Exordium:

The prime obligation of the State is to provide free legal aid to the poor, indigent and marginalized and it is their right guaranteed under the Constitution of India to demand and avail.

The philosophy of legal aid as an inalienable element of fairness is evident from *Mr. Justice Brennan’s* (Legal Aid and Legal Education, p.94) well known words:
"Nothing rankless more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness. (M.H.Hoskot v. State of Maharashtra, AIR 1978 SC 1548 : (1979) 1 SCR 192 : (1978) 3 SCC 544 : 1978 UJ 847 : 1978 Cr LJ 1678 : 1978 CrLR 362 : 1978 SCC (Cr) 468)

As it is understood by everybody, free legal services to the poor and needy is an essential element of any reasonable fair and just procedure. In Gideon v. Wainwright [(1963) 372 US 335 : 9 L ed 2d 799, quoted in Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (1373) : (1979) 3 SCR}
532 : (1980) 1 SCC 98 : 1979 Cr LJ 1045 : 1980 SCC (Cr) 40], Black, J. has observed:

"Not only these precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person held 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 everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, 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 State and national constitutions and laws have laid great emphasis on the procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him."

In a participatory democracy, it is essential that citizens have faith in their institution. A judiciary that is seen as fair and independent is an important component in sustaining their trust and confidence.

An impartial independent judiciary is the guardian of individual rights in a democratic society. In order for citizens to have faith in their court system, all people must have access to the courts when necessary.
The Courts in criminal and civil functioning in our Nation must see, how the legal profession contributes to making 'equal justice for all' a reality. Citizens agree to limitation on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy, and that has authority over all the parties to solve the disputes peacefully.

It is also the responsibility of the State to ensure that fair and impartial justice is made available at the door steps of the poor and economically weaker sections irrespective of their caste, creed, religion, geographical position at free of cost. A fundamental value of Indian system of justice is that the stability of our society depends upon the ability of the people to readily obtain access to the courts, because the court system is the mechanism recognized and accepted by all to peacefully resolve disputes. Denying access to the courts forces dispute.
resolution into other arenas and results in vigilantism and violence.

As envisaged under Article 15 of the Constitution of India, the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Based on this cardinal principle, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability.

Article 14 of the Constitution of India provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Human equality at the spiritual level has been preached and practiced in our country since ages. This is the meaning of, and is derived from, the
Vedantic teaching of the same divine *Atman* in all beings-integral, inalienable, and full, and the *samatvam* and the *sama-darsitvam*, equality and sameness of vision, flowing from it.

Equality has been and is the single greatest craving of all human beings at all points of time. It has inspired many a great thinker and philosopher. All religious and political schools of thought swear by it, including the Hindu religious thought, if one looks to it ignoring the later crudities and distortions.

However, to provide and avail the free legal assistance certain difficulties and challenges are being experienced in our nation. The issues with regard to the provisions of free legal assistance to the needy people getting increased day-by-day and the challenges have also been taking it's growth rapidly. Under these circumstances, the National Legal Services Authority, being the Strewed,
with the strength of the State Legal Services Authorities, being it's fore front warriors, is taking relentless effort to find out solutions with the active assistance of the Government both Central and State to tackle the situation.

Let us analyse the difficulties (issues) and challenges in providing free legal assistance to the poor and marginalized people and also reach out the solutions.

Legal Aid - A Historical Background:

In the early years 1876 – 1965, Civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the Legal Aid Society of New York. The legal aid movement caught on in urban areas. By 1965 virtually every major city had some kind of program. One hundred fifty-seven organizations had employed over 400 full time lawyers with an aggregate budget of nearly $4.5 million. There was no national program.
(Ref: The early history of legal services is described in EARL. JOHNSON JR., JUSTICE AND REFORM: The Formative years of the American Legal Services Program (1974), and John A. Dooley & Alan W. Houseman, Legal Services History ch.1 (Nov 1985) (unpublished manuscript, on file with National Center on Poverty Law).

Reginald Heber Smith’s 1919 book, Justice and the Poor, promoted the concept of free legal assistance for the poor. Smith challenged the legal profession to consider it an obligation to see that justice was accessible to all, without regard to ability to pay. “Without equal access to the law,” he wrote, “the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.”

National, state, and local bar associations responded to Smith’s call to arms. The American Bar Association established the Standing Committee on
Legal Aid and Indigent Defendants; state and local bars sponsored legal aid programs. However, these initiatives made only modest headway. Legal aid generally gave perfunctory service to a high volume of clients. Going to court was rare. Appeals were nonexistent. Administrative representation, lobbying and community legal education were not contemplated. Legal aid had little on those it served and no effect on the client population as a whole. Much of what we know today as welfare law, housing law, consumer law, or health law did not exist.

England had entered a new era with the 'Legal Aid and Advice Act, 1949'. The procedure known as *in forma pauperis*, which had been introduced in England in 1495 by Victorian times had been largely superseded and somewhat enlarged by a poor person’s procedure under rules of court, but it was confined to the extremely poor, had no adequate administrative basis, was dependent on the charity of private practitioners, and was restrictively operated by the courts.
It covered only litigation in the higher courts. In criminal cases a traditional “dock brief” system provided representation for prisoners in the dock who could produce a fee of one guinea (1.05 pounds), but no opportunity was afforded for a proper defense to be prepared.

