as soon as a person is arrested for an offence, he is entitled to legal aid.

59. In considering the types of cases in which legal aid should be granted, a State may vary its policy from time to time and it is advisable that in any legislation inaugurating a legal aid scheme, it should empower the State to pass regulations from time to time setting out the types of cases in which legal aid will be granted. Once the scheme starts working, it may be possible to enlarge the types of cases in which legal aid should be granted.

Who should recommend the grant of legal aid?

60. One of the important matters in any legal scheme is the question as to who should constitute the authority to recommend the grant of legal aid. This question has been answered differently in different countries. Three systems may be recognized :

(a) The older system which is still in force in a large number of countries places the responsibility in the hands of professional body of lawyers. The organisations of the lawyers on this matter are different in various countries. In some countries, such as England, Scotland and Rumania, the Advocates' Association or a Committee consisting of lawyers has full power to decide about the grant of legal aid. In other countries such as Brazil, Belgium, France and Italy and in the Swiss Cantons, there is a special bureau with power to decide on the applications for the grant of free legal aid. In these bureaus, members of the legal profession have a few seats. These bureaus are in most cases arranged hierarchically. There are bureaus attached to the inferior and superior courts, the trial court and to the Court of Appeal, and so on. An appeal lies from a division of a bureau attached to an inferior court to the bureau attached to the superior court. These bureaus are, in fact, tribunals. In Belgium and France the bureaus consist exclusively of advocates.

(b) In England, there are two bodies that function. In considering the means of a person, a special committee determines this fact. On this committee, there are laymen who are interested in social service and who function along with lawyers. Further, the question as to whether a person has any merits to deserve legal aid is considered exclusively by professional bodies of lawyers.

In certain countries, lawyers and government officials function in such bureaus. In Italy, for example, the commission consists of a judge, an official of the Department of Public Prosecutions and a member of the Bar. In certain countries, the body consists only

of lawyers. The advocates who are members of this commission are in all cases chosen by their professional bodies.

(c) In certain countries the decision for the grant of legal aid lies with an administrative authority. Thus, in Denmark the President of the Police, in Iceland and in Norway the Minister of Justice decides whether free legal aid is to be granted or not. This system has also been adopted in a number of Swiss Cantons.

61. In certain countries a curious mixture between the first and the third system is in force. Thus in Haity, a decision to grant or refuse legal aid lies with the Minister of Justice. Before giving a decision the Minister has to be advised by a consultative committee consisting of no less than 5 members, composed of the Government Commissioner, a Justice of the Peace of the Capital, and three advocates, who are appointed by the Minister. The Commissioner on his part has to hear Procurator-General so that the apparatus dealing with the applications of poor persons for legal aid is made complicated than that dealing with the claims itself.

62. But a large number of countries has adopted a third system in which the court itself decides the question whether or not legal aid should be granted. In an overwhelming majority of cases, the court which decides whether legal aid should be given or not is the same court which ultimately decides the claim itself. The decisions of the court in most cases are subject to an appeal. This system has been adopted not only in a number of Continental States such as the Netherlands, Germany, Austria, Czechoslovakia, Poland, most of the Swiss Cantons, Spain, Greece but also in a number of American States. This system has many disadvantages, in that it is a judge who has to do the extra work. If in addition to his onerous duties he has also to decide whether legal aid should be granted or not, undue strain is placed on his working capacity. Further, it is not quite desirable that the court that finally hears the case should also consider the question whether legal aid should be granted to a deserving litigant. In considering this issue the court has to go into the merits of the case. It is true no doubt that with the legal training a judge has, he will not be consciously influenced by whatever decisions he has arrived at at an **ex parte** hearing when he is asked to decide the matter **inter partes** at the final hearing. But in such cases it is difficult on psychological grounds to shed whatever views a judge has formed at the **ex parte** hearing. Therefore, in the interests of justice, a person who consi-

ders whether a person has sufficient merits in his case to grant legal aid should not be the judge.

63. It has been suggested by many jurists who are interested in legal aid, that there should only be one body who should decide both the question of means as well as the question whether a person who asks for legal aid has sufficient merits in his case. This is a very desirable suggestion that should be taken up seriously. If there are two bodies functioning independently on these two matters, legal aid will not only be delayed but it becomes expensive to the State. It is also submitted that if there is only one body that decides both these matters, in such a body the majority of members should be lawyers as the body has to decide the question whether there are sufficient merits in the case to warrant the grant of free legal aid. It is desirable that lay people should also find a place in it.

The organisation to recommend the grant of legal aid

64. The form of organisation to grant legal aid may vary in different countries.. Without going into the details of the organisation, four main types could be recognised.

65. In certain countries, legal aid is granted only by private organisations who do not depend on government subsidies for help. Thus, there are many organisations in the United States of America which grant legal aid without getting any help from the Government. It may be difficult to find such organisations in other countries of the world whose financial resources are meagre and do not compare favourably with those of the United States of America. Legal aid cannot be allowed to depend on private organisations.

66. There are organisations started by lawyers throughout the various parts of the world. The burden of granting the services to help the poor falls heavily on the lawyers. The legal profession is not merely a mercenary calling. During the early Roman period, the service of the legal profession was given gratuitously. Later, though fees were charged by lawyers, the legal profession was still considered a vocation serving society. Many lawyers have recognised this obligation and founded many societies which grant legal aid to poor persons.

Who should grant legal aid?

67. Should the legal profession alone carry the burden of giving legal advice to those who need it? The answer to this question should be in the negative. Dr. Cohn says:

> "Poverty is a social state which—apart from those cases where it is due to the fault or to the special circumstances of an individual—is the result of social conditions in whose creation and maintenance the whole of society partakes. Society itself acting through its self constituted agent, the State, should therefore find the means to alleviate it as far as possible. Legal aid is one of the means to alleviate the consequences of poverty. For this reason it should be a burden on the entire community, not on one individual group only. In the same way as municipal schools are opened for those who cannot afford to send their children to schools where school fees have to be paid, in the same way as Public Health Offices, Fire Precaution Services, Police Forces, etc., are available to supplement the efforts which every individual necessarily makes to preserve itself and property against illness, fire and fees, in the same way the State should supplement the efforts of the individual to stand up for his rights, the rights which the same State has granted to them."[1]

Gratuitous services by the legal profession

68. In many countries where the legal profession performs the duty of granting legal aid, free of charge, legal aid services have not been a success. Thus, in spite of the best efforts of the legal profession in England before the Rushcliffe Commission Report was implemented, and in spite of the earnest efforts on the part of the Indian lawyers, to grant legal aid free of charge, the system was a failure in both these places. The Report of the Rushcliffe Commission sets out the reasons why such a venture cannot be a success. Members of the legal profession are not all in affluent circumstances to grant legal aid, and spend their time in the granting of free legal aid, thus depriving themselves of earning a livelihood from other sources. The most members of the legal profession could do is to give their services free, but legal aid does not consist merely of the grant of free services. As stated earlier, unless financial aid is given to a litigant to find the means to prepare a case and also court fees are waived, legal aid cannot be a success. The members of the legal profession after sacrificing their time and energy cannot be expected also to contribute towards these expenses.

69. In some countries the municipalities have taken upon themselves the obligation to grant legal aid to those who live within their limits. Thus, in Germany, Poland, Finland and some

1 59, Law Quarterly Review, p. 370.

American towns, legal aid is organised and administered by municipalities. On the question as to whether municipal corporations should be entrusted with the organisation of legal aid services, it would be apposite to quote a passage from the memorandum of the Association of Municipal Corporations submitted to the Rushcliffe Commission. This memorandum stated as follows:

> "We take the view that it is not the proper function of a local authority to supervise and act on behalf of individual ratepayers in private matters where the other rate-payers (who also contribute to the salaries of local authority) are concerned. In our opinion, the objections apply to State services as administered by officers directly paid and employed by the State."

> "We consider that it would be disadvantageous if the close, confidential and privileged relationship which exists between solicitor and client should be replaced by the relationship of a member of the public towards the State or a municipal officer. Moreover, there is a considerable body of law in which the State and the local authorities are concerned on the other side."

70. It is submitted further, that legal aid should be kept away from party politics in municipalities. It is submitted that any legal aid scheme should not be entrusted to municipalities or local bodies.

State Subsidized Service by Lawyers

71. In some countries the administration and machinery of the legal aid is given over to a body of lawyers but the State gives an annual grant to this body in order that they may run the scheme. Such is the scheme in England and Scotland. The Bhagwati Commission recommended a similar scheme to be worked in Bombay. This scheme no doubt will work very well if the members of the legal profession organise themselves and consider legal aid as a service to the people. This system has many advantages over other systems if the person who asks for legal aid is given a choice of lawyers from a panel, and the members of the legal profession realise their duties and responsibilities and enrol themselves in this panel in large numbers. If this is done, legal aid will be a reality to the poor litigant.

72. In such an organisation the lawyers cannot be expected to receive the normal fees which they could charge, if they were retained by private clients. They often receive something nominal

and this would enable the State to provide legal aid to a large number of its citizens. The State, however, should relieve a poor litigant of court expenses and also should grant the necessary expenses for him to prepare his case such as expenses involved in summoning of witnesses, typing of briefs, preparing of plans, etc.

