

ACCESS TO JUSTICE FOR MARGINALIZED PEOPLE: National Level Review and Sharing



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Organized by

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Table of Contents

Background to the Workshop	4
The Project.....	4
Purpose of the Meeting.....	5
Structure of the Meeting.....	5
1 Introduction.....	6
1.1 Areas of Intervention and Support under the A2J.....	9
1.2 Review of the Programme: Sharing Triumphs and Travails	10
1.2.1 Challenges of Documentation	10
1.2.2 Suggestions towards More Effective Functioning of NGO Project Teams	11
1.2.3 Some Areas of Emphasis	12
2 Programming through Logical Framework for Effective Monitoring and Evaluation ..	14
3 Legal Aid and Empowerment: Strengthening Existing Platforms	17
3.1 National Legal Services Authority.....	18
3.2 The Paralegal Volunteers Programme of NALSA	19
3.3 Discussion around the Empanelment of Legal Aid Lawyers by NALSA	21
3.4 Other Comments from the Floor to NALSA	23
3.4.1 Complicated Procedures.....	23
3.4.2 Lack of Support at Pre-litigation Stages.....	23
3.4.3 Lack of Convergence between LSAs, other Government Departments and Commissions dealing in Issues related to Vulnerable Groups.....	24
3.4.4 Engaging more with CSOs and NGOs.....	24
4 Creating Paralegals, Forming Networks, Building Platforms and Engaging with SLSAs/DLSAs and Other Government Institutions.....	26
4.1 Training and Capacity Building of CJWs by MARG	26
4.1.1 Project Description.....	26
4.1.2 Learnings.....	27
4.1.3 Challenges.....	28
4.2 Some First-hand Experiences in the Field	29
4.2.1 Experiences from Bihar.....	30
4.2.2 Experiences from U.P.	30
4.3 Some Activities of Swadhikaar towards Empowerment of Dalit Women Elected Representatives	31
4.4 Activities of the Centre for Promotion of Social Concerns in Engaging with SLSAs/DLSAs and Other Government Institutions	32
5 Survey to Identify Gaps in the Legal Empowerment of People and Information Dissemination on Rights and Entitlement to the Vulnerable.....	34
5.1 The Survey.....	34
5.2 Findings of the Survey	35
5.3 Learnings and Challenges.....	37
6 Women and Children	38
6.1 Women's Rights and Redress of Transgression	38
6.2 Child Rights and Redress of Transgression.....	41
7 Review and Sharing with Partners Dealing with Rights of Scheduled Castes, Scheduled Tribes and Other Traditional Forest Dwellers	43

7.1	Guaranteeing the Rights of the SCs/STs	43
7.2	How Can FRA and PESA be more Meaningful for Forest Dwellers?	46
7.2.1	Challenges to Successful Legal Awareness Programmes in Forest Areas	48
7.2.2	Some Suggestions for Conducting Legal Awareness Programmes in Forest Areas.....	49
7.2.3	Implementing FRA and PESA: Experiences of ELDF in Chhattisgarh.....	49
8	Communicating for Legal Awareness	51
8.1	Importance of Branding and Media Advocacy	52
8.1.1	Leveraging Brand Image	52
8.1.2	Use of Logos	52
8.1.3	Media Advocacy as a Tool.....	53
8.1.4	Behavioural Change Communication.....	53
8.2	Use of Community Radio for Legal Awareness: The AID Experience.....	55
8.2.1	Broadcasting as a Tool to enable Access to Justice.....	56
8.2.2	Narrowcasting as a Tool to enable Access to Justice	57
8.2.3	Major Challenges Faced by the Community Radio Endeavour	57
8.3	Legal Aid through a Telephonic Helpline: A JJK experience	58
8.3.1	Being Fully Prepared	58
8.3.2	Building the Right Image.....	59
8.3.3	Building Synergies with the Media	59
8.3.4	Anticipating Common Issues and FAQs and Being Ready	59
8.3.5	Creating a Helpline Manual/Reference	60
8.3.6	Creating a Credible Platform for Legal Discussion	60
8.3.7	Ensuring Clarity of Communication	61
8.3.8	Ensuring Long Term Technical & Financial Feasibility.....	61
9	Training and Sensitization of Judicial Officers: The Role of State Judicial Academies	62
9.1	Training Module for the Judges.....	63
9.2	Group Discussion.....	65
10	Concluding Observations.....	66

Background to the Workshop

The Project

The Department of Justice, Ministry of Law and Justice, Government of India is implementing a Project on **Access to Justice for Marginalized People (A2J)** with the support of United Nations Development Programme (UNDP). The Project aims to strengthen access to justice for the marginalized sections of society—particularly women, Scheduled Castes, Scheduled Tribes and minorities—by supporting strategies and initiatives that seek to lower the barriers they face. The Project focuses on the one hand on improving institutional capacities of key justice service providers to enable them to effectively serve the poor and disadvantaged and on the other hand, on directly empowering the poor and disadvantaged men and women to seek and demand justice services.