A start, however, had already been made in developing a criminal legal aid system under statute. This was eventually completed in 1933, but was, again, most restrictively operated by the judges. Poor man’s lawyer centers had begun to appear in London and a few large cities, in which private practitioners attended evening sessions to give legal advice. A few centers had been established by charitable foundations in which lawyers were employed to give advice and a somewhat more extended legal service. In addition, many solicitors undertook a certain amount of charitable work in their own offices for the poor who dared to consult them.
But, the system established in 1949 was something entirely new in the long history of the law. This becomes apparent when its main principles are stated:

1. Legal aid was no longer to be a matter of charity but a national responsibility funded by the state.

2. It was to form an integral part of the administration of justice and, accordingly, be a matter of civic right.

3. Those granted legal aid were to be required to pay no more towards the cost than they could be reasonably expected to provide out of their own resources, and if they could afford nothing, nothing would be required.

4. The services provided were to be the same as were available to the paying client with sufficient means to meet the cost, though not so ample as to make it unnecessary for him to consider his own pocket, and the person assisted was to be entitled to consult the
solicitor of his own choice.

5. No restrictions or controls were to be imposed save as might be necessary to avoid abuse of the facilities, whether by the client or the legal adviser.

6. The lawyers providing the services were to be properly remunerated.

7. The new legal aid system was to embody constitutional protections to ensure both the professional independence of the lawyers in their service of their assisted clients and of the body administering the system. To further this, the administration was to be committed to the Law Society, acting in conjunction with the General Council of the Bar.

The Legal Aid and Advice Act 1949 had been introduced by the Labour
Government that had ousted the *Churchill administration* after the war. The Labour administration was pursuing a policy of nationalization and of building the first welfare state. This legal aid system could be regarded as a first step towards the nationalization of the English legal profession and the erosion of its independence, but it wasn’t. The system had been devised by the Law Society itself in the early days of the war, and it had been recommended by the *Rushcliffe committee* set up by the *Churchill Government* in 1944. The constitution of that committee had been of the highest calibre and it was entirely non-political. The bill had been welcomed in both houses of Parliament and was enthusiastically supported by the Conservative opposition. Lawyers and laymen alike were anxious to see it implemented.

While writing Foreword in 1919, to Reginald Heber Smith’s, "*Justice and the Poor*“, Elihu Root has observed that;

"Legal aid work essentially is a state of the individual"
lay mind, an individual professional point of view, and
the answer of the organized bar to a public demand
for a means for implementing some of the basic legal
principles undergirding the American way of life. This
activity is carried on generally in a material framework
of law office, bricks, mortar, desks, filing cabinets,
and books. But at the center of the concept there are
always a client asking help and a lawyer giving it.
Functionally always a client asking help and a lawyer
giving it. Functionally there is a meeting of their
minds, an exchange of ideas, the transfer of a
professional commodity."

John S. Broadway, Professor of Law, Duke University; Director Legal
Aid Clinic, Duke University, has stated in his Article – Legal Aid – Its Concept,
Organization And Importance, that;

“Legal aid works is not only the client’s state of mind.
It is also a point of view. The statutes in the various
jurisdictions which define the phrase “practice of law” award to the members of the bar what amounts to a monopoly. The privileges of this monopoly, of course are fully balanced by the obligations. One of these obligations, recognizing that laws and principles of justice do not implement themselves, devolves upon the members of the bar a large portion of the duty to see that justice according to law is actually administered to each of our fellow citizens, if, when and as he needs it.”

Pollock & Maitland express it in these words. “The old procedure required of a litigant that he could appear before the court in his own person and conduct his own cause in his own words.” (Pollock Maitland, History of English Law 211 (2nd ed. 1899). To the same general effect, see Cohen, History of the English Bar 5 (1929).

With reference to this, Professor John S. Broadway has stated in his
article;

“The need of the low income client for legal aid is not new. We are told that in an early stage of the development of law in a comparatively primitive world it was customary not to allow the individual litigant a lawyer. The right to be represented by counsel is an improvement rather than a basic concept in Anglo American procedure. Even today the right to appear in propria persona survives, though now it seems necessary to save it from extinction.

Lawyers did not spring full blown into the judicial arena. They were called into being little by little as the needs of clients in a society gradually acquiring civilization also became more complex. Only specialized services could meet the need. Lawyers have had to win the good opinion of the public. This condition may continue.”

Legal Aid Work in the United States:

According to Maguire, who has written the early history of the New York Legal Aid Society, The Lance of Justice (1928);
The first legal aid organization of which we have record opened its doors in New York City in 1876. The motivating factor was a recognized need for the service. Initially the demand, perhaps inarticulate, came from a group of immigrants. Only later was the service made available to all applicants who could not pay a fee. The basic concept may not have been American. Some early publications suggest that there were earlier efforts in this direction in Germany and the Scandinavian countries.

Since about 1930 there had been developing another phase of the organized legal aid movement. Gradually it has dawned upon us that the poor client in the rural country who for some reason does not have the aid of a lawyer can suffer as much injustice in a given case and be just as much disturbed as can his neighbour in the city. It was also clear that the same sort of obstacles which keep the latter from applying to the metropolitan private law office operate more or less effectively to deter the country man's visit to the lawyer in the rural
county seat. A new goal, organized service in every county in the United States, appropriate to local needs, gradually took shape. The question is what can we do about it.

**Equal Justice in Practice**

The idea of mere access to the courts in theoretical or legal sense is not enough; rather, it is the results that flow from the decisions made from the courts that give it meaning. For example, the value of 'access' is evident when the courts decide that no one, especially those in positions of power, is above the law, or when access requires the right to counsel in cases where one’s liberty is in jeopardy.

The practical application of the fundamental right to access the courts under the U.S. Constitution has been put to the test throughout the nation's history. It has been claimed and challenged by many. Early on, the Supreme Court established its authority over all disputes. In 1807, President Thomas
Jefferson claimed executive privilege in a case against Aaron Burr, whom Jefferson accused of treason. In his defense, Burr asked the Court to issue a subpoena compelling Jefferson to provide his private letters concerning Burr. Jefferson refused. Chief Justice John Marshall denied the president's argument and ruled that Jefferson's claim that disclosure of the documents would imperil public safety was a matter for the Court to judge, not the president.

