of far-reaching consequences but it was not always shaped on the anvil of research, nor was a watchful eye kept on the working and consequences of such legislation or the reckoning it received in the courts of law. We have thus a sizeable body of unimplemented and unfulfilled social legislation. It is necessary to provide a sheet-anchor for law reform, a weighing scale for laws in action and a sieve for sorting out legislative ideas and proposals for reforms. A kilogram of research and a gram of law reform would equal a hundred tonnes of routine litigation, fighting the same battles over and over again and perhaps experiencing the same hazards and obstacles in the path of justice for the poor. Legal first aid and prolonged curative treatment in individual cases is no doubt important in relieving personal afflictions and ailments but there is no doubt that an effective preventive and anticipatory legal 'public health programme' of reformed and humanised law provides more effective public immunity and protection. Scientific research and informed law reform will not only save money and effort on litigation and administration but will also bring a greater degree of integration and coherence in the legal processes. Research would help to map out the operational routes of law and would be conducive to effective, realistic and purposeful change, preventing law reform from barking up the wrong trees, from lapsing into inertia and from straying into irrelevance. It would also help to identify major issues for test case litigation so as to protect, preserve and promote the rights and the interests of the poor and would sharpen the cutting edges of such test case litigation and group action on behalf of the poor. The research component in legislative or adjudicative law reform may not still make the laws an epitome of perfection, but there is little doubt that such research could help to improve the marksmanship of our legislative exertions and could impart to law greater vigour, realism and efficacy. Research into the problems of the poor would unfold a new perception and would hopefully breathe a new vitality into the legal system. It would provide

an intellectual spearhead and a practical programme for the advancement of social justice. It would provide a compass and a barometer, a sense of direction and a scale of measurement for laws and a legislative lobby for the poor. What is more, it would have large and a far-reaching educative impact on the public and the media of communications. It would also catalyse and permeate social science research in the Universities and other research institutions by research workshops and seminars and through other means and methods of interchange and collaboration, thus generating a new awareness leaving the nation's counsel with a new outlook.

Establishing scientific system of operational reporting, etc.

5. Yet another function of research in the Legal Aid organisation would be to establish scientific systems of operational reporting, maintenance of statistics, information management and interpretation, and the audit and evaluation of the working of legal aid programmes. The performance audit and evaluation functions should also include a sustained study of the extent of the unmet need for legal services in given areas and the attitudes and reactions of users and recipients of legal aid and advice as well as those of other citizens, providing a basis for responsive and correctional alterations and improvements in the system and procedure of legal aid and advice.

6. We need hardly stress that we attach the highest importance to these and other functions described above in the national plan for legal aid and assistance. We may add that we have deliberately refrained from dwelling on specific priorities of research except as possible steps in a broad strategy because it would be for the Director of Research and his colleagues at the Central Headquarters and the corresponding research outfits in the States to prepare and work out research designs and programmes in the areas indicated by us as well as in other allied and cognate fields.

Research apparatus must be associated both at the centre and State level.

7. The Research apparatus should be a part of the legal aid organisation both at the Centre and the State levels and it should have a representation. Its functions should not be that of an apologist or a public relations officer for the legal aid programme. Rather it is expected to function as a conscience-keeper of the programme as a whole and to serve as an independent auditor in evaluating the utility of its services. The annual reports of the Research Director should be considered separately by the Authority and should form a distinct part of the annual reports of the authority to be transmitted to the Law Commission of the Government of India and to the Law Commissions of the State Governments, if any, and to be laid on the Tables of the Houses of Parliament and those of the State Legislatures.

Research Directorate set up in phases

8. The Research Director at the Central Headquarters should be a person of high eminence and ability with social science background and research experience. He should be assisted by a team of research personnel which should include lawyers and other social scientists as well as statisticians. There should be five divisions under the Research Director at the Headquarters dealing with the following subjects: 1. Statistics; 2. Social and Economic problems of the indigent and the Disadvantaged; 3. Litigation Research including Test Case Litigation; 4. Legislative Research, 5. Performance Audit and Evaluation.

9. Research Divisions for Statistics, Social and Economic Problems of the Indigent and the Disadvantaged and Legislative Research should be established at the outset in the first phase of organisation. Litigation Research and Evaluation Divisions should be set up in the second phase of the organisation. The personnel in each division should be recruited gradually and in stages.

Four steps of the First Phase

10. The first phase should have four steps: 1. Appointment of Research Director; 2. Appointment of the Head of the Statistical Division and two statistical assistants with supporting staff; 3. Appointment of the Head of Legislative Research Division who should be a trained and qualified academic or practising lawyer with social science background and research aptitude; Appointment of a lawyer and another social scientist to assist the Head of the Division with other supporting staff; 4. Appointment of the Head of the Division of Social and Economic Problems of the Indigent and the Disadvantaged, who should preferably be a sociologist with training in law and/or economics along with three social scientists including at least one lawyer. This division would also have to deploy field staff on a project-to-project basis.

Second Phase set-up

11. The first step in the second phase of organisation should commence with the appointment of the Head of the Litigation Research division who should have a qualified sociologist and a lawyer with some experience of law practice to assist him. The next step in the second phase should be to appoint the head of the Performance Audit and Evaluation Division who should have in the first instance three officers and the necessary supporting staff to assist him. The strength of the staff in the Performance Audit and Evaluation Division should be increased from time to time in proportion to the increase in the scope and size of legal aid programmes in the country.

Third and Fourth Phase to follow First and Second Phases in Third and Fourth Year.

12. During the second phase, the divisions established in the first phase should be further enlarged and consolidated by assessing their manpower requirements and the scope of their activities. During the

third phase, the Divisions established in the first and second phases should be brought to the optimum level of their functioning. When a programme of organised research is taken up, the first phase should be completed in the first 18 months, the second phase within a year thereafter and the third phase should commence in the fourth year of the programme and should be completed by the end of the fifth year.

State Directorate organization

13. The legal aid organisation in each State should have a Director of Research with a statistician, sociologist and a lawyer to assist him in the performance of the five-fold functions of Research and Evaluation outlined above. The State Research units should also undertake field studies in consultation and collaboration with the research apparatus at the Central headquarters. Common research designs should be developed and comparative research should be promoted by means of effective and continuous co-ordination by the Director of Research at the Central Headquarters.

14. The success of the research apparatus would depend largely on the effectiveness of the reporting and information and information management system which in turn will depend on the cooperation of the machinery at the State, District and Taluka levels. A pervasive recognition of the crucial importance of research and evaluation functions at all levels of legal aid organisation is therefore a basic essential. Legal aid literature and legal aid training programmes should underline the importance of the research and evaluation functions, the need for collecting and reporting accurate and authentic information and the requirement of objective and critical analysis and interpretation of data and case studies.

Excessive bureaucratisation to be avoided

15. We feel that it is necessary to safeguard the legal aid organisation, its operational system and its research, law reform and evaluation functions from excessive bureaucratization and creeping complacency. Insularity and infirmities in the system of accountability should therefore be carefully eschewed and avoided. Annual reports to the Houses of Parliament and those of State Legislatures would no doubt provide a nexus of public accountability. Equally, research, audit and evaluation of its activities would gear the inbuilt machinery for critical self-appraisal. In addition, we would recommend a hierarchy of consultative councils at the national, state and district levels to effectuate a living contact with different segments of society and to give a functional meaning to the principle of public accountability.

National Consultative Council to consist of 25 members

16. The National Consultative Council should consist of twenty five members, one-third of whom should be nominated by the Central Government from among legislators, civil servants, academics, and

men and women in public life. The Bar Council of India, the National Legal Aid Association of India, the Indian Council of Social Science Research and the Social Welfare Board should have three nominees each on the National Consultative Council. The Chief Justice of India, the Attorney-General of India, the Planning Commission, the Law Commission, the University Grants Commission and the Commissioner for Scheduled Castes and Scheduled Tribes should also have one nominee each on the National Consultative Council.

State Consultative Committee to consist of 15 members

17. The State Consultative Council should consist of fifteen members and should be constituted by the State Governments after obtaining recommendations from the Speaker, the Chief Justice, the Advocate-General, the Vice-Chancellors, the Bar Council and recognised social welfare organisations to secure the broad representation of legislators, public spirited citizens, practising lawyers and those interested in the weaker sections of the society.

District Committee to consist of 11 members

18. The District Consultative Council should consist of eleven members and should be constituted by the State Government after obtaining recommendations from the District Judge, the Collector, the Bar Association, the Zila Parishad and the social welfare organisations in the district.

Meeting of the Committees

19. The National, State and District Consultative Councils should meet at least once a year, should review the legal aid activities within their purview and should make appropriate recommendations from time to time. The Consultative Councils should also form Advisory Panels and Standing Committees to discharge specified functions. The District Consultative Councils should submit their reports annually in September to the State Consultative Council who would consider them in or about the month of December each year. The State Consultative Council should submit its report annually to the State Government which should place them on the Table of the State Legislature. The State Consultative Council should at the same time transmit the Report to the State Legal Services Board and the National Consultative Council in or about the month of February each year. The National Consultative Council should deliberate on the reports of the State Councils and should review the activities of the legal aid organisation as a whole and should submit an Annual Report to the National Council of the Authority which shall forward it to the Central Government along with its own Report, as soon as may be, so that copies of both the Reports may be laid on the Tables of the Houses of Parliament.

Various research bodies to be associated

20. The Research and Evaluation programme outlined in this chapter legitimately belong to the province of contemporary social science research and we hope that it would be sponsored and conducted by the Authority and the State Boards in close collaboration with the universities and research institutions, particularly those interested in interdisciplinary research and in legal aid research. It is important that such research is carried out not only within the organisational framework of the Authority but that bodies like the Indian Law Institute, the Institute of Constitutional and Parliamentary Studies, the Centre for the Study of Law and Society, the Institute of Public Administration, the Institute of Mass Communications, the National Legal Aid Association of India, the Tata Institute of Fundamental Research, the Institute of Social Work, Gokhale Institute of Economics, the Institute of Management (Ahmedabad), Society for Research and Development in Public Co-operation, the Institute of Economic Growth, Institute for Social and Economic Change (Bangalore) and university faculties and departments, institutes of criminology, police science, legal, socio-economic and sociological research should take an active part in the legal aid research programme. It would be in the fitness of things for the Indian Council of Social Science Research to extend its financial assistance to legal aid research programmes of the Authority and the State Boards as well as those of other research bodies and universities and we recommend accordingly. The I. C. S. S. R. will find this a truly worthwhile scheme for funding research and the Authority and the State Boards would be substantially relieved of their financial burden in respect of the research programmes.

21. The preceding outline of the Research Organisation is not to be regarded as laying down a definitive blue-print for its set up. There would necessarily have to be some room for modification. Further, a full-fledged research organisation cannot precede the setting up of the organisation which is to render legal aid. Its establishment would necessarily depend upon the availability of funds. A research organisation sketched out above would be our ultimate goal but to begin with, a small nucleus staff and a skeletal organisation may suffice. With gathering research momentum and improved finances, the fuller scheme envisaged above will bloom into existence. We would emphasize that the research aspect should not be neglected and that a start in that direction should be made simultaneously with the launching of the scheme of legal aid itself.

CHAPTER 15

COMMUNICATIONS AND TRAINING

The success of the legal aid plan will depend in a large measure on the involvement and the participation of those who are unable to obtain access to legal services owing to underserved want and in spite of the merit of their cause. It will depend equally on the quality of legal services provided and the changes it heralds in public attitudes and in the letter and the spirit of the law.

Importance of Communications

2. An effective communication programme, spreading the work about the availability and the location of legal services is obviously the first imperative. Unless the indigent and the disadvantaged, for whom the legal services in the legal aid plan are intended, know of the existence and the benefits of the services, unless they have a measure of confidence in these services and in the legal process itself, the legal aid plan would be unable to fulfil its functional role and to redeem the promise enshrined in it.

Publicity

3. An effective communication programme at all levels should include an ample use of existing resources and agencies, both official and voluntary, and should be directed towards all classes and sections of the people. Extensive use should be made on the printed and the spoken work as well as of audio-visual methods, the radio, the television, the films, the slides and the tapes. Regular programmes should be introduced on the radio and the television telling the listeners and the viewers about the availability and the location of legal services and as to who can obtain them and how. Programmes of expert legal advice in simple intelligible language and even in dialects should be broadcast filmed so that the common citizen is made aware of his rights under the law. The message of legal aid should be passed on through adult education programmes, community development programmes, newspaper media and mobile units especially designed for the purpose. Although the main thrust of the communication programme would be directed at the intended beneficiaries of the programme, it should also be addressed to all the other sections of the people to win friends and spokesmen for the legal aid programme and to make its appeal universal transcending the limited confines of the people to be directly benefited.

Training Material

4. We would recommend orientation programmes and introductory literature on legal services and the legal aid plan for legislators, lawyers, judges, civil servants, journalists and writers, party workers, special workers, school teachers, university teachers, college and university students, trade union workers, and those engaged in different professions, trades and business. Materials for such orientation programmes at different levels of comprehension should be prepared carefully and compact package programmes should be developed for different groups for varying durations. In developing and delivering these orientation programmes, extensive use should be made of the human and intellectual resources of the existing legal aid organizations and bodies of the bar such as the National Legal Aid Association, the Bar Association of India and the Bar Associations of the Supreme Court, the High Courts and the District and other mofussil courts as well as those of some of the universities.

Association of non-Governmental bodies

5. In the first phase of the legal aid plan it would be necessary to launch and carry out an extensive programme of disseminating basic information about the legal services to be provided to the indigent and the disadvantaged. At the same time, intensive training programmes for full time legal aid lawyers as well as for panel lawyers and para-legal personnel recruited to work in the legal aid programmes would be necessary. These programmes would have to be separately designed and would themselves require trained personnel to execute them. Since the expertise in the field of legal aid in our country is limited, our training programmes would have to be designed by an elite corps of those who have taken pioneering interest in legal aid or who are equipped by their background, aptitude and interest to design and execute legal aid training programmes in the first phase which would be meant to train those who would eventually impart training on a nationwide scale. Among these institutions and organisations, we would list the following: The National Legal Aid Association of India, the Law and Social Change Group of Indian Social Science Research Council, the Centre for the Study of Law and Society of the Institute of Constitutional and Parliamentary Studies, the Indian Law Institute and the University of Delhi Law Faculty. A composite consortium of these institutions should design, administer and implement the training programmes in the initial phase.

6. At a later stage, other universities and research institutions should also be involved in preparing and refining the orientation and training programmes. In the beginning, a succession of training courses should be held for those interested in the training part of the legal aid work. For this purpose, lawyers, law teachers, retired judges and others with experience in pedagogy and/or counselling should be chosen. The circles of those joining orientation and training programmes should be increasingly widened. Before the training programmes

commence, materials for study and detailed manuals of procedure should be compiled for different sections of legal aid workers. We would like to stress the importance of a standard manual of procedure which would systematise and facilitate the processing of legal aid applications and which would be aimed at cutting the red-tape and irksome delays.

Training Courses

7. For the full time legal aid lawyers, we would recommend a 8 week period of intensive training. For the para-professionals also, we would recommend the same period of training, which would, however, be imparted on the basis of different materials, with a heavier emphasis on the procedural part. For the panel lawyers, a period of two weeks would be adequate, whereas other orientation courses for different groups range from one session on a given day to a week. There should also be a programme of in-service training and transmission for those involved in the legal aid programmes. Refresher courses should be given in alternative years during the first five years. Continuing legal education programmes should be designed both for full-time legal aid lawyers as well as panel lawyers in the legal aid programmes. Similar arrangements should be made for the para-professionals. Incentive training programmes should be carried out under the auspices of the Authority at the central headquarters in the first year and later at the State as well as centre headquarters at frequent intervals. Eventually we envisage of a national Training Institute for legal aid, which may be established as part of the third phase of the legal aid plan. We feel that the research personnel at the central headquarters as well as State headquarters would provide a substantial part of the manpower requirements of the training programmes, but it would be necessary to infuse into the training programmes a steady inflow of others from voluntary organisations, research institutions and universities.

CHAPTER 16 LEGAL AID AND THE LEGAL PROFESSION

PART—A

No scheme of legal aid can function effectively without the active assistance and co-operation of the members of the legal profession. In fact, the profession has a heavy social obligation in this regard. Not only do the members of the Bar have a near monopoly of the necessary expertise in law which is essential to render legal aid but they possess an absolute statutory monopoly of the right to appear before the Courts. Section 33 of the Advocates Act provides that except as otherwise provided in the Act or in any law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or person, unless he is enrolled under the Act. Parliament has thus chosen to give by statute a monopoly to advocates who alone are entitled to have audience before the Courts. This exclusive privilege necessarily has to carry with it a corresponding social obligation namely, to ensure that services which can be rendered only by persons possessing such monopoly are not denied to members of the public on grounds of poverty.

2. Under the present legal system in any scheme for legal aid, the services of one or more qualified legal practitioners or advocates are indispensable. But the further question necessarily arises as to the role of the profession as a whole in any organised scheme of legal aid, theoretically, nodoubt, it would be open to the Legal Aid Organisation to secure the services of legal practitioners on payment of their usual fees and utilise them for giving legal aid. But whether such persons are engaged on a whole-time or a part-time basis, any scheme for legal aid on payment of fees as what may be described as the market rate is bound to be expensive. Further it would hardly be fair to expect the tax-payer to pay fees at the rates normally demanded by senior counsel, which are on the high side. To say that it is not necessary for the Legal Aid Organisation to engage such counsel would be to imply that persons getting the benefit of the Legal Aid Scheme do not deserve the same quality of professional service as the rich and the well-to-do who can afford to brief senior counsel and to pay them their usual fees.

Senior Counsel to be associated with legal aid at lower fee

3. It would therefore be necessary to organise the system of legal aid in such a manner that in appropriate cases, senior counsel noted for their competence and high fees do take legal aid cases and thus ensure that the highest quality of professional competence is not denied to a person merely on the ground of his indigence or poverty.

4. We do not deny that even now there are some senior counsel who do accept briefs in appropriate cases at a lower fee or without charging any fee at all, when the client is a person of limited means. But, in the present scheme of things, this is essentially an act of charity on the part of the advocate concerned. There is no established method, which a poor person genuinely in need of such service can have resort to. There is no recognised or enforceable professional obligation in this regard. No doubt, the Bar Council of India has framed a rule recognising the obligation of advocates to render legal aid. This new rule (which is Rule 39.B) runs as follows:

Statute should cast obligation on advocates to render legal aid

“Duty to render Legal Aid.—Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for 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 society.”

While this rule recognises an obligation on the part of the members of the legal profession to make their services available to persons of limited means, there is no machinery by which an advocate can be made to discharge this obligation or a private individual secure such services except as a matter of favour or grace. It is always open to an advocate who is so minded to evade his obligations in this regard and to plead an excuse when he is requested to give legal assistance in an unorganised fashion. Further the qualification “within the limits of an advocate’s economic condition” is so vague as to thwart any attempt to apply the obligations to a particular case.

5. We are therefore, of the view that it would be desirable if an obligation is cast by statute upon all members of the legal profession to do a specified minimum of legal aid work whether by way of advice, appearance in Court or the like.

Moral obligation of Lawyers

6. We are conscious of the fact that in its Fourteenth Report the Law Commission had expressed itself against conscription of lawyers or compulsion. They had stated that they were opposed on principle to the imposition of any measure of compulsion in the matter of legal aid. They had pointed out that a lawyer is in the same position as a qualified Doctor or an Engineer who is permitted to practise his profession and that if there was no compulsion on the part of the others to work without payment for poor persons, there was no reason why a discriminatory compulsion of any kind should be imposed on the legal profession alone.¹ We find ourselves unable to subscribe to this view. Apart from the monopoly of audience in the Courts which advocates enjoy which is not the case with regard to members of other professions,

1. p. 596.

we feel that the time has come to convert what the Law Commission itself recognises as a moral and social obligation into a legal one. Nor is it our suggestion that the work should be done wholly gratuitously.

7. Earlier in this Chapter, we had adverted to the rule framed by the Bar Council of India making it obligatory on the part of advocates to render professional services to indigent persons who cannot pay for such services fully and adequately. This shows that the profession itself has now recognised such an obligation on the part of its members. We only recommend the use of the Legal Aid machinery to make the obligation a real and effective one.

8. Further the spectacle of senior and fashionable Counsel known for their high fees taking up a case of a legally aided person for no fee or at the rate prescribed under the Legal Aid Scheme would have a salutary effect, not only upon the profession itself and the public at large, but also serve to improve the image of the profession in the public eye. We, therefore, recommend that it should be made obligatory on the part of all Counsel to take up legally aided cases on behalf of the Legal Aid Committee at the prescribed fee. The fee prescribed for the cases which an Advocate is required to do compulsorily as a matter of professional obligation should be on the low side. It should be somewhat lower than the reasonable fee which the Legal Aid Organisation would pay for other cases.

Maximum number of cases should be prescribed

9. In order to prevent an undue burden being cast upon individuals, a provision might be made that the case which an individual is expected to take should be in the courts in which he usually practises and also be of such a type which he normally handles. The maximum number of cases which an individual may be called upon to handle in the course of a year should be fixed, the actual number being left to be prescribed by rules. We suggest a maximum of seven cases per annum. In lieu of appearance, an advocate may also tender legal advice or help to draft documents in a larger number of cases.

Sanction for failure to do legal aid cases

10. Failure to accept a legal aid brief except for proper and justifiable reasons should be regarded as professional misconduct, for which disciplinary action can be taken against the advocate concerned by the Bar Council. Translated into practical terms, this would imply that every lawyer practising before a particular court or group of courts would be on the panel of counsel prepared by the Legal Aid Committee and would have to take cases assigned to him by the Committee, subject to the prescribed maximum. There would, of course, be no objection to a person taking more than the maximum prescribed under the rules, but that would be purely optional on his part.

Assigning of legal aid cases

11. It would be for the Committee to assign a particular Counsel to a case, taking into account the preference, if any, expressed by the litigant. If cases are assigned to advocates in rotation on the basis of alphabetical order, it would go a long way to forestall any criticism of favouritism in the assignment of cases or charges of an undue burden being cast upon a particular person. If such a scheme is introduced, this would turn the recommendation of the Law Commission that every member of the profession including the busy senior members at the Bar should make it a rigid rule to do a certain number of cases of poor persons every year into a reality and not a mere hope.

12. It is no doubt true that we are suggesting an element of compulsion. But this is not new. Reference has already been made to the rule obtaining on the Original Side of the Bombay High Court and in a modified form in the Supreme Court, by which Counsel are required to do poor persons' cases assigned to them without payment of any charges.

Example in other countries

13. Such obligation existed even in the past. Reference might be made to an English Statute of 1495 which provided that persons suing in forma pauperis shall not be charged fees for the issue of writs and that clerks, learned counsel and attorneys were to be assigned by the Chancellor to prepare such writs for them, without reward and that the justices were to assign to poor persons at their discretion Counsel who should act without reward.¹ Our suggestion thus involves no drastic innovation. Further, obligations similar to those envisaged by us are today cast upon members of the legal profession in other countries. All that we recommend is that what has all along been recognised as a moral and social obligation of the legal profession should be made a legal one by means of an appropriate statutory provision.

14. The foregoing deals with the role of the individual legal practitioner in our scheme of legal aid but the further question arises as to the precise role which the legal profession in our country should play in the institutional framework of the comprehensive scheme of legal aid which we propose should cover the whole country.

15. In England, administration of legal aid has been entrusted to the Law Society. Except in the Presidency towns of Calcutta and Bombay, there is no such organised body in our country. Our Bar Councils are also relatively bound in years and do not have the necessary organisation or the administrative apparatus for controlling or administering a scheme of the magnitude envisaged by us, particularly in the mofussil where the need for such aid is the greatest. Besides, it would be necessary to associate judiciary also with the scheme of

¹. Legal Aid and Advice—: Mathews & Gaulton, pp. 10 & 11.

legal aid. This would not be feasible if the function is entrusted to the Bar Councils or to the Bar Associations. Hence, we do not envisage professional association of members of the Bar directly administering schemes of legal aid.

Bar Councils associated with legal aid schemes

16. However, within the institutional framework formulated by us, provision has been made for the representation of the Bar Council of India in the apex All-India body and also representations of professional organisation in the All-India and in the State bodies which are to administer the scheme of legal aid. This would enable the profession to have an effective voice in the formulation and administration of the legal aid but at the present moment, the entire administration of the scheme cannot be left to professional bodies alone. We make no recommendation as to the legal aid fund which may be constituted by the Bar Council.

Law Students and teachers to be associated with legal aid cases

17. We have elsewhere dealt with the question of the role of law students and the law colleges in a programme of legal aid. Active association of law students with a programme of legal aid would certainly make the programme more effective, but in order to ensure that the maximum benefit is derived from such association, we would suggest that a provision might also be made for enabling the final year students to appear or conduct proceedings with the leave of the Court and under the supervision though not necessarily the immediate presence of a qualified advocates or law teacher who would be responsible for the pupil's work. We recommend that the Advocates' Act might be amended for this purpose. This does not necessarily imply that the quality of service given to a legally aided person would be inferior. It is not as if inexperienced students are left to handle cases on their own. The primary responsibility would still be that of the teacher or the practitioner. An additional safeguard would be the requirement of the consent of the Court.

18. In the foregoing, we have only dealt with the role of the legal profession within the existing legal frame work and organisation of the profession. It is, however, possible to visualise the legal profession as an instrument of social reform and change, which may call for restructuring it or for the organisation of practitioners to take a form different from that to which we are accustomed and which may well result in the emergence of what may be described as the Public Sector in the Legal Profession. To this aspect, which for the sake of convenience is dealt with separately, we now turn.