Public Defenders

73. In certain countries, legal aid in criminal cases is taken over by the State and the scheme is run by officials who are employed by the State. The persons who are appointed by the State to grant the aid, are known as 'Public Defenders'. Three methods of supplying counsel to indigent prisoners are in use today. These are by assignment to private counsel, by assignment or reference to voluntary defenders or to Public Defenders. A method that is mostly used is to assign in court individual lawyers who are entrusted with a particular case to defend indigent prisoners at the trial. This system obtains in many Asian and European countries. Lawyers of experience do not ask or are not prepared to take assignments. Assignments are taken by lawyers who are juniors in the profession and who wish to obtain some experience in courts. The question arises whether inexperienced lawyers should be foisted on the public and entrusted with legal aid work. The appointment of an experienced lawyer, as a permanent official in each jurisdiction to grant legal aid to poor litigants, has been considered an improvement on the assignment system. The Committee that was appointed to evaluate the legal aid systems in the United States of America, recommended that the appointment of a Public Defender would not be economical but would be desirable in cities where the population is large.[2]

74. The assigned counsel system does not operate satisfactorily because, apart from the inexperience of the lawyers who are prepared to give such services, the volume of cases may be too great for them to tackle them. A relatively small group of lawyers practises in criminal courts, and it is not possible for those lawyers to take up the defence on a large scale of prisoners who are unable to provide means for their defence. The fee that is payable may not be adequate and this may not attract the lawyers of experience. On the other hand, if the fees are increased, it may prove prohibitive to the State.

75. With the advancement of knowledge in detection and investigation of crime, the prosecuting counsel has become such a

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2 Equal Justice for the Poor, p. 80.

specialist that the average practioner is no match for him. Hence, it is necessray to train somebody who himself would specialise in the defence of criminals. Usually an assignment is made only at the trial and it is too late for the assigned counsel to get instructions in order to defend the prisoner who has been entrusted to him. In cases where the assigned counsel are not paid, they may not have the necessary incentive to work for their clients and do their best. On reviewing the position in America, the Committee that was appointed to consider the legal aid organisations in America, came to the view that public defenders are best suited to cities with large populations.

76. The Public Defender System, however, has been subject to severe criticism. Dr. Cohn states, as follows:

> "In a few countries, most strangely enough all belonging to the Anglo-American group, the advocate assisting the poor persons is a public official. This solution has not received the approval of the majority of countries, and rightly so. It is essential that the advocate should be a member of a free profession. This would guarantee its independence."
>
> "The prisoner who obtains legal aid, and is assisted by a Public Defender, may have a feeling that the Public Defender is also appointed by the State who is the other party to the litigation. He may feel that just as the Crown Advocate walks out of one room, another representative of the State is walking out of another room to help him. He may, therefore, not have the confidence which he would have in a member of the free legal profession."[3]

Hence, there is much to be said against the Public Defender System but where the finances of the State would not permit the running of a legal aid scheme through the lawyers then there is no aternative but to appoint a public defender.

77. The public defender should be selected in such a way as to secure his tenure of office, otherwise he may be liable to be influenced by others. In America, public defenders are selected by the civil service or appointed by judges or in a few cases, selected by the people. The voluntary defenders are selected by a Board of Directors of private organisations with which they are associated. Most opposition to the Public Defender System is based on the fear that public defenders will not be independent, since the

[3] 59, Law Quarterly Review, p. 368.

salaries are paid by the government as in the case of prosecutor. But in actual practice, in America, most public defenders are as vigorous in defending their clients as are private counsel. The method of selecting the public defenders may have an important bearing on the quality of the professional independence of the defence.

78. An important compromise is being tested in one large city in America, where the cost of the existing legal aid societies for the litigant defender service, is being covered by the payment of the County Treasury. The defender himself is subject to the supervision by a Board of Directors of the Bar. The effectiveness of this system has to be evaluated after this system has worked for a number of years.

79. The advantages of the Public Defender System are as follows:

(1) Such a system is more efficient and economical, especially for larger cities.

(2) Adequate service can be provided for all indigent prisoners.

(3) The prisoner can be furnished counsel with expert knowledge in the criminal law and practice. This is not always the case, if the appointment is made from the Bar generally.

(4) Certain procedural delays can be eliminated by the availability of the public defender, and it is easier for him to prepare the case.

80. Taking the pros and cons of the Public Defender System in criminal cases, it is both cheaper and less expensive for a State to appoint public defenders in large cities. Here again, this cannot be a universal rule that can be applied in all cases. If the members of the Bar of any particular country are prepared to grant legal aid, then they may be able to appoint special public defenders from their panel of lawyers who will be specialists in criminal law and procedure.

Machinery for legal aid

81. In order that legal aid may be granted effectively, it is necessary that a country should be divided into areas and each area should be administered by a special body of persons. In England, the country is divided into twelve areas, each area is administered by an Area Committee consisting of 16 members—12

practising solicitors and 4 practising barristers. In each area, there are a number of Local Committees. Each Area Committee has a secretarial staff at Headquarters. The Area Committee is responsible for the administration of the scheme within its own area, and in particular, it is required to hear and determine appeals from the refusals to grant certificates on legal grounds by Local Committees within its area and to consider applications for certificates, to conduct proceedings in the Appellate Courts, to prepare and maintain panels of Barristers and solicitors who are prepared to work under the scheme, and to deal with all questions as regards payment to barristers and solicitors for such work.

82. The duties of the Local Committee, on the other hand, are limited to the consideration of applications for legal aid other than the applications for legal aid in Appellate Courts and the issue of Civil Aid Certificates.

83. The Law Society co-ordinates the whole system, acting through the Legal Aid Committee consisting of solicitors and barristers who are elected. This body considers matters of major policy, gives advice and assistance to the Area Committee in connection with numerous problems that arise and secure uniformity of practice. It also provides the staff and premises for the administration of the scheme and maintains under its control the central accounting machinery.

84. In England, the responsibility of working the legal aid scheme is given to the Law Society which receives an annual grant from the State. But in countries where the burden of granting legal aid is taken upon by the State itself, a different set-up has to be envisaged. Still the country has to be divided into a number of areas for the purposes of granting legal aid in an efficient manner. In such cases, it is suggested that Legal Aid Bureaus should be established by the State in each area. It is preferable if these bureaus are situated within the court premises itself or close to it. It would not cost the State very much to erect a room or two by the side of the court buildings within the court premises. This would involve very little expense when compared with the other overhead charges that the State will have to bear if private organisations are financed to do this work. These offices should be opened at regular hours during the day time and should be in charge of some official who should be prepared to receive legal aid applications, interview the applicants, and to forward the papers to the determining authority responsible for recommending legal aid.

85. Legal aid in many countries have failed, because legal aid bureaus with regular hours of office work were not established. The establishment of such legal aid bureaus is a pre-requisite to the running of an efficient scheme of legal aid. Such bureaus must be within the easy reach of every litigant and should be situated in such a way that considering the means of communications available in a country, a litigant should be in a position to reach this office with expedition and the least expense. It is also suggested that those who man the Legal Aid Bureaus should be specialists and there should be a special grade of officers known as Legal Aid Officers who will be selected according to their qualifications and efficiency. These officers, by passage of time, will obtain the necessary experience and efficiency to run legal aid centres. These officers should also maintain a record of the decisions of the determining authority, carry out all correspondence and maintain accounts It is suggested that where legal aid is granted by the Government with the aid of the Bar, the lawyers should assist the State by actually appearing in cases or by giving advice. Payment has to be made to them for such services. They should apply to the Legal Aid Bureau for payment and the payment should be made on presentation of proper vouchers from the Legal Aid Fund.

Legal Aid Fund

86. It is also suggested that a separate fund known as the 'Legal Aid Fund' should be created by statute, and such fund should be under the control of a responsible officer, preferably the Minister of Justice who will be responsible to the Parliament of his country. The funds should be constituted of contributions from the Central Government, donations from Local Bodies, charitable institutions, individuals, associations, costs recovered in aided cases, etc. In order to encourage donations, it is suggested that such donations should be declared free of income tax. Further sources to augment this fund should be investigated, and if money could come from such sources, every effort should be given to fill the coffers of the Legal Aid Fund.

Publicity

87. In many countries where legal aid organisations have been set up, they have proved failure because of the lack of adequate publicity. It is futile to establish Legal Aid Bureaus, when the public do not know of their existence and the services they provide. Hence, in countries where legal aid has been a success, adequate publicity has been given to the fact that Legal Aid

Bureaus exist in the near vicinity. In America, the existence of Legal Aid Bureaus are publicised not only through periodicals, papers and the radio but also by pamphlets which are distributed to the public. In the United States even dramatic productions are based on the actual cases before the legal aid organisations and are sometimes nationally televised. These programmes are arranged by the National Legal Aid Association with the object of acquainting the public with the legal aid services available to persons of very limited means.[5]

88. The least requirement for giving publicity to a Legal Aid Bureau is to affix a name board to the office. It is suggested that there should be advertisements in the Press at regular intervals apprising the people of the various centres where Legal Aid Bureaus are situated. It would also be helpful if the names and addresses of such bureaus are displayed outside every legal aid office. Leaflets containing information as to the services available and the wisdom of taking advice in time before one goes to court, should be freely made available at such centres and other public places such as post offices, police stations, court houses, kacheries and the remand prisons. It is also suggested that in every summons, warrant or other process that are issued from the court, there must be appended a statement in the language of the country, the location of the nearest Legal Aid Bureau.