The issue of presidential immunity was heard again almost 200 years later. In 1974, a special prosecutor subpoenaed White House tape recordings in an effort to determine if the president had been involved in a political scandal known as Watergate. This time, the American President Richard Nixon, as he then was, sought to have the subpoena quashed on the grounds of executive privilege. The Court ruled eight to zero that the tapes should be released, because the Court determined that no person, not even the president of the United States, is completely above the law. In the opinion that followed, Chief
Justice Warren Burger wrote, 'Neither the doctrine of separation of powers, nor the need of confidentiality of high level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.'

**The Legal Profession's Commitment:**

The President of American Bar Association writes as under:

The American Constitution establishes the fundamental right of access to the judicial system. The courts, as guardians of every person's individual rights, have a special responsibility to protect and enforce the right of equal access to the judicial system. If the courts have this special responsibility but no judicial police force to enforce their rulings, why is there general compliance? Two important reasons stand out:

1. public trust and confidence in the system overall, and
2. a strong commitment by the organized bar to work
with the judiciary to establish and demand compliance
of judicial decisions.

As president of the largest bar group in the United States, I consider it important to discuss how this second point intersects with the judiciary. If the judiciary is the guardian of the rights of the people, the organized bar and its lawyers are the foot soldiers. The legal profession and the practicing bar bear a large share of the burden. With this in mind, the American Bar Association (ABA) has established 11 goals to be pursued in its quest of 'Defending Liberty and Pursuing Justice.' The second of these goals is 'To promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition.'

It was in defense of this goal that the ABA submitted its amicus brief on
behalf of disabled Americans in *Tennessee v. Lane*. When the Watergate scandal broke, *Chesterfield Smith*, then president of the ABA, issued a press release that stated 'no man is above the law' a quote that later appeared in all major U.S. Newspapers. Subsequently, the ABA House of Delegates-composed of 474 legal representatives from all 50 states and the U.S. territories-voted unanimously against granting legal immunity to President Nixon.

During the reign of Henry II, in the Twelfth Century, the concepts of 'access to justice' and 'rule of law' took shape in England when the King agreed for establishment of a system of writs that would enable litigants of all classes to avail themselves of the King's justice. Soon, the history revealed that with the abuses of King's Justice by King John, the rebellion in 1215 was broken out, which led to carving of *Magna Carta*, which became the foundation for the British constitutionalism.
Legal Aid being the primordial right of every citizen, reliance could be placed on the very tenets of the *Magna Carta* which was formulated well over seven centuries ago, where the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Charter as enshrined hereunder:

"*To no one will we sell, to no one will we deny or delay right or justice.*"

The modern concept of justice is not the one that was propounded by the Natural Law Schools theorists, nor was it crystallized from the aphorisms of the Positivists, but the modern notion was a milieu of sociological jurisprudence with a tinge of critical legal thought. With specific reference to India, this means that access to justice was not about bringing the culprits to the books, but it extended far beyond by imposing a positive duty to the State to restore it all that was due.
In Britain, the history of the organized efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advise are provided the same by the State.

The earliest Legal Aid movement appears to be of the year 1851 when an enactment was introduced in France for providing legal assistance to the indigent.

Evolution of Legal Aid Movement in India:

Before we endeavor for the search of the evolution of Legal Aid
Movement in India, it may be more relevant to refer the decision of U.S. Supreme Court in *Raymond Hamil*, 32 L ed. 2d. 530 (535), which has extended the processual facet of poverty jurisprudence, *Douglas*, has explicated as under:

"The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the
danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect."

The widespread insistence on free legal assistance, where liberty is in jeopardy, is obvious from the Universal Declaration of Human Rights:

'Article 8: Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted by the Constitution or by law.'

Article 14 (3) of the International Covenant on Civil and Political Rights 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 interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."
Free Legal Aid:

Free legal aid to the poor is an essential element of fair trial procedure for securing justice to all on the basis of equal opportunity for defence. By the mid-twentieth century the above principle was realised all over the world. In England, it was started by the Legal Aid Act, 1949, in civil cases and it extended to criminal cases in 1967. The Courts in Britain have established the concept of legal aid that, if the party has cause of action but has no money to pay for the fee of lawyers, he is entitled to get legal assistance from the Government Exchequer. In practice it is made available almost automatically when the accused shows that he has no means to defend his case.

Ancient India was not aware of the concept of equal justice. It is revealed from the history that the King was empowered by Manusmriti to administer justice without minding his wimps emphasizing on the religion. Manusmriti says that the sanctity of administration of justice in social, economic and political
aspects has to be preserved and developed.

In ancient period, Hindus were administered by Hindu Law in deciding civil and religious of which the parties were Hindus.

In the medieval period, the King was required to administer Islamic Law in deciding all cases irrespective of religion of the parties to the suit. It was Jahangir, who took the credit for dispensing even-handed justice to all irrespective of birth, rank of the official position. In fact, he used to say that God forbid to favour nobles or even princes in that matter of dispensation of justice. Because of his fair hearing the justice was known as 'Jahangiri Nyaya.

In the modern period, as stated in the fore-going paragraphs, the earliest Legal Aid movement appears to have been emerged in the year 1851, where some enactment was introduced in France for providing legal assistance to the
indigent.

In the year 1944, Lord Chancellor Viscount Simon had appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to ensure that the persons in need of legal advice are provided the same by the State. The Committee had recommended four-tier machinery i.e., (i) at Taluka (tehsil) level, (ii) at district level, (iii) at greater Bombay level, and (iv) at State level] for giving legal aid although the same could not be implemented due to certain reasons. In the same year i.e., in 1944, another Committee on 'Legal Aid and Legal Advice' was appointed under the Chairmanship of Justice Arthur Trevor Harries, the then Chief Justice of Calcutta High Court. This
Committee recommended giving legal assistance to the poor.