THE PROFESSION OF LAW VIS-A-VIS LEGAL AID

The present century has become unique for the "new consciousness" and "rising expectations" of hitherto inert, ignorant, weak, disorganized, poor, helpless and hopeless masses. If we agree with Friedrich Hegel who wrote that "the history of the world is none other than the progress of the consciousness of freedom", we must admit that the world is on the threshold of a new era of freedom and progress. This has created an urgent need for fulfilling the task which Alexis de Tocqueville long ago foresaw when he wrote: "To create a more equal allotment of poverty and of rights throughout the world is the greatest task which confronts those who lead human affairs". John Stuart Mill also had the vision to foresee the issues confronting our generation when he observed that the basic dilemma of the future would be how to unite the greatest individual liberty of action with common ownership in the raw materials of the globe and equal participation of all in the benefits of combined labour. Today, when we speak of equality, we do not mean political equality nullified by social and economic privilege. When we speak of economic reconstruction, we think less of maximum production (though that too will be required) than of equitable distribution." This is the new type of socio-economic order which our country has decided to build. Nowhere has this new order been better described than in the glowing words of the preamble of our Constitution and articulated more specifically than in the Directive Principles of State Policy.

If we want to make headway in the direction of bending law to deliver socio-economic justice, there has to be a fundamental reorientation calculated to bring the legal system into close activist proximity to the community. To achieve this, it is not enough to seek reforms in the procedural and substantive laws as if, once enacted, these fiats would be self-executing. Sadly, we have seen volumes of laws wither in their books for want of men willing to breathe life into law. Therefore, equally importantly, it is necessary to stimulate certain sympathies in the legal and judicial professions and create certain environmental factors whereby a new awareness and sense of public commitment become manifest in the approach and outlook of these professions. In fact, every step or action by which legal institutions are sensitised to respond to the socio-economic realities of our country, must be regarded as part of a comprehensive and all-embracing legal service programme. It is time the realisation dawns that the only sure way to preserve lawyers as effective elements in society is to abandon the bar's traditional conservatism and resistance to change and to respond to society's new needs and demands.

These new sympathies, this new awareness, are long overdue, particularly in the legal profession. The development of the legal profession took place essentially in the matrix of an individualistic society

in which the lawyer's clients were the landlord, the businessman, the employer and the corporate sector. Historically, it was a society in which two categories of rights—property and freedom of contract—were paramount. The lawyer served to protect these rights and his profession took its tone and outlook from the wealthy and middle classes who were principally concerned with these rights. From this genesis, the specialised learning of the lawyer has come to be regarded as his private stock in trade to be exploited for his private benefit. The wealthy and economically powerful interests have, through superior ability to recognise their own need for legal advice and to pay handsomely for it, virtually cornered the talents of the legal profession. Mr. Justice Stone said of the legal profession in the United States, "Steadily, the best skill and capacity of the profession has been drawn into the exacting and highly specialised service of business and finance," with the consequence that "at its worst it has made the learned profession of an earlier day the obsequious servant of business and tainted it with the morals and manners of the market place in its most anti-social manifestations." This should compel the profession to pause and ponder.

All this must change if we want the legal system to be an effective instrument for socio-economic transformation and the legal services programme to flourish. The legal profession is the major human component in such a project. Currently reluctant to greet such change, it must be disciplined into the new order so that the quest for justice through law ceases to be sale of legal expertise, on unsocial terms, and justice does not remain a close preserve of wealthy and economically powerful interests who alone can afford its price. The public commitment of the legal profession must oblige it to submit to social restraints and economic regulations as a realistic and constructive response to the basic philosophy enshrined in the Constitution. After all, in a rule-of-law, community advocates are officers of justice, into whose hands are committed the life, liberty and property of the people.

The fact that the profession has this anxious responsibility and a unique role both as social guardian and catalyst, impels the search for a new creed and a new mission. Whatever may be the criticism against the institution of lawyers right from antiquity to modern times, it cannot be gainsaid that the lawyers perform a very important social function in every society whether it be feudal, capitalist, socialist or communist. The importance of the social role performed by lawyers in any modern society flows from four different factors:

- (i) Our system of administration of justice is based on the adversary method and, therefore, the quality of justice depends on the proper presentation of claims of the parties by their respective lawyers;
- (ii) The problems of law and justice have become complex in a modern society and, therefore, they must necessarily be left to skilled persons who are sufficiently trained in law and related matters. The sheer principle of division of labour would justify the existence of lawyers;

- (iii) Since lawyers on both sides are expected to have sufficient expertise and competence, they tend to create equality between two unequal parties who have come before the court;
- (iv) The success of modern democracy depends upon the facilities for articulation of claims by different groups and classes in the society. These claims must find expression through all channels including the courts. In this process of articulation, lawyers are the most competent persons possessing necessary expertise and, therefore, they play a very important part in strengthening of the democratic processes.

Such, ideally, is the role a legal profession plays. Yet the experience in India has fallen sadly short of this ideal, with disturbing repercussions. One is that the poor and the under-privileged sections of the community have gone without legal services and have been denied effective participation in the legal processes. The other is that most of the ordinary people who have managed to engage lawyers have had to be satisfied with inadequate and unequal legal services. This, in its turn, has meant:—

- (i) the two opposing lawyers in a case being often unequal, the integrity and efficacy of the adversary process has been seriously prejudiced;
- (ii) As the fight between two parties, has often been between two unequals, the basic justification of the legal profession that it tends to create equality between two unequal parties who have come before the court has been destroyed;
- (iii) The democratic process which demands the articulation of different claims has been distorted because the claims of large masses of people who belong to the weaker sections of the community have not been adequately channelised into the legal process;
- (iv) As the health of the society depends upon the use of adequate machinery whereby claims of different groups and classes are properly articulated and put forward and are reconciled so as to create a stable and just social order, inequality in legal services has meant unfair advantage to some and unjust rejection of the claims of others and that has endangered the very basis of the social order;
- (v) The myth of equal justice for all citizens has perpetuated and it has continued to obscure the bitter reality that, in fact, the legal process, as it functions today, does not bring about real distributive justice but merely helps to protect and preserve the interest of the socially and economically higher sections of the community.
- (vi) Access to the Courts would be illusory unless representation of the under-privileged by counsel is recognised as a professional mandate.

The provision of legal services in our country is today afflicted by these consequences which are unleashed by the operation of free market forces.

There are other major drawbacks from which the provision of legal services by the legal profession suffers from a social point of view. Today the society is able to get the services of the best and the finest talent in the field of civil services, public services and judicial services for a reasonable remuneration fixed by the State in the context of the economic conditions prevailing amongst the large mass of population in our country. But the society continues to pay a disproportionately high remuneration to the legal profession for securing legal services. In a socialist pattern of society, the legal professional can have justification and utility only to the extent to which it provides social services to the members of the community. There is no reason why the society should have to pay for the social service rendered by the Legal profession an amount wholly disproportionate to what it pays for securing social service from its services, civil services and judicial services. The society cannot and should not tolerate charging of exorbitant fees by the members of the legal profession.

The question therefore immediately arises how this situation has come about and whether there is some way to control the legal profession and the provision of legal services so that competent and adequate legal services become available to all who need them. Let us first note that, unless one considers deprofessionalising the provision of legal services—a concept advocated and rejected in the early day of the American Commonwealth—the only way in which the legal services can be organised in a society is to recognise law as a profession which combines specialised knowledge with social responsibility. That is why we find that in all modern societies, whatever be their political character, legal services are proved by the legal profession which enjoys in varying degrees diverse privileges such as restricted entry into its fold, exclusive right to appear before the courts and a high degree of autonomy.

Turning to the question of regulation, there are four methods available to society to control and regulate the activities of any group within it. One is bureaucratic or managerial control but that is not possible here because the legal profession is a learned profession which requires training, specialised knowledge and a large number of other skills. The other is self-control but that too in practice is not effective. The third method of control is that exercised by market forces. That is the form of control which exists today. It has however failed with the consequences already described. The regulation of the provision of legal services cannot be left entirely to market forces. The reasons are as follows :—

- (1) The legal profession in India, as we have pointed above, enjoys a near monopolistic power and there being thus no equality of bargaining power between the consumer of legal services and the closed group of the legal profession, the operation

of market forces would necessarily result in the exploitation of the needy consumer.

- (2) The skills required of lawyers are so numerous and the variations in them are so extreme that it is a debatable question whether a pure market mechanism can successfully work so as to control the pricing by the legal profession;
- (3) The legal service market is a sellers' market where the competent lawyers are few and the stakes of the parties are high; a legal situation involves not only financial interests but also psychological overtones and questions of prestige and status. Therefore the parties are prepared to do anything to win the legal battle and, not having equal contracting power, they become helpless consumers of legal service dominated and exploited by the competent lawyers;
- (4) Since legal services in any society are not free but available only for a price, they are available only to those whose demand is backed by purchasing power. It is therefore the economic conditions of persons or groups which determine the availability and quality of legal services. In an inegalitarian society like ours, where inequalities of income and wealth are extreme, the market mechanism will simply reflect the social and economic inequalities, because it is the distributional pattern of society which determines the distribution of legal services in a free market.
- (5) The capitalistic society is an acquisitive society where the merits of a man are measured in terms of his acquisitions and consequently the status and prestige of a lawyer are measured in terms of his earnings. The fees which a lawyer charges have become a status symbol. The greatness of a lawyer is measured by the amount of the fees which he charges and not by the quantum of social service which he renders as a lawyer. The litigants who come from the higher sections of the community and unfortunately even those belonging to the weaker sections, look with awe upon a lawyer who charges fanciful fees. The amount of fees which a lawyer is in a position to demand invests him with dignity and status in society. That is an entirely wrong approach which blinds the lawyers to the true nature of their function and develops in them a tendency to work only for money even at the cost of professional ideals and to serve exclusively the upper sections of the society. Acquisitive attitude becomes for them an acceptable ethic.
- (6) The problems of justice and law are complex and difficult and success in a law suit depends upon a large number of variable factors. It is, therefore, difficult for the consumers of legal services to judge the competence and learning of the lawyers and, consequently, they cannot make intelligent choices and thereby exercise indirect control over the activities of the lawyers.

It will therefore be seen that regulation of legal services cannot be left purely to market forces and in the circumstances, the only alternative is to exercise some form of social control formal as well as informal which would aim at reducing the costs of legal services. We feel that there must be fundamental change in the moorings, methodology and ethos of the legal profession which would make it a real public service and that is a task which must be undertaken as part of the legal services programme. Legal aid is not just sending the poor man's brief to a lawyer with a cheque on the public exchequer but stimulating those reflexes in the profession which will bond their skills to the sorrows of the poor and wean them away from the tempting offers of the proprietariat. A systematic mutation is the social desideratum. The aware lawyer is the best human investment in the legal aid programme.

The traditional legal service programme which is based solely on extension of legal service to individual poor clients on a case-by-case basis, which looks upon the poor as simply conventional clients who happen to have no money, which accepts a static view of the law and regards law as given dictum which the lawyer has to accept and work with, and which is confined in its operation to the problems of corrective justice and is blind to the problems of distributive justice cannot possibly be effective to bring about socio-economic transformation. It would merely touch the fringe of the problem, or what may be graphically called, the surface of the iceberg. What is necessary is a massive social programme of legal aid with a radical goal. While the traditional legal service programme, such as we find in the United Kingdom, is important and cannot be neglected, the canvas of legal aid has to be spread wider and the legal services programme has to be geared to socio-economic goals.

Yet we wholeheartedly agree that the autonomy of the legal profession and the fearless advocacy of the lawyer are invaluable for liberty and must be preserved, even as the independence of the judiciary is the inalienable guarantee of a free society. It is for this reason that we hesitate to recommend direct controls over the income of private practitioners. Instead, our suggestions have the objective of creating a public sector in the practice of law which may compete with, and provide a reasonably priced alternative to, the private legal services offered at inflated cost. Furthermore, we recommend channelling the legal services requirements of Government and its related public sector corporations towards the public sector lawyers until such time as the private Bar is prepared to offer its services at tolerable rates. It may be argued that a public sector in the legal profession is a subsidised and hence unfairly advantaged competitor. However, as we shall demonstrate, it is largely Government and its related agencies and corporations which have for too long subsidised the private Bar and fuelled its inflated price scale with resultant hurt to private litigants as well. It is only if the major clients of the private Bar exercise

their prerogative in an alleged free-market situation to deal exclusively with reasonably priced lawyers, that a fair level of prices may be achieved.

We are conscious that the proposals we are making are somewhat radical. They mean a break with past traditions, but, like all other human institutions, the legal system, and with it the lawyer, must also change.

(1) Today, the main sources of income of well-established lawyers consist of the Central and the State Government, Corporations owned and/or controlled by the Central or the State Government and Public and Private Limited Companies. These clients in their anxiety to secure the best legal representation pay fanciful fees demanded by senior lawyers and they are largely responsible for encouraging the demand of heavy fees by the senior lawyers. If they collectively refuse to pay heavy fees to the senior lawyers, the standard of fees would definitely go down because private litigants, barring a few, would not be in a position to pay high fees to the senior lawyers. It is the Central and the State Governments, Corporations managed and/or controlled by the Central or the State Government and Private and Public Limited Companies who are really responsible for inflating the standard of fees. If this major feedstock of the senior lawyers dries up, the senior lawyers would have to be content with accepting reasonable fees. We would therefore suggest that the Central as well as the State Governments as also Corporations owned and/or controlled by the Central or the State Governments should not pay to the lawyers engaged by them anything more than the reasonable fees which may be fixed from time to time by the National Legal Services Authority. They should, as far as possible, engage the State-provided lawyers referred to in clause (2) below. If for any reason the State-provided lawyers are not available, they may engage other private lawyers but on payment of the reasonable fees fixed by the National Legal Services Authority. So far as Private and Public Limited Companies are concerned, they should do likewise. The Company Law Board or the Department of Company Affairs should take to itself the power to issue a directive to Private and Public Limited Companies to give their work to the State-provided lawyers as far as possible or engage private lawyers on fees not exceeding the reasonable amount fixed by the National Legal Services Authority. This direction should be enforceable by providing a sanction that any Company acting in violation of it shall not be permitted to debit the legal expenses incurred by it in the accounts of the Company but that the Directors of the Company shall be personally liable to bear such legal expenses.

There is also one other abuse which requires remedy. Today when shareholders file petitions under section 397 or section 398 of the Companies Act, the Government appoints Inspectors to inspect the affairs of a Company under section 235 or section 237 and the Directors or a group of Directors appear at the inquiry or file petitions in court to challenge the investigation, they reimburse the costs incurred

by them from the funds of the Company. The result is that the Directors who are put in the dock fight with the funds of the Company while the shareholders or the Government has to fight with its own money. Since the Company is going to pay the expenses and that is managed by the Directors by passing appropriate resolution of the Board of Directors—they engage senior counsel for representing their interests on payment of fanciful fees. It is therefore necessary that a provision should be introduced in the Companies Act 1956, that in petitions under section 397 or section 398 or in litigation arising out of investigation by inspectors under section 235 or section 237 or in any case where there are disputes between two groups of Directors, it shall not be permissible to the Company to pay the costs of any of the Directors or to reimburse such costs unless the Court for reasons to be recorded in writing otherwise so orders. The Directors who are in management and control of the Company would not then pay high fees to senior lawyers save in a few cases because they would have to pay such fees out of their own pockets.

It is only by collective action taken by the principal litigants that we shall be able to moderate the scales of fee charged by the higher echelens. The operation of the law of supply and demand can be effectively resisted only if the principal litigants refuse to pay or are legally prohibited from paying more than reasonable fees. We think that if the above suggestion made by us is implemented by the Government, it would go a long way towards bringing down the income of senior lawyers within reasonable limits. We would be able to achieve indirectly to a limited extent, whatever be regarded as a legitimate objective, namely, a ceiling on the income of lawyers.

(2) The State Board should engage a few top lawyers in the High Court who would provide legal services to the clients referred by it. The National Legal Services Authority should likewise hire two or three top-notchers for service in the Supreme Court. The clients would include legal aid clients receiving assistance free or on a contributory basis according as the legal aid granted is full or partial. In addition, non-assisted persons would be able to obtain the legal services of the State-provided lawyers on payment of reasonable fees which may be fixed from time to time by the National Legal Services Authority. Care has to be taken to peg such fees at a clearly low level to be attractive for even clients of means. These State-provided lawyers should be appointed by the Board in consultation with the Chief Justice of the State High Court, seeing to it that the State-provided lawyers are drawn from the best and finest talent in the legal profession so that even non-assisted persons are prompted to engage their services.

The object of this proposal is to create a competitive public sector in the legal profession which would not only help to secure excellent legal representation in complicated cases for the poor who are granted legal aid but also to go a long way towards breaking the monopoly of the top-most lawyers who are charging unconscionable fees.

But in order to achieve this result, it is absolutely essential that the public sector in the legal profession should be manned by competent and efficient lawyers who are imbued with a sense of social service. If not, the object of creating the public sector would be defeated. We would therefore suggest that the lawyers who are thus hired by the Board should be paid the same salary as a High Court Judge and, though they do not occupy any constitutional office, they may be placed on a footing of equality with the Advocate General for official privileges, ranking and what not. This in effect constitutes a subsidy to compensate for the regulated fees charged to legal aid and other clients referred through the National Legal Services Authority or its subsidiaries.

But, despite this, it is possible that in the beginning it may be difficult in some High Courts to obtain really good and competent lawyers on payment of salary of a High Court Judge alone. We therefore feel that in those States, in the initial stages, the State-provided lawyer should be permitted to continue their private practice in addition to their work as State-provided lawyers. We would make it clear that the State-provided lawyers should not accept any work against the State or against any statutory Corporation owned or controlled by the State or against a legally aided persons. Their private practice should always be subject to the prior claim of the work as State-provided lawyers and they must undertake not to charge for such private work higher fees than those allowable according to the scale sanctioned by the National Legal Services Authority.

So far as legal aid cases are concerned, the National Legal Services Authority should refer only such cases as are in its opinion sufficiently important to merit the attention of the State-provided lawyer. The other legal aid cases which are not so important may be distributed by the National Legal Services Authority or State Board amongst other lawyers who are in the panel of the legal aid agency. In the implementation of this proposal, flexibility is necessary having regard to local conditions and other factors.

(3) As a rule, the State and its subsidiary agencies should not pay to any of its law officers, including the Attorney-General and the Advocate-General, fees of an undue dimension. We regard it as reasonable in the present circumstances to fix a maximum limit of fees payable to law officers a sum which fairly represents the annual salary of the State Chief Justice or the Chief Justice of the Supreme Court, as the case may be, taking into consideration the pensionary benefits which accrue to these highest judicial personages. Somewhere, a line has to be drawn and may be we may equate the best legal talent with higher judicial officers and organise fee limits on that basis. Of course, these law officers, particularly the Attorney-General and the Advocate-General, have the additional advantage of being able to continue, in a limited way, their private professional earnings. We strongly suggest a ceiling of fee payable by the State and the other public sector organs on the lines set out above.

If the Governments, State and Central, and the Central Law Agency as well as the Corporations or institutions like Universities set their face against unlimited fees and stick, as a binding rule, to the reasonable maximum we have indicated, the 'status' scales now charged will slump beneficially. The *bona fides* of the public sector in paring down the extravagant size of legal incomes determines the success of our proposal. The fatuous argument that fancy fees are necessary to get the best talent and to win cases, if applied to other sectors will prove too vicious, too untrue and too self-defeating for a country going the socialistic way. The public sector management, still haunted by private sector thought processes may be prone to patronising the private sector lawyers as against the socially oriented and talented hope of the Indian Bar. The benefits of legal advice from the latter type of lawyers are many and we stress that the public sector in Industry should not betray them.

(4) The National Legal Services Authority must induce lawyers with ideals and convictions to start Lawyers' service co-operatives with the dominant object of providing legal aid and advice to the poor sections, of the community and taking up public interest causes in the manner in which public interest law firms are functioning in the United States. That would go a long way towards relieving the burden on the Legal Services Authority and it would also enlist the support of voluntary activities in furtherance of public policy. The National Legal Services Authority may lay down the norms which a co-operative of Lawyers must satisfy in order to be eligible for the benefits granted by the Government. The norms may include the requirement that the bye-Laws of the co-operative must be approved by the Legal Services Authority and that there must be a certain minimum membership with at least two to three senior members having experience ranging over ten to twelve years. The norms may also include proper and equitable distribution of the income of the co-operative amongst the members, leaving a certain percentage of the income undistributed as a fund of the co-operative which may be utilised for public causes and for the benefit of the members in accordance with the bye-laws. The fees charged by the members of the co-operative should not be higher than the reasonable scale fixed by the Legal Services Authority.

If the Legal Services Authority is satisfied that the co-operative has, in a given year, handled a sufficient amount of legal aid work or engaged in public interest causes in sufficient measure, the Government may, at the instance of the Legal Services Authority, pass on to the co-operative in recognition of the public service rendered by it some part of the Government legal work as well as some legal work of public corporations in order to compensate the members of the co-operative for the work done by them for the poor and weaker sections of the community on self-sacrificing terms.

The rewards may also include a grant of tax exemption, whole or partial, to the members of the co-operative in respect of their earnings from private work as well as other financial benefits, and facilities such

as office premises or the service of a secretary free of charge in proportion to the amount of legal aid and public interest work turned out by them. The High Court and the Government may also adopt a convention that whenever recruitment is to be made to the subordinate judiciary or appointment is to be made to the post of Government Pleader or Assistant Government Pleader, preference should, as far as possible consistent with efficiency and integrity, be given to the members of the co-operative provided of course the co-operative is one approved by the Legal Services Authority.

These co-operatives should take up causes which concern the public at large, if necessary, affirmatively soliciting individual or group clients to raise a claim in cases where rights are affected but the legal injury to any one person is so small that they would not ordinarily be inclined to take action. They may for example take up public interest causes relating to labour laws, land reform laws, consumer protection of hawkers, etc. They can also initiate and take part in projects for educating the poorer sections of the community in their rights and privileges making them aware of the rights and remedies provided to them by legislation or otherwise and creating in them a more active and assertive frame of mind with a view to enforcing the rights and benefits conferred upon them.

They can also carry out surveys in depth in collaboration with social scientists and find out what is the impact of any particular social welfare legislation on the weaker sections of the community and whether the social welfare legislation has succeeded in achieving its objective of benefiting the underprivileged classes of the society. If not, they may prove the defects and infirmities in the social welfare legislation which have prevented fulfilment of its objectives and recommend changes or innovation which should be made with a view to making social welfare legislation effective. They can take up projects of research and innovation and help in the achievement of socio-economic justice through the process of law. The State Legal Services Board, after proper appraisal, may subsidise the socially productive lines of professional life. What we have in mind is that the co-operative should, in their methodology and approach, function like the public interest law firms in the United States or even like law "Communes" which are also recently coming up in the United States. The spirit of the lawyers' collegiums in socialist countries adapted to Indian conditions can take many forms as it is taking in the U.S.A. A companion institution which is on the cards is the low-cost legal service bureau which provides for a man of moderate means competent legal services by private law officers for nominal fixed payments. In lower middle class areas, such bureaux can be a real facility. They may even undertake a comprehensive coverage of all legal problems, litigative and other, of a group of families on an annual pigmy payment. By subsidies and other intangible benefits such growths can be encouraged by the Authority.

(5) Obviously, a top heavy super-structure in the field of legal services is beyond the means of the average consumer of legal services. We would therefore recommend that in all assisted cases routed through the legal aid organisations or through voluntary co-operatives approved by the Legal Services Authority, the obligation to have an Advocate on Record should be relaxed in the Supreme Court. So also in Bombay and Calcutta, it should not be necessary in such assisted cases engage the services of a solicitor in addition to an advocate. There should be total exemption from the applicability of the dual system also in regard to cases arising out of social welfare legislation and labour laws. The legal profession can also take one more step to further reduce the cost of legal services and that is by agreeing not to charge fees for preparatory and incidental legal work involved in drafting and conferences. It must be remembered that the lawyer is after all not a trader but a public servant with the additional status of an officer of justice and his income is not profit but it is rather the reward or compensation for service to a section of the community which would otherwise turn against the law.

(6) Once the profession accepts the responsibilities of its social role, these prescriptions are but reasonable restrictions in the interest of the general public. Indeed the Bar Council of India has, in the rule made by it (already quoted) made the availability of legal services to the poor a canon of professional ethic. By the same token, maximum scales of fees permissible for advocates may well be laid down by the Bar Council of each State and of India *per diem*, per case, or in other ways considering the court, the area and other relevant conditions. The finest hour of the Indian Bar arrives, not when a fancied few draw astronomical incomes but when the profession as a whole with a lively sense of internal distributive justice agrees to be geared to a scheme of legal service at once competent, cheap and socially promising. We recommend that the Advocates Act give suitable legislative directives towards this end.

The proposals we have made are 'trendy' if we look at changes taking place in the American or Soviet bars. Essentially the social pressure on the profession's conscience must for its survival and utility produce those Darwinian adaptations some of which we have silhouetted in our recommendations. The radical note of the legal wing of society will enhance its prestige and re-build it as the *avant garde* again.