Legal Aid Certificates

89. When an applicant satisfies the test that would enable him to obtain legal aid, he should be given a legal aid certificate issued by the Bureau duly signed by the officer in charge. Once the certifying authority has approved an application for legal aid, the applicant must be notified of the decision by a form which offers him the certificate and gives him the information necessary to enable him to decide whether or not he wishes to proceed on the terms and conditions offered to him by the determining authority. The applicant must be given a certain length of time in order that he may make up his mind, whether to accept or not the terms and conditions set out in the legal aid certificates. If the applicant notifies his acceptance, the officer in charge of the Legal Aid Bureau would get in touch with the organisation that is responsible for the appointment of a lawyer to aid him in his litigation.

90. In some countries, from the decision of the determining authority granting or refusing legal aid, an appeal is given to a

[5] American Bar Association Journal, May, 1954.

higher authority. Indeed it would be a desirable thing if such an organisation could be set up, but often the setting up of such organisations would prove to be not only expensive but its effect would be dilatory and may defeat the ends of justice. Each country will have to consider whether an appeal should be granted from the decision of the certifying committee to a higher authority or not.

Amendments to Certificates

91. After legal aid is granted, there may be cases where the financial circumstances of the assisted person may improve to such an extent that he should not be entitled to free legal aid any more. It should, therefore, be open to his opponent or to any other person to show that the applicant's circumstances have improved since the grant of the certificate. If the determining authority is satisfied that the applicant's means have improved to such an extent that he would not be entitled to legal aid, an order should be made declaring the certificate inoperative as from that date. The certificate will also be amended to show the changed circumstances. Further, it may be amended to show that there has been an extension or limitation of its duration according to the circumstances of the case. A certificate should be operative only for a short period of time in the first instance and power should be given to the determining authority to extend the period from time to time.

92. In many countries the following grounds have been considered to be sufficient for the withdrawal of facilities:

(a) where the assisted person so requests;

(b) where the disposable income or the disposable capital increases above a ceiling limit;

(c) where the assisted person's solicitor or counsel has given up the case and the determining authority is satisfied that counsel was justified in so doing by reason either of his being required to conduct the case in a manner which may be unreasonable or likely to lead to unjustifiable expense;

(d) where there is wilful failure on the part of the assisted person to supply information;

(e) where false statements are knowingly made by the assisted person in regard to the case;

(f) where there is any act of commission or omission on the part of the assisted person which in the opinion of the determining authority disentitles the person to any further aid;

(g) where it subsequently transpires that a person has applied for and obtained the certificate on grounds which he knows were false.

Effect of Discharge or Revocation of Certificates

93. The effect of the discharge of a certificate will depend on the grounds on which such discharge takes place. If a certificate is discharged because a false statement has been made in obtaining the grant of such a certificate, then all costs incurred up to that time will have to be recovered as a fine, since one cannot place a premium on fraud. But if the discharge took place on the ground that the financial means have improved or that counsel had to give up the case as a result of an unreasonable request on the part of a legally-aided person to conduct a case in such a manner so as to incur needless expenditure, then any costs recovered up to that date should not be claimed. Where a certificate has been revoked on the ground that the assisted person obtained it by wilful suppression of facts or wilful mis-statements, he should be treated as a person who was not entitled to legal aid **ab initio.** Hence, in such a case, in addition to any penalty which may be imposed, such an applicant should be made liable to pay the full amount of the costs incurred on his behalf.

Emergency Certificates

94. Sometimes it may be necessary for an emergency certificate to be granted to a person who applies for legal aid. The grant of a regular certificate for legal aid involves time, but there may be cases of urgency where if legal aid is not given in time, the ends of justice will be defeated. Such will be the case where, for example, an injunction is asked for or against a party on frivolous grounds, and the party is too poor to employ a lawyer and asks for legal aid to resist such an application. Hence, the grant of emergency certificates may become necessary in certain types of cases. In such cases, the question arises as to whether these certificates should be recommended by the same determining authority or whether it should be left to the court that hears the action to grant an emergency certificate which will remain in operation till a permanent certificate replaces it. There should also be provision in an emergency certificate that in the event of a discovery of any fact which necessitates the refusal of a legal aid certificate, the emergency certificate should cease to have any effect on the determining authority's finding.

95. In criminal cases the grant of legal aid certificates may prove not only dilatory but also may defeat the ends of justice.

Hence, it is suggested that in serious types of cases, such as murder etc., where the magistrate proceeds to the spot and holds a preliminary inquiry, the suspect who is in custody should be informed that he has a right to employ a lawyer and all cross-examination of the witnesses who are examined should not be proceeded with till the prisoner is in a position to find a lawyer under the legal aid scheme.

Obligations of the Legal Aid Profession in Legally Aided Cases

96. Apart from the legal obligation that arises between the client and the solicitor, there may be special obligations which a lawyer owes to the legally aided person as well as to the panel that appoints him in legally aided cases. It is not necessary to discuss the relationship between the lawyer and client as this is well known in legal systems. The lawyer is under a duty to maintain strict confidence. Under many systems of law, communications issued to lawyers by clients are privileged. It is also the duty of the lawyer to follow the cannons of conduct set up by the professional body to which he belongs. Apart from these duties, a counsel who undertakes the duty of appearing for a legally aided person, should have the following duties:

(a) make such reports as may be required by the relevant committee on the progress and disposal of the case;

(b) set out the reasons for giving up, or refusing to take up a case assigned to him;

(c) draft a petition of appeal and sending of a report to the determining authority as to whether there is or is not an arguable case;

(d) not decline to appear in a case, except for good reasons.

97. The interests of the legally aided litigant should be sufficiently safeguarded so that his proctor or advocate should not abandon the case without good reason. It should not be permissible for a proctor or advocate to accept an assignment and then abandon the case entrusted to him in favour of the other retainers. There are cases, however, where a counsel who appears in a legally aided case, may not be in a position to appear in the case. In such cases he should, at the earliest available opportunity, hand over the brief to the officer in charge of the Legal Aid Bureau so that other alternative arrangements could be made. It should also be permissible for a counsel who has appeared in a legally aided case to withdraw from the case if the litigant is unreasonable in his demands regarding the conduct of the case. Since such an applicant

has the unlimited resources of the State or some charitable organisation to conduct his case, he may become unreasonable and bring pressure on the lawyer to protract the proceedings of the case unduly or to incur unnecessary expenditure. In such cases, it is the duty of the lawyer towards the State as well as towards his profession, to refuse to go on with the case. It is also most undesirable that a lawyer who has been assigned legal aid work, should try to either obtain payment or presents from the legally aided person. This would lead to abuses which would render not only the grant of legal aid nugatory but also encourage corrupt practices. Hence, there should be a provision that any lawyer who is given legal aid work under the Legal Aid Scheme, should only be paid out of legal aid funds by the proper authorities. Further, he should be prohibited from receiving any monetary or other gifts for his services.

Resignation from Panel

98. A member of a panel may at any time think it fit to resign from the panel. In such a case, he should send a written application to the authority that maintains the panel. However, the lawyer who resigns should continue to act in those cases which have already been assigned to him, otherwise it may be possible for any lawyer to give up a case entrusted to him under a legal aid scheme and appear in a more lucrative case. There should be nothing to prevent a lawyer from reconsidering his decision resigning from the panel and applying to rejoin the panel.

Exclusion from the Panel

99. In many countries, there are provisions which set out grounds or reasons which would enable an authority to exclude persons from the panel of lawyers who could be assigned legal aid work. It is necessary that there should be a 'Panel Complaints Tribunal'. This tribunal should have jurisdiction to inquire into the omissions and commissions alleged against a lawyer who has been assigned a job of work by the legal aid authorities. Such panels exist in England and other places. If, after hearing evidence, the panel is satisfied that a lawyer who has been assigned legal aid work, has either neglected his work or is guilty of any misconduct, then it should be at liberty to expunge the name of the lawyer from the panel. If he is guilty of misconduct involving professional integrity, the Panel Complaints Tribunal should be in a position to report the matter to the proper authority.

Measures to render justice inexpensive

100. If definite measures are taken in a country to render justice less expensive, it will facilitate the grant of legal aid. This may be done by the simplification of the procedure both in civil and criminal cases which will enable the courts to grant speedy and efficient justice. This could also be achieved by the appointment of Conciliation Boards which will have jurisdiction to settle minor and trivial disputes between parties. It is a matter of common experience, that trivial disputes often lead to serious crimes or may lead to expensive civil litigation. Hence, if these matters are settled in a reasonable way by an independent body consisting of persons who are appointed for their integrity and ability as members of the Conciliation Board, it may be possible to settle the differences between the parties, and the parties may not thereafter go to courts. Such Conciliation Boards have been working satisfactorily in various parts of the world. But in considering the constitution of these Conciliation Boards, very great care must be taken that proper people are appointed as members of this board. Often people with political propensities or corrupt people, may creep into such boards and there may be maladministration by the board, and the ends of justice will not be served. Such boards, if properly constituted may act as a sieve to hold up unnecessary litigation and thus enable the courts to deal only with serious civil disputes and offences.

101. In certain countries the law is uncertain. Many continental countries have partially solved this problem by the codification of their laws, but codification alone will not solve the uncertainty of the law. In many countries, therefore, a scheme has been devised that there should be a revision of the code after a passage of years. It is of the utmost importance for the speedy administration of justice that the law must not only be certain but should be known. Hence the codification of the law is a right step that would help the poor litigant to obtain justice in courts.

Legal advice

102. The question as to whether legal advice should precede legal aid or vice versa is a controversial one. In England, the Rushcliffe Commission recommended a scheme to provide legal advice at a nominal cost, but the State has deferred this matter for some time. The Law Society of England, however, has inaugurated a legal advice scheme in 1949 but in view of the high cost involved, it is engaged in preparing a new legal advice scheme somewhat different to that planned in 1949.