It is revealed from the available sources of information that from the year 1952, the Government of India had also started addressing to the question of legal aid for the poor in various Conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Government for legal aid schemes. In different States, legal aid sachems were floated through Legal Aid Boards, Societies and Law Departments.

In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Mr. Justice P. N. Bhagwati. This committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.
The introduction of *Lok Adalats* added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum of the litigants to conciliatory settlement of their disputes. The Committee so appointed has also evolved a model scheme for legal aid programmes. Subsequently, on a review of the working of the Committee, certain deficiencies were noticed and it was thought to constitute statutory legal services authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes.

In 1987, *Legal Services Authorities Act* was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th November, 1995 after certain amendments were introduced therein by the Amendment Act, 1994. *Mr. Justice R.N. Mishra*, the then Chief Justice of India, had played a key role in the enforcement of the Act.
Although the free legal aid was recognized by the Court as a fundamental right under Article 21, the scope and ambit of the right was not made clear. This left out was filled in *Sunil Batra vs. Delhi Administration, AIR 1978*. SC 1675 : (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1978 Cr LJ. 1741 : 1979 SCC (Cr) 155. It was held that the legal aid shall be available to the prisoner in two situations:

i. to seek justice from prison authorities, and

ii. to challenge the decision of such authorities in the Court.

Thus, the requirement of legal aid was brought about in not only the judicial proceeding, but also in the proceedings before the prison authorities which were an administrative proceeding.
Concept of Legal Aid:

The expression “legal aid” has not been defined anywhere in Legal Services Authorities Act, 1987. However it is generally defined that;

“Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.”

A number of delivery models for legal aid have emerged, including duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid. Legal aid is essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention on Human Rights regarding criminal law cases. Especially for citizens who do not have sufficient financial means, it will increase the possibility,
within court proceedings, of being assisted by legal professionals for free (or at a lower cost) or of receiving financial aid.

The meaning of the expression “Legal Aid” has also been defined in Government of Gujarat, Report of the Legal Aid Committee, 1971 as under;

“Legal Aid, in its common sense, conveys the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, bestowed upon them by the laws. In the words of Justice P.N.Bhagwati, “Legal Aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law.” In such an arrangement, Justice Bhagwati emphatically observes, “the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from
It has also been defined in *Government of India, Report of the Expert Committee on Legal Aid – 'Processual justice to the People', May 1973* as under;

"The spiritual essence of a legal aid movement consists in inviting 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 *Encyclopædia Britannica* defines "Legal Aid" as phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters i.e., the professional legal assistance given,
either free or for a nominal sum, to indigent persons in need of such help.

Legal Aid is the method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. Thus, the provisions of legal aid to the poor are based on humanitarian considerations and the main aim of these provisions is to help the povert-stricken people who are socially and economically backward.

_Lord Denning_ while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said:

_“The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers’ fees and expenses are paid for by the state: and not by the party concerned.”_

In _Bihar Legal Support Society vs. The Chief Justice of India_
P. N. Bhagwati, Chief Justice of India (as he then was) has observed that;

"In fact, this Court has always regarded the poor and the disfavoured as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the fights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their fights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice. The majority of the people of our country are subjected to this denial of access to justice and, overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for
perpetuation of domination over large masses of human beings. This court has always, therefore, regarded it as its duty to come to the rescue of these deprived and vulnerable sections of Indian humanity in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation."

**Concept of Legal Services:**

The phrase "Legal Services" has been defined under Section 2(c) of the Legal Services Authorities Act, 1987 as under;

"Legal Service includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of advice on any legal matter."
The object being to provide free legal aid service which is also the one enshrined under Article 39-A of the Constitution of India."

Literally, legal service means help or assistance or free service in the field of law. The apex court has categorically stated in it’s various decisions that legal aid is not a charity but it is a duty of a welfare state.

The provisions of Section 2(1)(c) encompasses the following three ingredients;

1) Legal services are provided in conducting legal proceedings;

2) Legal proceeding may be before courts or tribunals or any other authority; and
3) Legal service includes legal advice also.

**Equal Justice and Free Legal Aid:**

Whenever the phraseology namely *equal justice and free legal aid* comes to the mind of the Court, in sofar as our Indian system of Administration of Justice is concerned Article 39-A of Constitution of India will take it's magnitude.

*Article 39-A* has been inserted by the constitution (Forty-second Amendment) Act, 1976, Section 8 (w.e.f. 03.01.1977). *Article 39-A* enacts as under:

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

The directive principles envisaged under Article 39-A is that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This Article emphasizes that free legal service is an inalienable element of 'reasonable fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

The right to legal aid was examined by the Supreme Court in detail in *Hussainara Khaton vs. State of Bihar*, *AIR 1979 SC 1360*
(1374) : 1979 3 SCR 169 : (1980) 1 SCC 81 : 1980 SCC (Cr 23 : 1979 Cr.LJ 1036 : 1979 CAR 197, where prisoners were kept in Bihar jails without a trial for a longer period than that to which they would have been sentenced, if convicted. P.N. Bhagwati, J., in this case opined that a procedure which did not make available the legal services to an accused, who was too poor to afford a lawyer, could not be regarded as 'reasonable, fair and just.' Thus, the fundamental right of legal aid was held to be implicit in the procedural requirement of Article 21 of the Constitution.

P.N. Bhagwati, J., has further held that:

"The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal
services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require provided of course the accused person does not object to the provision of such lawyer."