The law is a noble profession. But its nobility as a profession and its professional claim as against being dismissed as a business in the context of our social transformation will rest only on its public commitment to social justice and not on its aristocratic past, great traditions and present performance. The time has come when ideals of economic justice, such as are incorporated in Articles 38 and 39 of the Constitution, become the passion of the profession and distributive justice inform its internal organisation and set-up. It is heartening that a considerable section of the junior bar and a progressive sprinkling of elders align themselves with the new hopes and new needs of the nation even

if, consequentially, the sights of the aware lawyers and the organisation of the members have to be set differently. Indeed given proper orientation and training, the younger generation in the profession—and if processed in the law schools, the fledglings—will fall in line with our proposals for legal services for the handicapped and offer to play a vital role in the delivery system not merely as technicians but as partisans. An over-all change whereby the young man of law gets a real opportunity to participate in the legal process must be wrought into the professional structure. The insistence on law firms taking on a minimum number of junior lawyers, the distribution of incomes within the unit in such manner that the seniors shall not carry off more than thrice the takings of the juniors, the special emphasis on acceptance of legal aid briefs in the constitution of the firm, the encouragement that the public sector must give to lawyers in forward-looking law units undertaking to conform to social restraints on fees and their distribution within, and social commitment on, the legal aid front, the desirability of a national policy of equitable opportunity for young lawyers to appear for the public sector so that a new cadre of enthusiastic legal idealists wedded to social change may arise—these are our suggestions to make the strategic profession of law dynamic and to ensure the economic security of the aspirants who are Bar's young promise to the New Order.

We insist on ceilings on fees being applied from the client's end and the Bar Council end. We ask for new forms of organised lawyers' units pledged to activist pursuit of social justice within the bar to which, on grounds of public policy, the State will accord fiscal and other inducements. We recommend obligatory distributive justice through regulations, to the younger wing. The nation is in transition and so the profession. If tremendous socio-economic changes to banish inequality and poverty are taking place, the phenomenon cannot be read in isolation. Nor can a public profession like the law in a rule-of-law community be the private concern of its members. Our proposals, addressed to the Administration and the Bar Council are an expression of the accountability and concern of the Law to the nation which is the highest tribute a democracy can pay to one of its major institutions.

The mission of the lawyer cannot be fulfilled by mere reorganisation or a few institutional beginnings. What is equally important, apart from the new look, is the new orientation and training which lawyers and judges need if the great change is really to take place. If the present deep-seated desire to keep out of court, right or wrong, on the part of the common people, is to give place to a new credence in our courts and a faith in the profession's functions as legal service agencies, not the bench alone, nor the bar alone, but both together must endeavour to acquire a social awareness through an orientation course and the new know-how of legal aid to the poor through train-

ing. The primary impetus for reforming and improving the judicial process and lawyers' services with a view to make law accountable to the poor should come from within the system. We therefore recommend—we have elaborated it elsewhere—that courses, workshops, seminars, conferences and exposure to poverty areas should be organised both for the judiciary and the bar. Our national reveres its Judges and esteems the independence and service role of the professions. That reverence and esteem must not be permitted to be diminished by lack of concern about their images by the members of the Bench or of the Bar.

CHAPTER 17

THE ROLE OF VOLUNTARY AGENCIES

The scheme of legal aid which we visualise is a comprehensive one and we have suggested an elaborate structure of local and District Committees together with apex bodies at the State and the Centre to administer it. A question may therefore be raised at the outset as to whether there is at all any scope for voluntary agencies operating outside the statutory units to play a useful role in the administration of legal aid. We would answer this question emphatically in the affirmative.

2. As we have had occasion to point out on more than one occasion, the object of legal aid is to bridge not only the gap between the rights which our people deserve and that which they have, but also the one between the rights conferred on them by law and the prospects of their enforcement. If legal aid is conceived not as an arithmetical total of instances of official assistance rendered in matters of law to the needy and the indigent but as a movement aiming to secure for the people their just rights, the role of voluntary agencies in any such scheme would be largely self-evident.

Their present role

3. So far what little legal aid worth the name is available in our country has been supplied by voluntary agencies. They may be few in number and the scope of their work and impact limited. But it cannot be denied that during the past thirty years during which they have been in existence, they have played a useful, though in view of their lack of material and human resources a limited role in this field. They have built up an organisation and also channels of communication between those needing legal aid and those who give it and also a certain amount of expertise in the field.

Future role

4. It would not only be a case of unawareness of a felt need but a positive disservice if any steps were taken that would have the effect of dismantling or scrapping the apparatus which has been built up over many years by the devoted labour of a few. Rather, the fullest advantage should be taken to utilise the existing machinery and integrate it with the new set-up in which the voluntary agencies have a distinctive contribution to make particularly in the field of research, law reform, training, communication and evaluation.

Existing bodies and their functioning

5. In dealing with the scope of voluntary agencies in relation to legal aid, we may broadly divide the existing ones into three categories namely (1) bodies of lawyers, (2) lawyers' wing of Social Welfare bodies and (3) Social Services Organisations.

6. There are in existence a few voluntary agencies of lawyers which render legal aid. Of the many in existence, reference might be made to the Bombay Legal Aid Society, the Kerala Legal Aid and Advice Society, the National Legal Aid Association of India and the Lawyers' Referral Service in Delhi. These bodies provide aid by referring indigent persons who have legal problems to lawyers on their panel. Such bodies apart from handling individual cases can also in the new set up perform a more fundamental function namely by identifying areas and problems wherein the law bears harshly upon the poor and the under-privileged and is in need of amendment. Further such bodies can rouse among lawyers themselves the social consciousness which tends to become atrophied unless it is periodically stirred into action and thus keep the legal profession alive to its responsibilities in the field. The fact that we have proposed a feeble dose of obligatoriness in securing the services of lawyers for purposes of legal aid would not alter the position.

Social welfare agencies and legal aid

7. Bodies of lawyers also perform a useful function as wings of social welfare agencies. Of the many in this field a reference might be made to the Legal Aid and Advice Bureau of the Bharat Sevak Samaj in Delhi. Started with a view to assist tenants of slum clearance areas, it has extended its services to the field of landlord and tenant generally which is its special field of service, though it deals with other types of cases also. Social welfare agencies which have a lawyers' wing attached to them would be in a better position than bodies consisting exclusively of lawyers to notice the effect of the working of the law in particular fields and its impact upon persons who need such legal aid services. Trained social workers might be able to identify and isolate problems which are legal in nature or the legal issues of a complex human and social problem and guide the persons concerned to the agency or office where legal aid is available.

Legal aid a supplement to welfare activities

8. It is particularly in this last field that purely social service organisations can perform a very useful and unique role. A woman turned out of her house or a child begging on the streets would draw the attention of the social worker whose services are what they need primarily and in the first instance. But further investigations may bring to light that the problem has medical or legal aspects. The woman might be entitled to maintenance. So might the child. If this right can be enforced they might not be destitute. In such a case the

law can be invoked to secure to the persons their rights. It may well happen that the bread-winner of the family is in prison and is unable to furnish bail, or is unaware of his right to it. The social worker can get in touch with the right person for securing the legal aid necessary to complete the service rendered by the social welfare agencies. They can also as explained later supplement the services rendered by the legal aid bodies.

9. Many of these agencies will continue to fulfil a real need even after a comprehensive scheme of legal aid is brought into force. In the first instance they can help to make people aware of the existence of legal aid and direct or guide those who stand most in need of such assistance to the legal aid Centre. By directing persons in real need of legal aid service to the legal aid centres and by creating an awareness among those responsible for administering legal aid that their services are specially needed in some quarters, they can ensure that the benefits of the scheme are not diverted to the more vocal and aggressive sections of the population and that the weak and the timid also get the benefit of an organisation primarily set up for their benefit.

Vice versa

10. Further such agencies can also make the services of the legal aid bodies more effective than they otherwise would be. For instance, in dealing with a case of an applicant for legal aid, it may be noticed that though the individual has a problem which could be termed legal, yet a fully beneficial solution calls for the utilisation of some machinery other than or in addition to law. For instance, certain disputes between co-tenants might be more satisfactorily solved by the installation of an additional watertap or electric meter in the premises rather than by moving the court for an injunction. A woman seeking help to enforce her claim for maintenance may also require medical aid, or special schooling for her handicapped children or suitable employment. Association of voluntary social welfare agencies with the legal aid organisation would enable the problems of the individual coming to the legal aid organisation to be tackled in a comprehensive manner.

11. Again in any State-run agency even an autonomous corporation, there is always a risk of what we may call bureaucratisation. To some extent this may be inevitable since any organisation once it grows beyond a certain extent has necessarily to adopt rules and regulations designed not only to facilitate but also regulate its day-to-day work. Voluntary agencies can alert those working in the legal aid organisation when they tend to fall into a rut and become ossified. The existence of a voluntary agency whose work impinges on that of the legal aid organisation will act as a stimulant and help the legal aid body to keep in mind that its ultimate aim is one of service and not of mechanical adherence to rules however well intentioned they may be.

Education and publicity

12. Education of persons as to their rights which is one of the functions of the legal aid organisation can be done more effectively if voluntary agencies are associated with their efforts in this direction. Similarly the publicity which would be required by the new legal aid organisations once they are set up can be better secured by the fuller utilisation of the channels of communication with the poor and the needy established by voluntary agencies.

Exceptional cases

13. Again however comprehensive a scheme of legal aid there would always be some marginal cases which strictly speaking do not qualify for legal aid under the scheme. A person whose case is otherwise meritorious might not qualify for legal aid on some technical ground or because the scheme has not been extended to cover the particular type of case in question. It might be a hard case within the legal aid framework which would otherwise make bad law. In such cases voluntary agencies can step in to supply the assistance which the legal aid organisation should—but is unable to—provide.

Other functions

14. It is easy to conceive of other areas wherein such voluntary agencies can play a part in legal aid quite apart from the fields of education and publicity. They may be able to identify areas wherein the law itself operates harshly on the poor or to promote public interest litigation wherein it would not be worth the while of any one individual to file a suit. A case of a public nuisance caused by a smoking factory chimney in a working-class area is an example in point. Such organisations can also help public-spirited lawyers to identify areas wherein their special skills would be of great avail. Para-legal services can also be performed by voluntary agencies such as by ascertaining the facts relevant to a legal dispute and in appropriate cases advising the parties to adopt non-legal remedies of settlement.

Voluntary agencies and research

15. Elsewhere in this Report we have discussed in detail the importance and increasing relevance of research and reform in the legal aid set-up. The role of voluntary agencies and community organisation in developing and assisting research and reform directed towards making the legal aid programme more effective is considerable. Without constant and intensive community participation, the legal aid organisation might lose its sensitivity to the changing legal and social problems of the poor and might become a part of the establishment lacking in response and resilience to the demands made by changing social conditions.

16. It is therefore essential that select voluntary agencies are given consultative status and their manpower resources and organisation are suitably pressed into the service of what we may call the research and

development functions of our proposed scheme. Agencies having special knowledge and expertise may even be entitled to assistance from the legal aid organisation for their progress. Our idea is to actively involve all interested parties in this new legal movement which would have far reaching social implications.

Close association with legal aid administration

17. We envisage that such agencies should be closely associated with the legal aid organisations and that they should be represented in the legal organisation at all levels and also in the National Authority. For this purpose associations with a proven record of services in this field can be given subventions or grants for legal aid subject to the usual financial safeguards such as audit and the like. Public recognition can also be given to voluntary agencies for outstanding and meritorious work in socio-legal fields.

Grants to such bodies

18. What is relevant is the process of integration and avoidance of overlapping. Non-legal bodies like social welfare organisations or trade unions can be given consultative status subject to prescribed conditions. The Authority's centres will be fed by them and will receive legal services through them. While the organ renders direct legal aid it can claim and be conferred associate status. Certainly education and publicity and liaison with the masses are useful types of activity as well as actual service which when rendered helps the broad spectrum programme. And grants, according to *quantum meruit*, may be made by the Authority carefully screening the operations of the voluntary agency.

Their increasing Importance

In our view therefore far from voluntary agencies ceasing to have a role under a State organised system of legal aid, their importance would necessarily increase for there would apart from rendering the other services outlined above be channels of a two-way traffic namely between the legal aid organisation and those who avail of its services. The persons needing such services can be guided to the legal aid organisation and the legal aid machinery in its turn can be made to move out in the direction where it is most needed and to identify problems wherein other forms of assistance including legislation are called for.

CHAPTER 18

MEANS TEST IN LEGAL AID

The *raison-d'etre* of the legal aid programme is that a person should not be denied access to Courts of law and justice merely because he is too poor to meet the cost involved in litigation. In the practical working of a legal aid scheme there would have to be some criteria as to who should be considered poor enough to get full legal aid, who would receive partial subsidies, and who would be eligible for no help at all.

Whatever the amounts to be fixed for eligibility may be, it is also important to bear in mind that these tests for granting legal aid must be flexible to some extent and the application process must be as simple as possible. The majority of the poor people in India, whom this scheme is envisaged to benefit would be in the rural areas and would often be illiterate or semi-literate. Therefore, complex application procedures will tend to reduce the number of potential clients availing of the scheme and create a market for touts specialising in referrals to the legal aid schemes.

As a general matter, completely subsidised legal aid should be available to any family unit consisting of husband, wife and children whose gross income is Rs. 2400 per year or less. Legal aid to the extent of half the costs of the case or matter will be extended to family units whose gross annual income is between Rs. 2401 and Rs. 5000. Family units whose gross income is more than Rs. 5000 per year will not be eligible for any assistance.

We emphasise income rather than assets because it is comparatively easy to calculate and ascertain and because the need to divert cash income to meet the costs of legal actions is sufficient hardship to merit legal aid, leaving aside the greater harm of having to mortgage or sell one's assets.

In certain legal aid schemes here as elsewhere the means test is based on "disposable income" and "disposable property" and various elaborate methods are laid down for computing the same.¹ The method of computing disposable income which entails a lot of clerical work is too cumbersome and we are not in favour of adopting this

¹. See for example the Tamil Nadu Legal Aid and Advice Bill, 1973, clause 8; the English Legal Aid and Advice Act 1949; the Singapore Legal Aid and Advice Act, 1956 and the Gujarat Committee Report on Legal Aid, 1970 p. 57—59.

method. The fact of taking into account "disposable property" is inappropriate for the following reasons:—

- (1) it is unrealistic because it is too much to expect a person to sell his property for the sake of bringing in liquid assets to conduct litigation;
- (2) the test if applied seriously would require considerable clerical work for the applicant as well as for the office of the Legal Aid Committee anybody who has had occasion to insure his property is aware of the amount of labour;
- (3) the fact that it has been adopted in order 33 C.P.C. and in other Legal Aid schemes is not conclusive because the practical considerations at (1) and (2) above should override any theoretical justification that may exist in its favour.

However, if necessary, the local legal aid committee may be given a discretion to refuse legal aid in the very rare case in which, though the income is not sufficient, the "Disposable property" is high in value.

Procedure for determining means.

It is submitted that in order to encourage applicants to take advantage of the legal aid scheme, the method of determining the means by the gross income be less cumbersome and should be adopted.¹ Furthermore, it would be difficult to equitably designate various categories of exemption and verification of each of the items would be burdensome without necessarily adding to the overall accuracy of the means declaration. In addition to the certificate of this gross income, a declaration of the property of the applicant or his family may also be required where the committee so decides in its discretion. But to expect the applicant to indulge in long exercises of computing the disposable income and disposable property may be to discourage a would be client and increase the administrative burden of the scheme.

We emphasize family income rather than individual income because the earning and consumption unit generally is a family. Calculating individual or per capita income may be more difficult to do. Where there is more than one earner within the family unit, their incomes should be clubbed, unless they are antagonists in the particular legal matter brought to the legal aid scheme. Where a family is unusually large (the medium household in India is about 5 persons), some additional rise in the eligibility threshold may be provided.

The gross income limits that have been set are admittedly arbitrary as all such limits are, but there is rationale behind them. The category whose upper limit is Rs. 2400 per year—those entitled to full

¹. The Government seems to have adopted this method in other cases of medical, housing and educational welfare schemes also.

legal aid—comprises somewhere between 40% and 50% of the entire population of the country. In this way the most disadvantaged sectors of the population are eligible for full legal assistance. We provisionally set this upper limit of Rs. 2400. When operation experience indicates the number of persons coming forward from this category, it may be adjusted up or down according to the needs and the capacity of the programme.

Obviously in making some 22 crores of people eligible for full legal aid, we are anticipating that many will not have legal problems or will not come forward for a variety of reasons including—unfortunately—lack of knowledge of the legal aid programme. It has been the experience of legal aid schemes begun in other countries that a few years of relatively few clients coming forward is followed by substantial yearly increases in the caseload until some levelling-off is reached. It is impossible to predict what the pattern will be in India. However, the main thrust of the programme should be to help the most deprived and in later years resources may be diverted from those eligible for partial assistance if the number of truly indigent clients so merits.

Taxable income ineligible

Looking at the second category—those eligible for subsidisation of half the cost of their cost—the upper limit of Rs. 5000 is that set as the lower limit for income tax purpose. Anyone earning above that amount must be expected to carry the costs of his own legal actions. The fact remains that the upper limit we have set still comprises all but the top 10% of the population. Are we prepared to commit the resources of the scheme to such a large segment of the population and will the resources be sufficient? Although in theory this may appear a prohibitively costly investment, in practice we doubt that will be the case.

First of all we expect that many persons at the upper end of this second category will prefer to select a lawyer of their own and pay him themselves rather than deal with the legal aid machinery. Secondly large segments of the scheme's budget will be allocated to serve groups whose members are not likely to fall in the income brackets close to the taxable limits. These would include scheduled castes and tribes, labour union, members and incarcerated undertrials. Therefore only a portion of the budget will be available to meet the cost of legal assistance to persons whose income is close to Rs. 5000 and who are unaffiliated to any one of the above mentioned groups. Thirdly there would be little argument that persons earning between Rs. 2401 and Rs. 3500—the lower end of the upper bracket we envision—are entitled to subsidised legal service. It only remains to be seen how large the clientele earning between Rs. 3500 and Rs. 5000 will be.

Reason for fixing limits

Obviously a person earning Rs. 2401 yearly and a person earning Rs. 4999 yearly are in far different financial circumstances and the question arises why we recommend treating them in a single category. Assume a litigation whose total cost is Rs. 4000 of which the subsidised client must bear half. Clearly it is far easier for a person earning Rs. 4999 to meet a Rs. 2000 expenditure than for a person earning Rs. 2401.

However, this disparity is offset by the availability of the *in forma pauperis* provisions under Order 33 of the C.P.C., complementing the provisions of the legal aid scheme. Even as presently drafted, the *in forma pauperis* provisions apply to a person whose worldly goods are less than Rs. 100 or *who cannot meet the court fees in his case*. This second provision would benefit litigants who under the legal aid scheme criteria would have to meet half the cost of their litigation and cannot do so. By Applying to proceed *in forma pauperis* a person earning only a bit more than Rs. 2400 may avoid all costs. A person earning close to Rs. 5000; on the other hand, would probably (and rightly) not be permitted to proceed *in forma pauperis* but would still receive 50% subsidisation from the legal aid scheme.

Limit of assets should be Rs. 1000/-

Further more this Committee recommends (as has the Law Commission) that the assets limits under the *in forma pauperis* provisions be raised to Rs. 1000 and that, in computing the cost of the litigation, an amount equal to the court fee be added to represent the cost of witnesses, printing etc. and that the services of a lawyer be provided as well. If this is done, an applicant for legal aid will have the choice of proceeding under the legal aid scheme itself—where he may have to pay half the costs—or establish his eligibility under the *in forma pauperis* provisions and pay nothing. Therefore where the applicant's income is low and the costs of the case are high, there is an opportunity to avoid an enormous financial burden.

Poverty line at Rs. 2500/-

Indigency vis-a-vis legal assistance has an absolute level, a relative status and a social dimension; and any scientific test has to adopt this triune approach. If a person is too poor to make both ends meet, he has ex hypothesi, no wherewithal for seeking legal advice or other legal services on payment. Such persons below the poverty line (which for reasons explained below, we draw at Rs. 2,500/- annual income) are absolutely eligible for legal advice and aid free of charge and constitute the bulk of the beneficiaries under this welfare programme. They must get the highest priority in the working of the project. A man may be above the indigency line and may earn say, around Rs. 3,000/- yearly but is faced with a problem which in litigation may mean heavy court fee plus incidentals and large lawyer's fee which may total upto say Rs. 5,000/-. Here relative

poverty prevents effective access to justice. The Civil Procedure Code in its pauperism provisions links up means with the needs of litigation costs of rather one of its components, viz., court-fee. We feel clearly that this is a valid standard applicable to civil and criminal cases. A man with 3000/- rupees a year involved in a considerable conspiracy or mis-appropriation case or grave murder trial is indigent vis-a-vis that case. And in this group may perhaps, be included grave cases or unusual human situations where the mechanical 'means' test may have to be relaxed. A capital case is one instance. A man fighting a costly battle with cancer and not finding liquid resources before the action is barred is another. In all these matters an exception has to be made having regard to the humanist concern of the whole project. In the second category the local committee must have the discretion to award aid if from a relativist point of view the applicant is unable to meet the costs.

Poverty line for special categories Rs. 5000/-

Thirdly legal assistance may have to be made available for special categories such as people in scheduled areas where courts are distant or lawyers are forbiddingly few or far away or whether the general social layer is so depressed that the client's poverty is qualitatively worse. In this category, special considerations covering a class, have to be adopted even if some members thereof may not qualify as poor persons. Such provision reflects a determination that an entire class of backward persons has legal problems as a class as well as individually and that so many members of the class are severely handicapped that it is administratively inefficient and counter-productive to attempt to weed out the small number of non-poor members of the class. A presumptive inclusion in the beneficial belt of such groups regardless of isolated exceptions of ineligible individual is justified on pragmatic and social grounds. Harijans, the working class, slum dwellers, jawans, women in certain situations are illustrative cases. Other flexible and elastic modifications in applying the means test are desirable in keeping with the spirit of the scheme.

Applicable both to Civil and Criminal litigation

The eligibility criteria we describe would apply to civil and criminal litigations, legal advice and representation before tribunals. However, we have exempted certain people from these criteria by the fact that they belong to any of the following groups:—

1. The following are automatically deemed eligible for free legal aid and advice :—

1. Women and children (and parents under 54th Law Commission Report) bringing actions under Sec. 488 Cr. P. C.
2. Members of Scheduled Castes and Tribes who are certified to be members by the official authorised to issue such certificates and whose income is upto Rs. 5,000/-.

3. Slum dwellers, if the area is notified as a slum.
4. Claimant for hutment under Land Reform legislation.
5. Defence personnel who are not officers, their dependents and ex-service personnel.
6. Indian Embassy Staff abroad earning less than Rs. 5000/- per annum.
7. Lunatics.
8. Individual workers whose dispute is with management and whose annual salary/wages is less than Rs. 5000/-.
9. Unions whose disputes is with management provided that the Labour Commissioner or his deputy certifies the Union is unable to fight with own resources.
10. Consumer/sufferers of public nuisance or mass eviction, provided that a Legal Aid Committee superior to the local Committee has determined that it is a reasonable cause.

To allow the above category of persons, a limit upto Rs. 5000/-, which is a departure from the limit suggested for indigent persons in general, it would be necessary for them to furnish an affidavit in that behalf. A provision may be made for penal liability for making false statement in the affidavit.

II. Persons presumed eligible for free legal aid and advice unless their claim of eligibility under the means tests is in some way rebutted :

1. Detenues under court orders or detention acts.
2. Internees in custodial homes under court orders.
3. Prisoners and under-trials under criminal or civil legislation.
4. Women, children and parents involved in intrafamily disputes which deprive them of access to resources they would normally have to meet legal costs.
5. Members of linguistic, religious or cultural minorities when their cause arises from their status as minority group members.

Special eligibility criteria

III. The following are subject to special eligibility criteria :

1. Persons residing in Andaman and Nicobar Islands outside of Port Blair, persons residing in Laccadive or Minicoy Islands, persons residing in Lahaul, Spiti and other areas notified by appropriate Government as inaccessible to the legal profession

are eligible for free legal aid if their income is less than Rs. 5000 per year. If their income is between Rs. 5000 and Rs. 10,000 per year, they are eligible for 50% subsidisation of the costs of their case or other matter.

2. Persons litigating in, or appealing to the Supreme Court are eligible for the free legal aid if their income is less than Rs. 5000 per year. If their income is between Rs. 5000 and Rs. 10,000 per year, they are eligible for 50% subsidisation of their cost of litigation or other matter.

IV. The following are subject to regulated fees and costs to be determined by the National Legal Services Authority :

1. Any tenant or beneficiary not already listed in some other category herein.
2. Indians living abroad or residing in India but distant from the site of a particular litigation or other matter who wish the help of the National Legal Services Authority in resolving a claim within India.

In all these cases the applicant must still meet the tests of merits and reasonableness.

Private corporations, co-operatives and charitable groups are also eligible for legal aid under these criteria where their objects are of a social welfare type and/or are designed to benefit those classes of persons who are themselves eligible for legal aid.

As far as the mechanics of ascertaining means, we envision the establishment of a means committee as part of each legal aid committee. Some of their powers may be delegated to the local secretary of the legal aid scheme or staff lawyer where an applicant only wants legal advice or legal services which may be quickly and inexpensively rendered or where there is a requirement of haste. Where an applicant's problem requires rapid action by the legal aid scheme, the means test may be deferred and the applicant may sign a bond promising to make good at a later date any financial liability he may have to the scheme. Also both the committee and those to whom they delegate their powers may apply relaxed procedures of enquiry where it is obvious from the applicant's address, occupation and appearance that he is clearly within the means limits. Otherwise they must request proof of the applicant's income.

The gross income per month in the case of an employed person could be certified by the employer and in the case of self-employed persons, it could be certified by an independent person who may be any one of the following :—

- (a) The appropriate revenue officer e.g. the Tehsildar or equivalent.