Starting in August 2009, the Project has completed a little over one year of supporting organizations to implement certain innovative activities relating to legal awareness, legal aid, and strengthening the capacities of institutions/ CSOs¹ and communities in the seven Project States (Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh (M.P.), Orissa, Rajasthan and Uttar Pradesh (U.P.)). Covering a variety of rights and entitlements ranging from rights against domestic violence and other women’s rights including their right to property and land, rights of Scheduled Castes (SCs) and Scheduled Tribes (STs), land rights, forest rights, right to information, to rights under the criminal laws, the Project is using innovative strategies for legal awareness like creating paralegal workers, using community radio, SMS etc. Some other initiatives that have commenced include:

- a baseline survey to determine the legal awareness gaps of the community,
- building bridges between the community and Legal Services Authorities at the National, State, and District levels,
- preparation of a training module for judges,
- creation of a module for adult legal literacy,
- creating database of primary justice institutions,
- conducting a study on the law school-based legal service clinics

¹ Civil Society Organizations

Purpose of the Meeting

The primary objective of the meeting with over 70 participants from the government, judicial academies, Legal Services Authorities, UN agencies and CSOs, was to review the progress under the Project and share some good practices.² It sought to get a comprehensive picture of the activities undertaken by the organisations, progress made so far, lessons learnt and challenges faced. The meeting was intended to take stock of the initiatives undertaken and debate what works for the community and what does not. Discussion also revolved around strategic and innovative activities that could be undertaken by the project supported initiatives to improve the ability of the marginalized people to access justice.

Structure of the Meeting

This was a two-day event with sessions on different aspects of the project outputs. The first day was an internal meeting between the Department of Justice, UNDP, Project Team and the Project partners. The purpose was to take stock of the project progress, review the success stories and debate ways to overcome challenges. This provided an opportunity for the partners to learn from each other's experiences, and share good practices for replication.

The second day brought together National Legal Services Authority, State Legal Services Authorities, State Judicial Academies, Central Government Departments, and the partners to share good practices under the Project. It provided an opportunity for the different agencies and partners to discuss ways to work together for improving the access to justice for marginalized people.

² For List of Participants and Invitees, see Annexure 1

1. Introduction

INAUGURAL PANEL PARTICIPANTS OVER DAYS 1 AND 2

Government:

- *Ms. Neela Gangadharan* A2J National Project Director, Secretary, Department of Justice, Ministry of Law and Justice, Government of India
- *Mr. U. Sarathchandran* Member Secretary of National Legal Service Authority
- *Mr. R.K. Aggarwal* Deputy Secretary, Department of Justice, Ministry of Law and Justice, Government of India

UNDP

- *Ms. Caitlin Wiesen-Antin* Country Director, UNDP India
- *Ms. Sumeeta Banerji* Assistant Country Director, UNDP India
- *Ms. Kanta Singh*, Programme Analyst, Governance Unit, UNDP

Member Secretaries of State Legal Services Authorities; Directors of the State Judicial Academies; Partners from Civil Society Organizations; representatives of other Government Departments and National Commissions

Article 39A of the Constitution of India provides that State shall ensure that the operation of the legal system promotes justice on the basis of equal opportunity for all, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 21 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 for all. Statutory provisions for legal aid strive to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor,

downtrodden and weaker sections of the society.

Ms. Caitlin Wiesen-Antin, Country Director, UNDP India, in her opening remarks introduced the basic contours of the Access to Justice (A2J) Project, which is a joint initiative of the Department of Justice, Government of India, and the UNDP. She appreciated the fact that Government of India had, through a series of progressive legislations and massive resource allocations put its weight behind the strengthening of National, State and District Legal Service Authorities³ in order to respond to the needs of the marginalized. Acknowledging the enthusiasm and leadership of the Secretary, Justice, Ms. Wiesen-Antin also appreciated the fact that Member Secretary and Secretaries from National and State Legal Services Authorities, and the Directors of State Judicial Academies have been extremely supportive to the A2J programme right from its inception.

She, however, expressed concern over the fact that despite progressive legislation and country-wide efforts, India's progress on Millennium Development Goals (MDGs) had not been more encouraging. Although India is among the Top 10 movers on growth globally, it has lost 30 to 40 per cent of its human development value due to inequality in access to health and education for the most vulnerable.

Millennium Development Goals focus on realization of the rights of the people, which depends upon the social and political arrangements, norms, institutions and laws within which people live and function. If the A2J project is able to facilitate the empowerment of the marginalized by increasing their awareness about their rights and entitlements such that they are able to demand their rights and also legal aid as their prerogative, it will further the broad MDG objectives as well.

The A2J project aims to experiment with replicable models for legal aid and legal empowerment of the poor; use of technology-based solutions; technical networks for communication; good resource material for the training of the judicial officers and possible

³ LSA Legal Services Authority; NALSA National Legal Services Authority; SLSA State Legal Services Authority; DLSA District Legal Services Authority

areas of linkages between different institutions of justice, commissions for the marginalized communities and ministries.⁴ These synergies are critical for translating policy to practice and addressing common and shared goals of ensuring rights for the marginalized and making a difference in the lives of those who need to be reached.

Ms. Neela Gangadharan Secretary, Department of Justice, Government of India, and National Project Director, emphasized the catalytic nature of the A2J project in bringing together key stakeholders at the field level in the seven States of Bihar, Chhattisgarh, Jharkhand, M.P., Orissa, Rajasthan and U.P. She also highlighted the fact that despite progressive legislation and considerable fund infusion (through the 13th Finance Commission award) by the Government as well as the creation of legal institutions for the provision of legal aid to the marginalized, key linkages and synergies across key stakeholders are often missing. Critical inputs from CBOs and NGOs⁵ who work in the field directly with the communities can help bridge these gaps and create those synergies. Legal Services Authorities (LSAs) are to be commended for being open to receiving these inputs and trying to gain insights into what, in the system, is working and what is not. Lessons from the field will be crucial to building better processes and utilizing funds well and wisely. Intense State level workshops under the A2J Project would provide the forum for interaction and experience sharing.