The directive principles in Article 39-A has been taken cognizance by the Supreme of India along with the provisions of Article 21 in M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548 : 1978 Cr LJ 1945 and State of Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369 : (1979) 3 SCR 532 : (1980) 1 SCC 98 : 1979 Cr LJ 1045 : 1980 SCC (Cr) 40 to lead to certain guidelines in the administration of justice. One of these is that when the accused is unable to engage a counsel owing to poverty or similar circumstances the trial would be
vitiated unless the State offers free legal aid for his defence to engage a lawyer to whose engagement the accused does not object. In recent years it has increasingly been realised that there cannot be any real equality in criminal cases unless the accused gets a fair trial of defending himself against the charge laid and unless he has competent professional assistance. In such a case the Court possess the power to grant free legal aid if the interest of justice so require. This dictum has also been laid down by the Honourable Supreme Court in *Ranjan Dwivedi v. Union of India*, AIR 1983 SC 624 (629) : (1983) 2 SCR 982 : (1983) 3 SCC 307.

**Access to justice:**

Access to justice has been universally recognized as one of the most important basic human rights and this right is included in Article 39-A of the Constitution as a Directive Principle of State Policy with a view to ensuring equal access to the people irrespective of their caste, creed or resources. But, sadly
this principle was not implemented in its letter and spirit up to 1978. Strong awareness of rendering legal aid and advice has resulted in Supreme Court's interpretation of Articles 21 and 19 (1)(d) and (5) as incorporating provisions for legal aid. (Ref. AIR 2000 Journal Section, 17 at p. 19)

**Right of choice of lawyer for legal defence:**

Article 22(1) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the Code of Criminal Procedure, under Section 303. The Courts have held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. The accused may refuse to have a lawyer but the Court has to provide an *amicus curie* to defend him in serious cases. The Courts have also held that the indigent accused have a right to legal aid. This requirement is to ensure that
poverty does not come in the way of any accused getting a fair trial. (ref. AIR 2001 Journal Section, 138 at p. 142)

right to legal aid to the said detenu as well. In the opinion of the learned Judge, the preventive detention law should also satisfy the test of Article 21. Thus, the right of legal aid was made available to the detenu to consult a legal counsel of his choice.

**Accused To Be Informed Of His Right For Free Legal Aid:**

A significant question regarding legal aid is: whether the accused has to ask for the lawyer where the majority of the people in a country are illiterate and backward and even the literate people are not aware of their rights. In *Khatri v. State of Bihar, AIR 1981 SC 928 : (1981) 1 SCC 635 : 1981 SCC (Cr) 235*, it was held that it was not necessary that the accused must ask for legal assistance. Even when there is no such demand, such aid must be made available. Further, the Supreme Court imposed a duty upon the trial Court to tell the accused about his right. The Supreme Court required that the Magistrate or the Sessions Judge before whom the accused was produced must
inform him about his right to counsel for his defence. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services.

*Khatri v. State of Bihar, AIR 1981 SC 928 : (1981) 1 SCC 635 : 1981 SCC (Cr) 235*, enunciates that the Magistrate or the Sessions Judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. *Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991 : (1986) 1 SCR 590*, also reiterates the above proposition. Thus the duty is cast on the Magistrate or the Sessions Judge to inform the accused concerned about his entitlement to have engaged a counsel at the cost of State. The rules regarding the legal aid to unrepresented accused persons in cases before the Courts of Session also provide the same thing. In the instant
case, when the learned Judge allowed the counsel engaged by the Legal Aid Committee to withdraw the *vakalatnama*, he should have again apprised the accused of the fact that he was entitled to the services of the counsel at the cost of State, and on the accused's giving consent, he should have referred the matter again to the Legal Aid Committee for engaging another lawyer. Instead of doing so, he shut the doors of justice to an indigent person, who was in custody, and left him unrepresented. The course adopted by the Additional Sessions Judge is against the spirit of the provisions and rules and the accused was, therefore, deprived of the constitutional safeguard. In a zeal to have a speedy trial, the Judge ignored the constitutional mandate and denied the justice to the accused. The trial held by him, therefore, cannot be said to be a trial guaranteed by the Constitution. (Ref. Hiraman s/o Sakharam Borkar vs. State of Maharashtra, 2000 Cri LJ 4185 (4188, 4189) : (2000) 2 All MR (Cri) 1439 (Bom).

It is unfortunate that the programme of free legal services is not
successful to the extent to what it should have been because of the non-cooperative attitude of the members of the Bar. The judicial officers are also equally responsible for the non-availability of these benefits to this class of litigants. In each case where a woman or child is a party, it is equally a duty of the judicial officer concerned to let them know that they are entitled for free legal aid. (ref. Kalaben Kalabhai Desai vs. Alabhai Karamshibhai Desai, AIR 2000 Guj 232 (233) : (2000) 4 Cur CC 419.

Chapter-II of the Legal Services Authorities Act, 1987 (herein after it may be referred to as 'the Act') encompasses Sections 3 to 5. Sections 3 and 4 deals with the constitution of the National Legal Services Authority as well as it's functions. Whereas, Section 3(A) deals with the Supreme Court Legal Services Committee. As per Section 2(aa) 'Central Authority' means the National Legal Services Authority constituted under Section 3.
Chapter-III of the Act encompasses Sections 6 to 11(A). Chapter-III deals with the constitution of the State Legal Services Authority. Sections 6 and 7 deals with the Constitution of State Legal Services Authority as well as it's functions respectively. Section 8(A) deals with High Court Legal Services Committee. Whereas, Sections 9 and 11(A) deals with District Legal Services Authority as well as Taluk Legal Services Committee.

Chapter-IV of the Act contemplates the criteria as well as the entitlement to legal services. It encompasses Sections 12 and 13. Section 12 deals with the criteria for giving legal services. Whereas, Section 13 deals with entitlement to legal services.

