



# The 2018 International Forum on Legal Aid

*Expanding the Horizons of Legal Aid*

## **WORKING TOGETHER WITH** **NON-LEGAL SERVICES**

Presenters:

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The poor and the illiterate should be able to approach the Courts and their ignorance and poverty should not be an impediment in the way of their obtaining Justice from the Courts.

~Justice P.N Bhagwati

Free legal aid is the State's duty and not Government's charity.

~Justice Krishna Iyer in *H Hoskot v. State Of Maharashtra*, AIR 1978 SC 1548

The free legal service is an inalienable element of 'reasonable, fair and just' procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

~ *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar* [1979 SCR (3) 532]



- ❖ Free legal services to socially and economically backward sections of the society who have difficulty accessing the judicial system or afford the services of a lawyer for the conduct of a case.
- ❖ Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
- ❖ Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all.
- ❖ Article 21 of the Constitution of India, which says, “No person shall be deprived of his life or personal liberty except according to procedure established by law”.



- ❖ **Section 304 of the Indian Criminal Procedure Code and Order 33 of the Civil Procedure Code provides possibility of assigning a pleader to the indigent person.**
- ❖ **Special Legislation :**
  - The Legal Services Authority Act, 1987 has been enacted to constitute the Legal Service Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice.**

# NEED FOR BROAD BASED LEGAL AID SERVICES



- ❖ Paramount duty of the welfare State.
- ❖ Essential factor for the survival of healthy democracy.
- ❖ Necessary requirement for implementation of rule of law.
- ❖ True spirit of equality.
- ❖ An integral part of natural justice.

*“To no man will we deny justice, to no man will we delay justice or right”*

*~Magna Carta*

# TARGET PERSONS



- ❖ Members of marginalized social groups such as schedules castes/tribes and indigenous persons.
- ❖ Poor (with annual income less than Rs.50,000/- for cases in the Supreme Court and Rs.25,000/- in other courts).
- ❖ A victim of human trafficking, disabled persons, including mentally disabled.
- ❖ A woman or child in conflict with law.
- ❖ Victims of racial atrocity, natural calamities, industrial disaster and other cases of undeserved want.
- ❖ In custody and prisoners.
- ❖ Person who is otherwise unable to engage lawyer due to poverty, indigence, and illiteracy etc.

*Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.”*

~ Nelson Mandela

**Legal Services can be broadly classified into two categories:**

**I. Pre-litigation Services (Non-Legal Working Groups can play an active role):**

- Legal Education
- Legal Advice and Counselling
- Legal Awareness

**II. Litigation & Post-litigation Legal Services (Primarily Lawyer and Judiciary Centric):**

- Engagement of Lawyer, legal proceedings, court fee, explaining litigation outcome etc.

**III. Legal Aid includes**

- Reimbursement of Court fees, travel expenses, cost of certified copies, pleaders fee etc.

# NON-LEGAL SERVICES



- ❖ **‘FIRST PORT OF CALL’** for people with legal needs, irrespective of their capacity to provide legal information or assistance.
- ❖ When people face legal problems : 1. Go to Lawyer directly 2. Do nothing and deal yourself 3. Seek Advice and assistance from non-legal sources and services.
- ❖ Non-legal sources broadly includes friends, government agencies, welfare agencies and other professionals such as teachers and doctors, civil society, Non-governmental organizations/civil society groups, trade unions, business associations, religious bodies, academic institutions, student organizations, ethnic lobbies, community groups, etc.



# LEGAL AND NON-LEGAL SERVICES



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## Traditional Legal Services

- Private solicitor/barrister
- Local Court
- Legal Aid Clinics
- Law Access

## Lawyer friend/relative

## Published

- Internet
- Self-help source

## Traditional Non-Legal Services

### **Other friend/relative**

### **Government:**

- Government organization
- Local Council
- Member of Parliament

### **Police/complaint handling:**

- Police
- Industry complaint handling body

**Other:** School counsellor/teacher, Non-legal community group Private agency/organizations, Company/business/bank, Insurance company/broker, Trade union/professional body, Library, Employer etc.

# WHY PEOPLE APPROACH NON-LEGAL SERVICES WITH LEGAL PROBLEMS?



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- ❖ Kinds of services a person may avail depend upon their geographic location, their socio-economic circumstances and other needs.
- ❖ Pathway to a lawyer : The person who will advise them that they need a lawyer.