103. If a person knows beforehand his rights and duties, he may be reasonable enough not to launch on expensive litigation or even to defend a just claim which has been brought against him. Hence, it is of the utmost importance that he should obtain proper and competent legal advice on any matter in which he is involved at the earliest opportunity.

104. Law is a specialised subject, and it is essential that poor litigants should obtain legal advice on legal matters. In many countries, the legal advice is granted voluntarily by the Bar Association. This is a commendable step, but a State cannot complacently look on and say that there are others who are prepared to give legal advice and thus shirk the primary responsibility which is cast on it to grant legal advice to those who require it. The laws are created by the State and the poor litigant is not responsible for the complexities and uncertainties of the law. If a State passes a law, it is also the bounden duty to explain the intricacies of the law to its citizens. It is suggested that a properly constituted legal advice scheme financed by the State should be made available to all poor litigants. Experience has shown that if a legal advice scheme is properly inaugurated and worked, the number of institutions of cases will be greatly diminished. This may prevent even serious crimes being committed. It is suggested that a legal advice scheme should precede a legal aid scheme.

105. In many countries, the applicant is asked to pay nominal sum in order that he may obtain legal advice. This is a very salutary provision because it may prevent a person from rushing to a legal aid bureau and asking for advice on trivial matters. Sometimes legal advice may not be sufficient and it may be necessary to draft correspondence or to draft pleadings, etc. It is suggested that the drafting of legal correspondence should be part and parcel of the work of the Legal Advice Committee but in dealing with the drafting of pleadings, as this forms part of the court work, it can only be entrusted to a lawyer who can appear in courts and if a legal aid service is not provided for in a country, it may not be possible to perform this service to an applicant.

A scheme to grant legal aid to nationals of the Member States in another Member State

Without resorting to the expediency of establishing an International Legal Aid Organisation a simple machinery could be devised by which one Member State of this Committee can give legal aid to the nationals of another State in deserving cases.

This scheme could be worked through the Ministry of Justice of each country. The Ministry of each country could entertain applications for legal aid from a person who is the national of another Member State. On receipt of such application, the Ministry will send the application to the Ministry of the State of which the applicant is a national and the latter will make the necessary inquiries as to the applicant's means, and whether the applicant has exhausted any remedy in his country, etc.

The Ministry of Justice of the country to which the applicant belongs shall then forward the necessary information to the Ministry of Justice of the country in which the application is made, and the latter shall refer the matter to the legal aid organisation, if any, who will take up the matter at that stage. If there is no legal aid organisation in the country, its government should appoint a lawyer who will inquire into the merits of the case and recommend whether legal aid should be given or not. If it is recommended that legal aid should be given either by any legal aid organisation or lawyer to whom the matter has been referred to, then legal aid should be given.

The scheme set out is only meant to apply to civil matters and is not suitable for criminal cases. In serious crimes, legal aid should be given to any foreign national without any investigation as to his means or the merits of the case if such a person is not in a position to defend himself. A foreign national may be totally ignorant of the language and the laws of the country in which he is charged with the offence and it is one of the fundamental rights of such a person that he should be given legal aid in such cases if conviction will end in incarceration.

In civil matters, if there is a provision of law that a person should deposit security either to bring or defend an action, such a requirement should be waived if a determining authority decides that the merits of the case and the means of the applicant are such, that he should be given legal aid. The same privilege should be extended to nationals of the State when they bring or defend an action against a foreign national who is given legal aid.

If an applicant is successful in his litigation all expenses incurred by the State granting legal aid should be recovered out of the costs awarded to him or the fruits of the litigation. To ensure such recovery the expenses incurred in the litigation should be made a first charge on the costs and fruits of litigation.

In order to work this scheme, it is necessary to establish in each of the Member States of this Committee, some form of legal aid service. The necessity of establishing such a service has already been stressed.

For this scheme to work satisfactorily the mode in which a non-national who wishes to seek legal aid should be duly published and all Embassies in that country should be furnished with the necessary information.

It is submitted that should the Member States enter into a covenant to give legal aid to the nationals of one another, then a sub-committee should be appointed to draw up the details of the scheme.

APPENDIX I

I. (a) HISTORY OF LEGAL AID IN ENGLAND

During the early period, there appears to have been no organized form of legal aid in England. Small concessions were made in favour of poor persons in the reign of Henry I. One of the concessions was that a suitor who had to give security was exempted from this obligation if he did not have sufficient means. Another concession that was granted to the poor was the admission of ecclesiastical lawyers in the temporal courts whenever they pleaded to a poor person's cause. The Magna Carta, the Englishman's charter of liberty, states as follows:

> "To none will we sell, to none will, we deny, to none will we delay right or justice".

Although this promise was held to the poor, the terms of it were not implemented but only observed in its breach. The utter neglect of the poor led many jurists to quip: Garney Champion, in his work entitled "Justice to the Poor in England", ironically added an appendix to his book, a draft bill to repeal the section of the Magna Carta, in so far as only poor persons were concerned.

In the reign of Henry III a change was made in the Chancery Courts by which poor persons could obtain speedier and cheaper justice. The Common Law Courts had power to issue writs and hear cases of needy suitors without fees. In 1494, the Special Statute of Henry VIII was passed which dealt with proceedings in **forma pauperis.** In 1531, a further enactment was passed (23, Henry VIII, Chapter 15), which provided that "if the matter shall fall out against the plaintiff, he shall be punished with whipping and pillory".

This was intended as a safeguard against persons who ventured on vexatious litigation. Further, only the plaintiff was allowed to proceed in **forma pauperis,** as this procedure was not available to the defendant. In spite of this drastic safeguard, vexatious litigation increased. In 1774, this drastic provision against vexatious litigation was replaced by counsel's certificate as to the merits of the case. Yet this did not solve the difficulty of the increase in vexatious litigation. This Statute did not apply to the charter report where plaintiff and defendant were permitted to avail themselves of the **forma pauperis** procedure.

In 1883, the Statute of Henry VIII was repealed and Rules of Court were passed regulating procedure in **forma pauperis** in the High Court. Although before 1883 a poor person whose worth was no more than £5, could obtain relief, after this period the amount was increased to £25. In 1914, only 88 petitions were presented in this way.

This and other restrictive qualifications led to the establishment and growth of the Poor Man's Lawyer. This was inaugurated and maintained by social workers. The first of these appeared in the University Settlements in the East End of London, and in 1890 at Tonybee Hall, London. The movement spread like a craze. The Poor Man's Lawyer was sponsored by a band of social workers whose aim was to help the people to gain their legal rights with the aid of those lawyers who believed in charity. In the post war years, many more centres were opened. In 1928, there were as many as 27 non-political centres in London granting legal aid. But there was no uniformity in their organisation or the type of services they provided. This movement was also greatly helped by another organisation named after the famous jurist Bentham. The Bentham Committee, a voluntary organisation was formed in 1931, to supply such needs as legal advisers, to co-ordinate the activities of the various legal aid centres affiliated to it, and to ensure that correct professional standards were observed. The Bentham Committee maintained their quota of lawyers willing to advise and undertake work in the county courts. The Secretary who was a full-time paid officer investigated the means of the applicant and examined the merits of his case. If he was satisfied, he would send the case to one of the Committee's 45 honorary solicitors, who then proceeded to handle it gratuitously. If the solicitor so desired, one of the Committee's 60 honorary counsels could be allotted for purposes of legal opinions, pleadings and other help in the courts. If the applicant was too poor to pay court fees, the Committee provided the fees. The activities of the Committee were limited to the London area for financial and practical reasons.[1]

In 1913, it became apparent that the 1883 Rules needed a complete overhaul. Side by side of the Poor Man's Lawyer grew a number of organisations started by speculative lawyers who stipulated that any damages recovered should be split fifty-fifty as between them and the client. These lawyers were derisively called "ambulance chasers". The mushroom growth of this parasitical group, and the lack of uniformity of the rules observed by the various centres, led to the Law Society summoning a conference of

1 See J. Mervyn Jones: Free Legal Advice in England and Wales.

Poor Man's Lawyers in 1913. New Rules came into existence in 1914.[2] Under these rules, the applicant had to establish (a) that he had a reasonable cause of action or defence, (b) that his means did not exceed £50 excluding the subject matter of the action. Prescribed officers were appointed to each of the three Divisions of the High Court. The application was made to the appropriate prescribed officer who in due course referred it to a solicitor who was taken from the list of solicitors kept by him. The reporting solicitor made inquiries as to the means of the applicant and examined the merits of his case. The court on receiving the solicitor's report, was given the discretion to assign to the applicant, counsel and solicitor from the list of members of the Bar willing to act. A person to whom a certificate was granted was not required to pay court fees or any costs to the other side. Neither was he allowed to recover any costs. But the counsel or solicitor assigned in this way was permitted to receive any fees by way of remuneration from his clients. This scheme, however, did not provide for the payment of out of pocket expenses incurred in the conduct of action of lawyers and this was one of the defects of this system.