India is a country of large numbers but in the present day, when project partners have modern technology at their disposal, reaching the masses is not an insurmountable challenge. Civil Society partners could leverage available technical networks such as EDUSAT⁶ to reach the masses and spread awareness messages.

Ms. Neela Gangadharan closed her address by appreciating the efforts by the A2J Project team and all its partners.

⁴ One of the important outputs of the project is to assess the capacity needs of the State Justice Institutions. Some states have already organized consultations, meetings and the positive responses have led to concrete actions.

⁵ Community-based organizations and Non-governmental Organizations

⁶ EDUSAT or GSAT-3 was launched on 2004-09-20 by the [Indian Space Research Organization](#). EDUSAT is the first Indian [satellite](#) built exclusively to serve the educational sector. It is mainly intended to meet the demand for an interactive satellite-based [distance education](#) system for the country.

1.1 Areas of Intervention and Support under the A2J

Distinct areas of intervention and support have been identified as follows:

- **Strengthening the supply side by supporting justice delivery institutions**, that is, institutions such as the NALSA, SLSAs and DLSAs⁷, which have the legal mandate to provide legal aid to vulnerable communities. A needs assessment study of Legal Services Authority is being supported to suggest strategies to strengthen the State and District Legal Services Authorities. The Project is also supporting the judicial academies in training judicial officers on laws and issues relating to marginalized people.
- **Empowering people to demand justice services**
 1. Capacity development of CBOs, NGOs, lawyers and other intermediaries which are working at the field with marginalized people through training on relevant laws, rights, and procedures for seeking redressal for victims whose rights have been encroached upon⁸.
 2. Empowering people directly by creating awareness about rights and entitlements, and processes to access these.⁹
- **Action research:** Policy research is encouraged to scrutinize existing legislation and policies relating to marginalized people. The objective is to identify gaps and loopholes in the existing laws, regulations and policies or in their implementation so that appropriate changes can be made to plug them.

⁷ NALSA National Legal Services Authority; SLSA State Legal Services Authority; DLSA District Legal Services Authority

⁸ This form of intervention includes the creation of a cadre of community justice workers or paralegals and training them so that they can then engage with the community and facilitate access to legal aid for the victims.

⁹ Key legislations covered include Domestic Violence Act 2005, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) (FRA) Act 2006 or the Panchayat Extension in Scheduled Areas Act (PESA) 1996. This intervention takes the form of innovative strategies such as community radio, mass SMSs or narrowcasting of messages in village squares, markets, gram sabhas, using the services of law students for providing legal service etc.

1.2 Review of the Programme: Sharing Triumphs and Travails

1.2.1 Challenges of Documentation

Mobility and means of communication in today's world have been revolutionized. Technology has transformed the vehicles to deliver mass messages, create, maintain and transmit accurate documentation. Now that the A2J has completed a year of operations, expectations from project partners has intensified not just in terms of field activities but in terms of leveraging available technology to document these activities, learnings, best practices and outcomes in a comprehensive way. NGO partners are expected to find and create innovative ways to document or capture real situations on the ground so that the learnings are not lost.

Some NGO partners shared their concerns over the fact that while documentation and record-keeping were important for release of donor funds, they were finding the documentation requirements too extensive. Data to be filled into detailed formats, and preparing quarterly progress reports was becoming very challenging for their project teams and volunteers and often imposing on the schedule of the core work of legal awareness mandated within the project.

The A2J Project Team and UNDP, however, reiterated the importance of accurate and comprehensive documentation, even if it sometimes seems strenuous and detailed. **Cogent successes and outcomes need to be documented as also failed attempts and the causes of the failure. When these are shared with the project teams, it becomes possible to keep action on the ground focused, precise, and result oriented rather than diffused and inefficient. It is important to record case outcomes in a manner that is disaggregated by community, region, gender etc. so that patterns of 'what works and where' can be studied.¹⁰ Documentation should also focus on exclusionary processes and exclusionary practices that prevent marginalized people from accessing justice. The significance of documentation lies in showcasing the work done with conviction and to capture the causalities behind each stage of**

¹⁰ The mid-term review of this project specifically recommended documentation of cases viewed through a gender perspective so that gender-related strategies could evolve.

exclusion. Lessons captured through this process will help others in either replicating or improving upon these endeavours.

Partner organizations felt that while process documentation was still possible, impact documentation presented many challenges. There were many situations where evidence was present but sufficient quantifiable information was not available to document the successes.¹¹

The A2J Project Team explained that **since these were subjective, real life situations where social or behavioural change was perhaps palpable but certainly not tangible, evidence need not be in hard numbers.** Project volunteers at the field often resort to innovative ways of evidence building which should be utilized by the project teams of partner CSOs to create result-based reporting. For example, suppose there is a community where domestic violence had earlier gone unreported and socially unnoticed. In fact most families and victims did not even consider it a crime. After activities undertaken under the A2J project, suppose, the field volunteer reports, that more and more members of the community were now approaching the authorities with incidents of domestic violence. This may be treated as direct evidence of impact and captured accordingly.

Certain results should of course be quantifiable. For example, exactly how many members of SCs, ST, Dalits, excluded women, children, or HIV patients were reached through the programme and made aware?

It was agreed that representatives of partner organizations and the UNDP project team would consult on ways to simplify the existing documentation requirements so that it remains useful and effective and yet presents lesser challenges for the CSOs.

1.2.2 Suggestions towards More Effective Functioning of NGO Project Teams

Ms. Kanta Singh highlighted some of the concerns regarding the Project implementation by partners that were brought to the fore in the Mid-Term Reports submitted by the partners.