For instance, people at risk of homelessness are reported to turn to family and friends, schools, doctors, community health worker, refuge staff and seeking legal redress is not the first option for them.

- ❖ People may come in contact with social support networks and services they had previously help them. Such services although may not necessarily be most relevant to the issue nor be best equipped to deal with the legal issue.
- ❖ In some cases people simply seek help from the service or worker who they are in contact with when a crisis hits or a problem arises.

# WHY PEOPLE APPROACH NON-LEGAL SERVICES WITH LEGAL PROBLEMS?



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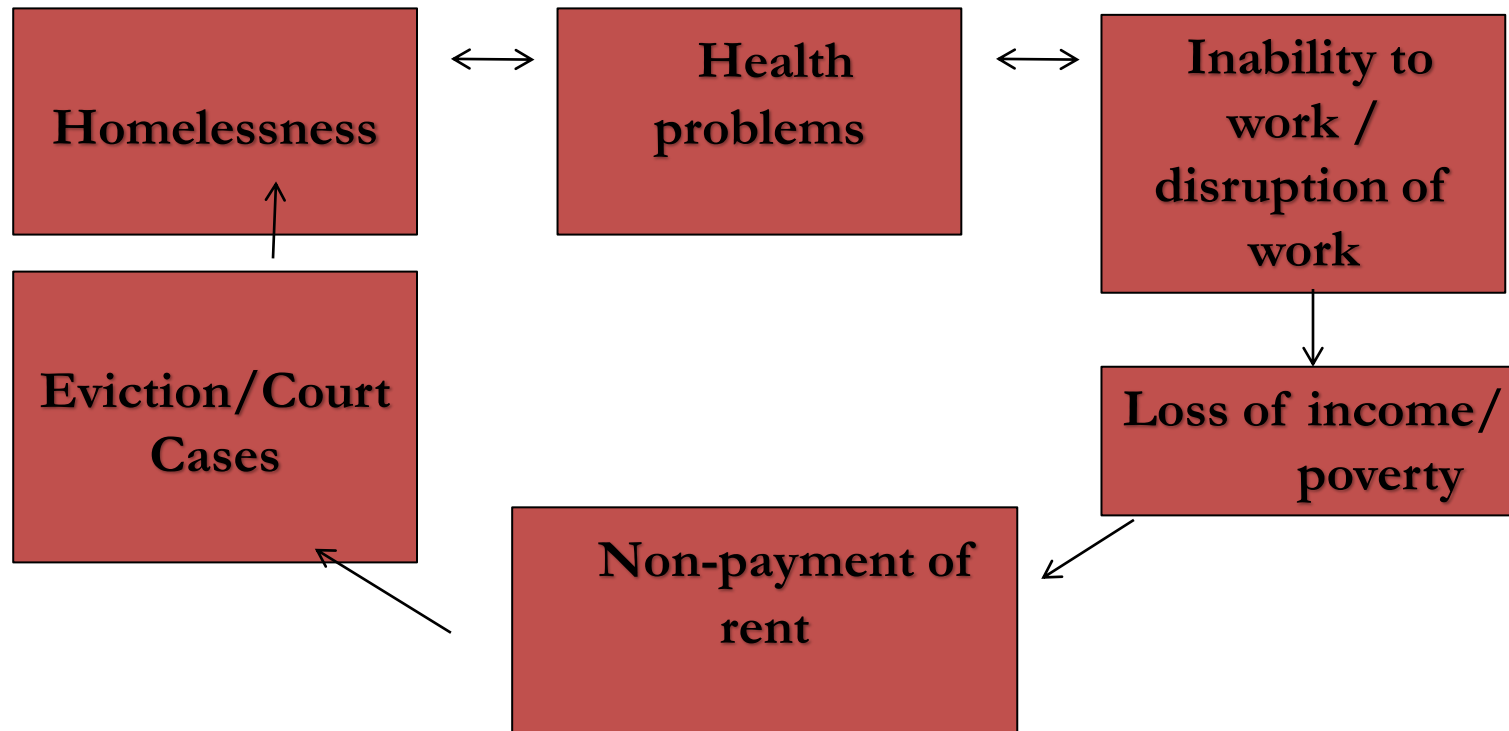
- ❖ People also approach to address issues they are facing (e.g. a doctor about an injury). However, the legal aspect of the issue (e.g. seeking victims compensation for the injury) may remain unaddressed.