The situation was examined anew in 1919 by a Committee presided over by Mr. Justice P. W. Lawrence. In 1919, the societies granting legal aid worked so badly that Lord Portland thought necessary to appoint this Commission. This Commission which was appointed on 7th April, 1925, was authorised to inquire what facilities existed for granting to poor persons legal advice in regard to their litigation, whether civil or criminal and to report what, if any, further steps should be taken in respect of these matters. After hearing the evidence, they submitted their final report on the 2nd January, 1928. In their first report they dealt with questions that arose regarding criminal cases by expressly excluding from inquiring into the question whether a person should be given legal aid facilities in the higher courts. In dealing with legal advice, this Commission recommended that the evidence before them confirmed the view that in most of these cases, the solicitors were willing to do their work on terms which would be within the reach of the poor clients. After estimating the invaluable services rendered by the legal profession in England who were motivated by the higher social standards and ideas, the Commission said that they would appeal to the Law Society to establish Poor Man's Lawyers where they did not exist at the time. They also condemned the practice of some Legal Aid Societies which were abusing the privileges and were trying to get the work by un-

2 R.S.C. Order XVI, Rules 22 to 31 D.

desirable means. They said in their report that the only permanent and more satisfactory remedy would be the ousting of undesirable societies by the steady spread of the legal aid societies of the genuine type.[2] They also expressed the view that in the county courts, legal aid was not necessary, as a large proportion of cases which came up before these courts was so simple in character that the judge was able to ascertain the ultimate results of the case and do justice. The report further stated that the success of any scheme of granting legal aid would depend on the barristers and solicitors in the branch of the legal profession, and that they did not want to add to the onerous duties which were already imposed on them by the Poor Person's Rules in the High Court.

Although the Commissioners conceded that the failure to give legal aid would amount to a denial of justice, yet they said that such cases were far and few, having regard to the assistance given to the poor by trade unions and the voluntary grants of its societies and agencies. They urged the necessity of both branches of the legal profession in doing voluntary work on legal aid. They rejected the contention put forward by certain witnesses who gave evidence before them that Legal Aid Societies should be organised by municipalities or by the State. In the course of oath they stated as follows:

> "We think that it would be disadvantageous for the legal profession and still more disadvantageous to persons who require legal aid and assistance from the legal profession if there was substituted for the relationship at present existing between solicitor and the client relationship of a member of the public and the State or a municipal official. Very grave difficulties would also inevitably arise in practice but as we are opposed to general principles in this scheme, we do not think it worthwhile to discuss these difficulties in detail."

Spurred by the recommendations and admonitions given by the Report on the Lawrence Commission, the Law Society for the first time stepped in and did work in collaboration with autonomous bodies such as the Professional Law Societies which had been set up for Poor Persons Committees throughout England and Wales. The barristers and solicitors who acted for poor persons as volunteers in ordinary cases were only given out of pocket expenses. These expenses were met out of the deposit which was required by every applicant for admission by way as a poor person.

2 See Report of the Committee on Legal Aid, Final Report, 28 Cmd. 3016, para 11.

Although provision was made to grant legal aid for the poor, no provision at all was made for those with limited means who could not provide all the expenses provided for litigation. The war of 1939-1945 had a marked effect on the efficacy on the poor person's scheme. Unemployment disappeared and the number of poor persons dwindled. Although there were no longer really the poor people, yet there were people who were too poor to litigate at their own expense. The number of those who needed relief in Magistrate's Courts increased, and they were left without any sort of assistance. The assignments of barristers and solicitors were depleted as many of them were called to join the services. Those who were left behind were no longer young and could ill-afford to volunteer and conduct out of their limited resources the cases of the ever increasing number of poor persons. The scheme was in imminent danger of a breakdown. In 1940, the situation became acute, and had an adverse effect on the morale of the fighting forces. War had brought about a number of broken marriages, and there were no facilities to enable those who sought relief in court, to defend or bring matrimonial actions. The ranks of the lawyers became seriously depleted as a result of the members being called to perform war services. To meet the exigencies of the situation, a Royal Commission was appointed under the Chairmanship of Lord Rushcliffe. This Commission heard evidence and sent in their Report.

Rushcliffe Commission

In 1944 Viscount Simon, Lord Chancellor of the War-time Coalition Government, set up a Committee under the chairmanship of Lord Rushcliffe to inquire into among other things the existing facilities for legal aid in civil proceedings and to make recommendations for modifying and improving them. The Law Society itself had been anticipating the need for reform, and from 1944 had worked on a scheme which was ready for presentation to the Rushcliffe Commission when it sought evidence through the law societies. The Rushcliffe Commission adopted with little variation the recommendations of the scheme adumbrated by the Law Society. The recommendations made a new approach and was based upon the following main principles:

(1) That legal aid should be available in all courts.

(2) That those who were normally classed as poor and those who could not pay anything should receive legal aid free and even those who could afford to contri-

bute something but who could not pay for the whole case should receive legal aid.

(3) That the net cost should be borne by the State but the scheme itself should not be administered by any department of State or law authority but by the legal profession answerable to the Lord Chancellor.

(4) That the means of the applicant for legal aid, and the merits of his case should not be investigated as hitherto by the same body but the National Assistance Board should investigate the means, the Committee of Lawyers should investigate the merits.

(5) Barristers and solicitors undertaking work under the scheme should be adequately remunerated.

(6) The expression 'poor person' should be abolished and those who obtain help from the new scheme should be known as 'assisted persons'.

The Report was presented by the Lord Chancellor to Parliament in May 1945, and to implement the recommendations of this Report the Legal Advice Act of 1949 was passed by Parliament. This Act contained provisions by which rules could be made for working the scheme In view of its importance a summary is given of this Act·

Scope of the Act The Legal Aid and Advice Act makes legal aid available in all courts dealing with civil proceedings in England and Wales. It does not extend its scope to administrative tribunals or to tribunals relating to professional discipline. It applies not only to criminal matters in appeals in courts of quarter session but also to applications for orders of mandamus, prohibitory notices in criminal matters and divisional matters on all appeals therefrom to the Court of Appeal.

Certain kinds of actions were excluded from the ambit of the Act such as libel, slander, breach of promise of marriage, seduction and enticement. Subject to this exclusion, all other cases were included, and were caught up by the legal aid scheme. In addition, the Legal Aid Act also provided for the establishment of legal advice services to make them available to any person in England and Wales and to Her Majesty's Forces who were outside Great Britain. The scheme for legal advice provides for oral advice to be given on legal questions to be given by solicitors employed either on a whole or part-time basis. Such services consist of preparing for the case and in supplying information required in connection therewith and

in determining means. Although provision was made for legal advice, such provisions have not been put into actual practice.

The Limited Operation of the Legal Aid and Advice Act of 1949. Section 17(2) of the Legal Aid and Advice Act of 1949 provides that the provisions governing civil litigation shall only come into force on such date as the Lord Chancellor may by Statute appoint, and there is also provision that this date may be appointed for the different purposes set out in the Act.

In October, 1949 when the attempt was made to implement the provisions of the whole of the Act, the Government found that in view of the financial conditions prevailing at the time it was not possible to bring into effect the whole of the scheme. Therefore, the Government intimated that when the first commencement order was made it would limit the scope of the Act to legal aid in connection with proceedings in the Supreme Court and also proceedings in the county court, when a case had been remitted from the Supreme Court. It was in this limited form that the Legal Aid and Advice Act has operated till July, 1955. The Lord Chancellor announced the Government's intention to extend the scope of legal aid to county courts, and therefore the second step has been taken towards the establishment of the full comprehensive scheme as designed by the Act.

The Qualifications and Procedure for obtaining Civil Aid Certificates. The object of the Act is to extend legal aid to persons who are really in penury circumstances and make it available to those who are not too poor but whose means are so limited that they will not be able to provide for the expenses connected with litigation. In order to achieve this end a certain formula was adopted which, when applied, would help a person in the grips of penury to continue to prosecute his litigation without any expenses on his part but at the same time to take a reasonable contribution from those who could afford to pay a part of the sum which is required for the litigation.

An applicant's gross income was computed and certain deductions were allowed for day to day living expenses and the balance has been termed "disposable income". The Act also takes into account the capital which the applicant may have. Here again it is not the gross capital that is taken into account but what has been termed as the "disposable capital". The Act provides that an applicant whose disposable income is more than £420 per annum

is not eligible for assistance. Rules have been made by the Lord Chancellor to make an assessment of the disposable income and disposable capital. The task of making an assessment is cast not on the law societies but upon the National Assistance Board. A maximum contribution has also been fixed which an assisted person has to pay when called upon to make. It has been provided that an assisted person's contribution to legal aid fees in regard to any proceedings may include

(a) a contribution in respect of income not greater than half the amount, if any, by which his disposable income exceeds £156 a year, and

(b) a contribution in respect of capital not greater than the amount, if any, by which his disposable capital exceeds £75 a year.

The Prima Facie Case Test Once the National Assistance Board has gone into the means of the applicant, and holds that the person is eligible for legal aid from the finances standpoint of view, then the second and more difficult question as to whether the facts of the case justify the expenditure of public funds in supporting it, is decided by a Committee composed wholly of lawyers, generally consisting of 4 solicitors and 1 barrister. This Committee examines in detail the applicant's case, as presented by the applicant, and decides whether the applicant has reasonable grounds for taking, defending or being a party to the proceedings, and whether it is reasonable in all the circumstances that he should receive legal aid. If the Committee is not satisfied on these questions, then the applicant is refused legal aid, and he is so informed but he has the right of appeal to a body called the "Area Committee". On the other hand, if the Committees are satisfied that legal aid should be granted, then they proceed to consider the terms and conditions upon which the certificate for legal aid should be granted. For example, they may limit the scope of the certificate in such a way that only certain steps could be taken; thus ensuring that there should be a further scrutiny before the trial. Apart from any special conditions of this kind they must also fix the quantum of the contribution which the assisted person is asked to pay and also fix the mode of payment; that is to say, they must decide as to whether such sum must be paid in a lump sum or by instalments. If they decide that such sum should be paid by instalment, then they must fix the nature and amount of instalment, in such a way that the amount they fix does not in any

way exceed the maximum contribution assessed by the Board. Then an offer is made to the applicant incorporating terms and conditions on which a legal aid certificate should be granted to him, and if this offer is accepted, then the civil aid certificate is issued. The local committee considers applications, except those for certificates covering appellate proceedings. Applications for certificates in appellate courts are considered not by the local committee but by an area committee.