As per Section 12 of the Act every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:-
(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

(c) a woman or a child;

(d) a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal opportunities, Protection of rights and full Participation) Act, 1995 (1 of 1996);

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman, or

(g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956)
or in a Juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

(Now the income limit has been raised up to One Lakh by NALSA)

Section 13(1) of the Act envisages that the persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.
Section 13(2) of the Act says that an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

Chapter-VI deals with the Lok Adalats. This chapter encompasses Sections 19 to 22. Nowadays, in proportion to the escalation of the population, filing rate of cases has also been rapidly increasing, which causes grave concern to the administration of justice and it also portrays as a prime challenge to the Indian Judiciary. In this regard, it is presumed that Sections 19 to 22 of the Act are the enabling Sections and for rendering a helping hand to the Courts in dilution pendencirate.

Sub-Section (5) to Section 19 of the Act confer jurisdiction to the Lok
Adalats to determine and to arrive at a compromise or settlement between the parties to the dispute. As per Clause (i) of sub-Section (5) to Section 19, any case pending before any Court may be brought before the Lok Adalat. As contemplated under Clause (ii), any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised can also brought before the Lok Adalat and could be settled by way of pre-trial disposal. Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

As envisaged under Section 21(1) of the Act, every Award of the Lok Adalat shall be deemed to be a decree of a civil court, or, as the case may be an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court fee paid in such case shall be refunded.
As per sub-section (2) to Section 21 of the Act, every Award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the Award.

In view of the decision of the Honourable Supreme Court in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2002 (4) CTC 504*, *Section 89 has been inserted in the Code of Civil Procedure, 1908*, to reduce the burden of the Courts by resorting to Alternative Dispute Resolution Mechanism. The intention of the Legislature behind enacting Section 89 C.P.C., is that where it appears to the Court that there exists an element of a settlement which may be acceptable to the parties, they at the instance of the Court, shall be made to apply their mind so as to opt
for one or the other of the four A.D.R., methods mentioned in the section and if
the parties do not agree, the Court shall refer them to one or the other of the said
modes.

Section 89, a newly inserted Section in C.P.C., deals with settlement of
disputes outside the Court. Section 89(1) C.P.C., enacts as under:

Where it appears to the Court that there exist elements of a
settlement which may be acceptable to the parties, the Court
shall formulate the terms of settlement and give them to the
parties for their observations and after receiving the
observation of the parties, the Court may formulate the terms
of a possible settlement and refer the same for-

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok
Adalat; or
(d) mediation.
Section 89 C.P.C., suggests four kinds of alternative ways for settling the
disputes of the parties concerned outside the court. Amongst the four devices,
the third one, Clause (c) contemplates that where a dispute has been referred for
judicial settlement, the court shall refer the same to a suitable institution or
person and such institution or person shall be deemed to be a Lok Adalat and all
the provisions of the Legal Services Authority Act, 1876 (39 of 1987) shall apply
as if the dispute were referred to a Lok Adalat under the provisions of the Act.

Thus, it is clear that sub-section 2(c) of Section 89 itself empowers the
Legal Services Authority under the Legal Services Authority Act to settle the
dispute through the mode of Lok Adalat.

Section 69-A has been inserted to Tamil Nadu Court-fees and Suits
Valuation Act, 1955 by the Tamil Nadu Court-fees and Suits Valuation

As per Section 69 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been, respectively, paid. Further, the Court can refer the parties to the suit to anyone of the modes of settlement of disputes referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

The Government have now decided to amend the Tamil Nadu Court-fees and Suits Valuation Act, 1955 by inserting new Section 69-A, based on the lines of the amendment made in the Court-fees Act, 1870 (Central Act VII of 1870) in
the year 1999 with a view to entitling the plaintiff to a certificate from the Court authorizing him to receive back the full amount of fee paid in respect of such plaint, if the dispute referred by the Court is settled.

The Honourable Supreme Court in Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353 has directed all the State Governments to amend laws on lines of amendment made in Central Court Fees Act by Act 46 of 1999. Generally, refund of Court-fee on reference to ADR under Section 89 C.P.C.,,

Order X, Rule 1A C.P.C., envisages the direction of the Court to opt for any one mode of alternative dispute resolution. It says that after recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the
date of appearance before such forum or authority which may be opted by the
parties.

**Order X, Rule 1B deals with appearance before the conciliatory forum of authority.** It envisages that where a suit is referred under Rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

If the effort made by the Court at the request of the parties to the suit or proceedings fails in settling the dispute before such forum, the parties to the suit or proceedings whatever may be the case have to appear before the Court consequent to the failure of efforts of conciliation.

In this connection, Rule 1C of Order X assumes more importance. It says that where a suit is referred under Rule 1A and the Presiding Officer of
Conciliation Forum or Authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

It is more relevant to note here that Rules 1A, 1B and 1C were inserted by C.P.C., (Amendment) Act, 46 of 1999, w.e.f.01.07.2002.

Rule 3 to Order XXIII C.P.C., deals with compromise of suit. Rule 3B to Order XXIII C.P.C., contemplates that no agreement or compromise to be entered in a representative suit without leave of Court.
Issues and Challenges:

Equal access to the courts is not reserved for adult citizens only. Children deserve the same access to the nation's courts because they too are citizens and deserve to exercise their right in court. However, they face additional barriers. Children cannot initiate legal actions without the assistance of adults; they may not know where to turn for assistance or even that help is available; and their voices are often unheard or unnoticed. Yet improving children's access to the justice system can help strengthen families and made victims of crime more likely to disclose their victimization and to support the legal process.