- (b) The President of the local authority for the area of the applicant's place of residence or business ;
- (c) any gazetted officer of the Government or Member of Parliament or Member of the Legislative Assembly.
- (d) Justices of the Peace under the Criminal Procedure Code.
- (e) In cases of Scheduled Castes and Scheduled Tribes, the appropriate revenue officer or officer of the Harijan Welfare Department authorised by the Legal Aid Committee to issue such certificates.

It will have to be borne in mind that in order that the better off, the better educated or the more urbanised applicants do not get the lion's share as it were of the available free or subsidised services, the legal programme administrators must consciously influence the choice of clientele by locating their offices in areas where there is a concentration of the poor and also leave a discretion to them to disallow some applications of applicants at the upper limit of the income eligibility criteria if the press of applications from less well-off clients so merits.

An applicant should be allowed to approach a legal aid committee only once for determining the means test and if it has been held that he is not entitled for such aid, then it bars him from making a further application to another committee on the same matter. Only one appeal to a higher Legal Aid Committee on rejection of the application on the ground of the means test may be allowed. Any deliberately false declarations of the income or other particulars given in such forms¹ as to the financial means of the applicant would be considered an offence and punishable with a fine of upto Rs. 250.

In all cases of applications for legal aid and advice, the initial fee of 25 p. should be payable by the applicant for the application forms.

¹See Appendix B, for the suggested form for Means Test.

APPENDIX 'B'

Particulars of financial Means of Applicant for Legal Aid

- (1) Name
- (2) Home Address
- (3) Employed/self employed
- (4) Certificate of income as given by*.....
- (5) Address of Employer
- (6) Any transfer of property made during the last six months exceeding Rs. 1,000 in value, if answer to (6) is 'Yes', give details.
- (7) Have you been refused aid by any other Legal Aid Committee.
If yes, state ground.

NOTE:- Any declarations given above which are false is a punishable offence under the Legal Aid and Advice Act, 19.

* Here state name and address of the certifying officer who can be any one of the following:

- (a) The employer in the case of employed persons.
- (b) Tehsildar or other revenue officer.
- (c) President of the Local authority for the area of the applicant's place of residence or business.
- (d) any gazetted officer, M. P. or M. L. A.
- (e) Justice of peace.
- (f) In cases of Scheduled Castes or Tribes, officer so authorised by the Legal Aid Committee in that area.

CHAPTER 19

THE ORGANISATION OF LEGAL AID—THE ADMINISTRATIVE SET-UP

Administrative machinery

Any large scale and complex scheme of legal aid as contemplated by us necessarily postulates an efficient and representative agency for administering it. Its functions *inter alia* would involve the scrutiny of an individual's eligibility for legal aid, the offering of advice and other related services, assignment of a counsel and arranging for the representation of the assisted individual in a court or before administrative bodies, and a variety of other lines of activity like research, reform, communication and training and regulating and co-ordinating the profession and service agencies in relation to legal aid schemes.

2. At the threshold we have therefore to face the problems of the agency which is to administer such aid. Various alternatives are possible. The first and the one which obviously suggests itself is that this should be done by a separate Government-department organised for this purpose or by the judiciary as the bulk of the funds for legal aid at least in the initial stages would have to be found by the State. The other courses open to Government are entrusting the functions to the Bar, the formation of a society under the Societies Registration Act, the registration of a government company or the establishment of a statutory corporation charged with the duty of administering the legal aid programme.

Government Department not favoured

3. The first course is, however, open to several objections. As is clear from the scope of a legal aid visualised by us, this may involve assisting an individual not only against the State and its organisations. It would at the very least be anomalous for the department of the Government to encourage or to assist litigation against another. Further in such cases the individual approaching the legal aid agency may not have the necessary confidence in its impartiality or in its ability to do justice. Again legal aid being essentially a welfare measure, a certain amount of flexibility is essential particularly in the early stages if the scheme is to work well. Initially at least a fair measure of discretion would have to be given to the authorities administering the scheme with regard to the sanctioning of expenditure, choice of cases in which aid is to be given, the engagement of counsel and the like. It may be difficult to give the necessary element of flexibility in the set up of a regular Government-department which would necessarily have to

conform to the general rules and regulations of Government for the transaction of business. These objections would apply to the scheme being administered by a department of Government. Neither does it appear to be desirable to entrust his function to the judiciary. Apart from the difficulties which are inherent in any scheme of operating through a Government-department which cannot be got over by entrusting the functions to the judicial Department, there are certain additional objections to such a course. For instance, since the cases of legally aided parties have to be decided by judges, this might give rise to an apprehension in the minds of litigants who are not legally aided that the scales of justice are likely to be tilted against them in a case against an assisted person.

4. While there would be no basis for such an apprehension, we would not like to suggest any thing which might even remotely cast doubts upon the impartiality of the Judiciary. Elsewhere we have suggested that a Judge who has had occasion to deal with a case at the stage of grant of legal aid should not decide it in his judicial capacity. Even such a safeguard may not fully serve the purpose. Finally it would be preferable to entrust this pioneering work to a specialized agency than to an overburdened judiciary.

Nor the judiciary

5. While the active assistance and involvement of the judiciary in any scheme of legal aid is undoubtedly essential, this does not necessarily mean that the Judiciary as such should be entrusted with the implementation of what is basically a social welfare project which calls for talent of a different kind.

6. We are aware that the Tamil Nadu Legal Aid and Advice Bill recently introduced in the Legislative Assembly of that State confers the power to frame the necessary rules to give effect to that Act upon the High Court. Even the national legal services programme in the U.S.A. is being given statutory form involving the judiciary in it judging by current discussions. But this would be different from making the High Court directly responsible for the administration of the scheme.

The Bar as an agency

7. If neither an ordinary Government Department nor the judiciary is to administer the scheme, we would have to think of an alternative agency. It has been suggested that the Bar Councils and the Bar Associations should be entrusted with the management of the scheme. In this connection reference has also been made to the position obtaining in England wherein the responsibility for administering Legal Aid and advice Act is entrusted to the Law Society. A similar situation obtains in Ontario. In the Chapter on Legal Aid and the Legal Profession we have pointed out that outside the Presidency towns of Calcutta and Bombay, we have no body corresponding to the Law Society in England and that the Bar Councils have at present

no machinery suitable for administering such a scheme and for reaching out into them mofussil and villages where the need for aid is the greatest. It is true that there are Bar Associations spread all over the country but they are loosely organised and do not possess the necessary administrative apparatus for running a scheme of this magnitude. We also wish to guard the scheme particularly in the early stages against the criticism that it is being controlled by a small coterie and that it has been designed to benefit lawyers as distinct from litigants. Besides, the Bar Association also lack a legal personality. We have therefore to think of an alternative framework outside the Governmental hierarchy.

Registered society or company

8. It has been suggested that since the object of the legal aid organisation is to render aid to the poor and the needy which is essentially a charitable object, it might be desirable to promote the formation of a society registered under the Societies Registration Act 1860 or any corresponding law and to entrust the administration of legal aid to such a society. Legally such a course is feasible. In fact the Bombay Legal Aid Society and the National Legal Aid Association of India are such bodies. But the magnitude of task is such as to render the advice of a registered society or a company unsuitable. Further under our scheme certain special statutory powers and rights are conferred upon the legal aid organisation which statutory recognition is not necessary in the case of other social welfare or charitable organisations like the Central Social Welfare Board which has been registered as a company under the Companies Act.

Statutory Corporations favoured

9. We therefore favour that the adoption of a device of a statutory organisation should serve this end. Statutory corporations with a separate legal personality have been set up in other countries for administering scheme of legal aid. Of these, mention might be made of the Legal Aid Committee of Victoria and the Legal Assistance Committee of Queensland. We understand that in U.S.A. also there is considerable agreement for the formation of a corporation for legal services. Such a body being an entity distinct from the Government would not be bound by all the rules and regulations of a Government department and can have the necessary flexibility in its day-to-day working. Further incorporation by the Statute would give it the necessary prestige, status, autonomy and authority which would be essential to its working. No doubt the concept of prestige and status might be regarded as being out-moded in a democratic and egalitarian society but it is a fact that they do help to get things done. Again it would be possible in the parent Statute creating the corporation to make necessary amendments in the procedural and other laws to make the body effective. Hence we recommend that necessary legislation may be enacted by Parliament for the establishment of a statutory corporation.

10. The Act might provide for the incorporation of the All-India Body and empower it to lay down broad policies to make grants to the State Bodies and for exercising overall supervision of their work. The All-India Body may well be styled as the National Legal Services Authority. Similarly the same statute should establish corporations for supervising the detailed working of the legal aid in each State or Union Territory. Below the State Body, there would be a number of committees at the district level and also local committees being the local unit of the legal aid organisation which would be in charge of the grant of legal aid on a day-to-day basis.

The local unit

11. Before we deal with the composition of the state and national bodies, it may be well to visualise the organisation as it would function at the primary grass-roots level wherein it could come into contact with the public. The primary unit would be either one or more development blocks or the taluks or taluka at the Headquarters of which in most States the lowest civil and criminal courts are situated.

12. We have considered the question whether legal aid should be part of the service rendered by the development block and whether it would not be desirable to make the legal aid machinery a part of the block services. The main advantage of such a course is that it would enable social workers and other extension officers coming a cross problems which have a legal aid aspect to channelise them to the legal aid machinery. But in our view such a course would not be desirable, though the machinery of the block can well be utilised to refer cases to the legal aid organisation. At the present moment considerable local politics comes into the working of the Block administration. We would prefer to keep the Legal Aid Committees out of this. Further there might be cases wherein an individual has a grievance against the block machinery itself for some alleged injustice done to him. In view of this possibility it would not be advisable to make the legal aid scheme a part of the block machinery as assistance in such cases may not be forthcoming or there would be an apprehension that it would not be real and effective in such cases.

13. While the services of the block and the block officers might be utilised in making known the availability of legal aid services to the public or in rendering assistance to those who approach the local Legal Aid Committee, we would recommend that the two organisations should be kept separate and distinct. Further, since lawyers are grouped round courts and the services of legal practitioners would be necessary we would suggest that the primary unit for the administration of the legal aid scheme should be built round the courts.

Local Committee Corporation

14. The primary Unit may be described as the Local Committee. This should be presided over by the Senior Judicial Officer of the Station. The other members would be local Revenue Officer, i.e. the Deputy Col-

lector, Sub-Collector or the equivalent, and the Area Social Welfare Officer and an Advocate nominated by the local Bar Association plus the senior most Government Pleaders there. There should also be a representative of the local Panchayat Union or other body charged with the responsibility of local self government and also a member of the Scheduled Castes and/or Scheduled Tribes nominated by the Collector of the district. In addition, the Committee should have a Member-Secretary functioning either on a full-time or part-time basis but preferably full-time who would be its chief executive officer.

15. The Member-Secretary who should be an Advocate with some years practice would be responsible for giving legal Advice to those who approach the committee for that purpose, for the drafting of simple documents and the like. He would also receive applications for legal aid and take steps necessary for verifying whether the individuals case satisfies the requirements for aid. His work would include appearance in cases wherein a reference to an Advocate on the legal aid panel is not feasible or necessary. He should be in a position to appear in a simpler cases himself.

16. For an honorary part-time Secretary, we would prefer the utilisation of the services of a retired Judicial officer or an Advocate who has retired from active practice but is otherwise fit. If he is to be a full-time employee, we would recommend that a person who is qualified to practice in the courts and has had about three years practical experience might be appointed as a Member-Secretary. He might be placed on the pay scale of Rs.210-530 which is the scale now prescribed for Legal Assistants in the Central Secretariat.

17. The function of the Committee would be to make available all the services of the legal aid organisation to the extent they are available. This committee would also maintain the panel of lawyers grouped according to the nature of the cases which they are willing to take up, assign cases to them, arrange for payment of their fees and other necessary assistance. In effect, the office of the Committee would be the local legal aid centre wherein such services would be available. The committee would also determine eligibility for aid under the scheme.

18. In cases wherein it is necessary to move some court or authority not within the territorial jurisdiction of the local Committee, that Committee would arrange to refer the case together with its recommendations to the District Committee or to the local Committee within whose territorial jurisdiction the authority or the court is situated. Such Committee would thereafter take steps to engage counsel.

Legal assistance in outlying areas

19. While normally such a set up might be sufficient to serve the purpose yet there might be cases wherein the headquarters of the local legal aid committee is situated at a distance from the

Block headquarters. Legal assistance particularly to the backward sections might be needed at the block level. Social workers or extension officers might come across cases of women and children requiring maintenance or other persons who require legal services. In order to save such persons the difficulty of having to proceed to the legal aid centre, we would suggest that the Secretary of the Legal Aid Committee might camp one or two days at the headquarters of the Block wherein local cases can be referred to him.

20. The hours of work of the local Legal Aid Centre should be so arranged that persons can attend Office without losing a day's work or wages.

21. In areas wherein a large section of the weaker strain of the community is concentrated as in a tribal area, although the local Legal Aid Committee might have its headquarters in the place where the nearest Civil Court is situated, it might be necessary for an Extension Officer (Legal) to be posted on a full-time basis at the block headquarters wherein he can give advice to the persons needing it. In other places a weekly or bi-weekly visit by the Secretary of the Legal Aid Committee as envisaged by us earlier might serve the purpose.

22. Variations may necessarily have to be made in the composition of the local Committees to suit local conditions. In an area wherein members of Scheduled Tribes are concentrated in large numbers, a representative of the Scheduled Tribes might find a place in the local Committee in lieu of or in addition to the Scheduled Castes representative. It may also be desirable to provide for a woman's representative being nominated to the local Committee in certain areas. In some cases the inclusion of an outstanding social worker or in an industrial area a labour leader may be an asset to the Committee. Some room may be left for flexibility and experimentation in this regard.

23. Above the local Committee it would be desirable to establish a District level Committee called the District Legal Aid Committee. This is so because in our country the District is the primary administrative unit for nearly all purposes. The functions of this Committee would primarily be to supervise the work of the local Committees, to give them necessary guidance in all matters and also to tackle problems which the local Committees find too difficult for them. Further this Committee might be entrusted with the task of disposing of appeals against orders of local Committees refusing aid. Further, when the scheme of legal aid is extended to appeals and a local Committee has already recommended the grant of legal aid to the unsuccessful party in the trial court it would be the function of the District Committee to scrutinise the person's claim for further legal assistance.

District Committees

24. The District Level Committee should be headed by the District Judge. The other members would include the Collector or Deputy Commissioner of the District who would be the Vice President or Vice

Chairman of the Committee. In our opinion the Committee should also include the following: the Chief Judicial Magistrate, the President of the District Bar Association and two representatives of the local Bar chosen by the practitioners, the District Labour and Welfare Officer and a prominent representative of the Scheduled Castes and of the Scheduled Tribes of the District to be nominated by the State Government or the Collector. In addition there should be two members of the local bodies including the Zila Parishad if one has been established. Further, if there is any Law College in the District, a member of the teaching staff and a student representative should also find a place therein. If any of the ex-officio members like the Collector or the District Judge is unable to attend a meeting, he should be in a position to depute a representative to attend it on his behalf. We would like to make it clear that the judicial officers who are members of the Committee will not concern themselves with the merits test in determining eligibility for aid.

25. In our view the District Committee should have a full-time Member-Secretary drawn from the rank of practising Advocates who would not only function as the Secretary to the Committee but also give advice to parties and where necessary appear in the court on behalf of the legally aided person. He may be placed in the pay scale of Rs. 350-20-450-25-575.

Only regarding local condition

26. There should also be functional bodies to assist the District Committee. The members of these functional bodies need not necessarily be members of the District Committee. About three Functional Committees might be sufficient—one for dealing with the legal problems of labour and another of women and children, and the third for dealing with the problems of members of the Scheduled Castes and Scheduled Tribes. The functional Committees suggested by us are only illustrative. The actual functional committees should be formed having regard to the requirements of a particular District and local conditions.

27. Apart from a lawyer, the functional bodies should consist of representatives of the department administratively concerned with the welfare of the particular group dealt with by the functional Committee and also non-officials. Thus the functional Committee on Legal Aid to labour would include the Labour Officer, an Advocate and two representatives of labour organisations nominated by the State Government. The Committee on Scheduled Castes and Scheduled Tribes might consist of the District Welfare Officer, two social workers including members of the Scheduled Castes and Scheduled Tribes and two representatives of the local authorities. Similarly the Committee on Women and Children might consist of the Collector, the District Women's Welfare Officer if any and two members of Women's organisations nominated by the State Government besides an Advocate.

Metropolitan areas

28. The structure of Local and District Committees suggested by us might require modifications in so far as large metropolitan areas are concerned. In their case the adoption of the development block or the Taluqa as the unit for a Local Committee may not be possible. It may also be desirable to divide large metropolitan cities into Legal Aid Districts. Having regard to the problems of urban centres, it may also be necessary to modify the composition of the local and district committees and also the functional committees. For instance, representation may have to be given to persons with special experience of the problems of hutment dwellers, industrial workers and the like.

High Court Committee

29. It would be necessary to have a separate Committee for screening proceedings and specially original proceedings to be instituted in the High Courts. Further, since the bulk of the work in the High Courts is of appellate nature, the High Court Committee may not be required very often to go into the question of the means of the applicant which is normally a matter to be decided by the local committee. A separate High Court Committee consisting of Advocates practising in that Court, a serving Judge nominated by the Chief Justice, and other persons might be appointed to deal with cases of legal aid in respect of proceedings in the High Court. The structure indicated by us for district committees might be adopted with suitable modifications for the High Court Committee.

Legal Aid Committee for Supreme Court

30. Similarly it would be necessary to have a separate Committee to deal with problems of legal aid in the Supreme Court. The pattern of the High Court Committee with necessary modifications can be adopted.

30-A. In so far as legal proceedings before the Supreme Court are concerned, it would be necessary to constitute a separate Committee. This may be on the lines of the High Court Legal Aid Committee mentioned by us earlier. This Committee would scrutinise applications for legal aid in proceedings in the Supreme Court from the merits angle, i.e., it would go into the question of the existence of a *prima facie* case and the reasonableness of instituting such proceedings. This enquiry may be dispensed with when the State Board has recommended the case for legal aid or the certificate of fitness to appeal has been given by the State High Court. In so far as enquiry into the means test is concerned, this Committee would refer such issues to the local Committee.

31. At the State level the administration of legal aid should be entrusted to an autonomous Board which like the National Authority would be a body corporate created by a statute. In fact the same statute would authorise the establishment not only of the National Authority but also the State Boards. We would call this the State Legal Aid

Board. This body would be primarily responsible for administering the legal aid scheme in the State and for drawing up detailed rules. It would have to fix the scale of fees payable to counsel who take up legal aid work. It may also have to lay down the maximum expenditure which might be incurred on a particular case or class of cases and also authorise the District or local Committee to exceed the limit in special circumstances.

32. Apart from giving briefs to counsel on the panel, the legal aid organisation may also like to consider the feasibility of having a full-time Public-Counsel for the indigent to do all legally aided cases in an area. This can be done either by the Secretary of the District Committee or by another counsel exclusively engaged for this purpose. His position might be similar to that of the District Government Pleader.

33. It would be for the State Boards by a process of judicious experimentation to find out the particular method which is most feasible in the State or in the conditions obtaining in a particular District.

Composition of State Board

34. As regards the membership of the State Board, we would prefer it to be fairly broadbased and representative though the day-to-day administration might have to be left in the hands of an Executive Committee. We would suggest that the Chief Justice of the State should be the ex-officio President of State Board. However it should have an Executive Chairman or Principal Executive Officer appointed by the State Government in consultation with the President of the Board who would be responsible for the effective day-to-day administration of the scheme. The persons so appointed should possess both legal and administrative expertise and be a person who has been or is qualified to be a High Court Judge. In our view the Board should in addition consist of a Judge of the High Court nominated by the Chief Justice, the Advocate General, the President of the State Bar Council, the Finance Secretary and the Secretary of the Department of the State Government administratively responsible for legal aid.

35. Since the active cooperation of the Bar is necessary for the successful working of the scheme and the judicial officers would not concern themselves with the merits of the cases of the applicants for legal aid, we would suggest that in addition the Board should include three representative Advocates. Further, in order to ensure that attention is drawn to the needs of the relatively weaker sections of the community, persons having specialised knowledge of their problems would have to be made members of the Board. We would suggest the inclusion of the Director of Harijan Welfare and a lady representing social welfare organisations of the State to be nominated by the State Government.

36. One or two representatives of District Legal Aid Committees should also be there so that the Board might have first hand knowledge of the working conditions in the field. A non-official element can be

provided by two members of the Legislative Assembly nominated by the Speaker. In addition, in States which have a Legislative Council, one member may be nominated from the Council by its Chairman. It may also be desirable to include persons having specialised knowledge of Correctional Services and a Law Teacher interested in legal aid nominated by the State Government in consultation with the appropriate authorities together with two Law students. Representatives of unorganised and organised labour may also find a place. The term of office of the members other than the ex-officio members might be two years.

37. The Registrar of the High Court may be the Member Secretary of the Committee in the initial stages. This may help in ensuring the cooperation of judicial officers. He may have to be assisted by some staff.

Executive Committee

38. The Board should have an Executive Committee consisting of the Executive Chairman, the Advocate General, the State Finance Secretary and two other members selected from among themselves by the members of the State Legal Aid Board. The Advocate General and the official members should be empowered to depute another person by general or special order to attend the meetings of the Executive Committee on their behalf. The Board may delegate its powers and functions to the Executive Committee or the Executive Chairman.

39. As at the District level so at the State level, there should be functional bodies for dealing with the problems of labour, women and children and the Scheduled Castes and the Scheduled Tribes. An attempt has been made to indicate the membership in the organisation Chart.

Composition of National Authority

40. As regards the All-India Body this would primarily be responsible for laying down the policy administering the scheme of legal aid and for making grants-in-aid to the State Board. The National Legal Services Authority of India, we feel, would be an appropriate name for the statutory corporation to be established for this purpose. It may be headed by the Chief Justice of India but we feel that it should have a separate Executive Chairman who would be responsible for the day-to-day working of the Authority. He may be nominated by the Government of India in consultation with the Chief Justice and may be styled as the Executive Chairman or the Director General of Legal Services or by some other appropriate designation. He should be a person who has been or is qualified to be a judge of the Supreme Court. In addition, the authority should consist of a judge of the Supreme Court nominated by the Chief Justice. Further, the Attorney General, the Presidents of the Bar Council of India and the Bar Association of India as well as the Finance Secretary and the Secretary of the Ministry administratively dealing with the subject of legal aid should find a place.

Three members of Parliament—two from the Lok Sabha and one from the Rajya Sabha chosen by the Presiding Officers would furnish the necessary non-official element. Two representatives of State Legal Aid Boards chosen in rotation by the Government of India should also find a place. There should also be a lady representative of Social Welfare Organisations and four Chairmen of State Legal Aid Boards nominated by the Government of India in rotation. The term of office of the members other than ex-officio members might be two years. The President of the All-India Law Teachers Association and of the National Legal Aid Association of India, two student representative and a person having specialised knowledge of Correctional Services may also be included in it. The Authority should also include two members chosen by the Government of India as representing institutions having special knowledge or interest in the field of legal aid and also three Advocates. There may also be representatives of unorganised and organised labour.

41. The Authority may delegate its day-to-day functions to an executive body and to the Executive Chairman or Director General. The executive body should consist of the Executive Chairman, the Attorney General, the Finance Secretary and two other members of the National Authority elected by the members from among themselves. Similarly, there should be functional bodies representing the various interests at the State level. The Attorney General and the official member might be empowered to depute by general or special orders another person to attend the meeting of the executive body on their behalf. Consultation and advisory committees at various levels might also be necessary. We append an Organisation Chart which would illustrate our proposals.

42. The broad idea is that not only should the organisation be a high-powered one so as to command general confidence but that it should also be aware of the problems affecting the persons concerned and be in a position to take quick decisions. For this purpose it would be necessary to choose the Executive Chairman and other personnel of the organisation with care and to give the personnel necessary training.

43. However well-intentioned any Organisation, it cannot function effectively unless the persons working in it particularly at the grass roots level who come in contact with the members of the public are aware of their social obligations in this regard and do not look upon their work merely as a chore to be done with least amount of trouble.

Training of Personnel

44. The point which we would wish to underscore is the importance of proper training given to the Secretaries of the legal aid committees both at the district and the unit level. It is not enough that the person is a sound lawyer. He should be in a position to understand the social function which he has to perform and the basic philosophy underlying the concept of legal aid. Further it would be necessary to make him familiar with the nature of the problems which confront the

poor in general and the rural poor in particular. There is little point in taking a young man with the beginnings of a practice in the city and who has specialised in company law and taxation but who has never seen an irrigation canal or a tank to function straightway as an effective secretary of legal aid Committee to which people turn up with problems concerning land tenure, tenancy rights, a request for assistance in securing bail or an occasional claim for maintenance by a Woman against husband. It might even be necessary for the Secretary to have some rudimentary knowledge of survey and the maintenance of village records, so that cultivators to whom lands are sought to be given by legislation for the promotion of agrarian reform are able to effectively utilize the services of the legal aid machinery in this regard. Further knowledge of the legal aid rules and regulations and a modicum of instruction in book-keeping would necessarily have to be imparted to him before he is placed in independent charge of the Committee as its secretary. Otherwise, there is every danger of his coming to rely and depend entirely upon the advice given by the clerks of the local courts whose part-time services we recommend should be made available to him for discharging the ministerial and other functions of his office.