Administrative Arrangements In order to achieve decentralisation and to maintain local interests in the scheme for administrative purposes, England and Wales are divided into 12 areas. Each area is being administered by an area committee consisting of barristers and solicitors. In the delimitation of these areas, an attempt has not been made either to achieve equality in the square mileage or population but the areas have been fixed in order to suit administrative convenience in each area in establishing number of local committees. The area committee is responsible for the administration of the scheme in those areas, and is required to hear and determine appeals from the refusal to grant certificates of legal aid on legal grounds within its own area. It also considers applications for certificates to take proceedings in an appellate court. It prepares and maintains a panel of solicitors and barristers who are prepared to accept work under the scheme and it also deals with all questions concerning payments to solicitors and barristers for such work.

The duties of the local committee on the other hand are limited to the task of deciding as to whether a person should be granted legal aid by going into the merits of the case and in issuing civil aid certificates.

The Council of Law Societies, through its general council, nominated barristers and the Bar had a supervisory control in such matters as, settling of major policy, giving advice and assisting area committees in connection with numerous problems that are encountered in securing such uniformity in practice as it appears desirable. The Council also supervises all staff and premises for the administration of the scheme, and has under its direct control a clients' department which the volume of the business requires. It has also to concern itself with amendments to the scheme as may appear desirable, and in achieving these objects the Council also endeavours to maintain the closest touch with the area committee.

Conduct of Litigation

The Act also makes provision for the litigant to choose his lawyer from the panel of solicitors and barristers, and also provides for adequate remuneration to be paid to those who do work under the scheme. The sums which were paid to solicitors and counsel amounted in the Supreme Court to 85 per cent of the cost assessed according to the ordinary rules that are applicable to taxation as between solicitor and client where the costs are paid out of the common fund in which the client and others are interested. The statement that a litigant was given a choice of a lawyer from the panel must be qualified subject to one exception for reasons of economy. The Act provides for the establishment of a divorce department to be administered by the Law Society and makes provision that applicants for legal aid in matrimonial cases whose maximum contribution fixed by the National Assistance Board does not exceed £10 should be represented by solicitors of the Law Society's divorce department and not by members of the panel of lawyers appointed under the Legal Aid and Advice Scheme.

Once a legal aid certificate was granted and a lawyer was assigned, the ordinary relationship of solicitor and client applied. Also it is true to say that there was some degree of financial control. The lawyer was left with a free hand with the preparation and presentation of his client's case. He may settle his client's case if it seems to him proper, and if his client accept such advice. The paramount consideration is the interests of his client at heart. In the conduct of the case, therefore, the assisted litigant was at no disadvantage compared with an unassisted person. By being assisted he gets a real advantage in that he gets the services of a competent lawyer without any payment or in the case of a person of limited means, who is able to pay, payment is almost nominal. If he loses, the court will not order him to pay the full costs to his opponent but only such costs as may appear reasonable having regard to the means of the party and the conduct of litigation.

In order that an assisted litigant does not obtain undue advantage, Section 3(iv) of the Act gives to the Law Society a charge or a levy on any damages recovered to the extent of the net liability of the assisted person to the legal aid fund. To enable this charge to be enforced, regulations have been made to enable that all sums of money recovered in actions in which civil aid certificates have been given are to be paid to the legal aid fund.

One may summarise the recommendations made by the Rushcliffe Commission in criminal matters as follows:

Legal aid should be granted in all matters in criminal courts. (Section 140 of the Report of the Committee on Legal Aid and Legal Advice in England and Wales—45 C.M.D. 6645). if it appears desirable in the interests of justice that such aid should be given. Aid is to be given to all parties in civil cases which come up before criminal courts. There are some civil cases, which, although civil in nature, come before the criminal courts for speedy disposal. It is that type of cases that is envisaged in these recommendations. A certificate entitling a person to whom legal aid is granted should be granted in the Magistrate's Court by two Magistrates, in Quarter Sessions by the Recorder or Chairman and in other courts by the Judge. On appeal, authority to grant a certificate should be vested either in the court from whose decision or in the court in which the appeal is made. Section 140 states that authority to a certificate should be decided to ensure that adequate time was allowed for the preparation of the case. In normal instances this should not be less than 4 days. As an interim measure they recommended that attention of the proper authorities should be drawn to the provisions of the Poor Persons Defence Act of 1930, and steps should be taken to see that care is more frequently employed. They also recommended that the cost of working the scheme should be borne by the State and not by the local authorities.

Civil Cases

Legal aid should be available to all persons whose net income is not more than £420 per annum (Section 156). The assisted person is required to pay the contribution towards the cost of his case except in the following circumstances where assistance will be granted free of charge-

(a) in the case of a single man or woman whose income does not exceed £3 a week.

(b) in the case of married man whose income does not exceed £4 a week.

Subject to these exceptions which have been set out, an applicant should contribute the following sums notwithstanding the contribution he may make under the recommendations with regard to the contribution based on income (Sec. 156(7)).

(a) a single man of capital above £25.

(b) a married man of capital above £50.

Special provisions should apply to cases before the divorce courts.

Assistance should be available in the following courts:
Court of Appeal.

High Court.
County Court.
Court of Summary Jurisdiction.

At the conclusion of the litigation for which a certificate is granted a bill taxed in the normal way in which it is taxed between solicitor and client is presented and the State pays to the solicitor disbursements in full other than counsel's fee and 85 per cent of the total allowed costs in respect of costs. Counsel should similarly be paid 85 per cent of the fees normally allowed on taxation (Section 171). In county courts matters, this should be settled on a solicitor and client basis. In criminal matters, barristers and solicitors should be fairly remunerated, regard being had to the amount of work involved in each case. The amount to be paid should be assessed by the Clerk to the Justice, Clerk of Appeal or Clerk of Assize as the case may be.

Cases before Special Tribunals — In cases before special tribunals, the amount of remuneration to be paid should be assessed by the Area Committee in every case having regard to the amount of work done.

Emergency Certificates — As there must necessarily be a delay before a number of cases for legal aid has been given, to the Chairman or the Secretary of the Local Committee to grant emergency certificates as a matter of urgency and such certificates will remain in force for a period of six weeks and not exceeding 3 months. (See 1949 Act, Third Schedule—paras 1 and 2).

Estimate of the Scheme — It is too soon to attempt to assess this far reaching scheme. Keeton and Lloyd (their work on British Commonwealth—The Development of Law and Constitution—Vol. 1. p. 322) state that on the whole it seems to have been far less productive than was originally anticipated.

From the view point of the litigant the main grievance probably is that the Act has not been extended to proceedings than those in the High Court. It has already been said that there is the tendency to fix the assisted person's contribution at a rather high level and this has often led to dissatisfaction. The liability of the unsuccessful party to pay costs to the successful party cannot be anticipated before the end of the case. It is also feared that costs are taxed unduly low. This practice coupled with the fact that solicitors and barristers pay cost profit tax has resulted in the payment

of inadequate sums to the lawyers for their services. There have also been dictums by the courts in England to the effect that in certain cases, there has been an abuse of procedure or an unwarranted imposition on the tax payers. Such impositions must necessarily be levied in a few types of cases but the number of cases reserved for criticism, says Keeton, is probably not more than at a tiny minority of the total (Ibid. p. 232). On the whole, the system is working satisfactroily.

(b) LEGAL AID IN SCOTLAND

In 1424, a system of granting free legal aid to the poor had existed in Scotland. Later the Act of 1535 was passed by which two advocates were appointed for the poor. Admission to the poor rules was in the hands of the court, and after the Act of Sederunt of 1842, reporters on **probabilis causa** were appointed by the faculty to consider the applications of the poor, and in fit cases legal aid was granted to the poor. Later each year a number of advocates was appointed for the poor. Now the Legal Aid Scotland Act of 1949 Nos. 12 and 13, George VI, Chapter 63, makes provision for the grant of legal aid to the poor. Assistance is made available to a wider section of the community with moderate means and modified fees are paid to counsel. The scheme, although intended to cover up appeals to the House of Lords and criminal cases does not cover such cases.

2. In criminal cases, advocates are still appointed to represent the poor. If the crime is a serious one, such as murder, the junior counsel will request the Queen's counsel to lead him for the defence. This is an obligation which is always honoured by the seniors in the profession who act gratuitously. (See: The United Kingdom, British Commonwealth by Smith and Sheridan—Scotland and Channel Islands, p. 686).

Legal Aid & Solicitors (Scotland) Act, 1949

3. This Act provides for legai aid to be given in connection with proceedings before courts and tribunals in Scotland and before the House of Lords on appeal from the Court of Session. It specifies the type of proceedings in the course where legal aid has to be given, and also excludes certain types of cases from the scope of legal aid.

4. Section 1 provides that legal aid shall consist of representation on the terms provided by the Act, by a solicitor, and if necessary by a counsel. It provides that legal aid shall be given to persons whose disposable income does not exceed four hundred

and twenty pounds a year, provided that a person may be refused legal aid if he has a disposable capital of more than five hundred pounds, and it appears that he can afford to proceed with legal aid.