For instance, a tenancy worker will be able to assist and advocate for a client with a housing issue, they may not be able to assist the client with a family law issue or fine-related debt.

- ❖ Complex needs or particular disadvantage (e.g. intellectual disability, mental health issues or limited literacy and comprehension skills).

For instance, people with cognitive impairment reported difficulties in communicating with lawyers, understanding legal documents and articulating their complaints.

## A vicious cycle of vulnerability *(adapted from Tobin Tyler et al 2011, p.236)*



# FUSION OF PROFESSIONAL LEGAL AND NON-LEGAL SOCIAL SERVICE



- ❖ Non-legal organisations can play a key role in Pre-Litigation Services.
- ❖ Legal aid cannot be limited to conventional roles of lawyers and judiciary.
- ❖ Inclusion of socio-economic & health care groups with legal professionals for legal redress.
- ❖ Law School Clinics assisted by professional academicians and qualified lawyers.
- ❖ Common Client Groups: necessity based assistance at different levels including legal aid.
- ❖ Acceptance that legal problems are not isolated problem and often overlap with other issues.
- ❖ Legal aid organisation in collaboration with non-legal services organisations to address multifaceted problems.

# SCOPE AND BENEFITS OF COLLABORATION



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- ❖ **Promotion of Legal Aid Schemes alongside other social welfare schemes.**
- ❖ **Legal Education and awareness to specific target groups. Legal advice and representation based upon special community requirements.**
- ❖ **Advocacy and law reform.**
- ❖ **Training, Cross-referrals and setting up of interdisciplinary case management teams.**
- ❖ **Assistance from other community workers such as social workers, counsellors and indigenous cultural workers to work with legal professionals to provide broad based Socio-Legal Services.**
- ❖ **Recognize they have a legal right or responsibility, in order to exercise or assume it. Render support and take the necessary action to avoid problems.**
- ❖ **Recognize when a problem or conflict is a legal conflict and when a legal solution is required.**

- ❖ **Legal Aid by Law Teachers and Students:** Section 33 of the Advocates Act, 1961 provides for categories of persons that may appear in any court or tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect.
- ❖ **Teachers and Students of a Law School providing full time instruction for the professional LL.B degree maintains a Legal Aid Clinic as a part of its teaching program where poor persons receive legal aid, advice and related services. These clinics are assisted by visiting qualified lawyers and social workers.**
- ❖ **SCHOOL OF LAW, BENNETT UNIVERSITY** taking forward the mandate of the Legal Aid Clinic, amongst several other activities had organized a two-day practical Legal Aid Training Workshop consisting of lecture and exercises in collaboration with International Bridges to Justice, Geneva, Switzerland and Founder, Cicero Chambers, Delhi on 24th and 27th February 2018.

# TWO DAY WORKSHOP BY ADV. AJAY VERMA, IBJ [FEBRUARY 2018]





# ROLE OF LEGAL AID CLINICS IN LAW SCHOOLS



- ❖ Legal awareness, sometimes called public legal education, is the first step towards the empowerment of individuals regarding issues involving the law.
- ❖ Legal awareness helps to promote consciousness of legal culture, participation in the formation of laws and the rule of law.
- ❖ Training of trainers and para-legal persons for the purpose of providing support to the legal aid program.
- ❖ Community education and legal empowerment; Strengthening community solidarity and supporting grass-root advocacy.
- ❖ Exposing law students to social justice work.
- ❖ Organization of legal aid camps for carrying legal services to the doorsteps of the people.

**Contd...**

# ROLE OF LEGAL AID CLINICS IN LAW SCHOOLS



- ❖ Law Clinics utilizes untapped resources of the student community for providing legal aid to the poor. Students can work on cases under supervision of qualified lawyers and assist in legal drafting.
- ❖ Inclusion of subject 'Law and Poverty' in LL.B. curricula with co-operation of the Bar Council of India.
- ❖ Exposure of students to the socio-economic realities of the country and of the use of law as an instrument of social change.
- ❖ Use of law for public interest litigation through class action.
- ❖ Assist the persons in need to find legal information and to obtain suitable legal service.
- ❖ Generate confidence that the legal system will provide a remedy and explain the legal process clearly enough to perceive that justice has been done.