The Constitution of India, under its various Articles, makes it imperative upon the State to provide healthy environment for children and protect their rights. Article 14 provides that any child shall not be denied equality before the law or the equal protection of the law within the territory of India. Article 15 safeguards a child from discrimination, allows the State from making special
provision for children and for the advancement of children from any socially and educationally backward classes, the Scheduled Castes and the Scheduled Tribes. Article 17 abolishes and forbids the practice of 'Untouchability' in any form. Article 19 confers upon the right to freedom of speech and expression; Article 21 prevents any person to be deprived of his life or personal liberty except according to procedure established by law. Article 21A provides for free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibits traffic in human beings and begging and other similar forms of forced labour. Article 24 prevents a child below the age of fourteen years to be employed to work in any factory or mine or engaged in any other hazardous employment. The Directive Principles of State Policy in the form of Articles 38, 45, 46, 47, 51 and 51A also safeguard the interests of children.

More than five lakh children are doing work at homes and they never gone to schools. More than 8.6 billion children are left by their parents for other works
instead of sending them to schools. 69.65 percentage of children are in drop out. Though there is hue and cry about the abolition of child labour, there is no significant improvement in the abolition of child labour.

Article 21A of the Constitution of India contemplates that there shall not be any discrimination in equal education. (*Unnikrishnan vs. State of Andhra Pradesh, AIR 1993 SC 2178*)

Education shall be made available to all. Compulsory education alone strengthens the social integration. Reasons for compulsory education - Poverty, Social Inequality and Age Limitation. (*M. C. Metha vs. State of Tamil Nadu*).

Section 2(t) of the Right to Education Act says that the duty of the responsible Government is to provide free and compulsory education.
Article 45 of the Constitution of India provides provision for early childhood care and education to children below the age of six years: - The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. (This provision has been substituted by the Constitution (Eightysixth amendment) Act, 2002, by Section 3 w.e.f. 01.04.2010).

Right to education is implicit in right to life.- In Francis C. Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 : (1981) 2 SCR 516, while elaborating the scope of the right guaranteed under Article 21 of the constitution, the Apex Court has observed:

"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it, viz., the
bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21 of the Constitution, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21 of the Constitution. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the
Communitization of Education:

Directive Principles of State Policy: It emphasizes the compulsory education as one among the rights of the children. (*Mohini Jain case*)

The children between the age of 6 and 14 must be necessarily found in schools then only, we can eradicate the child labour. States are bound to provide free and compulsory education to all the children between the age of 6 and 14.

The Honourable Supreme Court, in *Mohini Jain v. State of Karnataka*, *AIR 1992 SC 1858 (1864)* : (1992) 3 SCC 666, has observed that the right to education has been held to flow directly from right to life. The observations of the Apex Court are quoted below:
"Right to life is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

As per the Survey made in the year 2001, the literacy rate was 53.38 percentage. (Ashok Kumar Thakkar - Kothari Education Commission)

In these days, the education is a privilege and not a right. Right to education is a justifiable right.

Reservation for economically weaker students fails to take off because of
private schools' reluctance. (The Week, May 12, 2013).

**Child Abuse:**

An eminent social activist Dr. Dorothy I Hieght, has said that 'We have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it.'

Children are the most vulnerable human asset of any nation. Therefore, their nurture and solicitude becomes the responsibility of the State, nay it is the responsibility of the entire society. Today's children constitute tomorrow's future and to ensure a bright future of our children, we have to ensure that they are properly educated and not exploited. For this reason, they are entitled to special care and assistance, more so, because of their physical and mental immaturity. However, at the same time, children are most vulnerable members of any society. Because of this vulnerability, many children are exploited in various
forms.

Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guest houses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bars the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits, 'traffic in human beings and other similar forms of forced labour'.

A damning report from the Asian Centre for Human Rights says that child sexual abuse in juvenile justice institutions in India, is rampant, systematic and has reached epidemic proportions.
Even if we have waken up to the horror of child sexual abuse because of one atrocity, we must recognize that his malady is not skin deep. It has afflicted the entire body.

Since the protectors turn predators, the abuse of children becomes the order of the day.

Rehabilitation of abandoned, neglected and deserted children and also children craving for love and affection. These children are left at lurch in street on account of either social immorality of their parents or due to poverty and illiteracy.

Article 38 of the Constitution of India deals with State to secure a social order for the promotion of welfare of the people. It enacts as follows:
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.
Although Women may be victims of any of the general crimes such as murder, robbery, sexual harassment, cheating etc., only the crimes which are directed specifically against Women are characterised as ‘Crimes Against Women’. Since crimes against women appears to be very serious in nature, various new legislations have been brought and amendments have also been made in the existing laws with a view to handle these crimes effectively. These are broadly classified under two categories.

1. The Crimes under the Indian Penal Code (IPC).
2. The Crimes under the Special & Local Laws (SLL).

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried
out to keep pace with the emerging requirements. The gender specific laws for which crime statistics are recorded throughout the country are -


During the year 2010, a total of 2,13,585 incidents of crime against women (both under IPC and SLL) were reported in the country as compared to 2,03,804 during 2009 recording an increase of 4.8% during 2010. These crimes have continuously increased during 2006 - 2010 with 1,64,765 cases in 2006, 1,85,312 cases in 2007, 1,95,856 cases in 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010.

Many activists blame the rising incidents of sexual harassment against
women on the influence of "Western culture". The Indecent Representation of Women (Prohibition) Act was passed to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

In the Vishaka case [(1997) 6 SCC 241 : AIR 1997 SC 3011], the Supreme Court of India took a strong stand against sexual harassment of women in the workplace. The Court has also laid down a detailed guidelines for prevention and redressal of grievances. The National Commission for Women subsequently elaborated these guidelines into a Code of Conduct for employers.

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. However, many cases of dowry related domestic violence, suicides and murders have been reported. In the 1980s, numerous such cases were reported. However, recent
reports show that the number of these crimes has been reduced drastically.