45. Even the members of the committee and the judicial officers who tend to function in a conservative, conventional and technical surroundings may have to be instructed or put through orientation course as to the object which legal aid seeks to achieve and the cause it seeks to serve. At the present moment in the State of Gujarat a conscious effort is being made to imbue the judiciary and the Bar with the philosophy of legal aid due to the enthusiasm of the present Chief Justice but the concept of legal aid is too important to be left to the enthusiasm of individuals. It would be necessary to institutionalise the machinery by which persons concerned are informed of the really vital social role which they are to play so that they do not become astute in rejecting applications for legal aid or refusing it on technical grounds but rather take a profess pride in the number of cases wherein they have given useful advice, effect a settlement and kept parties out of courts by enabling them to realise their rights.

Power to make rules & Regulations

46. Certain other details regarding the organisational set up also deserve mention. The National Authority and the State Boards would have to be empowered to make rules or regulations with regard to the conditions under which legal aid is to be granted, the employment of staff, the scale of contributions from assisted parties, the conditions of employment of those working under them and the like.

Power to Authority to give directions

47. It may be provided that the State Boards shall be subject to such directions as the National Authority may give them on questions of policy. Provisions might be made for the establishment of Funds by both these bodies.

Taxation problems

48. In order to avoid any difficulty with the tax gather, they would have to be declared to be companies for the purpose of the Wealth Tax Act so that they may not be subject to Wealth Tax. A specific provision might also be made exempting the income of the National Authority and the State Boards from liability to income-tax as has been done in the case of the income of the Unit Trust of India.

Staffing problems

49. While the organisation of the Authority was being considered, a point was made that the legally qualified employees of the State Boards who function as the Secretaries of the Local and the District Committees might after their initial enthusiasm was over, legitimately have a grievance as to the lack of career prospects in the organisation. This is no doubt a valid point and would continue to be so unless the organisation expands—and a system of public defenders at various levels comes into vogue on a large scale. It has also to be admitted that an organisation is not likely to function effectively if it is staffed by disgruntled persons who have nothing to look forward to except their retirement.

- 50. One way out would be to give preference to those who have worked under the legal aid scheme in making appointments to the Judicial Service of the State or even by reserving a percentage of appointments for them. An alternative might be to appoint them only on a contract basis for a limited period with a right to a Contributory Provident Fund so that they might after a period of work under the Board, if they so wish, revert to private practice.

51. These are questions of detail which may have to be worked out taking into account the varying conditions in different States.

52. It would also be necessary if the Scheme of legal aid is to work effectively to organise collection of data which would be necessary for the administration of any scheme. At the present moment, the statistics maintained by the civil or the criminal courts and the published reports on the administration of justice do not contain material necessary for this purpose. Details are not even given as to the number of applications filed for leave to sue or to prefer an appeal *in forma pauperis*. The number of suits wherein the accused are not represented by the counsel are also not available.

53. Whenever an enquiry was made in this regard, it became necessary to gather this information specially and to comb the records of the courts for this purpose. This was our experience and also that of the Tamil Nadu Committee.

Collection of data

54. We would therefore suggest that along with or even before the introduction of the scheme of legal aid, the existing registers maintained by the civil, criminal and other courts wherein representation by a legal practitioner is permitted should be modified so as to show whether a party was represented by counsel and whether he claimed legal aid under any of the existing provisions. The results of legally-aided proceedings should also be shown separately, in other words, the success or failure of the assisted person.

55. The legal aid machinery once it is set up would no doubt organise the collection of detailed material about those who apply for assistance and the services rendered by the several committees but that would necessarily have to be correlated with the information gathered by the courts.

STRUCTURE OF THE LEGAL AID SCHEME

The National Legal Services authorities of India

(a statutory corporation)

(a) The President (The Chief Justice of India)

(b) Executive Chairman or Director-General of Legal Services (To be nominated by Government of India in consultation with the Chief Justice).

(c) Members :—

1	2	3	4	5	6	7	8	9
A Justice of the Supreme Court nominated by the Chief Justice	President Bar Council of India	President Bar Association of India	A Secretary of Law Ministry	Attorney General of India	Finance Secretary of the Government of India	President All India Law Teachers Association	A lady representative of a social welfare Organisation nominated by Govt. of India	Central Labour Commissioner and two representatives of Labour nominated by Govt. of India.
10	11	12	13	14	15	16	17	18
Four Chairman of State Legal Aid Boards nominated by Govt. of India in rotation	Three M. Ps. (2 nominated by Speaker of Lok-Sabha and 1 by Chairman of the Rajya Sabha)	A person of specialised knowledge of correctional services	Three Advocates	Nominee of National Legal Aid Association of India	Two representatives of State Legal Aid Boards	Two student representatives	Two members of special knowledge in the field of Legal Aid chosen by the Govt. of India	Representatives of organised and unorganised labour.

(d) EXECUTIVE BODY

1	2	3	4
Executive Chairman/Director General of Legal Services.	Finance Secretary	Attorney General	Two Members of the National Legal Service Authority elected by members from among themselves.

(e) FUNCTIONAL BODIES

1	2
<p>For Labour</p> <p>3 representatives of labour organisations nominated by Government of India</p> <p>Lawyer</p>	<p>For Women & Children including war widows</p> <p>The Attorney-General</p> <p>3 Members nominated from women's organisations and war widows' Association.</p> <p>Lawyer</p>
3	4
<p>For Scheduled Castes and Tribes</p> <p>The Social Welfare Officer</p> <p>2 Members nominated from social welfare Organisations</p> <p>Lawyer</p>	<p>For Displaced Person and Refugees</p> <p>Welfare Officer/Rehabilitation Officer</p> <p>2 social workers nominated by Govt. of India</p> <p>Lawyer</p>

II. STATE LEGAL AID BOARD

(A Body Corporate created by Statute)

(a) President = Chief Justice of the High Court of the State ex-officio

(b) Executive Chairman/Principal Executive Officer = Nominated by State Govt. in consultation with President

(c) Members :—

1	2	3	4	5	6	7	8
A Judge of the High Court nominated by the Chief Justice of the State	President of the State Bar Council	Advocate General	State Finance Secretary	Secretary to Government handling Legal Aid at the Administrative level	Three Advocates representing the State Bar	Director of Harijan Welfare	A Lady representative of State Social Welfare Organisation
9	10	11	12	13	14	15	
Registrar of High Court may be ex-officio Secretary of the Body	Two representatives of District Legal Aid Committee	Two M. L. As. nominated by Speaker and One M.L.C. nominated by the Chairman	Chief Inspector of certified schools or the top officer in charge of correctional institutions in the State	Law Teacher nominated by the State Govt.	The Law Students	Commissioner for Provident Fund	

(d) THE EXECUTIVE BODY

1	2	3	4
Executive Chairman	State Finance Secretary	Advocate General	Two other selected by the members of the State Legal Aid Board

(e) FUNCTIONAL BODIES

1	2
<p>For Labour</p> <p>3 representatives of labour organisations nominated by State Government. Lawyer</p>	<p>For women & Children including war widows</p> <p>The Attorney General 2 Members nominated from womens' organisations Lawyer</p>
3	4
<p>For Scheduled Castes & Tribes</p> <p>The Social Welfare Officer 3 Members nominated by State Govt. from such Organisations Lawyer</p>	<p>Welfare Officer/Rehabilitation Officer 2 nominated social workers Lawyer</p>

LEGAL AID COMMITTEE FOR HIGH COURTS

Members :—

1	2	3	4
A serving judge nominated by the Chief Justice	An advocate practising in the High Court	Other persons	Structure of District Committees may be adopted. <i>mutatis mutandis</i>

LEGAL AID COMMITTEE FOR SUPREME COURT

The pattern of the High Court Committees may be adopted *mutatis mutandis*.

LOCAL COMMITTEE

(a) President—Local Senior Judicial Officer

(b) Members :—

1	2	3	4	5	6	7
Deputy Collector/ Sub-Collector	Area Special Welfare Officer	An Advocate nominated by the local Bar Association	The Senior-most Govt. Pleader	Representative of Local Panchayat	A member of Scheduled Caste/ Tribe nominated by the Dist. Collector	A member Secretary

DISTRICT LEGAL AID COMMITTEE

(a) President—District Judge

(b) Vice President/Chairman—Collector/Deputy Commissioner

(c) Members :—

1	2	3	4	5	6	7	8
Chief Judicial Magistrate	President District Bar Association	Two representatives of the Bar	District Labour & Welfare Officer	A prominent representative of the Scheduled Castes & Tribes of that area nominated by State Govt./Collector	Two members of the local Bodies including Zila Parishad if any	A member of the teaching staff of the Law College if any in the District	A student representative

FUNCTIONAL BODIES UNDER THE DISTRICT LEGAL AID COMMITTEE

(a) *On labour*

may include

Composition

- (i) Labour Officer
- (ii) Advocate
- (iii) Two representatives of labour organisation nominated by the State Government.

(b) *On Scheduled Tribes & Scheduled Castes*

may include

- (i) District Welfare Officer
- (ii) Two social workers including Scheduled Tribes and Scheduled Castes
- (iii) Two representatives of local authorities.

(c) *On women & Children*

may include

- (i) Collector
- (ii) District Women's Welfare Officer, if any.
- (iii) Two members of women's organisations nominated by State Govt.
- (iv) An Advocate.

CHAPTER 20

FINANCIAL ASPECTS OF LEGAL AID

Apprehension that legal aid is expensive

“All undertakings”, observed Kautilya in his Classic ‘Artha Sastra’, “depend upon finance”. This observation applies equally to the scheme of legal aid. In fact earlier proposals to give effect to any such scheme have foundered upon the rock of non-availability of resources. But while the apprehension has generally been expressed that any scheme of legal aid is bound to be expensive, no attempt has been made to verify whether in fact that is so and to work out even in a rough and ready fashion the expenditure which the State would have to incur under a legal aid programme.

Detailed estimates not made

2. Earlier enquiries have (with the exception of the Tamil Nadu Committee) while touching upon the sources of financing the legal aid fund, not attempted an estimate of the expenditure which is likely to be involved in any such scheme. Thus, though the Law Commission in its Fourteenth Report had attempted to work out certain financial aspects of its proposals with regard to the pay-scale of judicial officers and the like, it had refrained from such a step in so far as its recommendations relating to legal aid were concerned. The Commission while observing that they had not been able to assess even approximately the cost of working a fully comprehensive legal aid scheme on a country-wide scale contented themselves with observing that it must be very substantial.¹

Difficulty in framing estimates—Unavailability of statistics

3. This is not surprising for the existing compilation of statistics is not such as would enable one to readily retrieve therefrom information which is necessary to draw up even a tentative estimate. The annual reports on the administration of civil and criminal justice which themselves are many years behind do not give particulars of the number of criminal trials in which an accused has not been defended by a lawyer, nor of the number of suits filed in *forma pauperis* and the results of such trials. It is thus necessary to make a special effort to gather such information from the registers of individual courts. This would be a Herculean task and the collection of full information from all over India, even if practicable, would have taken a good

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deal of time resulting in delay in the submission of this report. However, such data as we have been able to gather and in particular the information gathered by the Tamil Nadu Committee do not indicate that the number of such cases is so many as to throw a considerable burden upon the financial resources of the State.

Expenses of proposed administrative set up—Cost of Secretary of Local Committee

4. We may in the first instance deal with the financial implications of the administrative set up which we have suggested for organising legal aid. We would make it clear that the personnel will deal not only with most forms of non-litigative aid but that they would also appear on behalf of the legally-aided persons in a fair number of cases. According to information furnished by the Registrar General of India, it would appear that in 1971, there were 356 districts in the country and the number of Tehsils/Taluq/Development Blocks/Mouzas/Circles were 3026. In the Chapter on the Administrative Set-up, we had suggested that each local committee at the level of the Taluq or Development block should wherever necessary have a full-time Secretary on the pay scale of Rs. 210-10-270-15-450-20-530 and each district committee should have a secretary on the pay scale of Rs. 350-20-450-25-575. It may be that in some cases the Secretary can do the work for two or more Taluqs whereas in some other places, more than one person would be required. It is on this basis that we have on an average allowed one Secretary for each Taluq. Applying the formula prescribed by the Finance Ministry for calculating the average cost of posts, the average cost of one such Secretary for a local committee would approximately be Rs. 7,860 per annum and for 3026 Taluqs, the cost would be Rs. 2,37,84,360 or Rs. 238 lakhs per annum approximately.

Cost of Secretary of District Committees

5. On the same basis the cost of one Secretary to the District Committee who can also function as the public defender and appear in cases would be Rs. 9,500 per annum. For 356 districts, the cost would be Rs. 33.82 lakhs or 34 lakhs per annum approximately.

Supporting staff

6. It is true that the secretaries of these committees who would appear on behalf of legally-aided persons and advise the public and also appear in a certain number of cases may require some assistance from supporting staff. While a legally qualified person who is competent to advise persons, draft documents and to appear in courts in certain cases is a must for legal aid, we are averse, at least till the need for it has been fully established, to a system by which public funds are immediately expended on an apparatus of ministerial and last grade staff.

7. It is an unfortunate experience in our country that the first reaction of any person entrusted with responsible official work is to ask for the exclusive services of a clerk and a peon. While a legal aid office like any other office would require such assistance in dealing with its correspondence and the like, this may not in the beginning call for the services of full-time supporting personnel.

Part-time help suggested

8. This assistance can be furnished by the staff of the courts or the block through which the services are being rendered. At the same time, it would be unfair to cast this additional burden on a regular basis on such staff. While people would cheerfully take up occasional extra work with a spirit of enthusiasm as a piece of social service, or in the exigencies of public service, it would be asking too much of human nature to expect them to do such job in addition to their normal duties day in and day out. Some incentive in this respect would prove valuable and would ensure that the work is done cheerfully and willingly.

Payment of honorarium suggested

9. We would therefore suggest that the device adopted in Gujarat by which a suitable honorarium is paid to the staff of the courts for extra work done by them on account of legal aid might be usefully adopted in the rest of the country also. Something like this appears to be the thinking in the Tamil Nadu Scheme.

Total expenditure estimated at Rs. 3.5 crores

10. According to the orders of the Gujarat Government for each Taluq Committee, the clerk/typist is allowed a special pay or honorarium of 20% of his pay or Rs. 25/- whichever is less (per mensem) and similarly an honorarium of Rs. 20 or 10% of his pay per mensem is allowed to the peon. Assuming payment at this maximum rate of Rs. 25 and Rs. 20 respectively for each of the 3026 taluqs or blocks referred to above, the expenditure would be Rs. 540 per annum. If we add an extra Rs. 400 per annum on account of other expenses, the total expenditure for 3026 taluqs would come to Rs. 28,44,440. Similarly expenditure for the supporting staff and other expenses at Rs. 750 per annum for the 356 districts would come to Rs. 2.67 lakhs. Thus the expenditure for the whole country would come to Rs. 31,11,440. Thus the total expenditure which is likely to be incurred in covering the entire country with a net work of legal aid centres and committees will come to only Rs. 3.03 crores which may be rounded upwards to Rs. 3.5 crores. This would enable the establishment of a net work of legal aid services including advice throughout the country. This would be the extra expenditure involved for rendering the actual services. We understand that the estimated total revenue expenditure of the Government of India for the year 1973-74 is Rs. 4,752 crores and the budget estimates for 1972-73 was of the order of Rs. 4,124 crores. The estimated capital expenditure for the

same years was Rs. 2,874 crores and Rs. 2,689 crores respectively. Similarly the total estimated expenditure of the States for the year 1972-73 according to their budgets was round about Rs. 8,131 crores.

(In the light of these figures the extra expenditure proposed by us of Rs. 3.5 crores for creating an infra-structure of preventive legal aid can hardly be regarded as excessive.)

11. We have quoted earlier Dr. Albert Einstein's insistence that our defence is not so much in science and armaments and going underground but in law and order. Positive laws without a programme of legal service will not spell order. And disorder destroys wealth, disturbs production and throws the processes of the National Plan out of gear. Therefore any substantial Plan input into the free legal services programme is itself an investment in self-defence. We recommend inclusion of and liberal provision for the national legal services project in the Fifth Plan as an enlightened step towards social justice which is one of the major goals of the Plan.

Expenditure on provisions of counsel in Sessions cases

12. As already stated, in the absence of reliable statistical data of the nature required by us, we have had difficulty in calculating the extra expenditure which is likely to be incurred by the provision of counsel under the scheme of legal aid. However the following estimate based upon the figures collected for the State of Tamil Nadu and certain Union Territories is revealing. In the State of Tamil Nadu, for the years 1970 and 1971, a little more than 1400 cases or to be exact 1,457 and 1,435 respectively, were tried in the Courts of Session. The number of undefended cases rose from 91 in 1970 to 121 in 1971. In 1970 an amount of Rs. 25,000 was spent in providing counsel at State expense in 317 cases and in 1971 Rs. 24,000 were spent in 269 cases. On that basis the extra expenditure involved in giving aid to the accused in all the undefended Sessions cases would not exceed Rs. 10,000 per year in that State. The extra expenditure on giving legal aid on an All India basis would thus appear to be inconsiderable.

No extra expenditure on maintenance cases.—To be handled by legal aid machinery.

13. Similarly the number of maintenance applications in that State for the year 1968 was 1,232 and in 1970 it was 607, making an average of 919 or 920. Information was not available as to the number of cases wherein the petitioners were represented by counsel but the number for the entire State is not so large that they cannot be handled by the Secretaries of the Taluq and the District Committees whose appointment we have recommended. In that event there will be no extra expenditure on account of providing for aid in such cases. Similarly in the Union Territory of Goa, Daman and Diu, the number of maintenance applications under section 488 of the Criminal Procedure

Code was only 31 in 3 years and the average was 10 per year. This work can also be handled by officers in charge of the legal aid centres under the scheme envisaged by us. So, no particular extra expenditure would be incurred in this regard.

14. It is no doubt true that if a comprehensive legal aid system is established, the number of such applications might increase but even if they are doubled, the legal aid machinery contemplated by us should be sufficient to handle them.

Expenditure on aid in civil suits

15. We have experienced similar difficulty in calculating the extra expenditure which is likely to be incurred if a counsel is assigned to persons suing in *forma pauperis* and the out-of-pocket expenses of such persons are also met. The expenditure incurred in suits necessarily varies depending upon its complexity. However, the sample survey conducted by us through the assistance of certain counsel shows that apart from the court fees and the advocate's fees, the expenditure incurred in suits whose value is below Rs. 5,000 which, as we have already seen, constitute the bulk of our litigation, varies from Rs. 50 to Rs. 75. On this basis, it would be possible for any State to work out the extra expenditure which it is likely to incur in this regard.

16. As regards the lawyer's fee this again is difficult to estimate. The Tamil Nadu Committee has estimated that during the years 1966-1971, the average court fee remitted on pauper suits would be to the tune of Rs. 4.18 lakhs and the average fees payable to the lawyers for the said suits on the basis of the Legal Practitioners' Fees Rules would come to Rs. 3.25 lakhs. These figures do not confirm but rather belie the apprehension that an extended scheme of legal aid would cast an undesirable burden upon the Exchequer. What is important to remember is the fact established by the experience of Tamil Nadu that a high proportion of the pauper suits are decreed and the cost of legal aid would thus come back through the decree passed in favour of the State Legal Board. The net input is inconsequential.

17. The number of applications filed in that State for leave to sue as a pauper in 1970 and 1971 was 925 and 901 respectively and of these 708 and 617 were allowed. The number of pauper appeals filed varied from 58 to 92 in the years 1968 to 1971. It is obvious that if a legal aid machinery like the one envisaged by us is set up, the personnel should be in a position to deal with all these cases and it may not even be necessary for them to request counsel on the panel to appear. So no extra expenditure on this account would become necessary. The position might change if with the liberalised definition of indigent person suggested by us, the number of such cases increases.

Cost calculated on existing Central pay scales

18. We would make it clear that for the purpose of calculating the costs of posts, we have adopted the Central pay scales. It may

be that there might be variations if the equivalent State scales are adopted but by and large the estimates should be fairly accurate. Again the pay scales on the basis of which the average costs have been calculated are on the basis of the scales as they are in force on the date of the signing of the Report and not on the basis of the scales which might come into force on the basis of the recommendations of the Third Pay Commission. We considered it inappropriate to make any estimate of costs on the basis of recommendations which have yet to be accepted by Government.

Source of funds for legal aid

19. The question may well be raised as to wherefrom the funds for this expenditure, even though it might be on what we consider to be a modest scale, are to be obtained. It may be too optimistic for us to expect that a situation similar to that obtaining in England would come into being wherein it had been reported that for the years 1966-67 only 61.8% of the cost of legal aid scheme was required to be met out of the Public Exchequer, the balance coming out of contributions, costs; and miscellaneous receipts, would come into being at an early date but some income from the fees charged for legal advice and costs awarded in favour of the Legal Aid Committee can be reasonably expected after some time.

Taxation of special groups for financing legal aid not favoured.—Part of social welfare expenditure.

20. Various suggestions such as the imposition of a special surcharge on court fees or a special stamp on each Vakalatnama or the levy of a surcharge on the property tax or a profession tax on lawyers have no doubt been made for the purpose of raising resources for legal aid. In this connection, attention is invited to the provisions of section 76 of the Kerala Court Fees and Suits Valuation Act (Act 10 of 1960) which enables the Government to levy an additional court fee the proceeds of which together with half the proceeds of the stamp duty on Vakalatnamas were to be paid into a fund called the Legal Benefit Fund which was to be utilised *inter alia* for providing an efficient legal service for the people of the State. The basic assumption underlying these suggestions is that it is the responsibility of one particular group of litigants in general to finance the less well-to-do litigants or suitors in court. Once it is recognised that the State is responsible for law and that legal aid is necessary so that the machinery of law may work alike for the rich and poor, it follows that the provision of legal aid is one of the normal functions of the State and that the funds for this purpose would have to be provided in the same manner as for any other public purpose. There is no particular justification for taxing litigants as a class or new entrants to the Bar as was once proposed in order to assist the needy who require legal assistance. It may be that a tax on litigants is otherwise necessary for fiscal reasons, but it would appear to be contrary to the canons of sound finance to ear-mark particular tax receipts as distinct from fees for particular items of expenditure. Judicare is like medicare and must substantially

be met from the public revenues. It is true that grants for this purpose would have to be made by the Centre or State Governments but the problem of finding the funds for making the grants is part of the overall problem of finding the funds necessary for development and welfare schemes.

Charging of fees and recovery of costs

21. It is possible that the burden on the State Exchequer might be alleviated by charging fees for legal advice and also for providing that costs awarded in favour of the legally aided person would go to the legal aid fund, and we have in fact recommended accordingly.

Donations

22. It may also be possible to stimulate private donations for the cause of legal aid by making such deductions qualify for exemption from income-tax as donations for a charitable purpose under the law relating to income-tax.

Legal insurance scheme suggested

23. It may, however, be possible to link the raising of resources with the furnishing of aid to specified groups, by making the groups themselves contribute to the costs of the services to be rendered to them. At the present moment there are statutory provident fund schemes established for the benefit of workmen and miners. Reference might, in this connection, be made to the schemes framed under the Employees' Provident Funds Act and Family Pension Fund Act 1952, the Coal Mines Provident Fund and Family Pension and Bonus Schemes Act 1948, and the Seamen's Provident Fund Act 1966. It might be possible to provide for a compulsory contribution from the employer and the employee alike from all those who are beneficiaries of such schemes, and to make the funds so raised available for giving legal assistance to the workmen concerned by such schemes and their families. This would be a form of legal insurance which should aim at being self-supporting. The possibility of establishing such a scheme merits serious consideration on the part of the authorities and has been dealt with in an earlier part relating to Labour and Legal Aid.

CHAPTER 21

A PHASED PROGRAMME

In the preceding pages we have attempted an explanation of the rationale of legal aid and to specify the measures—legislative and otherwise which would have to be taken if a full-fledged scheme of legal aid is to come into being. We have also outlined the administrative set-up necessary for giving effect to these recommendations and have attempted a rough and tentative estimate of the costs which are likely to be incurred in giving effect to such a programme.

Immediate implementation of recommendation difficult

2. We are, however, conscious that it may not be possible to introduce the scheme in its entirety overnight in one leap in every nook and corner of our country. The enactment of comprehensive legislation on the lines suggested by us would itself take time. So would the setting up of the necessary administrative framework. The cost of the various schemes is more a matter of intelligent guess about imponderable variables.

Phased implementation preferable

3. But the fact that the establishment of a full-fledged scheme of legal aid would take time is no reason why a big beginning should not be made immediately in certain directions wherein action is feasible by means of administrative orders or even by legislation when only minor amendments to the existing laws which can be passed without much time and difficulty, are necessary. Further, a stage by stage implementation of a project, particularly an elaborate scheme like ours with many facets, would have certain inherent advantages of its own. Thus while all at once as a policy it may be wrong and infantile, the postponement of the lift-off till the last detail is ready for execution is not wise on a social scheme like legal aid to the poor.

Reasons for phasing

4. If a plan or project is to succeed, execution has to be feasible financially, technically and even socially. One can never anticipate precisely what the cost would be like for each programme, whether the legal personnel exist for implementation and the people will take kindly to any such service at all. For instance, there may be no lawyers available or the men may oppose legal aid to women. In a country hard-pressed for financial resources, we have to feel our way

and not make a rash leap forward. Moreover, every rupee expended must yield, if not revolutionary, substantial social returns and not be sunk in overheads or additions to indifferent lawyers' incomes. We have no experience of the reactions of the judiciary, the response of the Bar, the co-operation of the welfare workers, labour organisations and the like or the contribution of student-run legal clinics. Cadres and coordination have to be built up step by step and circumspectly. The sharing of the burden by the States and the Union and how each will raise resources, the research input and its impact on legislation and the legal system—these are again to be watched and developed. From a legislative angle, certain programmes of free legal service may be easier to effectuate in a given parliamentary mood or agenda and sometimes to be overly enterprising is to be forced to retreat. So much so, a phased programme with periodical appraisals and modifications from experience, is the only right course and not a doctrinaire plunge into a spectacular or speculative scheme of unknown dimensions. Moreover, we cannot get practical guidance from the experience of countries like the U. K., the U.S.A. or the U.S.S.R. Our social conditions, economic geography and cultural levels, administrative cadres and professional reliability being of a different order, pilot projects in selected representative areas, experimental implementation of some aspects in hospitable conditions are better tactics, assuming agreement on goals and strategy.