Section 2 provides that legal aid shall be available in connection with criminal proceedings to an accused person without inquiry into his resources, notwithstanding the provisions of the foregoing section:

(a) Where the proceedings are taken under what is known as solemn procedure until after being brought before a Magistrate for examination on declaration. The procedure by way of solemn procedure corresponds to the procedure by way of indictment in Ceylon.

(b) Where the proceedings are taken under summary proceedings, until the conclusion of the first day at which he is called upon to plead.

5. The Act provides for the payment of any contribution by the person who receives legal aid, not direct to the solicitor but to the legal aid fund. The solicitor and counsel are only paid such sums as are certified in the Act out of the legal aid fund, and if the assisted litigant loses his case, he only pays a reasonable sum by way of costs which in the opinion of the court is reasonable under the circumstances. In computing the disposable capital of a person, his dwelling house, wearing apparel and household furniture and the tools and implements of his trade or profession are left out of account except to such extent which in any part of the United Kingdom, is liable to be seized in execution proceedings.

The disposable income and disposable capital, for the purpose of finding out whether a person is entitled to legal aid, are computed after making such deductions as are prescribed in respect of the maintenance of dependents, interest on loans, income tax, rates, rent and other matters for which the person in question must or reasonably may provide and such further allowances as may be prescribed after taking into account the nature of his resources.

Section 5 of this Act also provides for the granting of legal aid in matters not involving litigation in a court of law. The Act provides for the appointment of solicitors and advocates who are willing to give legal aid to poor persons. Different panels are to be prepared for different courts and for different districts. Any practising solicitor or advocate shall be entitled to have his name on the appropriate list unless the Law Society, in the case of a solicitor, or the Faculty of Advocates, in the case of an advocate, determines that there is good reason for excluding him by reason of some misconduct arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct generally. The right of appeal is given to any solicitor or an advocate whose name has been excluded from such lists in the Court of Session.

6. The Act also provides for the grant of legal advice to a person who is able to satisfy that he cannot afford to obtain it in the ordinary way. He has to pay a fee of half a crown or such other fees as may be prescribed for each interview. All fees paid for legal advice are credited to the legal aid fund. A person seeking legal advice has the same privileges for communications made for that purpose to the person for any negligence, as if he had been consulting him as his solicitor in the ordinary way. The limitation of legal advice or oral advice does not prevent the person giving it, where he thinks the person seeking it will need a written note of the advice given or any part of it, from giving him such a note.

7. The administration and finance are vested in the Law Society. The Law Society is also made responsible for making arrangements, in accordance with a scheme made by them with the approval of the Secretary of State and with the concurrence of the Treasury, for securing that legal aid and legal advice are available as required by the Act and generally to administer the Act. Provision is made to alter any scheme submitted by the Law Society. For the purpose of making or varying any such scheme as aforesaid, the Law Society has to appoint a committee consisting of members of the Law Society and of persons nominated by the Faculty of Advocates. Any scheme under this Act should provide for the establishment, for the purpose of administration of the scheme, a central committee consisting of members of the Law Society and of the Faculty of Advocates, and for the inclusion in such a committee, to an extent not exceeding one third of the total membership thereof, of persons who are not members of the Law Society or of the Faculty of Advocates. Further, any scheme under this Act should define the constitution of any committee so established providing for procedural matters. Where a scheme has been submitted to the Secretary of State for his approval, any member of the committee who was present when the scheme or any provision thereof was considered by the committee, and who then objected to the scheme or to that provision, may inform the Secretary of State of his objection; and the Secretary of State shall not approve a scheme unless he heard that member.

8. The Law Society, at the end of each financial year, is required to make a report to the Secretary of State of the operation of the Legal Aid Act and a copy of such an Act should be laid before the Parliament by the Secretary of State. For the purpose of attesting the legal aid, the Act provides that there is a legal aid fund and it is a function of the Law Society to establish and administer the legal aid fund. All receipts and expenses of the Law Society in connection with the legal aid are paid into and out of the legal aid fund and the sums required in payment out of the legal aid fund after allowing for the sums received apart, should be paid to that fund by the Secretary of State at such times and such manner as may be approved by the Treasury and shall be paid out of the money provided by Parliament.

9. The Act also provides for a scheme of accounts and audit. The accounts are audited by an auditor appointed by the Secretary of State, and the auditors shall be furnished by the Law Society with the copies of the said statement and accounts. The Comptroller and Auditor General should examine every statement and report sent to them, and after considering the accounts, should submit a report before Parliament.

10. As stated earlier, the Act also provides for legal aid to be granted to persons whose income or capital exceeds the limit already stated but is below certain sums. Such assistance is granted to persons whose income is not greater than £156 per year and whose capital is not greater than £75. Such persons are entitled to contribute to the legal aid fund in respect of any proceedings, and such contributions may include, (a) a contribution in respect of income not greater than half the amount, if any, by which disposable income exceeds £156 per year, and (b) a contribution in respect of the capital not greater than the amount, if any, by which his disposable capital exceeds £75. A person who is required to make contributions could do so by way of instalments. In order to understand the modern provisions of legal aid, the system of civil courts in Scotland should be stated.

11. The civil courts consist of a Sheriff's Court, which are district courts and are in many ways analogous to the county courts in England, and a Court of Session, which is the Supreme Court in Scotland. The Court of Session is both an original court and the court of appeal. Many cases of poor persons are dealt with in the Sheriff's Courts, and only divorce cases come up before the Court of Sessions in the first instance. Representation in civil and criminal cases is provided by the agents of the poor. In the

Court of Sessions, six advocates and at least four writers to the Signet and four solicitors are appointed annually by the respective professional organisations. Two advocates, a writer to the Signet, and a solicitor are appointed to act as reporters to **'probabilis causa'** and investigate the means of the applicant. It is usual to appoint the most junior members of the profession for these duties. The persons applying for the benefit of the poors' role, must lodge an affidavit stating his means to the clerk in charge of the poor role. Then a solicitor is allotted to him who submits a memorandum on the case to the reports on **probabilis causa** and to the opposing party who is given an opportunity for appearing before the reporters in court. If a favourable report is received by the court on means and in a civil case on **'probabilis causa'**, a poor person is entitled to a writer to the Signet, and a solicitor or an advocate is allotted to him. He is not required to make any payment to the court, and he is provisionally exempted from all court fees and lawyers' fees, but he must pay out of pocket expenses. Lawyers receive no fees.

12. In the Sheriff's Court, the procedure is much the same except that the number of advocates varies for each court. A high proportion of the cases in these courts concern affiliation proceedings corresponding to maintenance cases and separation. In all courts the opponents of the poor person has the same rights and liabilities to the cause as in ordinary case. There is no fixed standard as to the limit of amount of means which constitute a poor person, but an income limited to £2 a week, appears to be the normal limit. In some districts, more would be allowed where there were several children. The decision of the authorities regarding means is final and there is no benefit of appeal given from such decisions. The agents of the poor are not obliged to act in Police Court cases. It is recommended that large towns should be under an obligation to provide this aid. Annually the members of the profession were elected to undertake the voluntary duties in connection with the poor. In most cases, persons of some years standing were appointed to these posts, but the chief complaint is that a heavy burden was cast upon those acting as the poors' agents. In Glasgow, a practice grew up by which a person demanded £10 or £20 from a poor person.

13. The Paiasley Faculty of Procurators tried to alleviate the position of the agents by inviting members to subscribe to a fund out of which two junior agents of the poor are paid £20 each year. These and other defects were brought out in 1937 in the report of the Committee appointed by the Secretary of State of

Scotland which confirmed that the system might break down if radical changes were not made. (See Report of the Poor Persons Representations (Scotland) Committee C.M.D. 5435 para 16.) The outcome of this report is the Act of 1949.

14. In addition to the representation in all courts, in Scotland a well established legal advice centre is mentioned. This is the Edinburgh Legal Dispensary formed in 1900 and managed by a Board of Directors appointed by each of the four professional bodies. It is open one night in a week and normally advice is given to applicants whose income does not exceed £3 a week. Records are kept and correspondence is undertaken, and every effort is made to settle cases. Litigation is left entirely in the hands of the agents of the poor. The following figures show its development:

Year	No. of Consultations
1900-1901	274
1905-1906	1232
1910-1911	2032
1915-1916	1513
1920-1921	1672
1925-1926	2434
1930-1931	3243
1935-1936	3161
1938-1939	3471

15. In Glasgow, Pais Institure Govan and the University Settlement under the auspices of the Glasgow University Law Society, students who have recently qualified and who are in their final year give advice. There are also two centres under the Glasgow Society of Social Service. (See : Egerton, Legal Aid, p. 35 and the following pages.)

Operation of the Act

16. The object of the Legal Aid Scotland Act of 1949 is to make legal aid and advice more readily and easily available to persons of small or moderate means. In the interests of national economy it was decided by the Government in 1949 that only those parts of the Act enabling legal aid in civil actions in Quarter Sessions and in Sheriff Courts should be brought into operation on a date in 1950 which was later fixed as 2nd of October, 1950.

Legal Aid in all Criminal Courts in Scotland

17. Legal aid, not involving litigation, (Sec. 5 of the Act) and legal advice (under Section 7) are not being introduced at present. Neither is legal aid available in civil actions in the House of Lords, Land Court or the Land Valuation Appeal Court. Until legal aid is introduced in criminal courts, the Poor Rules System continues to operate in the High Court of Justiciary and in criminal courts in the Sheriff Courts. The procedure for appealing in civil case **in forma pauperis** to the House of Lords also continues.