¹¹ This matter was also discussed at length in the session on Programming through Logical Framework for Effective Monitoring and Evaluation led by Rajat Khanna. [See Chapter 2](#)

- Reports submitted by many of the NGO partners were huge with hundreds of pages but vague in terms of the content. It was difficult to cull out the activities conducted and the impact achieved. She recognized that this was not because the work had not been done but was rather a problem of reporting.
- It was also pointed out that the progress of the activities was not on track. She wanted to know if the partners required support from the Project Team in implementing their activities in time.
- **Concern was also raised about the training programmes being conducted by partners. Often the content/modules used for training are not shared with the Project Team despite repeated requests. She mentioned that the Project Team could assist the organisations in selecting the content and resource persons for training, in case the partners require this kind of help. Many of the existing partners could share their training contents and resource persons with others. She stressed the importance of standardizing the IEC (information, education, and communication) material and training content so that correct messages are imparted to the community.**
- The need for proper accounting and utilization of financial resources was also emphasised. She mentioned that often the money disbursed under the project is either not spent or is over spent by the partner organizations.

She pointed out that there must be a consolidated effort in creating and preparing an action plan for the project (for the next year) with a view to accelerate its speed, impact, and result.

1.2.3 Some Areas of Emphasis

- 1. Frequent, productive, and frank communication between partner NGOs, UNDP and the Government of India as also among stakeholders within each program can address the need for building linkages/relationships and to bridge gaps faced by partners in the fields.**



2. Access to justice must be a top down process: support systems need to be strengthened, quality of legal service provided should be acceptable, and need-based support (like shelter and protection to women fighting criminal cases) should be provided

by the government.

3. **The importance of “well assessed reporting” to competently showcase and share work done with the others was emphasized. All reports should have a clear and standardized format. Activities undertaken and impacts assessed should have specific gender perspective.**
4. Focus is needed on accounts management.
5. In the reports, goals, activities and outcomes should be clearly differentiated from each other.

2. Programming through Logical Framework for Effective Monitoring and Evaluation

3. SESSION PANEL

4. *Mr. Rajat Khanna*, Monitoring and Evaluation Officer, A2J Project

The Logical Framework Approach (LFA) presented by Mr. Rajat Khanna at the workshop is an essential set of tools for trainers, programme officials and partners to monitor and evaluate the project execution and its impact on an on-going basis. The Monitoring and Evaluation Framework within the LFA lays out the objectives (outcomes), indicators, and targets (outputs) of the project and then goes on to measure outcomes vis-à-vis effort.



instrumental in the preparation of a project schedule and implementation plan. It provides a framework within which programme managers and coordinators can effectively manage project resources and closely monitor implementation of the project activities.

LFA has four components that are Goals, Objectives, Outputs, and Activities. These components can be described as follows:

- Goals/Impacts – To which the project contributes significantly after the project has been in operation.
- Objectives/Purpose/Outcomes – Achieved after the project has been completed.
- Outputs/Components – Are deliverables, produced during the execution of the project.
- Activities – Activities are the interventions which are required to produce desired outputs and components.

Mr. Rajat Khanna explained the relationship between these four components with the help of a “Results Chain” diagram and illustrated the goals, objectives and outputs of the A2J project within this framework.

The Access to Justice Project has four Outputs which are:

1. Supporting national and local justice delivery institutions to improve access to justice.
2. Developing legal and representational capacity of CSOs and networks providing access to justice services to women and men belonging to disadvantaged groups.
3. Enhancing legal awareness of disadvantaged communities and their elected representatives in select districts.
4. Informing Policies and institutional structures through action research and studies

The session included a long, interactive and productive engagement with the participants on the theme of indicators. Indicators are the pointers developed in order to measure whether specific targets and outputs of the project have been achieved as per the desired levels of expectation. Indicators can be either Qualitative or Quantitative but they must, under all circumstances be objectively verifiable and SMART—Specific, Measurable, Achievable, Relevant, and Time Bound.

To present an illustration of SMART indicators, an illustrative activity entitled ‘Legal Awareness through Volunteers’ within the A2J project was taken up for discussion and two indicators at the level of this activity showcased.

Indicators:

1. By the end of the first year of the activity, 100 volunteers identified and trained in the project area are in a position to generate legal awareness on the issues relating to the marginalized community.
2. By the end of the project period, the target population within the marginalized community is aware of its rights and in a position to assert and access these rights.

During the discussion many queries were raised and the clarifications had embedded in them important insights for project monitoring and evaluation exercises. For example, the partners wanted to know how to define qualitative indicators. It was explained that qualitative indicators are those indicators which in some form measure the qualitative

impact of project interventions. For instance, the number of people who understand their entitlements and are able to access them, say, after attending Panchayat Shivirs/legal awareness camps indicates a measurable project impact.

The participants mentioned that they can train a particular number of people but how would they know whether the people being trained understand the concepts and are able to use them? What would be the indicators to measure this kind of impact? It was clarified that a possible way is to establish a feedback mechanism to record what people have understood from a legal awareness activity and the kind of resource material that was used. This would also help in defining qualitative indicators.

In some activities such as broadcasting of community radio or legal awareness rallies it is difficult to define indicators and measure the impact. **An available option includes inviting suggestions from listeners and the community on the community radio programme. Community shows could have a question-answer session embedded for the programme team to gauge if people are listening and asking appropriate questions. Collecting feedback is also a good way to design/tailor the programme as per the needs of the community.** ¹²

Another option suggested was the distribution of self-addressed post cards to the participants during the legal awareness activities so that they may revert with queries and suggestions, issues and concerns. These alternatives provide ways for measuring whether the intended message is reaching the right audience and the triggering the right response.