5. Pamphleteering campaigns among the affected sections of the people, educating political representatives on the approach to the legal aid plan, its relevance and implementation and training up of cadres in different fields to operate the schemes—these need not await actual implementation and may logically precede the operational stage—a law family planning programmes. Unprepared execution does injustice to any scheme and a harvest of legal hope for a hungry people takes time. Zig-Zag courses and diverse tactics are inevitable since the climb is steep. Cautious social engineers construct, not in haste, but brick by brick.

Examples of phased implementation

6. For the implementation of a comprehensive scheme in stages, we have many respectable precedents. Thus, in several States, prohibition, was introduced by stages on a districtwise basis. Again, the scheme for the separation of the Judiciary from the Executive by executive orders in force in the Southern States was introduced over a period of time on a district-wise basis. This enabled the experience gained in the working of the scheme in one district to be utilized in ensuring that those difficulties experienced in one district did not recur when the scheme was subsequently extended to others.

7. The same considerations would apply to our scheme of legal aid. By way of example, we may refer to the measures adopted in Gujarat where the scheme of legal aid is being tried out in one taluk

in each district as an experimental measure before its extension to others. A phased programme would, however, necessarily involve a scheme of priorities—administrative and financial. It also postulates that reforms which can be effected immediately and on points on which there is general agreement need not be postponed pending the finalisation of other aspects which might require more detailed consideration or comprehensive legislation which is bound to take time.

Modes of implementation—Executive action—Amendment of Rules—Legislation

8. Normally executive action can be effected more speedily than any scheme of legislation and may yield much experience to mould future legislation. The several recommendations made by us can be implemented in different ways. Some of them are capable of being implemented straightaway by means of executive orders either by the Central Government or Union Territory Administration or by the State Governments. Certain others would require only the amendment of the Schedule to the Code of Civil Procedure which can be done by the High Courts with the previous approval of the State Government or the Central Government as the case may be. Certain other suggestions call for the amendment of the Code of Civil or Criminal Procedure and other enactments in the Concurrent List. Some might require legislative action on the part of the State Legislatures. The establishment of a National Legal Service Authority and State Legal Aid Boards would call for comprehensive Parliamentary legislation, though the framework of local and district committees and the State Boards can be established—though without statutory powers—by executive orders. Certain other recommendations are of such a nature that although it would be desirable to give effect to them by means of legislation such as the provision of counsel to accused persons and petitioners for maintenance yet they are capable of being achieved by means of executive orders also. The establishment of legal aid centres for the purpose of legal advice and other forms of non-litigative aid is another example in point.

9. Although normally, the issue of executive orders is simpler and speedier than legislation, yet, in the cases mentioned below, legislative action would appear to be immediately feasible.

Amendment of the Criminal Procedure Code

10. The Code of Criminal Procedure Bill has been passed by the Rajya Sabha and is pending before the Lok Sabha before which it is expected to come up during the next session of Parliament when it would probably be passed. This Bill does contain certain minimal provisions relating to legal aid. We would, therefore, suggest that advantage may be taken of the pendency of this Bill in the Lok Sabha and the fact that it would in any case have to be returned to the Rajya Sabha for the making of certain formal amendments by moving amendments to it. The recommendations made by us in our Chapter on

Legal Aid in Criminal Proceedings in so far as they are capable of being implemented by means of amendments to the Code of Criminal Procedure can be given effect to immediately by moving necessary amendments in the pending Bill. If it is considered necessary to further consider some aspects of our proposals in this regard, a provision can be made by which the coming into force of these provisions can be postponed till the issue of a notification to that effect.

Amendment of Advocates Act

11. Similarly Government might consider whether it may not be desirable to move amendments to the Advocates' (Amendment) Bill which is now pending in the Lok Sabha to give effect to the recommendations making it obligatory on the part of Advocates to do a certain number of legally aided cases and to enable law students under an organised legal aid scheme to appear in courts.

12. Once the necessary amendments are passed they can be brought into force after necessary administrative arrangements have been made. This would be simpler than sponsoring further legislation and going a new through the entire legislative process.

Executive action—Aid in sessions cases, maintenance cases etc.

13. That apart, we would suggest that immediate steps might be taken to provide for legal aid to accused persons in sessions cases, respondents in appeals against acquittals or in revision petitions under the present Code for the enhancement of sentences, and petitioners in maintenance cases. No legislation is necessary for this purpose. This can be effected by executive orders and we would recommend the adoption of this course for even after the new Criminal Procedure Code Bill is passed, it will be sometime before it is brought into force and the orders can give immediate relief in cases where they are needed. In so far as Union Territories are concerned it is open to the Central Government to take action on its own and we suggest that it should do so. The financial implications would be negligible in so far as this type of cases are concerned.

Assignment of counsel in civil cases—Amendment of schedule to C.P.C.

14. Similarly provision might be made for the assignment of counsel to all persons who are authorised under the existing law to sue and appeal as paupers. This also can be done without any amendment of the substantive provisions of the Code of Civil Procedure. Executive instructions would be sufficient. Similarly, counsel for the respondent

in appeal who was a pauper plaintiff is also necessary so that what was secured through legal aid is not snatched away for want of it. The money needed will be too small to mention since quantitatively such cases are few.

15. Thereafter, action can be taken to enable an individual to defend himself as a pauper and to enlarge the category of persons who can sue as paupers. For this purpose, an amendment to the Schedule to the Code of Civil Procedure would be sufficient which can be done by the High Courts. In order to expedite matters we suggest that a suitable amendment to the Schedule to the Civil Procedure Code may be drafted by the Central Government and circulated to the State Governments for adoption by the High Courts concerned.

Aid to special sections

16. Along with this, steps might be taken to make available facilities for legal aid on the lines indicated by us to members of the Scheduled Castes and the Scheduled Tribes and to the working class. The hour is late and further delay is deleterious. The scheme is simple and self-financing. There is a litigation fund for labour and liberally provided for although unused so far as the Scheduled Castes and Tribes are concerned.

17. The foregoing measures can be given effect to even without enacting any legislation and we would recommend that steps may be taken to give effect to them immediately.

Establishment of legal aid centres

18. In so far as the establishment of the network of legal aid centres is concerned, if any State expresses hesitation in giving effect to it immediately on a State-wise basis, it should be possible for it to launch a pilot project covering a few of the less-developed Districts in each State.

19. It may be that in the beginning the staff of the legal aid centres are not fully occupied. If that is so, their services can be utilized in giving necessary training to the members of the Nyaya Panchayats. This training programme itself is part of our recommendations and has been referred to in the relevant Chapter.

20. Progressively, once the institution of the Nyaya Panchayats becomes effective we would recommend an extension of their jurisdiction, pecuniary and otherwise.

Comprehensive enactment suggested

21. To give effect to these suggestions we would recommend that a comprehensive Legal Aid and Advice Act should be passed by Parliament and that necessary steps for this purpose might be taken at an early date.

22. The Legal Aid and Advice Act would establish the National Legal Services Authority and the State Legal Aid Boards, and provide for their composition and powers. It would also make the necessary amendments to the various statutes such as the Code of Criminal Procedure, the Code of Civil Procedure and others to the extent that they have not already been made.

May be brought into force in stages

23. It is possible that some States might have difficulties in organising the requisite legal aid machinery immediately. Further, considerations of finance and the like might stand in the way of the entire scheme coming into force at once. A provision might, therefore, be made not only that the provision of the Act shall come into force on such date as the Central Government may specify by notification but that different dates may be fixed for different provisions of the Act and also for different States. However, in order to prevent the enforcement of the statute from being put off indefinitely, it would be advisable for the Act itself to specify that all the provisions shall come into force on a date not later than two years from its enactment.

Extension to other proceedings

24. Once the necessary framework for legal advice and for legal aid in original proceedings is well established, the scheme may be extended to appellate proceedings. The scheme for establishing a Suitors Fund and for reimbursing parties their costs in public interest litigation can follow at a later stage. While these schemes are desirable, there is no immediate urgency with regard to them.

Saving of existing facilities

25. We wish to make it clear that the implementation of the legal aid measures suggested by us should not result in the discontinuance of any form of legal aid which is already being given in a State or Union Territory. The more liberal facilities than those recommended by us if already in existence should be continued till they are taken over and absorbed by the new legal aid machinery.

Preference to the unorganised and weaker sections

26. Further, in giving effect to the scheme, it should be ensured that preference is given to the un-organised sector and to the genuinely indigent so as to ensure that the benefits of the scheme in the initial stages are not diverted to the relatively well off.

CHAPTER 22

CONCLUSION

In the preceding Chapters we have sought to show the vital need for a comprehensive scheme of legal aid as it is an indispensable instrument of social transformation of our country in the direction indicated by the Constitution. A properly organised and implemented scheme of legal aid would serve to spread among the people at large a consciousness of their rights and duties and act as a shield against exploitation and as a means of spreading justice by making available justice within the framework of law. It would, besides, discourage resort to extra-legal methods of obtaining redress and thus tend to enhance regard for the rule of law.

Recommendations capable of implementation immediately

2. With these objects in mind we have made several recommendations. Some of them are capable of being implemented immediately by executive action by the State Governments and in so far as Union Territories are concerned, by the Central Government or the Union Territory Administrations. Some others involve an amendment of the Schedule to the Code of Civil Procedure which can be done by the High Courts subject to the previous approval of the State Governments or the Central Government, as the case may be. Effect can be given to certain other recommendations by relatively minor amendments to the Code of Civil Procedure, the Code of Criminal Procedure or certain other Central Acts falling within the Concurrent List. For the implementation of certain other recommendations, it would be necessary for the State Governments to sponsor amendments to State enactments relating to land tenures, Panchayati Raj and the like.

Recommendations requiring comprehensive Legislation

3. The establishment of Legal Aid Committee at Taluk and District headquarters and the enactment of a comprehensive legislation for setting up legal aid bodies at the All-India and State level would call for considerable preliminary work, such as the preparation of detailed estimates, correspondence with State Governments and Union Territory Administrations, drafting and processing of the necessary legislation and the like. Even after the Bills prepared for this purpose have been enacted into law, the requisite rules and regulations would have to be framed to put flesh on the skeleton of the Statute. The necessary finances and staff would have to be provided to breathe life into the organisation. A number of minor but necessary and essential details ranging from the preparation of the form of application for aid to the panels of Counsel would have to be attended to. It may be

that with regard to many of them the work would ultimately devolve on the new legal aid organisation. But that would have to be set up in the first instance, and it would take time for the new machinery to start functioning smoothly. Meanwhile, a good deal of detailed and preparatory work would be necessary before the scheme of legal aid, as we envisage it, comes into being as a working and well-oiled engine of social transformation.

Secretariate requirement

4. Unless, therefore, a determined and purposeful effort is made to translate our recommendations into action, we are apprehensive that they might languish due to neglect. It is doubtful whether the necessary organisation now exists in the set-up of the Secretariat which can take steps to implement our recommendations expeditiously.

Special Cell should be set-up

5. In this State of things, we are anxious—as, undoubtedly Government too—that efficient follow-up action should be taken on our recommendations and the necessary organisation got ready to process them. We therefore recommend that the task of implementing the proposals contained in this Report should be entrusted to a special cell in charge of an officer with sufficient sympathy, enthusiasm, vigour and time for this purpose. Justice to the poor is too dear and too long delayed to brook leisurely secretariat action. In the context of the mounting campaign of Garibi Hatao and the extravagant series of conferences, seminars, ministers' meets and the like with little national level action except fragmentary schemes by States, frustration and disdain for official pledges of equal justice programmes will follow indifference to the present Report. If our national planners are able to read the writings on the wall, they will realise that the urgency of translating our recommendations in a phased way into a reality is to save the legal order from lawlessness and to achieve that social transformation which our Constitution stands betrayed.

Summary of recommendations appended

6. For facility of reference, we append a summary of our recommendations. Although we have not departed from the conventional course of drafting the report in English, we are presenting it also in Hindi, Urdu and Malayalam. In this land of linguistic pluralism and constitutional policy of language catholicity a report on behalf of the poor must speak their tongue. The Official Language Commission has helped us in this objective and we are grateful. We conclude in the hope that with the inauguration of the activist phase of our project through statutory implementation and sufficient financial allocation, the humble and the have-nots will secure the effective aid of the law for promoting that civil revolution which is the cherished goal of our nation.

CHAPTER 23

EPILOGUE

The rule of law underlies our entire social, economic and governmental structure as well as constitutional order. The Indian way of life will lose its soul if social justice ceases to be the dharma holding us together as a nation. And so it is that we want legality not to be wet with the tears of poverty. For, surely the law of life will outlaw lawyer's law unless the strategy of bringing law-in-action into rapport with the norms of justice is put into operation and the cost of the legal system is brought into fair concord with the economic conditions of the country. In this humanist perspective, our concern has been to view the welfare-inspired legal services programme not as a professional gratuity but as the juridical arm of *Garibi Hatao*. For this reason, we have given a social sweep to our scheme which exceeds the court room, the lawyer's chambers, the traditional legal aid and advice thinking, techniques and machinery. Frankly, we plead guilty to taking this liberty with the subject because law reform, court reform, realistic legal studies, poverty law research and involvement of the community in the administration of justice through the legal process, are integral to the larger issue of socio-economic justice. Our dedication is to this larger cause and so, our recommendations have been spread over a wider canvas.

We have worked under some limitations and without resort to the conventional processes which enrich similar committees in the gathering of materials and otherwise. We have gone a little beyond the original time-schedule for reasons beyond our control. But the job has been executed not later than other like bodies entrusted with tasks as big and seminal. Critics may discover faults and shortfalls, opinionated suggestions and impressionistic conclusions, over-zealous proposals and unscientific approaches. Nevertheless, we are confident that the conscience of free legal service is present in these pages and the basic recommendations set out here furnish the technology for launching a large-scale juridicare programme. How and in what stages the lift-off must be organised or when the count down must begin is a policy decision for the Administration. The cause is noble; the time is set true, a realistic scheme is ready and we cherish the hope that a State-funded statutory legal service for the people in want will soon come into existence making law more friendly with the lowly and the lost.

Finally, we express our deep gratitude to Shri H. R. Gokhale the far-sighted and sapient Minister for Law and Justice, for having given us the fruitful opportunity, in this progressive national context, to

draw up the design and methodology of making over the wheels of the legal process to the weaker but vaster segment of Indian humanity which has hitherto been economically out of bounds for forensic justice. May be, this stream of socio-legal service will gently promote that civil revolution whose awful anithesis and counterproductive negation may well be the demolition of democracy. The prime mover and inspirational source in the governance of India is the Prime Minister and to her and to the Minister for Justice we hopefully tender our Report, looking forward to the early inauguration of a radical social chapter on Law and Justice in India.

To-day, 27th May, we remember the first Prime Minister of India who strove to make the rule of law run close to the rule of life and we sign with the satisfaction that our proposals are a decisive step towards that goal.

V. R. KRISHNA IYER

Chairman

L. M. SINGHVI

Members

JAISUKH LAL HATHI

D. P. SINGH

M. K. RAMAMURTHI

HARISH CHANDRA

LAKSHMI RAGHURAMAIYA

N. R. MADHVA MENON

GOPI NATH DIXIT

KANWAR LAL SHARMA

P. B. VENKATASUBRAMANIAM

Member-Secretary

One among us, the Member-Secretary, Shri P. B. VENKATASUBRAMANIAN has brought to bear on the task of preparing these long pages remarkable industry, selfless dedication and organisational ability assisted by a hard-working team headed by the Deputy Legal Adviser, Shri S. K. BAHADUR. We place on record our deep appreciation and indebtedness for the valuable services so rendered without which we could not have signed this Report this day.

V. R. KRISHNA IYER *Chairman*

L. M. SINGHVI *Members*

JAISUKH LAL HATHI

M. K. RAMAMURTHI

D. P. SINGH

HARISH CHANDRA

LAKSHMI RAGHURAMAIYA

N. R. MADHVA MENON

GOPI NATH DIXIT

KANWAR LAL SHARMA

NEW DELHI,
27th May, 1973.

APPENDIX 'A'
The terms of Reference
No. F. 6 (10)/72-J
GOVERNMENT OF INDIA
(BHARAT SARKAR)
MINISTRY OF LAW AND JUSTICE
(VIDHI AUR NYAYA MANTRALAYA)
Department of Legal Affairs
(Vidhi Karya Vibhag)

New Delhi, the 27th Oct., 1972

ORDER

The problem of making legal aid and advice available to the community has been under consideration of the Government of India which has come to the conclusion that it is desirable to appoint an expert committee to go into the matter.

2. Accordingly, the Government constitutes a Committee consisting of the following :—

- | | |
|--|-------------------------|
| 1. Shri Justice V. R. Krishna Iyer, Member, Law Commission, New Delhi. | <i>Chairman</i> |
| 2. Dr. L. M. Singhvi, Advocate-General of Rajasthan | <i>Member</i> |
| 3. Shri Jaisukh Lal Hathi, Member of Parliament | <i>do</i> |
| 4. Shri M. K. Ramamurthi, Senior Advocate, Supreme Court | <i>do</i> |
| 5. Shri D. P. Singh, Member of Parliament | <i>do</i> |
| 6. Shri Harish Chandra, Advocate | <i>do</i> |
| 7. Mrs. Lakshmi Raghuramaiya | <i>do</i> |
| 8. Dr. N. R. Madhava Menon, Faculty of Law, Delhi University. | <i>do</i> |
| 9. Shri Gopi Nath Dixit, Senior Advocate, Supreme Court. | <i>do</i> |
| 10. Shri Kanwar Lal Sharma, Advocate | <i>do</i> |
| 11. Shri P. B. Venkatasubramanian, Joint Secretary & Legal Adviser. | <i>Member-Secretary</i> |

3. The terms of reference to the aforesaid Committee shall be as follows:—

- (i) to consider the question of making available to the weaker sections of the community and persons of limited means in general, and citizens belonging to the socially and educationally backward classes in particular, facilities for
- (a) legal advice so as to bring among them an awareness of their constitutional and legal rights and just obligations and for the avoidance of vexatious and unnecessary litigation, and

- (b) legal aid in proceedings before civil, criminal and revenue courts so as to make justice more easily available to all sections of the community;
 - (ii) to formulate having regard to the resources available a scheme for legal advice and aid for the purposes of aforesaid and
 - (iii) to recommend the time and manner in which the scheme may be implemented.

4. All the Members including the Chairman of the Committee shall work in an honorary capacity. Shri Justice Krishna Iyer shall perform his duties as Chairman of the Committee in addition to his normal duties as Member of the Law Commission.

- 5. The Headquarters of the Committee shall be at New Delhi.
- 6. The Committee shall make its report by March 1, 1973.

R. S. GAE

Secretary to the Government of India.

APPENDIX 'B'

Recommendations of the Law Commission on the provisions of Order 33 of the Civil Procedure Code

Order 33 deals with suits by indigent persons. The Code does not deal with the subject of legal aid but provides for exemption of court fees in respect of persons who are indigent, called by the inappropriate name of paupers. The object seems to be to enable persons who are too poor to pay court fee to institute a suit without payment of it. The exemption does not extend to process fee. The Commission recommended that the expression "indigent person" should be used throughout the Code in place of the present expression "pauper" as the same is not in harmony with modern attitudes.

2. For rule 1 of Order 33, the Commission recommended that subject to the following provisions, any suit may be instituted by an indigent person. Who would be indigent person has been explained as one who does not possess sufficient means other than property exempt from attachment in execution of a decree and when he is not entitled to property worth Rs. 1,000/- other than the property exempt from attachment in execution of a decree. As regards inquiry into pauperism, the Commission recommended that it should be made by the Chief Ministerial Officer of the court unless the court otherwise directs and that the decision of that officer, unless the court otherwise directs be deemed to be the decision of the court. The Commission also recommended a proviso to rule 3 that no application shall be rejected under clause 3 if, even after the value of the property disposed of is taken into account, the applicant would be entitled to sue as an indigent person within the meaning of rule 1 of this order.

3. For the purposes of rule 7 of Order 33, if the application of the indigent person to sue as pauper has been rejected, the order should be made appealable.

4. As regards rule 8 of Order 33, the Commission has issued a questionnaire to consider in what cases the State should provide legal aid, whether legal aid should be provided to a person without any means or to a person with inadequate means, legal aid be provided in full or in part, exemption from payment of process fee, *inter alia*. After considering the various suggestions of the States, the Commission recommended that in Order 33, rule 8, for words and brackets "(other than fees payable for service of process)", the words "or fees payable for service of process", should be substituted.

5. The important recommendations of the Commission is in regard to the introduction of rule 9-A to Order 33 to provide that where a person permitted to sue as an indigent person is not represented by a pleader, it is desirable that the court should assign a pleader to him at the expense of the State. As to the mode of selecting pleaders to be so assigned, the facilities to be allowed to such pleaders by the courts and the fees payable to such pleaders by the Government and other matters, the High Court can make rules.

6. Therefore, for rendering legal aid to the indigent persons, the main recommendation of the Commission is the introduction of a new rule, namely, rule 9-A to Order 33, which may be quoted as below:—

"9A. Where a person permitted to sue as an indigent person is not represented by a pleader, the Court shall assign a pleader to him 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 to be assigned 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)."

APPENDIX 'C'

Tentative Model Order XXXIII and Order XLIV of Civil Procedure Code

ORDER XXXIII

SPECIAL PROVISIONS RELATING TO INDIGENT PERSONS

Institution and defence of suits by indigent persons

1. (1) Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation 1.—A person shall be deemed to be an “indigent person” in relation to a suit,—

- (a) when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one thousand rupees other than any property exempt from attachment under the Code and the subject-matter of the suit, or
- (b) where he does not have an annual income exceeding two thousand and five hundred rupees and produces a certificate to that effect from any officer authorised in that behalf by the State Government by general or special order :

Provided that in relation to a member of Scheduled Caste or Scheduled Tribe, who is certified as such by any officer authorised in that behalf by the State Government by general or special order, clause (b) shall have effect as if for the words “two thousand five hundred rupees”, the words “five thousand rupees” were substituted;

46 of 1950

45 of 1950

62 of 1957

- (c) where he is a person subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy Act, 1957, but not being an officer as defined therein, and the Commanding Officer or any other person authorised by him certifies to that effect and reports that by reason of his official duties, he is prevented from leaving his place of duty.

Explanation 2.—Where a person sues in representative capacity, the question whether he is an indigent person or not under clause (a) or clause (b) of Explanation 1 aforesaid shall be determined with reference to the means possessed by him in such capacity.

Explanation 3.—Any part of the subject-matter of the suit, which the opposite party relinquishes and places at the immediate disposal of the plaintiff, shall be taken into account in considering the question of possession of sufficient means by the plaintiff for the purpose of clause (a) or clause (b) of Explanation 1.

(2) Any defendant, who is an indigent person,—

- (a) who desires to plead a set off or make a counter-claim as an indigent person, may be allowed to set up the claim as such and the Rules of this order shall, so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint;

- (b) who desires to defend a suit as an indigent person, may be allowed to do so and the Rules of this Order shall, so far as may be, apply to him.

(3) The Rules of this Order shall, so far as may be, apply in relation to proceedings in execution of a decree or order passed in favour of an indigent person, who has been treated as such in the suit or other proceeding in which such decree or order was passed;

Provided that it shall not be necessary to make any further inquiry into the claim of the applicant for execution as an indigent person unless the court sees cause to direct such inquiry.

Contents of the application

2. Every application for permission to sue or to defend as an indigent person shall contain,—

- (a) the particulars required in regard to the respective pleadings in suits;
- (b) a schedule of movable or immovable property belonging to the applicant with the estimated value thereof;
- (c) a statement of the annual income of the applicant;
- (d) a statement whether—
 - (i) he has, within two months next before presentation of the application, disposed of any property and, if so, the value thereof;
 - (ii) he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter;
 - (iii) he has entered into any agreement with any other person to finance the litigation, and every such application shall set out the grounds on which he claims to be an indigent person be signed and verified in the manner prescribed for signing and verification of pleadings and be accompanied by such certificate as may be appropriate.

Presentation of application

(1) Notwithstanding anything contained in these Rules, the application for permission shall be presented to the Court by the applicant in person, unless,—

- (a) he is exempted from appearing in Court; or
- (b) he is detained in prison; or
- (c) he is old or infirm or not physically fit and for that reason unable to undertake any journey for appearing before the Court in person and produces certificate of a medical practitioner to that effect; or
- (d) he belongs to such class or category of persons as the High Court may, by general or special order, exempt from personal appearance for presentation of an application to sue or to defend as an indigent person, and in every such case, the application may be presented to the Court by a pleader or other authorised agent, who can answer all material questions relating to the application, or sent by registered post addressed to the Court with acknowledgement due whereupon it shall be deemed to have been duly presented.

(2) In every case where an application for permission to sue or to defend as an indigent person under sub-rule (1) is sent by registered post, the applicant shall engage a pleader or other authorised agent to represent him and the name and address of the pleader or the authorised agent shall be given in the application.