In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) rules were framed. According to these rules, a signed list of presents given at the time of the marriage to the bride and the bridegroom should be maintained. The list should contain a brief description of each present, its approximate value, the name of whoever has given the present and his/her relationship to the person.

Female Infanticides and Sex Selective Abortions:

India has a highly masculine sex ratio, the chief reason being that many women die before reaching adulthood. Tribal societies in India have a less masculine sex ratio than all other caste groups. This, in spite of the fact that tribal communities have far lower levels of income, literacy and health facilities. It is therefore suggested by many experts, that the highly masculine sex ratio in
India can be attributed to female infanticides and sex-selective abortions.

All medical tests that can be used to determine the sex of the child have been banned in India, due to incidents of these tests being used to get rid of unwanted female children before birth. Female infanticide (killing of girl infants) is still prevalent in some rural areas vis., Salem, Krishnagiri, Dharmapuri and Theni. The abuse of the dowry tradition has been one of the main reasons for sex-selective abortions and female infanticides in India.

**Domestic Violence against Women in India**

According to United Nation Population Fund Report, around two-thirds of married Indian women are victims of domestic violence and as many as 70 percent of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55 percent of the women suffer
from domestic violence, especially in the states of Bihar, U.P., M.P. and other northern states. Violence against young widows has also been on arise in India. Most often they are cursed for their husband's death and are deprived of proper food and clothing.

**Incest Rape in India**

Incest is sexual intercourse between close relatives that is illegal in the jurisdiction where it takes place and is conventionally considered a taboo. The term may apply to sexual activities between: individuals of close "blood relationship"; members of the same household; step relatives related by adoption or marriage; and members of the same clan or lineage.

'Cime in India -2009' report released by the National Crime Records Bureau (NCRB) reveals that cases of incest rape have 'increased by 30.7 per cent from 309 cases in 2008 to 404 cases in 2009', and out of total rape cases of 21,397,94, in some cases involved offenders were known to the
victims.

Remedies for Domestic Violence against Women

This is the high time for our Nation to take effective steps to minimize the occurrences vis., The Domestic Violence. A recent study has concluded that violence against women is the fastest-growing crime in India. According to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. Domestic violence is now being viewed as a public health problem of epidemic proportion all over the world and many public, private and government agencies are seen making huge efforts to control it in India. There are several organisations all over the world, government and non-government actively working to fight the problems generated by domestic violence to the human community. There is an
urgent need for stringent laws and severe punishment after proper investigation.

The gruesome rape and murder of a 23 year old paramedical student in the heart of the capital has shaken the conscience of the entire nation. The unprecedented furor over the continuous inaction by the law enforcement agencies had resulted in nationwide protest forcing the Government to announce an empowered committee headed by Justice J.S. Verma.

Justice Verma Committee had invited suggestions on “Possible amendments in the criminal laws and other relevant laws to provide for quicker investigation, prosecution and trial as also enhanced punishment for criminals accused of committing sexual assault of extreme nature against women, and connected areas such as gender justice, respect towards womanhood, and ancillary matters.
*Bachpan Bachao Andolan (BBA)* is India’s pioneer grassroots social movement for the protection of child rights especially from child trafficking, child labour, in favour of education for all. It is common knowledge that the largest number of crime against women of sexual nature goes unreported. However, millions of girls in the country are leading a life of slavery, sexual and physical abuse with no freedom of movement and no help forthcoming from the law enforcement machinery. As victims of trafficking these girls are exploited in multiple forms and are often missing from their homes and yet, no cases are being registered for their recovery and against the perpetrators, who are exploiting them. In this connection *Bachpan Bachao Andolan* has made several suggestions along with the documents under the caption of Suggestions on Specific Changes required in the Law. It is apparent that Justice J.S.Verma, committee has also recommended the Law Commission to amend the Penal Law providing more teeth to punish the culprits, stringently who are Committing crime against women.
Epilogue:

As envisaged under Article 15 of The Constitution of India, social justice is the key stone. One facet of it is gender justice, which is a composite concept. It is the human right of women. The Universal Declaration of Human Rights (1948) too affirms the ideal of equal rights of men and women. The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (1979) observes that discrimination against women violates the principles of equality of rights and respect for human dignity.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the
formulation of the guidelines to achieve this purpose.

Gender relations need to be measured in the context of participation and sharing of the important decision-making process that results in the above inequalities. Such a measure would help identify the differing degrees of inequality in terms of age, income levels and geographical location. For Governments and concerned citizens seeking to redress these inequalities, indices are a mean of determining the issues on which they must concentrate, and provide feedback on the effectiveness of their actions. Clearly, then the accuracy of any measure of gender inequality needs close scrutiny.

The question of gender equality is a very old and burning problem. Twenty years ago in Mexico the First World Conference on Women inspired a movement that has helped to reduce gender inequality worldwide. Illiteracy
among women is declining, maternal mortality and total fertility rates are beginning to fall, and more women are participating in the labour force than even before. However, much remains to be done. Persistent inequality between women and men constrains a society's productivity and, ultimately, slows its rate of economic growth. Although this problem has been generally recognised, evidence on the need for corrective action is more compelling today than ever before.

To eradicate the crimes against women, if not completely, at least to certain extent, female education is very much important and the Government is under the obligation to make awareness among the women folk to create awareness about the importance of education for the purpose of erasing the illiteracy and poverty.

In a Democratic country like our Nation, in the course of administration of
justice both the victims of crime as well as its perpetrators are required free legal aid. In order to improve this mechanism we have to create faith in the minds of needy people to have free and costless access to justice and for which the lawyers community at large must be prepared to do more pro bono service and if they are nominated to handle the cases through legal aid system, their remuneration may sizeably be increased.