¹² A demonstrative example was shared Mr. Ashutosh Srivastava, Project Officer, A2J project. AID India consulted with the community before they designed a community radio program for them. The feedback they received indicated that PDS¹² was an area of concern and priority for the community. The community radio program then incorporated the issues raised by the community on PDS (public distribution system) into the program design and presentation which elicited an immediate response from the PDS authorities. The entire experience is captured by Mr. K.T. Arasu of AID India in his paper that was circulated as part of the conference material.

3. Legal Aid and Empowerment: Strengthening Existing Platforms

SESSION PANEL

- *Mr. U. Sarathchandran* Member Secretary of NALSA

PRIMARY DISCUSSANTS

- *Mr. Radha Krishna* Member Secretary, Bihar SLA
- *Mr. V.R. Mittal* Member Secretary, U.P.
- *Ms. Anju Talukdar* Multiple Action Research Group (MARG), Delhi
- *Mr. Henri Tiphagne* Executive Director, People's Watch, CPSC, Tamil Nadu



“There were three friends “A”, “B” and “C”. One day child “A” fashioned a bamboo flute which “B” and “C” laid claims to. “A” contested the claims saying that he was the maker of the flute and so it was his by right. “B” claimed that he was the poorest of all and he could not afford to buy a toy so he

*should be given the flute. And child “C” claimed that flute should be given to him because he alone knew how to play the flute. From the Capitalist point of view, the person who undertook the production should own the product. From the Proletarian point of view, child B deserved it. And from the utility concept, child C deserved it. **Thus, the concept of justice is very elusive and varies from person to person, ideology to ideology, country to country and situation to situation.**”*

The above anecdote finds mention in Amartya Sen’s book, *The Idea of Justice* and was narrated by Mr. U. Sarathchandran, Member Secretary NALSA to set the context of the discussion in this session on strengthening existing platforms for legal aid and empowerment. He provided a brief background of the history of legal aid movement in

India and the series of events that led to the enactment of the 1987 Legal Services Authorities Act to give a statutory base to legal aid programs throughout the country in a uniform pattern.

3.1 National Legal Services Authority¹³

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to guide, monitor and evaluate implementation of legal services available under the Act. The NALSA issues guidelines for the State Legal Services Authorities to implement the legal aid programmes and schemes throughout the country.

Primarily, the State Legal Services Authorities, the District Legal Services Authorities, and the Taluka Legal Services Committees are required to discharge the following two main functions on regular basis:

- To provide free legal services to the eligible persons; and
- To organize Lok Adalats for amicable settlement of disputes.

The Legal Services Authorities Act 1987 lists persons eligible to access free legal aid as:

- SCs and STs
- women
- persons with disability
- victims of mass disasters, either driven by human action or natural
- all people charged with criminal offences
- persons living in custody including custody of protective homes within the meaning of Section 2 of Immoral Traffic (Prevention) Act 1986, Juvenile Justice Act 2000 and also the Mental Health Act 1987 (those who are confined to mental hospitals)
- persons with annual income less than Rs. 9000 (in some States this has been enhanced to Rs.1,00,000/or above).- **It was mentioned by partner NGOs that there are cases where the victim may be eligible for legal aid as mandated by the law but may hail from a remote village and the nearest LSA may be several hundred kilometres**

¹³ Primary discussant and presenter was Mr. U. Sarathchandran, Member Secretary NALSA.

away.¹⁴ In such situations it becomes very difficult to ensure swift and smooth access to justice. Mr. U. Sarathchandran addressed this concern by clarifying that the State, District and Taluk Legal Services Authorities are in the process of setting up Legal Aid Clinics across the country. The National Plan of Action of NALSA for the year 2009-10 and 2010-11 contemplate setting up of Legal Aid Clinics at the Mandal level and Panchayat level as well. NALSA is in fact envisaging a legal aid clinic in each village.

Mr. Sarathchandran highlighted that NALSA monitors the activities of SLSAs closely in order to streamline efforts and create and maintain a certain standard of services rendered to the marginalized. SLSAs are encouraged to prepare blue-print for activities planned to be undertaken during the year and present monthly progress reports in respect of each such programme. It is envisaged that they will take steps for appointing full time Secretaries in all District Legal Services Authorities.

3.2 The Paralegal Volunteers Programme of NALSA

Mr. Sarathchandran emphasized that preventive and strategic legal aid under the Legal Service Authority was not just about courts and cases. NALSA had recently launched its flagship programme 'paralegal volunteer programme', developed with the objective of training paralegal workers to engage in spreading legal literacy and awareness among people. In particular, the programme aims to educate weaker sections of society about the rights, benefits and privileges guaranteed by social welfare legislations. It was envisaged that the programme would roll out at the Panchayat level with close participation of CSOs and NGOs who would assist in the training of paralegals and ensuring that they are able to form a bridge between common people and formal legal services institutions. Say, for villagers from remote hamlets with poor access to courts, their local paralegal volunteers could offer advice and also help complainants reach a legal services institution.

The present policy envisages at least two trained paralegals employed in every Legal Aid Clinic. The paralegal is expected to handle all queries and issues that are not complicated

¹⁴ This issue was also highlighted by Ms. Joanne Lokhande from the Centre for Social Justice. See Chapter 5 in this report.

and do not require the services of professional lawyers. At the same time, Mr. Sarathchandran alerted the audience to the fact that paralegal workers will not be lawyers, and will be expected to put the complainant in touch with a qualified lawyer and legal services institution where required.