18. Where in a civil case a person has been admitted to the benefit of the Poor Rules before the 2nd of October 1950, the case will be carried to the conclusion as a Poor's Rule case. In certain types of actions legal aid is not granted in civil matters. Thus no legal aid is given in proceedings which wholly or partly are in respect of defamation, verbal injury, breach of promise of marriage, inducement to one's spouse to leave or remain away from the other, election petitions under the Parliamentary Elections Act or the Elections Scotland Corrupt and Legal Practice Act of 1890, proceedings in small debt courts in which the liability of the debt and the amount therefor admitted when proceedings in the Sheriff Courts for summary removing in which the liability for the debt and the amount therefor admitted.

19. As the Poor Rules disappeared from the 2nd of October 1950, apart from admitted cases those accepted for sittings will have the benefit of neither legal aid nor the Poor's Rules.

Legal Aid in Civil Cases

20. Legal aid in civil actions consists of representation of an eligible person by a solicitor and if necessary by a counsel including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to the proceedings or in arriving or give effect to, a settlement to bring to an end any proceedings. Once a solicitor or counsel is assigned to a person to grant legal aid the normal relationship of counsel and client prevails. The legal aid certificate covers only certain proceedings such as proceedings in the Sheriff Court, proceedings in the Quarter Sessions, whether in the Inner House or before the Lord Ordinary, and proceedings in the Quarter Sessions so far as they are proceedings in the Appellate Court.

The Administration of Legal Aid in Scotland

21. The Law Society of Scotland is responsible for the general administration of legal aid and for this purpose it establishes

in terms of the Act the following Committees:

(a) The Central Committee,

(b) The Supreme Court Committee, and

(c) The Local Committees for 21 areas.

In those places where it has not been possible to have a Local Committee, a local representative functions who is normally also a member of the Local Committee for this area. There are Central Committees consisting of 3 members of the Faculty of Advocates and 5 solicitors with the addition of two lay members nominated by the Secretary of State. The Chairman of the Central Committee is a solicitor. The members of the Committee hold office for 5 years from the 1st day of October in the year of appointment. It is the function of the Society to supervise the actions of the Supreme Court Committee and the Local Committees and to submit to the Law Society all necessary estimates, accounts, reports and to make arrangements for the publication of information in regard to legal aid generally. This Committee also acts as an appellate tribunal and hears vital appeals from the decision of the Supreme Court Committee or the Local Committee in regard to the refusal, discharge or suspension of legal aid certificates or in relation to the assisted person's contribution to the legal aid fund. The Committee is also responsible for the proceedings of the Supreme Court Committee and each Local Committee and paying into the fund the contribution from an assisted person. All payments to solicitors are made by the Central Committee and all expenses and accounts received from solicitors are referred to the Central Committee by the Supreme Court and Local Committee for scrutiny.

Supreme Court Committee

22. This Committee consists of 4 advocates and 4 solicitors. The members hold office for 3 years from the first day of October in the year of appointment. The principal function of this Committee is to hear and determine **probabilis causa** and fix applicant's actual contribution in applications for legal aid in Quarter Sessions both in the first instance and in the Appellate Court. This Committee is responsible for recovering contributions from applicants and accounting the same to the Legal Aid Scotland Fund through the Central Committee. It is also responsible for the maintenance of a list of solicitors who are willing to act for assisted persons in the Quarter Sessions and a fair allocation of cases among these solicitors.

Local Committees

23. The size of a Local Committee varies from place to place,

according to the volume of the business with which it is expected to cope with. The members of the Local Committee hold office for 3 years from the first day of October in the year of appointment. The principal function of this Committee is to hear and determine **probabilis causa** and to fix the applicant's actual contribution in the applications for legal aid in their courts. They have the same responsibility for the recovery of assisted persons' contributions and for the maintenance of a list of solicitors willing to act for assisted persons in Sheriff Courts, and for the fair allocation of cases among these solicitors, as at the Supreme Court Committee. They are also responsible for supervising and assisting the local representatives within their areas.

Local Representatives

24. In larger towns where there is no Local Committee, a Local Representative is appointed. He holds office at the pleasure of the Law Society but as is normally the case, he is a member of the Local Committee for his area and generally holds office for 3 years. His functions are principally to put applicants for legal aid in touch with the solicitor in the appropriate list of solicitors willing to act for assisted persons and to investigate applications legally from his district at the request of the Local Committee.

25. The Faculty of Advocates prepares and maintains a list of counsel willing to act for assisted persons in the following:

(a) Consistorial cases in the Quarter Sessions,

(b) Cases other than consistorial cases in the Quarter Sessions, and

(c) Civil cases in the Sheriff Courts.

A list is also maintained by the Supreme Court Committee of solicitors who are willing to act for assisted persons in the Supreme Court, (a) in consistorial cases, and (b) in non-consistorial cases in the Quarter Sessions. They also hold copies of lists of counsel who are willing to act for assisted persons in the Quarter Sessions. A list is also maintained for each Local Committee of the solicitors who are willing to act for assisted persons for the purpose of civil cases in each of the Sheriff Courts in their area. This will also contain old copies of lists of counsel who are willing to act for assisted persons in the Sheriff Courts. A solicitor who is willing to act for an assisted person may apply to have his name included in such of the lists for the Sheriff Court within his area as desired. A counsel or solicitor may withdraw his name from the list at any time but he is liable to carry out through to its conclusion every case in

which at the time he is acting for an assisted person until he satisfies the Faculty or the appropriate Committee as the case may be, that he has a good reason to give up the case, and if proceedings have commenced for the purpose of having his name or in the case of a solicitor (the name of a partner of his) excluded from the list, his name continues on the list but only for the purpose of those proceedings. It is the duty of the solicitor on the list to comply with the terms of the Act, scheme and regulations of the Act and to supply such information as would be necessary to enable the Law Society or any of its Committees to perform their functions. The solicitor's document is not in any way affected. A solicitor on a list is bound to act for any assisted person who selects him to act unless the solicitor satisfies the appropriate Committee that he has a good reason to ask that another solicitor on the list be nominated to act in the case. A solicitor acting for an assisted person in the Quarter Session can make his arrangements, if necessary, for the employment of counsel, but in the Sheriff Court, counsel cannot be employed without the prior consent of the Local Committee concerned. The solicitor must also obtain the sanction of the Supreme Court Committee or the Local Committee concerned with the arrangement of any necessary expert witnesses.

26. Remuneration to counsel or solicitor is prescribed by the Act and no other remuneration can be paid other than that prescribed by the Act. Expenses are taxed according to the ordinary rules as between solicitor and client and 85 per cent of the amount so taxed is allowed to the solicitor by way of remuneration, and no remuneration is payable to a solicitor unless the applicant becomes an assisted person by being granted a legal aid certificate or an emergency certificate. A solicitor acting for an assisted person has to report immediately to the appropriate Committee as to the completion by him of the case, and as soon as practicable thereafter must submit to that Committee an account of all his expenses with sums received by him in connection with the case and an account of the expenses. The accounts and expenses are then forwarded to the Central Committee which scrutinises the matter, and the Central Committee pays the solicitor subject of course to the right of the Central Committee and the solicitor require a formal taxation. The Central Committee may also on the recommendation of the Supreme Court Committee or Local Committee authorise payment to be made on account of the expenses to solicitor acting for an assisted person. A solicitor who has acted for an assisted person must immediately after payment is made to

him on account of his expenses in which are included fees to counsel, counsel's clerks and outlays make payment of such fees and outlays so far as they are not already paid. Any complaint against his counsel may be received by the Faculty of Advocates and complaints against solicitors by the Law Society acting through its various Committees. The Complaints Committee investigates the circumstances and recommends to the Law Society whether the solicitor's name should be excluded from the list or lists. Similarly the Faculty of Advocates reports as to the name of the advocate complained of should be removed or not from the panel. Steps are also being taken to publicize the existence of legal aid. Legal aid is not given unless a person has a **probabilis causa litigandi** and also that he has a disposable income of less than £420 a year and also that he has no disposable capital which exceeds £500. The National Assistance Board determines the applicant's means. In computing the disposal income the applicant's income less certain amounts as sick pay, superannuation and pension benefits which are ignored up to a maximum of £1 per week, and after allowances have been made in respect of income tax, national insurance, rents, rates, maintenance of dependents, etc. Where it appears to the Secretary and a member of Committee or two members of Committee that applicant is eligible for a legal aid certificate and it is desirable in the interests of justice that legal aid should be made available as a matter of emergency, then such persons are authorised to grant what is known as an emergency certificate without reference to the Committee or to the National Assistance Board. Such a certificate has the same effect as a legal aid certificate in all respects. It is not granted until the applicant gives an undertaking in writing to pay into the Legal Aid Scotland Fund which the Committee may direct, or the Committee discharges the emergency certificate without issuing the legal aid certificate, such sum may be paid or become payable out of the account in respect of the proceedings for which the emergency certificate was granted.

A person who is granted an emergency certificate immediately brings the matter before the Committee for their consideration. Such a certificate is not enforced for a period of more than 6 weeks till after the expiry of this period. The certificate automatically gets discharged if no legal aid certificate is given in the mean time. Emergency certificates are seldom issued and normally granted when there is a real urgency, and they are not required in order to take proceedings in an appeal in the ordinary matters.

Legal Aid Procedure

27. A person seeking legal aid is often given the choice of