

CHAPTER VI

LEGAL AID

About a hundred years before lawyers in British India started indulging in glib talk about introducing legal aid it was an accomplished fact in the French Indian Establishments. As early as 1854, legal aid to the indigent was introduced in these Establishments by a *décret* of 16 January 1854.¹

Any litigant applying for legal aid had to prove his indigence. He had to produce a non-assessment certificate and a certificate stating that he was a pauper issued by the Mayor or the Administrator. The opposite party who was required to be informed of the application could also supply all necessary particulars. A petition supported by proof of his indigence should be submitted by the litigant concerned to the Magistrate who would constitute by himself, or preside over, the court before which he sought to put forward his claims. The petition was to contain an explanatory statement of the facts relating to his request and was to be accompanied by documents in support of it. In the Court of First Instance and the Court of Appeal, the petition would be communicated to the *Procureur* who would express his opinion on the matter in writing. If his opinion was in favour of the request, legal aid would be granted and the court would pass an order to this effect.

The petition would be considered not only in regard to the evidence rendered about the petitioner's poverty which could always be checked, but also regarding the grounds on which the right to legal aid was claimed. The Judge to whom the petition for free legal aid was referred would summon the opposite party to appear either to contest the statement of indigence made by the petitioner or to give his own submissions on the merits of the claim. If the opposite party appeared, the Judge would make use of his good offices to try to bring about an amicable settlement.

1. Promulgated by an *arrêté* of 1 May 1854.

The indigent who had been granted free legal aid in the first court would continue to receive this benefit in the higher court to which appeal was preferred against him, or where he would be an appellant. The benefit of free legal aid would be available to him in case an appeal was filed against him in the Court of Cassation. If the indigent litigant preferred an appeal in the Court of Appeal or the Court of Cassation, he could get the benefit of free legal aid only after a fresh order was passed declaring him to be a pauper. For getting such aid, he had to apply,

- (i) if the appeal was filed in the civil court, to the judge of that court;
- (ii) if it was filed in the Court of Appeal, to the President of that court;
- (iii) if the appeal was filed in the Court of Cassation, to the *Procureur Général* of the Court of Appeal who would examine the petition and forward it to France, through proper channel, if he was satisfied that the petition was admissible.

If the case was referred to an inferior or superior civil court, the Judge or President would appoint a legal practitioner (*conseil agréé*) to conduct the case and a *huissier* (process-server) to assist the indigent litigant. If the case was before a commercial court or a justice of the peace, the President of the court or the justice of the peace would content himself with designating a *huissier* under his control. The *Procureur* of the Court of First Instance as well as that of the Court of Appeal was authorised to exercise over the *conseils agréés* and *huissiers* special powers in matters relating to free legal aid. He could call upon them to account for the proceedings and acts entrusted to them.

The *Procureur* would be heard in all cases in which free legal aid had been granted to one of the parties.

The judges were required to appoint a counsel for the defence of the accused in cases instituted in the correctional court by the *Procureur*; if the accused were in judicial custody, they could receive this benefit on request and after their indigence had been proved either by producing documents as specified by local rules or by any other documents. In cases filed before police courts, no legal aid was granted.