In the context of the discussion on the paralegal volunteer programme, it was mentioned by partner organizations such as MARG¹⁵ and CPSC¹⁶ that the depth and intensity of a paralegal training programme needs to be given due consideration and course curriculum developed carefully so as to ensure that all that is significant is included and at the same time the training module is time efficient and effective. It was suggested that the structure and content of such programme be developed through a discussion with all the stakeholders including civil society organizations working in this area for many years. It was suggested that a National level consultation be held or perhaps a Working Group involving both officials from NALSA as well as CSO partners working in the field be formed for discussing these issues.

On the issue of compensating the paralegals, NALSA was clearly of the opinion that being a volunteer and not a paid employee is critical for the success of the programme. The Member Secretary mentioned that only in such a case would, those who are truly motivated and have a deep inherent understanding of justice in its true spirit join the cadre. However, MARG which has been training community justice workers in U.P. and Bihar under the A2J Programme with the aim of creating a cadre of intermediaries (paralegals) between ordinary persons and legal service institutions, felt strongly that unless such functionaries are recompensed for their efforts, they are not be able to find the requisite time or inclination to take on legal aid work seriously. They often move, and perhaps understandably, on to other issues where they are assured some recompense.

¹⁵ Multiple Action Research Group

¹⁶ Centre for Promotion of Social Concerns

3.3 Discussion around the Empanelment of Legal Aid Lawyers by NALSA

The Legal Services Authorities have an empanelment system under which lawyers are empanelled to provide free legal aid through the LSAs. The CSOs raised the concern that since the recompense offered to panel lawyers was paltry, their interest in legal aid related work wanes quickly and their commitment to fulfilling their responsibilities in this sphere becomes perfunctory.

NALSA agreed that the fees for the lawyers are very low and accepted that this may impact the quality of the service. However, the Member Secretary clarified that efforts are being made to improve this. Many States have increased the fees for lawyers although it still remains pretty low as compared with market standards. NALSA also clarified that recently it had notified a regulation “National Legal Services Free and Competent Legal Services Regulation” which envisaged the appointment of 5 retainer lawyers at the Taluk level, 10 at District level, 15 at high court level and 20 at Supreme Court level against small retainership fees. In return for the monthly fee, these functionaries were expected to be available whenever their services were required by NALSA. The retainership fee ranging from Rs 3000 at the Taluk level to Rs 15000 at the level of Supreme Court is fairly nominal. However, it is assumed that these professionals are not going to be involved in legal aid work full-time. They are, in any case not offering their services just for the sake of the money but for the cause they are serving.

The Regulation also provides for the appointment of a full time senior lawyer (on payment at the markets rates) when required.

It was also suggested by the forum that lawyers to be empanelled to the NALSA, SLSAs, and DLSAs should be identified and trained when they are young and fresh out of law school because at this stage they are more idealistic and passionate than mature legal professionals and are more receptive to issues relating to marginalized communities. This suggestion emerged because it was strongly felt by CSO representatives that the initial passion among young legal professionals during the Legal Aid Movement in the 1980s somehow got dissipated with the passing of the Act

and the formal institutionalization of legal aid services. There was a need to re-infuse some of that passion and motivation in the legal aid services to make it relevant and responsive to the needs of the marginalized people.

Drawing upon the same sentiment, Ms. Abha Singhal Joshi, an independent lawyer working in the area of legal literacy emphasized that with the institutionalization of legal aid, certain traditions within the legal practice of addressing the needs of the marginalized such as the designation of an Amicus Curiae (friend of the court) or the provision of appointing a defence lawyer under the Code of Criminal Procedure Amendment Act 2008 by the courts are dying out. All cases where the defendant/complainant is needy or unable to pay for a lawyer are automatically and mechanically referred to the LSAs, only serving to increase the burden of an already overburdened system. Lawyers no longer respond spontaneously to the plight of a vulnerable in light of their commitments under Rule no 46 of the Bar Council of India.¹⁷

Lok Adalats

Lok Adalat is a system of alternative dispute resolution developed in India. It roughly means "People's court". It is a non-adversarial system of disposal of cases, mandated by the LSA Act. Lok Adalats deal with cases ranging from motor vehicle accidents to domestic disputes as well as very minor compoundable criminal offences. It does not, however, have jurisdiction on criminal matters that are non-compoundable offenses. The Member Secretary mentioned that for the financially weak, the lok adalats are a relief, as they need not pay any court or lawyer's fees for the Lok Adalats to take up their case. The 13th Finance Commission has earmarked a substantial grant for Lok Adalats with a target of settling 75 lakh cases in 5 years¹⁸.

A concern was raised by Mr. K.T. Arasu of AID that though the demand for legal services at the Lok Adalats is overwhelming, they are held only on Saturdays and Sundays. He was of the opinion that the Lok Adalats should be held more frequently and regularly. Mr. Sarathchandran clarified that since the Lok Adalats are headed by judges who perform their regular judicial

¹⁷ Rules made by the Bar Council of India in exercise of its rule-making powers under the Advocates Act, 1961, CHAPTER – II, Standards of Professional Conduct and Etiquette, (Rules under Section 49 (1) (c) of the Act read with the Proviso thereto), Section VI-Duty to Render Legal Aid, Rule no 46. **Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.** Ms. Abha Singhal Joshi also mentioned the existence of a loose network of like-minded lawyers called the Rule 46 Network which espouses the cause of providing free legal aid to those in need.

¹⁸ Mentioned by Mr. U. Sarathchandran

functions on working days, these additional responsibilities of holding Lok Adalats or conducting legal awareness sessions can only be discharged during Saturdays and Sundays.