# Legal Aid Camp at Mandoli Prison Complex, Delhi Prisons [5<sup>th</sup> May 2018]



# ROLE OF LAW SCHOOL CLINICS IN SPREADING LEGAL AWARENESS



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- ❖ Organizing camps, lectures, and interactive workshops or crash programs on the essential and elementary legal laws.
- ❖ Organizing General Public Sessions, wherein people may spend time interacting and discussing with legal scholars on contemporary issues that have significant bearing on the rights and livelihood of ordinary people.
- ❖ Road shows, radio talks, street and theatre plays.
- ❖ Publication of relevant books, periodicals, posters, and charts that deal with particular laws.
- ❖ Distribution of pamphlets, brochures, and stickers, the display of paintings, illustrations in comics, and other ways to ensure publicity for various legal mobilization activities.
- ❖ Assisting Public Bodies in preparation of display boards for public places (railway stations, bus stations, market places, in front of major government offices and police stations) to understand the spirit of law.



# National Training on Prisoner's Rights



# PARTICIPATION IN EXTERNAL WORKSHOPS



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# CHALLENGES BETWEEN LEGAL AND NON-LEGAL SERVICES



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- ❖ Organisations such as Bar associations, often react negatively to developing legal aid out of a sense of competition.
- ❖ Lack of motivation and time amongst lawyers to render pro-bono legal services.
- ❖ Lack of cooperation schemes, such as referral mechanisms involving lawyers or the bar association.
- ❖ Only some judges find it necessary for every party to be represented by a lawyer for effective assistance during Court proceedings.
- ❖ Obstacles faced during Court proceedings involving uninformed parties.
- ❖ Limited resources available to provide assistance. Varying capacity of workers and services to assist.
- ❖ Clients with complex legal problems which requires only trained lawyers assistance. Confusion about appropriate level of assistance to refer people with legal problems.



# INCLUSION OF ACTORS IN THE PROCESS OF LEGAL AID REFORM



- ❖ All stakeholders are important and not merely the judges and lawyers. For contemporary legal reform social workers, academicians, civil societies etc. are equally important.
- ❖ Other actors provide different perspectives and experiences that helps to address more complex issues.
- ❖ Involvement of private sector as a part of Corporate Social Responsibility. Private sector is generally not viewed as a potential partner in the provision of legal aid services.
- ❖ There is a need to facilitate different voices to be heard, especially from the weaker groups.
- ❖ Governments are realizing that participation is key to achieving consensus on reforms and that such consensus provides greater ownership and a higher probability of success. They also seek to improve access, efficiency, and quality of the delivery of justice.
- ❖ Inclusion of other stakeholders can help to strengthen the public confidence in judiciary.
- ❖ Building partnerships and data sharing.

- ❖ **Re-thinking the ‘one-stop’ model wherein all kinds of legal and social services would be provided under one roof. For example, victims of domestic violence can benefit from advice from the legal aid lawyer on legal options, while receiving psycho-social and job-training programs.**
- ❖ **Legal assistance for non-legal workers.**
- ❖ **Caseworker specific legal ‘hotlines’ can be useful to non-legal workers when assisting clients with urgent legal needs.**
- ❖ **Simplifying the determination of eligibility for services.**



- ❖ **Outreach is much more important than simply generating information.**
- ❖ **Recognition of the role of non-legal services as a pathway to legal support.**
- ❖ **Providing a coordinated response and inter-sector support and networking.**
- ❖ **Developing pro-bono lawyer networks with social workers. However, this will require long-term changes to the culture of practicing law.**
- ❖ **There is considerable demand for legal aid services from the not-so-poor.**

# CONCLUSION



Reform requires both a cultural change and a systematic change in the delivery of justice and countries need to adopt an inclusive and broad based approach for developing an effective and self-sustaining system of legal aid.

There are few people outside legal circles that have access to legal information and illiteracy, economic barriers, language barriers, social taboos and a lack of zeal among the legal fraternity may lead to obstacles in gaining requisite levels of legal literacy. Therefore, developing a one stop model with legal and non-legal groups can have far reaching benefits in strengthening the legal aid services to the actual beneficiaries. It will also increase efficiency, reduce cost and inspire confidence.

***“It is the duty of the law-giver to deliver to the many the instructions of whose truth he has persuaded himself.”***

**~Apollonius of Tyana**

THANK  
YOU

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