(3) Where an application is made jointly by more persons than one, presentation of the application by one shall be deemed to be sufficient compliance with the provisions of sub-rule (1).

Examination of the applicant

(4) (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his pleader or agent when the applicant is allowed to appear by pleader or agent, regarding the merits of the claim and other relevant matters relating to the claim of the applicant to sue or to defend as an indigent person and allow any evidence, in support of his claim to be an indigent person, to be adduced.

(2) Where the applicant is represented by a pleader or an agent, the Court may, if it thinks fit, order the applicant to swear one or more affidavits in relation to any matter relevant to the inquiry as the Court may specify.

(3) The Court may, by general or special order, and subject to such conditions or restrictions as may be imposed or such directions as may be given, by the High Court in this behalf, direct that all or any of the powers of the Court under the Rules contained in this Order may be exercised by the Chief Ministerial Officer of the Court and unless the Court directs otherwise, any action taken or any decision given by such officer shall be deemed to be an action taken, or, as the case may be, a decision given by the Court under this Order.

Rejection of application

5. The Court shall reject an application for permission to sue as an indigent person—

- (a) Where it is not framed or presented in the manner prescribed by and in accordance with the provisions of Rules 2 and 3, and the applicant on being required by the Court to make any amendment within such time as may be allowed by the Court, fails to do so, or
- (b) where the applicant is not an indigent person, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to, be able to apply for permission to sue as an indigent person, or
- (d) where the allegations do not show a cause of action, or where the suit appears to be barred by any law, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter, or
- (f) where he has entered into an agreement with any other person to finance the litigation:

Provided that in a case falling under clause (c), if the Court is satisfied that even after taking into account the value of the property so disposed of, the applicant satisfies the conditions specified in Explanation 1 to Rule 1, the Court shall not reject the application under the said clause (c).

Memorandum of Evidence

6. The Court shall record a memorandum of the substance of the evidence adduced by or on behalf of the applicant under Rule 4.

Order of the Court

7. (1) The Court shall, on a consideration of the evidence and after hearing arguments, if any, by order in writing, either grant the application or reject it.

(2) Nothing contained in this Rule shall prevent a Court, while rejecting an application, from directing the applicant to pay the requisite court-fee within such time as may be allowed by the Court and upon such payment and on payment of the costs referred to in Rule 15 within that time, the suit, or, as the case may be, the written statement shall be deemed to have been filed on the date on which the application was presented.

Procedure if application is admitted

8. (1) Where the application is granted, it shall be numbered and registered and shall be deemed the plaint in suit and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that—

- (a) the plaintiff shall not be liable to pay any court-fee (which expression shall hereinafter in this Order and in Order XLIV include fees payable for service of processes) in respect of any petition or other proceeding connected with the suit, and
- (b) where the Court has assigned a pleader to the applicant under sub-rule (2), the liability for payment of fees of the pleader shall be as provided in that sub-rule.

(2) In every case, where the application is granted, the Court shall, subject to such general or special orders as the High Court may make in this behalf, assign a pleader to represent the applicant in the suit or other proceeding and fix the fees payable to the pleader and the fees so payable shall be borne by the State Government.

(3) Where an applicant has been assigned a pleader under sub-clause (2) such pleader shall, when required by the applicant also prepare for him without further payment a memorandum of appeal or, as the case may be, cross-objections or reply.

Declaration of persons as not indigent

9. (1) The Court may, on the application of any party to the suit or other proceeding, or of the Government pleader, of which seven clear days' notice in writing has been given to the indigent person (and to the Government pleader where the application is not made by him), order such person to be declared as a person who is not an indigent person—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit or other proceeding, or
- (b) if it appears that his means are such that he ought not to litigate as an indigent person or if he has otherwise ceased to be an indigent person, or
- (c) if he has entered into an agreement with reference to the subject-matter of the suit or other proceeding under which any other person has obtained an interest in such subject-matter, or
- (d) if he has entered into an arrangement with any other person to finance the litigation.

(2) In any inquiry under sub-rule (1), the Court may direct that the parties and their witnesses may tender evidence by filing affidavits.

(3) Where an order is passed under sub-rule (1) declaring a person as a person who is not indigent, the Court shall further direct the person to pay the requisite court-fee within such time as may be allowed by it and deposit in Court such fee of the pleader for the service rendered till then as may be fixed by the Court.

(4) While disposing of an application under sub-rule (1), the Court shall make such orders as to costs as it may deem fit.

(5) Every order made by the Court under this Rule shall be applicable.

Provision for court-fees, etc., where indigent persons succeeds

10. Where a plaintiff, who is an indigent person, succeeds in the suit, the Court shall calculate the amount of court fee which would have been payable by the party if he had not been permitted to sue as an indigent person and the amount of fee payable or paid to the pleader, and such amounts shall be recoverable by the State Government from any party ordered by the decree or order to pay the same and shall be a first charge on the subject-matter of the suit.

Procedure where the indigent person fails

11. (1) Where the indigent person fails in the suit or is declared not to be an indigent person, or where the suit is withdrawn or where part of the claim is abandoned or where the suit is dismissed :—

- (i) because the summons for the defendant to appear and answer has not been served upon him in consequence of any failure on the part of the plaintiff, or
- (ii) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff or any person added as a co-plaintiff to the suit to pay court-fee and in the case of abandonment of part of claim, the proportionate court-fees which would have been payable by the plaintiff if he had not been permitted to sue as an indigent person.

(2) Where the suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, but no provision has been made for payment of court-fee and fees of the pleader, the Court may direct either or both the parties to pay the same or any proportionate part thereof as it thinks fit.

(3) Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a plaintiff who is a minor or a mentally ill person on a cause of action which accrued during the minority or, as the case may be, mental illness of such plaintiff, the Court may order the next friend to personally pay the court-fee.

Procedure where suit abates

11A. Where the suit abates by reason of the death of the plaintiff or of any person added as a coplaintiff, the Court shall order that the amount of court-fees, which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person, shall be recoverable by the State Government from the estate of the deceased plaintiff.

State Government may apply for payment of court-fees and pleader's fees

12. (1) The State Government shall have the right at any time to apply to the Court to make an order for payment of court-fees and pleader's fees due under rule 9, rule 10, rule 11 or rule 11A.

(2) No order for payment—out of money standing to the credit of any indigent person in any suit or other proceeding shall be made on the application of any party except after notice to the Government pleader on behalf of the Government.

State Government to be deemed a party

13. All matters arising between the State Government and any party to the suit under Rule 9, Rule 10, Rule 11, Rule 11A or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Recovery of amount of court-fees and pleader's fees

14. Where an order is made under Rule 9, Rule 10, Rule 11 or Rule 11A, the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who, may, without prejudice to any other mode of recovery, recover the amount of court-fees and pleader's fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

Refusal to allow applicant to sue as an indigent person to bar subsequent application of a like nature

15. An order refusing to allow the applicant to sue as an indigent person shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute or to continue the suit or defend the same in the ordinary manner, provided that he first pays the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an indigent person and the Court may allow the parties to make such amendments to the proceedings as may be reasonably necessary for the purpose.

Costs

16. The costs of an application for permission to sue or to defend as an indigent person and of an inquiry into that matter shall be costs in the suit.

ORDER XLIV

APPEALS BY INDIGENT PERSONS

Persons who may appeal as an indigent person and procedure on application

1. (1) Any person entitled to prefer an appeal, who is unable to pay the court-fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable.

(2) The provisions of this Order shall, so far as may be, apply in relation to,—

- (a) a reply which an indigent person may be called upon to give as a respondent in any appeal;
- (b) every cross objection to the decree taken by an indigent person in accordance with the provisions of Rule XLI, and
- (c) every proceeding in execution of any decree or order passed in appeal in favour of an indigent person.

(3) In every case where the application is granted, the Court shall, subject to such general or special orders as the High Court may make in this behalf, assign a pleader to represent the indigent person in the appeal or other proceeding connected with it and fix the fee payable to the pleader and the fee so payable shall be borne by the State Government.

Inquiry into applicant's claim to be an indigent person

2. The inquiry into the claim of the applicant to be treated as an indigent person may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to institute or defend a suit as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of his claim to be an indigent person shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

SUMMARY OF RECOMMENDATIONS

Chapter 2—The Constitutional position.

Competence of Parliament to make a law on the subject

Entry 3 of List II (Administration of Justice) connotes only the apparatus and machinery for the enforcement of legal rights and liabilities. Even the entire legal process is not totally covered by the Entry (p. 5). The entry mainly deals with enforcement (p. 6). Covers only one stage of legal aid, namely appointment of counsel in conventional civil and criminal proceedings in the orthodox courts. (p. 6).

However widely one may interpret Entry 3 of List II [See *State of Bombay v. Narothamdas Jethabhai*. A.I.R. 1951 S.C. 69, 70], it cannot cover pre-litigative and preventive legal aid, including advice on legal issues, drawing up of documents etc. (p. 7).

'Legal Aid' is an integral part of the legal system—not a matter of charity or confined to the four walls of the court-building. Several entries in the Legislative Lists touch legal aid (p. 6).

[List I—Entries 77, 78 and 97; List II—Entry 3; and List III—Entries 2 and 13, 20, 23, 24 and 26].

'Legal aid' can be related to the *entire legal system* and this would bring it in the Concurrent List, or at least make it transcend the State List. Obligations are cast on the legal profession—relatable to list III, Entry 26, and List I—Entries 77 and 78 (p. 6).

Central Government can also make grants for the purpose of legal aid under Art. 282 (p. 8).

Parliament can, therefore, make appropriate provision for a comprehensive scheme of legal aid (p. 8).

A comprehensive scheme of legal aid must involve the States financially and administratively. (p. 8).

Chapter 3—Towards A People's Law and A People's Law Services—The

Underlying Concepts

The proposed Statute: What it should provide for

State funding and statutory incorporation should be the backbone of the project (p. 13). The status should provide for the creation of a national legal aid body to stimulate, guide and perpetuate organised free legal services. It should be statutorily insulated from official or party pressure—should not be a Government scheme only (p. 14).

To create networks of legal aid groups, centred in court-houses, bar associations, law schools, community organisations, a variety of rural private and public agencies, organs of local government and *ad hoc* panels of private lawyers, is a major recommendation of our report. (p. 15).

A second aspect is the need to reform and revise our laws and procedures courts and prisons, the Bar and the Bench, police and public servants to make them more responsive to all citizens. It is the need to modify our curricula of legal education. It is the need to create means of dispute settlement which

are rapid, inexpensive, honestly performed and which utilise concepts and a vocabulary which is native. Modification of the Cr. P. C. and the C.P.C., in the light of drafts already submitted to Parliament, may be early legislative priorities (p. 15-16).

The regulations to be formulated by the State and Central legal aid bodies will not constitute a uniform format for the entire country, but rather a broad range of options covering the forms of local organisation and control, the services and financial assistance that may be given to clients, the personnel that may be utilised and the persons of their application, and the financial and other incentives that may be provided to advocates and legal aid personnel (p. 20).

The governing bodies of the local legal aid cells should include representatives of the potential recipients of service, representatives of those who provide the legal aid, as well as of relevant mass organisations (p. 20).

Constitution of the National Authority

The need for autonomy for legal aid bodies may be best met by the statutory creation of a National Legal Services Authority—insulated from rigid official controls. Institutional accountability to Parliament and the public would, however, be necessary (p. 21).

Constitution of the National Body: Honorary President—Chief Justice of India; Judges to be on the governing boards; a separate executive Chairman as Director-General of Legal Services who may preferably be an eminent person in the field of advocacy with social service and administrative experience : Chairman of Bar Council of India to be ex-officio member; one or more representatives from State Legal Aid Boards; Finance Secretary and Secretary of administrative Ministry concerned with legal aid, as ex-officio members and some M. Ps; President of All India Law Teacher's Association as ex-officio member; Representative of an all-India body engaged in social work; A woman social welfare worker; Two student office bearers from Law Schools; Representative from institutions engaged in research work; Representatives of Scheduled Castes & Scheduled Tribes; Representative of Labour; there should be a full-time Secretary—a Law man with a social scientists background (pp. 21-22).

The National Authority would be responsible to Parliament and the public through periodic independent audits and annual reports to the Houses, public availability of records and through other measures (p. 23).

A public sector in legal profession is a benignant portent and is part of the legal aid movement (p. 25).

Government and the public and private sectors must be willing to set a ceiling on the fees they pay to advocates drawn from the private Bar (p. 45). *Law Schools and Law Students :* It is vital....that we introduce clinical legal education in our law schools with an accent in socio-economic poverty. Such direct student participation in handling the legal problems of the indigent clients is potentially one of mutual benefit to the student, to the legal aid scheme, and to the whole system (p. 26).

The recommendations is to include student legal aid work, including representation in court (p. 27).

This will be done under supervision by practicing lawyers as well as law teachers (p. 27).

Legal Aid's Clients

High Court Bench in Andaman & Nicobar

In the Andaman and Nicobar group of islands, subsidised travel for legal aid lawyers, and High Court Benches sitting with realistic frequency, are worth considering (p. 28).

Legal guidance will help poor villagers who cannot go to towns and big legal opinion at high cost (p. 29).

Agricultural workers are, by and large, unorganized and counterfied and, therefore, exploitable in the absence of moral boosting legal advice and aid. Progressive legislation has proved illusory as they have remained ineffective in execution. (p. 29).

Procedure on labour matters to be changed

The conciliation procedures, the labour courts, and the industrial tribunals require overhaul and renovation as recommended by the National Commission on Labour. Legal assistance at State expense for workers and dependents in proceedings under other labour welfare statutes is a 'must' (p. 31).

Substantive and procedural legal aid to women as women in civil and criminal matters is a 'must' even regardless of the means of the affected persons (p. 32).

We need a cadre of properly oriented and trained police and judicial personnel for the proper treatment of young offenders (p. 32).

Treatment of young offenders

Another suppressed social group in need of legal aid is the Harijan (p. 57), Minorities (p. 34) and prisoners (p. 34).

Reform of the Administration of Justice

Financial inputs

The experience in 'civil' legal aid suggests that most of the 'poverty' litigation pays itself. In the matter of scheduled castes and tribes the State has always been willing to spend on full legal aid coverage. A suitors' fund... must be tried before too in due course. The public sector in the profession and voluntary organisations will receive public contributions. Labour may be eligible for free legal aid financed by the industry itself. When the student legal aid clinics become numerous a proportionate lessening of the legal aid cost will be consequence. (p. 34).

Free Counsel for Warrant cases as well

As for the criminal process, even now free counsel in sessions cases is provided in some parts of the country, and its extension to warrant cases will not add onerously to the outlay (p. 34).

Reduction of Court-fee and Institution of a Suitor's Fund

Something must be done to arrest the escalating vice of burdensome scales of court-fee (p. 34). There is strong case for reducing court fees and instituting a suitor's fund to meet the cost directed to be paid by a party because he is loser but in the circumstances cannot bear the burden (p. 35).

Social sympathies of judges and police

Selection of candidates for judicial and police posts should focus on their social sympathies (p. 35).

Simplification and sentence procedure

Provisions similar to section 101 of the Motor Vehicles Act may usefully be introduced in other local laws also (p. 36).

Mobile Courts for Minor Offences

Mobile courts for trying minor offences on-the-spot will be a boon to the poor and to all citizens (p. 36).

Summary trials

Provisions regarding summary trials will help dispose of petty cases quickly and with less expenses (p. 36).

C.P.C. to adopt conciliation procedures

Our C.P.C. should encourage conciliation processes and settlements of disputes without detailed litigative stages (p. 37).

Small causes courts

Legal formalities must be cut down to the minimum. Pleadings may be informal...the judge must be the activist at the trial and not counsel, three stage examination being available and detailed judgement a superfluity (p. 37).

It is very necessary to devise a statutory method by which the police will look into small complaints without a detailed process of investigation (p. 38).

Nyaya Panchayats

The Nyaya Panchayats must be entrusted with wider powers as part of the programme of local and low cost justice (p. 40).

*Chapter 4: Scope of legal aid***Legal aid and advice**

The concept of legal aid is sufficiently wide to include legal advice (p. 43).

State will have to exempt the assisted persons from all expenditure on process fees, witnesses etc. (p. 44).

If a person and the particular proceedings otherwise qualify for aid, it should not make any difference whether this is to be calculated as civil or criminal proceeding or a proceeding before any authority or tribunal..... This would include proceedings before the High Courts in the exercise of their constitutional writ jurisdiction (p. 46).

Tests for grant of legal aid*3 tests for grants of legal aid*

1. 'Means Test'—Indigence
2. Prima facie case
3. A social purpose should be served by filing the suit or defending it (pp. 47-48).

Exceptions

Legal aid is not to be tendered to artificial persons except in cases of trade unions and co-operative societies. (p. 49).

Chapter 5—Legal Advice—Non-litigative Aid and Prevention of Litigation

We would place the furnishing of competent legal advice in the forefront of any scheme of legal aid. (p. 50).

The giving of legal advice would be the function of the Taluka Legal Aid Committee or its equivalent. (p. 51).

Requests for advice should be made to the Secretary of the Committee who must be available at times which do not interfere with a typical applicant's working day. He may give advice himself or refer the applicant to an advocate specialising in the particular problem area. (p. 51).

In giving legal advice, senior law students may be useful in ascertaining facts and interviewing clients. Similarly, the services of retired judicial officers will be most helpful. (p. 52).

The decision as to whether legal advice will be rendered completely free or for a specified fee may be made based on a statement by the applicant of the particulars of his income. The general means criteria will apply. (p. 52).

Fee to be charged from all who seek legal advice except those who are absolutely destitute. May range from 25p to Rs. 5 in the mofussil and Rs. 10 in bigger cities for each consultation (p. 52). Those who have the means can consult provided they pay full fees, like some Govt. Hospitals (p. 52).

Properly drawn up document and advice in drafting are an essential consistent of any scheme of preventive legal aid (p. 53).

Settlement

The legal aid machinery should be encouraged to promote conciliation and settlement, rather than litigation (p. 55).

Chapter 6—Legal Aid in Civil Proceedings

Extension of jurisdiction of Panchayat's Courts

It may be necessary to provide alternative forums for the disposal of claims of relatively smaller value when it is not necessary to investigate questions of title. For this class of cases we would favour an extension of the jurisdiction of the Panchayat Courts (p. 57).

Establishment of special forums like Motor Vehicles Claims Tribunals should not be optional. It should be obligatory on the part of State Govt's. to establish them and *ad valorem court* fees should not be charged in such cases (p. 57).

Amendment of Order XXXIII & XLIV of C.P.C.

Order XXXIII & Order XLIV of C.P.C. should be amended so as to enable a Court to assign a pleader at the expense of the State of a person suing as an indigent person. Equally so for an indigent person who is a defendant. (p. 59-60).

Recommendation that legal aid should not normally be given for the institution of any proceedings for divorce or judicial separation or for the custody of children, unless an attempt has been made by the Legal Aid Committee to effect, if possible, reconciliation between the parties, and the aforesaid person agrees to a reasonable settlement. (p. 61).

Reference to arbitration when both parties are indigent

If in a case before a Court, both parties have obtained legal aid, Court should not hear it but refer it to arbitration unless the issues involved are too complicated. Either the Court or the parties may choose the arbitrator. If party insists on being heard before the Court and refuses arbitration, the legal aid may be revoked (p. 62). The law should accordingly be modified.

Writ proceedings

We feel that the rules with regard to the grant of aid for the institution of a suit should also apply to the institution of proceedings under Art. 226 of the Constitution. (p. 63). If the State Legal Aid Board is satisfied that the circumstances of the case are such as would warrant the moving of the Supreme Court under Art. 32 in preference to moving the High Court under Art. 226, it may for special reasons grant a certificate to that effect (p. 64).

Fee certificate is to be dispensed with. Cost awarded in favour of the Legal Aid Committee may also be made recoverable as arrears of land revenue (p. 65).

After a legally aided person has been successful the assistance should be continued at the stage of execution (p. 66).

Amendment of Provincial Insolvency Act

Amendment to Provincial Insolvency Act to provide that non-payment of decree amount by judgment debtor would be regarded as an act of insolvency, as recommended in the Third Report of the Law Commission, should be implemented (p. 66).

Amendment of Order XLIV C.P.C. re: pauper appeals

The existing provision in Order XLIV of the C.P.C. which deals with pauper appeals should be amended to provide that once the applicant is allowed to sue as a pauper, no further inquiry as to pauperism is necessary, unless the appellate court sees cause for such an inquiry (p. 66).

At the first stage of the introduction of legal aid it is not necessary to give an assisted person a right of appeal against the judgment of the trial Court (p. 67) excepting in special case (p. 67).

Printing of judgment

Printing of the judgement which is essential in some States, may be dispensed with in appeals filed on the basis of a certificate granted by the Legal Aid Committee. (p. 68).

Vakalatnama to members of Legal Aid Committee

The Law may be amended to permit parties to execute Vakalatnamas in favour of the Legal Aid Committee, which would thereupon take over the function of assisting and pleading for the assisted person in the Court (p. 68).

Chapter 7—Legal Aid in Criminal Proceedings (pp 69-85)

Liberalisation of Bail Policy

An indigent accused in a criminal proceeding stands the risk of denial of fair treatment and a fair trial when he does not have equal access to the legal services available to the opposite side and to more affluent accused.

In determining the eligibility for legal aid in criminal cases, a means criteria should be applied, except in cases where the accused faces the death penalty or imprisonment for life upon conviction.

An applicant should not be required to demonstrate a *prima facie* case for his innocence nor show the reasonableness of taking up his case.

Legal aid should be denied to habitual offenders and generally to those involved in election, defamation and adultery cases in which an essentially 'private' claim is involved.

Pragmatic and financial considerations may indicate to individual legal aid committee additional matters which may generally be excluded from legal aid eligibility.

Legal aid to complainants in maintenance cases and in genuine private criminal complaint cases should be available.

Those accused in preventive security cases under Chapter VIII of the Criminal Procedure Code and appellants already convicted in cases eligible for legal aid, should be given assistance, along with more conventional accused.

Institutional arrangements for regular legal aid and advice to inmates of jails and other institutions should be available.

Liberalisation of bail policy to release conditionally without monetary sureties or financial security and on one's own recognizance. May even be entrustment of accused to relatives or on supervision or on recommendations of trade unions, social service or welfare agencies etc. (pp. 76-77).

Enlargement of category of bailable offences in Cr. P. C. and insistence on expeditious completion of pre-trial procedures. Release on person's undertaking to extern himself from the area may be tried (p. 77).

Commissioners of Police not to remand to police custody

The existing practice of Commissioners of Police in Presidency towns exercising magisterial powers in respect of remanding persons to police custody must be abolished (p. 79).

Access to lawyer during investigation stage also

The right of a person to have access to a lawyer at any stage of a police investigation should be legislatively provided (p. 79).

Police Officers recording statements of accused under section 161 Cr. P.C. must compulsorily give a copy of the same immediately to them (p. 80). The likelihood of a person being released on his recognizance should be increased (p. 80).

Pleading guilty at time of assignment itself

To shorten inordinate delays, Cr. P. C. may contain provisions enabling accused to plead guilty even at the time of assignments without having to wait for proper charge after notice report (p. 81).

Legal aid in pre-trial phase should also provide for some rational and expeditious procedures to get grievances against enforcement agencies, including the police redressed (p. 81).

Post trial Acquittance

Some psychiatric and rehabilitation programmes will have to be built into the legal aid scheme itself whereby such persons when they come out of the criminal judicial process are given proper counselling, correctional treatment and vocational guidance. (p. 82).

Legal aid should include free expert evidence, free copies of evidentiary documents, free laboratory and scientific facilities, exemption of court and witness fees and the like. In all these matters, the Legal Aid Committee must balance the interests of justice and the circumstances of the defendant.

Civil adjudication for damages after criminal trial

It is worth examining whether, at the end of a criminal trial, the case be made over for civil adjudication for damages without a *de novo* trial, by suitably amending the civil and criminal procedures. (p. 83).

Legal aid cannot rely entirely on an assigned counsel system utilising private lawyers, appointed on an *ad hoc* basis. Salaried legal services lawyers at taluka or block levels might become necessary. (p. 84).

The use of 'duty solicitors', as recommended in the Gujarat legal aid report, will assure legal assistance to an accused immediately after arrest.

Appropriate provision would also have to be made for an accused person to be represented at the stage of his trial by a competent counsel. (p. 84).

A specific provision should also be inserted in the Cr. P.C. by which the State Governments can extend the scheme of legal aid to any other category of proceedings apart from those mentioned above (p. 85).

Chapter 8—Legal Aid for the Working Class

Legal aid for all workers so certified

It is necessary to have a special panel of lawyers specialised in labour law if the legal service offered is to be qualitatively excellent. (p. 88).

The proposed legislation should contain a blanket provision that any worker, certified as such by any recognised Union or Labour Officer (or his dependent/heir) must be statutorily entitled to free legal aid and advice (p. 89).

Legal aid must also be given to workers irrespective of their wages (p. 89).

Research and report for redress

The State Committee of the Judicare Corporation of India must have a Research and Development Cell and periodical reports must be forwarded to the State and Central Governments in the Labour Department or Ministry for suitable action, and must be forwarded as a part of the annual report to be presented to Parliament and/or the State Legislature (pp. 89-99).

Group legal insurance for workers

The Employees Provident Fund Law should be amended to provide for a collective or group legal insurance for organised working classes to assert their right (pp. 90-91).

Recommendation that without references to means and merits tests, wherever there is injury sustained by an agricultural labourer in the course and within the scope of his employment, the legal aid centre must take up the cause and strive to secure for his compensation, by negotiation and by legal action, (p. 92).