One CSO representative pointed out that Lok Adalats were an unfair burden imposed on the LSAs. Were the judiciary able to dispose of its pending cases in a timely manner, the need for Lok Adalats would never arise. District judges are already overburdened with their caseloads at the judiciary and yet, they are compelled to dispose of requisite number of cases at the Lok Adalats which are part of their targets. There are instances where Lok Adalats are being used for the hearing of cases of large organizations such as ICICI Bank, Citi Bank or the powerful mobile companies like the Reliance Communications (a case of 'Mobile' Lok Adalats with a twist!).¹⁹ Cases of the poor and marginalized wait in the wings, the District judges complete their target of cases heard in the Lok Adalat while the intended beneficiary is by-passed. Further since, all activities relating to legal awareness camps and advocacy are undertaken on Saturdays and Sundays. So Lok Adalats are often held at the cost of other awareness and related activities.²⁰

3.4 Other Comments from the Floor to NALSA

3.4.1 Complicated Procedures

Representatives from CSOs mentioned that the procedures entailed in approaching and engaging with legal service authorities were fairly complicated, particularly for the sections of society that were expected to avail of these services. NALSA clarified that to simplify processes it was planning to start front offices where one could directly walk-in and ask for the services instead of following any complicated procedure.

3.4.2 Lack of Support at Pre-litigation Stages

Partner NGOs highlighted the fact that relief, assistance or security offered to the victim by the LSA at the pre litigation stage is limited. For example, under the SC/ST Act, a victim of atrocity is entitled to compensation from the Government. However, it was pointed out that the LSAs do not assist the victims in accessing this compensation from the Government Department. Similarly, where a job card is not made under NREGA or a BPL card is not made despite entitlement, LSAs should assist the needy people.

¹⁹ Mentioned by Mr. Henri Tiphagne, CPSC

²⁰ Mentioned by Mr. Henri Tiphagne, CPSC

3.4.3 Lack of Convergence between LSAs, other Government Departments and Commissions dealing in Issues related to Vulnerable Groups

It was highlighted by the representative from the National Commission for Minorities that though they often deal with cases of denial and transgression of rights, in the absence of information about LSAs they end up referring these to the State Commissions which, often, does not yield any response or action. It was suggested that the NALSA may consider deputing lawyers to Departments and Commissions that handle issues of vulnerable groups such as minorities, SCs, STs, or women. These agencies which often handle cases of violation need legal professionals to fulfil their mandate of delivering justice to these groups. It was concluded that there is a need for continuous engagement between the LSAs, Government Departments and Commissions that handle issues of vulnerable groups through events, meetings and discussions. This can ensure that these agencies are well informed about the LSAs, legal remedies and redress mechanisms and hence in a better position to help their target audiences.

3.4.4 Engaging more with CSOs and NGOs

Mr. Ashish Joshi, Director, Policy Planning, Ministry of Minority Affairs made a pertinent point that governmental agencies tend to have an extremely adversarial reaction to feedback from the grassroots. Instead the grievances and concerns of partners in the field should be heard with an open mind. Mr. Sanjay Upadhyay of ELDF pointed out that it is important for governmental agencies to view CSOs and NGOs as partners in and supporters of a common cause of enabling access to justice for marginalized people rather than adversaries and trouble-makers. This is important to ensure that governmental systems, policies and procedures remain responsive to the voice of the people and in close touch with the situation on the ground.

A concern raised by judicial officers (from DLSAs) in the context of engaging with CSOs and NGOs was that sometimes these organizations as well as other functionaries at the local level try to take unfair advantage of the judicial officer and seek extra-legal favours. Local functionaries even try to influence the judge and cloud his/her unbiased vision of a case by

giving inputs and comments pertaining to a live case. It was concluded that in case judicial officers are approached by NGOs, CSOs or others for such requests, they should never be entertained. NALSA member Secretary suggested that possibilities such as these should not imply that the DLSA and SLSA should not work with NGOs at all. It is possible to ignore such requests for favours and yet carry on a cooperative relationship for greater good.

Bihar SLSA²¹: Efforts to engage with the civil society

The Bihar SLSA engages the executive officers apart from the judicial officers who provide legal services on weekends. For every Panchayat, two paralegal volunteers are being deputed. 246 Paralegal volunteers have been trained in Bhojpur District alone.

In the context of engagement between the SLSA and CSOs, as per the Bihar Regulation 1998, NGOs can be engaged for spreading legal awareness in collaboration with the DLSAs. In developing the paralegal training programme, the Member Secretary, Bihar SLSA felt that the CSOs in the State were not very forthcoming in participating in the programme. The SLSA had tried to prepare a list of NGOs working in the area to invite their participation in the training process but hardly any response was elicited. MARG expressed its keenness to be a part of the process and assured the SLSA that they would get in touch with the SLSA in this context soon.

The CSOs clarified that often they are not even aware of such initiatives taken by the Legal Services Authorities. It was agreed that better means of communication between the CSOs and LSAs must be developed.

²¹ Inputs from Mr. Radha Krishna, Member Secretary, Bihar SLSA

4 Creating Paralegals, Forming Networks, Building Platforms and Engaging with SLSAs/DLSAs and Other Government Institutions

SESSION PARTICIPANTS

FACILITATORS

- *Ms. Sumeeta Banerji* Assistant Country Director, UNDP India
- *Mr. Dilip Das* Antodaya, Orissa

PANEL

- *Ms. Anju Talukdar* Multiple Action Research Group (MARG), Delhi
- *Mr. Noor Alam* Multiple Action Research Group (MARG), Delhi
- *Ms. Sahnaz Fatima* Trained personnel from MARG working in Chitrakoot District, U.P.
- *Mr. Kailash Kumar Rai* Trained personnel from MARG working in Bihar
- *Dr. Srivella Prasad* Swadhikaar, Delhi
- *Mr. Henri Tiphagne* Centre for Promotion of Social Concerns (CPSC), Madurai, Tamil Nadu

The session dwelt on issues relating to training of community justice workers (CJWs), dalit women elected representatives, local volunteers and paralegals, as well as their convergence and communication with the formal legal systems.