Litigation Fund for workers

A litigation fund in each industry/establishment of over 100 workers may be constituted for workers of the union to conduct their litigation (p. 92).

Pecuniary ceilings should be placed on industrial litigation expenses (p. 93).

Govts to discourage public sector industries from litigation against workers

Appropriate government must make public sector industries models by not filing appeals against arbitral awards, unless it has wider impact on a questions of law or policy; by ensuring that only lawyers who have a correct social perspective and who are engaged in legal aid work are legal advisers to such industries (pp. 93-94).

Industrial worker and Union—legal aid

Legal aid should not be confined to proceedings before tribunals and labour courts but should also be available in the High Courts and the Supreme Court as well as in Civil Courts and Company Courts where workers are involved in litigation with employers or are interested (pp. 95-96).

A worker should be presumed not to have sufficient resources to bear the expense of litigation except where his basic wage or salary is more than Rs. 500 per mensem.

In the case of a union, its financial condition must be taken into consideration in ascertaining whether it is eligible for legal aid. The Commissioner of Labour or Registrar of Trade Unions may be able to certify that in the type of disputes where aid is sought and at the level of the fight in which aid is to be given, the union deserves help or not, a liberal view being taken generally.

In considering the reasonableness of the case of a union or workman applying for legal aid, the Legal Aid Committee should consider whether the applicant has been guilty of any unfair practice in the case under consideration.

If a complaint of unfair labour practices is against management, the Legal Aid Committee or Government should take up the case as a matter of public policy rather than placing responsibility for bringing such an action on a worker or union.

Where an award at the trial level has been in favour of the union or workers, legal assistance should be given to them if management takes an appeal.

However, the normal merits test would apply if the award at trial is against the union or worker and they wish to appeal. (pp. 96-97).

Chapter 9—Legal Aid in Supreme Court

Amendments to Supreme Court Rules

The Supreme Court Rules do not contemplate any direction being given by the Court for the preparation of the records of the case at State expense (p. 99). Provisions to that effect must be made (p. 99).

Legal aid should be extended liberally in the Supreme Court, covering lawyers' services exemption from printing costs and security for costs as well as the order that the loser pay all the costs (p. 99).

For legal aid in the Supreme Court, any applicant earning less than Rs. 5000 per annum will be eligible for complete aid. Persons earning between Rs. 5001 and Rs. 10,000 may be required to make a contribution to the extent of half. (p. 100).

The rate of fees payable to lawyers taking legal aid cases in the Supreme Court is half official rate now permissible to senior lawyers.

In regard to merits test, legal aid should not be withheld if the case has broad social importance and will not otherwise reach the Supreme Court.

There is no need for a merit test to be applied in regard to the appeals to the Supreme Court which are filed only after a judicial scrutiny followed by a leave or certificate.

Justice to the Constitution constrains us to treat the Scheduled Castes and Scheduled Tribes as a particularly handicapped class meriting sensitive help through specialised legal processes.

Annual income of litigants may be the basis. Legal Aid briefs should be exempted from the need for Advocates on record (p. 100). In the practice of the Supreme Court, legally aided briefs must receive special treatment and even if the party loses he should not be mulcted with costs throughout (p. 101).

When an appeal involving a difficult question of law is decided by an appellate court, the amount of costs occasioned thereby should be paid by the State (p. 102).

Raison d'etre for the same (pp 102-103).

Chapter 10—Legal Aid to special Groups : Special Areas

Legal Service Programme for Scheduled Castes & Scheduled Tribes

Advisory Committee

Legal Welfare Officers in the Harijan Welfare Department

An Advisory Committee should be set up to counsel the National Legal Services Authority in the matter of legal aid services to the Scheduled Castes and Tribes (p. 105). For tribal areas and harijan habitations, Legal Welfare Officers attached to the Harijan Welfare Depot at district levels may be appointed (p. 106). Activists with the proper orientation must be appointed to key post in such areas. (p. 107). In all civil cases, legal aid and advice must be given free for harijans and tribals except where they are income tax and/or sales tax assessees.

Amendment of Section 304 Cr. P.C.

In criminal proceedings, apart from lawyer's services, witnesses' batta, cost of getting copies etc. and even travel expenses to the police station or court must also be met. Section 304 Cr. P.C. may be amended to this effect (p. 107).

Suits on behalf of harijans—Sanction provisions to be made inapplicable

Where a legal aid official starts a case on behalf of a harijan it shall not be invalidated for want of sanction e.g. under section 197 Cr. P.C. (p. 108). No order of eviction should be made against a Scheduled Caste or Tribe member

unless after expiry of 6 months of notice of decree to the District Collector or legal aid unit, so that alternative living space may be found for the evictee. Every State should enact legislation in this behalf (p. 108). Legal aid officials moving on behalf of the affected victim must be deemed to be 'aggrieved persons'. (p. 108).

Summary trial for offences re: Untouchability Act

Trials of cases under the Untouchability Act or other notified Act must be by summary procedure. The Evidence Act or the elaborate provisions of the Cr. P. C. should not apply. The law must be suitably amended (p. 108). Setting up of specially sensitive harijan cells in selected areas is worth a trial. (p. 109).

Defence Services & Legal Aid

Declaration by Legal Aid Committee instead of Vakalatnama Succession Certificate, etc., not to be necessary

Legal aid should be given by the State to the members of the services, ex-servicemen as well as their families. (p. 111). The National Legal Services Authority must liaise with the soldier's, Sailor's and Airmen's Board at its various administrative levels so as to ensure free and ready legal services to these military, customers and their dependents. (p. 112). Legal services to such persons must be largely free, regardless of the clients means. (p. 112), and reasonable charges in cases of officers. (p. 113).

When a legal aid centre deputed a lawyer on behalf of a member of the Armed Force or of his family, a declaration by the office of the Centre, as distinguished from a Vakalatnama, must be treated as sufficient by the Courts. (p. 113). In relation to claims made by heirs of a deceased member of the Armed Forces, succession certificate should be dispensed with on production of heirship certificate from the Legal Aid Organisation (p. 113). In criminal proceedings, except in case of grave offences the requirement of surety should be dispensed with when granting bail (p. 113).

Legal Aid for Women, Children and disabled groups

Family, Courts & Children's Courts to be set up—Women not to be sent to police lock up

Family courts and children's courts, separate from civil courts, should be set up, particularly in slum areas and in centres of rural poverty. A woman must necessarily sit on a family court Bench. (p. 118). Women accused of crime should never be sent to police lock-ups (p. 118). Legal aid should be given to children under the Probation of offenders Act, 1958 (p. 118).

Public Defence Counsel in Children's Courts

The Children Acts debar advocates appearing in juvenile courts (p. 119). Through the presence of private legal practitioners is not desirable, such courts should be provided with public defence counsel to defend the children and protect their interests. (p. 119). Free legal aid centres can help under the Children Acts and the suppression of Immoral Traffic Act (p. 119). Regardless of means, special concessions must be provided for women in civil actions for maintenance and divorce. (p. 120).

Exemption to maintenance suits from court-fee

In the Court Fees and Suit Valuation Acts, provisions should be made to exempt actions by women for maintenance etc. from payment of court-fee, if their income does not exceed Rs. 5,000/- per year. (p. 120). Legal aid should also be extended to women claiming custody of her child. (p. 121), and in criminal proceedings. A separate wing for crime against women and children should be established. (pp. 121-122).

Women and Nyaya Panchayats

In the nyaya panchayats, there should obligatorily be woman in the panel. In the recruitment to the judiciary, greater representation for women is necessary (p. 122).

Order 1 and O.32B C.P.C.—Amendment to enable Courts to pass orders safeguarding children's interests

Family disputes affect off-spring. Our procedural laws do not recognise this fact. Under Order 1, C.P.C., a child cannot be a party to a suit or proceedings. Courts can, in such cases, be empowered to issue notices to the local legal aid committee to furnish all relevant papers, so that it shall be a party to the proceeding and safeguard the interests of the child. Order 32 B, C.P.C. may be amended also to provide that the courts shall have power to pass such orders as are deemed just to prevent the moral and material abandonment of the child (p. 123).

Amendment to section 125 Cr. P.C. to provide for destitute child of persons sent to jail

Section 125, Cr. P. C. may be amended to provide that, if a destitute child is left by a person sent to prison, the Court may direct the reception of the child into an institution or a willing family (p. 125). Minors litigating for *bona fide* reasons, through a representative other than his legal guardian must be deemed to be without reasonable resources and legal aid should be given.

Other Minorities and Groups

Visits by Legal Aid Committees to prisons to ensure compliance with Prison Rules

Legal aid movement should champion cause of minorities (p. 125), and test case should be brought in court. (p. 126) without reference to means test. Independent bodies like the Legal Aid Committees may be given powers to visit prisons periodically to ensure the proper enforcement of Prison Rules (p. 127).

Andaman & Nicobar Islands

Shortcomings re: administration of justice in Andaman & Nicobar Islands Suggestions for reforms

Certain areas in the Nicobar group have no civil courts at all-to be remedied at once (p. 128). Virtually all these backward Islands have no lawyers also. The legal aid programme should provide (a) legal advice bureaux manned by lawyers in each development block; (b) duty counsel in each court and (c) legal aid committees on the general pattern for each Island and around every court-centre. (p. 129). A subsidy should be given to any lawyer who agrees to settle down there outside Port Blair professionally. There is a good case for adding to the civil and criminal powers of the nyaya panchayats (p. 130). Fare for travel between any island and Port Blair and between Port Blair and Calcutta should be half the regular fare if the trip is certified by a judicial officer as necessary for filing a legal proceeding in one of the higher courts (p. 130). It is good to organise research as part of legal aid. A Judicial Commissioner's Court at Port Blair is worth serious examination (p. 131). The Separation of the Executive and the Judiciary must also be carried out (p. 131).

Laccadive & Minicoy Islands

There are no lawyers here. (p. 132). Advice Bureau of lawyers should be set up (p. 133). A system of nyaya Panchayats in every island will be a forward step by way of legal aid to the poor. (p. 133). A scheme of legal aid, administered by the judiciary is likely to carry prestige and credibility. (p. 133).

Free legal advice to all but the well to do, to women regardless of means, service of counsel in court to every one who in the view of the court is weak and unable to engage one, should be given (p. 134). The concession of 25% now granted in the matter of court fees in the Scheduled area and which expires in 1973 must be continued (p. 134). The Sub-Judge at Kavaratti may be invested with the powers of a sessions Judge which would save enormous sums of money for accused and the prosecution who have now to go to Calicut (p. 134). The Sessions Judge may also travel to the Island to hold trials (p. 135). Power of District Judge under section 24, C.P.C., to transfer cases from one Munsif to another can also be made over to the Sub-Judge at Kavaratti by a Notification by the State Government (p. 135).

Law Commission must study the customs in the Islands and the abodescent property ownership system in the light of modern property law and family law (p. 135). Revision or simplification of the procedural laws may also be necessary (p. 135). A typist-cum-copyist may also be appointed for each court and carbon copies of judgements by certified as true copies. (p. 136).

Chapter 11—Panchayati Justice & Legal Aid

Role of Nyaya Panchayats—Report of Study Team of 1962

We must create mini-courts which save the poor from litigiousness (p. 137)—a radically different non-judicialised forum for conciliation and adjudication (p. 137). (14th Report of Law Commission and the Report of the Study Team on Naya Panchayats quoted from, as also their recommendations). (pp. 138-141).

Recommendations

Recommendations—pp. 140-145.

Subject to the modifications suggested in our recommendations, the Draft Bill appended to the Report of the Study Team of 1962 should be enacted (p. 140). It may first be implemented in the Union Territories so as to make the idea credible to States.

The civil jurisdiction of Naya Panchayats must be extended to cover all litigation where the subject matter is Rs. 1000/- or less. (p. 142).

Suits upto the value of Rs. 2000 may be heard with the written consent of the parties (p. 142).

On the criminal side, the court must have the powers of Third Class Magistrate as well as jurisdiction to hear maintenance cases (p. 144).

Execution of decrees, orders and sentences must be made by the panchayats board itself except where immovable property on civil side and imprisonment on crime side involved. (p. 144).

Lawyers will not ordinarily be allowed to appear except before Registrar of Panchayats and verdicts will be final except for a revision. (p. 144).

The draft bill drawn by the Study Team under the Chairmanship of Shri G. R. Rajgopal may be brought into force in the light of modifications we suggested.

Chapter 12—Miscellaneous Matters

Special Tribunals—Representation by lawyers may be permitted

In departmental enquiries against Govt. servants, the accused officer may with the permission of the disciplinary authority avail himself of the assistance of a legal aid practitioner (p. 148).

Provisions barring representation by legal practitioners before bodies or Tribunals other than courts must be removed e.g. in Rent Control, Land Reform litigation etc. (p. 147).

Refund of Court fee in appeals

Some Indian statutes provide for refund of court fee to a successful party in certain cases e.g. section 13 of the Court Fees Act, 1870. If an uncertain legal position calls for a determination by a higher court in appeal, in all such cases, refund should be made (p. 151). Special Leave matters before Supreme Court would be proper instances for refunds (p. 152). Initially it may be made applicable to persons whose income falls below Rs. 5,000/- per year.

Fund to compensate for losses sustained by counsel's dishonesty

A legal Fund may be set up to compensate for loss sustained by a client as a result of his Counsel's dishonesty (pp. 153-154).

Suitors fund may be constituted to provide for the payment of costs of both the parties out of such fund where a substantial question of law is involved in the matter or matters of public interest. (p. 151).

Eligibility for such reimbursement may be certified by the appropriate counsel and may consist of total compensation to those litigants earning less than Rs. 5000 per year and 1/3 compensation to those earning between Rs. 5000/- and Rs. 10,000/- (p. 153).

Chapter 13—Legal Aid & Law Schools

Law Students—to appear before Courts on behalf of indigent clients

Law School clinics should be a visible and effective instrument for community education and a wide variety of far reaching preventive legal service programmes. (p. 157).

Statutory adoption of student practice Rules (as in U. S.) enabling law students to appear in court on behalf of indigent clients would be a good step (p. 159). Similar rules obtain in Canada, Ceylon, Costa Rica etc. (pp. 160-161). Advocates Act to be amended suitably. Draft section 33-A indicated (p. 164).

A monthly stipend of Rs. 250/- during the period and a possibility being admitted to the collegium of legal aid lawyers would give a student initiative and confidence for starting professional career in legal aid work. (p. 163).

Compulsory public service as part of law school curricula

Whether a 6-months period of compulsory public service in a rural or tribal legal aid agency towards the end of the 3-year academic instruction can be prescribed needs to be examined (p. 163).

Chapter 14—Research, Law Reform and Evaluation

Research and Law Reforms functions should be built into the National Scheme for legal aid and a suitable apparatus should be provided to undertake and promote research to examine law reform proposals, to identify the real problems of poor and suggest remedies and to evaluate the legal aid programmes and institutions (p. 165).

There shall be a Research Director at the National level dealing with (i) Statistics (ii) Social and economic problems of the indigent (iii) Litigation Research including test case litigation (iv) Legislative Research and (v) Performance Audit and Evaluation (p. 168). Likewise in the State level.

The consultative councils comprising of legislators, civil servants, men and women in public life, nominees from Bar Council of India, Social Welfare Board, Planning Commission, Commissioner for Scheduled Castes and Tribes etc., should be created at the National, State and District levels to keep the legal service programme in touch with different strata of society. (p. 170).

Chapter 15—Communication and Training

An effective communication programme by means of radios, television, and films as to the availability and location of legal services and to make people aware of their rights under law, is the first imperative. (p. 172).

An eight week intensive training course should be given for full-time legal aid lawyers and para-professionals. Penal lawyers must receive two weeks of training. (p. 174). There should also be a programme of ex-service training and refresher courses in order to draw on the required experience of legal aid workers (p. 174).

A National Training Institute for legal aid may be established to co-ordinate and refine the work.

Chapter 16—Legal Aid and the Legal Profession

R. 39 B, framed under the Advocates Act—not sound—Law necessary to impose on obligation

Duty to render legal aid imposed on every Advocate. No machinery to enforce the obligation. Obligation must be cast by a statute on all lawyers to do a specified minimum of legal aid work (p. 176).

[Conditions that may be contained in such law are stated at p. 177].

Failure to accept legal aid brief except for proper and justifiable reasons should be regarded as professional misconduct. (p. 177).

The Legal Aid Committee would assign cases to counsel, taking into account the preferences of the client into consideration. (p. 178).

Profession of law vis-a-vis Legal aid

A public sector in the practice of law which may compete with and provide a reasonably priced alternative to the private legal services, may be created. (p. 185). Central and State Governments and public sector Undertakings pay

fanciful fees to lawyers to represent them. (p. 186) which inflates the standard of fees. They should decide to pay only reasonable fees, to be fixed by the National Legal Services Authority. Company Law Board should issue directives to Private & Public Limited Companies to entrust their work only to State-provided lawyers as far as possible or private lawyers on fees fixed by the aforesaid Authority. Sanction should also be provided that companies violating the directive shall not be permitted to debit the legal expenses incurred by them in the accounts of the company but shall be borne by the Directors (p. 186).

Companies Act—Amendment to bar reimbursement of costs to Directors by firm in certain cases

When Directors of a Company challenge investigations under sections 235 or 237 of the Companies Act, the costs are reimbursed to them from out of the Company's funds. Directors, therefore, engage the best counsels at fanciful fees. Companies Act should be amended to provide that costs in such cases shall not be reimbursed, unless the Court otherwise orders. (p. 187).

Payments to Law Officers of the Govt's to be limited

The State and its subsidiary agencies should not pay to any of its law officers (the A. Gs.) fees of an undue dimension. The maximum limit of their fees should be fixed (pp. 188-189).

Lawyer's Service Co-operatives—Incentives that may be given

Lawyers' Service Co-operatives (with bye-laws approved by the National Authority) to provide legal aid may be encouraged (p. 189). If they work well, some part of the Govt. work may be handed over to them (p. 189) and rewards may be given in the form of tax exemption etc. to members of such co-operatives, as also free office premises, preference in judicial appointments and the like. (p. 190).

Chapter 17—Role of Voluntary Agencies

Voluntary Agencies should be closely associated with legal aid organisations and they should be represented at all levels including National Legal Service Authority. (p. 198).

Associations with a proven records of services in this field can be given subventions or grants for legal aid subject to the usual financial safeguards. (p. 198).

Where an organisation renders direct legal aid, it can claim associate status and have it conferred by the National Scheme. (p. 198).

Chapter 18—Means Test in Legal Aid

Amendment of *in forma pauperis* provisions of Order 33 C.P.C.

The assets limits under Order 33, C.P.C. should be raised to Rs. 1000/- and, in computing the cost of litigation an amount equal to the court-fee be added to represent the cost of witnesses, printing etc. (p. 202).

As a general matter, completely subsidised legal aid should be available to any family unit consisting of husband, wife and children whose gross income is Rs. 2400/- per year or less. (p. 199).

Family units whose gross income is more than Rs. 5000/- per year will not be eligible for any assistance. (p. 202).

The eligibility criteria would apply to civil and criminal litigation and the following are automatically eligible for legal aid i.e. Scheduled Castes and Tribes, women and children bringing action under section 488 Cr. P.C., defence personnel, Indian Embassy Staff abroad earning less than Rs. 5000/- per annum, lunatics etc. (p. 204).

Private Corporations, Co-operatives and Charitable groups are also eligible for legal aid where their objects are of social welfare type. (p. 205).

Means test may be deferred in urgent type of cases and the applicant may sign a bond promising to make good the financial liability at a later date. (p. 205).

Any false declaration of the income and other particulars as to the financial means of the applicant would be an offence punishable with fine upto Rs. 250/- (p. 206).

Chapter 19—Organisation of Legal Aid

Administrative set-up—Preferably Specialised Agency—A Statutory Organisation

A separate Govt. Deptt.—not advisable, since the individual has to be assisted against Govt. Depts., as well (p. 208), nor to be entrusted to the Judiciary (p. 208). A specialised Agency would be best. A statutory Organisation should be created for the purpose. (p. 210).

[Composition of National & State Bodies discussed at p. 211. See also Tables at pp. 22-227.]

Necessary legislation may be enacted by Parliament for the establishment of a Statutory Corporation called National Legal Services Authority. (p. 210).

The Member-Secretary of the Local Committee shall be the Chief Executive Officer who will give legal advice, draft simple documents, receive applications for legal aid and above all appear in courts in some cases (p. 212). He shall be paid a fixed salary.

Where a large section of weaker strata of the Community is concentrated far from the Headquarters of Legal Aid Committee, a legal Extension Officer may be posted at the Block Headquarters to give legal advice to them. (p. 213).

Above the Local Committee, there shall be a District Legal Aid Committee headed by a full-time paid Secretary to supervise and guide the local committee and dispose of appeals against the orders of local Committee refusing aid. (p. 213).

Apart from the Counsels on the Panel a full time Public Counsel for the indigent may be appointed to do all legally aided cases. (p. 216).

The National Legal Services Authority would be responsible for laying down the policy, administer the scheme of legal aid and for making grants-in-aid to the State Legal Aid Boards. (p. 217).

Provision may be made by the National Authority and State Boards for purposes of establishment of funds, and exemption from Income Tax and Wealth Tax (p. 219).

Preference will be given to those who have worked under the legal aid scheme in making appointments to the Judicial Service of the State or even by reserving a certain percentage of appointments to them (p. 220).

Chapter 20—Financial Aspects of Legal Aid

Financial Estimates

The finances estimates to be required for implementing the project are roughly estimated at pp. 229-230.

Source of Funds

Not by imposing special surcharges on Court-fees etc., the provision of legal aid is one of the normal functions of the State and funds for this purpose would have to be provided in the same manner as for any other public purpose (p. 233). Burden can be alleviated by charging fees for legal advice and diverting costs awarded to the Fund. Private donations may be encouraged by making them exempt from income-tax (p. 234).

According to the data collected by Tamil Nadu Committee, the number of cases are not many as to throw a considerable burden upon the financial resources of the State. (p. 231).

The average cost of each Secretary for a Local Committee would be Rs. 7860/- per annum and for 3026 Taluks, the cost would be Rs. 238 lakhs per annum. Likewise, the cost of each Secretary for District Committee would be Rs. 9500/- and for 356 Districts, Rs. 34 lakhs. (p. 229).

The total expenditure which is likely to be incurred in covering the entire country with a net work of legal centres and committees would come to Rs. 3.5 crores.

Once it is recognised that the provision of legal aid is one of normal function of State, the funds would have to be provided in the same manner as for any other public purpose. (p. 233).

It may be possible to stimulate donations from private sources for legal aid by making such deduction charitable and hence exempt from Income Tax. (p. 234).

Chapter 21—A Phased Programme

Action required

Enactment of comprehensive legislation to cover all aspects would take time (p. 235). Executive action can be effected more speedily. Some of the recommendations can be implemented straightway by executive orders of State Govts. and Union Territories. Some require amendment of Schedule of C.P.C. to be done by High Courts with the approval of State Governments/Central Government, as the case be. Some call for amendment of C.P.C. and Cr. P.C. (p. 237).

Stage by stage implementation of a project particularly an elaborate scheme like this would have certain inherent advantages of its own and postponement of scheme till last detail is ready for execution is not wise. (p. 235).

The establishment of National Legal Services Authority and State Legal Boards requires comprehensive Parliamentary legislation, but the frame work of local and district Committees and the State Boards can be established by executive orders. (p. 237).

Executive orders should provide for legal aid to accused persons in sessions cases, respondents in appeals against acquittals or in revision petitions for enhancement of sentence, provision for the assignment of counsel to all persons who are authorised under the existing law to sue and appeal as paupers and petitioners in maintenance cases. (p. 238).

A comprehensive Legal Aid and Advice Act should be passed by Parliament and necessary steps for this purpose might be taken at an early date. (p. 239).

Legislation immediately feasible

Legal Aid Provisions in the Cr. P.C. Bill pending before Lok Sabha—Necessary amendments as suggested by us may be moved. (p. 238)

Advocates (Amendment) Bill—Pending in Lok Sabha—may be amended further to provide for an obligation on Advocates to do a certain number of legally aided cases and for enabling law students appear before courts. (p. 238).

Executive orders to be made immediately

To provide for legal aid to accused to sessions cases, respondents in appeals against acquittals, and to petitioners in maintenance cases. Central Govt. should take immediate action re: Union Territories. (p. 238)

To assign counsel to all persons who are authorised under the existing law to sue and appeal as paupers and to pauper plaintiffs who are respondents in appeals. (p. 238).

To enable an individual to defend as pauper—an amendment to the C.P.C. by the High Courts would be sufficient. In order to expedite matters a suitable amendment to the Schedule to the C.P.C. may be drafted by the Central Government and circulated to State Governments for adoption by the High Courts. (p. 239).

Comprehensive legislation on Legal Aid

To be passed by Parliament—establishing the National Legal Services Authority and the State Legal Aid Boards and providing for their composition and powers. (p. 239).

The law may come into force on dates to be specified by the Central Government by notification—may be different dates for different provisions and for different States—but not later than 2 years from date of enactment. (p. 240).

Chapter 22—Conclusion

Special Cell for preparatory work

Since a lot of preparatory work is required, the task of implementing the proposals should be entrusted to a Special Cell in charge of an officer with sufficient enthusiasm and vigour.

The urgency of translating our recommendations in a phased way into a reality is to have legal order from lawlessness and to achieve social transformation. (p. 242).

Price : (Inland) Rs. 4:30 (Foreign) £ 0:51 or \$ 1 55 Cents.