4.1 Training and Capacity Building of CJWs by MARG

4.1.1 Project Description

MARG is training a cadre of paralegals or 'Community Justice Workers' (CJWs) in

the States of U.P. and Bihar, enlisting motivated and literate volunteers from the

existing staff of local CBOs and NGOs²² already functioning in these States. MARG undertakes a four day training programme at regular intervals on various aspects of criminal, constitutional and civil law and seeks to build their capacity and confidence to provide basic legal assistance to the community. Fifty CJWs, each in Bihar and U.P., have been selected and trained till date. They are encouraged to access courts, Commissions and other avenues for the enforcement of the rights of the communities they serve.

CJWs are there to assist the people in need of legal advice to access justice. However, it should be kept in mind that CJWs are not lawyers. They require a certain degree of hand-holding at the District or Block level. **It is vital to have lawyers to intervene at the right juncture and take the case through to its lawful end.** Any litigation to be carried forward to the court at in District or level must be taken over by lawyers and that is where MARG's partnerships with local lawyers and linkages with the DLSAs and SLSAs come into play.

Eventually CJWs, much like the paralegal workers under NALSA's Paralegal Volunteers Programme should be able to create networks and build bridges between the common people and legal aid institutions on their own without intermediation by MARG.

4.1.2 Learnings

After the training course, most of these volunteers return to their full time jobs in the NGOs from which they draw their monthly salaries. How much time they are able to spare for legal work which may not be a part of their NGO's mandate remains an important question. **MARG's experience seems to suggest that if the government is serious about enabling access to justice for the poor, it will have to provide the resources and devise a**

²² Community Based Organizations and Non-governmental Organizations

system within which paralegals or CJWs receive sufficient financial support to be able to fully focus on legal aid related activities.²³

Representatives from Development Alternatives describing their experiences in Tikamgarh District in M.P., mentioned that caste-based discrimination and gender-based victimization was rampant in the District. They felt that legal issues that they tackled were complex and closely related to the socio-economic fabric of the region. CJWs/paralegals, in order to be able to handle these issues with sensitivity and caution need to be extremely well-trained. They face a challenge that volunteers who sign up for training as paralegals are often not even literate. To train them within a short period to understand legal concepts well enough to spread awareness about rights and legal redress among the victims, potential victims and their families is extremely difficult. In this context, they wanted MARG to share its learning with the forum.

In the experience of MARG, it has proved very important for the volunteers to be lettered to the extent that they can read and understand simple text. A basic series of law books developed by MARG is the backbone for the CJWs in imparting effective legal advice. However, mere information on rights or screening of informative movies without proper and thorough technically sound discussion can lead to confusion and misinformation. It is important to have in-depth discussions on problems and possible solutions followed by hand-holding support.

4.1.3 Challenges

Law and legal systems are not easy to understand. These are fairly nuanced issues and training of CJWs can be a challenging task. It needs time and commitment both on the part of the trainee as well as the trainer to do full justice to the subject. Trainees with partial knowledge or immature understanding if let loose on the general public can bring more harm than good. Initially MARG conducted three-day training programs for CJWs, with one day of field exposure. Though this has now been extended to four days, it is still not believed to be sufficient.

²³ This is contrary to the position held by NALSA that paralegals should be volunteers and not paid employees because then the programme will only attract people truly motivated and committed rather than those that are there for the money. See Section 3.2 of this report.

The key questions faced in running such a programme are:

- Are the right people being selected?
- Is the training intensity appropriate for the trainees selected?
- How does one keep the trainees motivated?
- What kind of handholding do they need when they go back to the community?
- How can the available time and resources be utilized for maximizing gains provided?

There was a discussion on the need to have standardised modules for training paralegals so that the same message is delivered by different groups. The participants agreed that this is important but pointed out that since the context, culture and constraints of each community are unique to it, some flexibility around the course content and the design of the training module is perhaps desirable so that community-specific nuances can be captured. Within the standard content and structure some flexibility can be introduced provided there is consensus on this across all stakeholders. These nuances should also be taken into account in selection of trainees and their profiles. ²⁴

4.2 Some First-hand Experiences in the Field: MARG CJWs

In this session, CJWs shared their experiences on how their training on rights and entitlements, laws and regulations helped them to empower their communities and engage with the police and the legal system in the assertion of these rights. CJWs in Bihar and U.P. are actively disseminating information on the correct procedures related to FIRs, supporting victims of domestic violence, helping senior citizens demand Old Age Pension at the Block level, taking measures to stop foeticide, and spreading awareness among the women about their legal rights and their rights to refuse arrest between dusk and dawn.

²⁴ For instance Dr. Jacob John of KDS also shared his point of view about the State of Bihar where there are areas where up to 95% of households lived below the poverty line. Such households are usually SCs, STs, or OBCs or minority groups. An effective strategy in servicing such communities and enabling legal access is to create an army of trainees and **in particular, a network of paralegal women trainees who can reach out to women within households in need of legal counsel.** Women paralegals are more accessible to marginalized women who are not too comfortable approaching men with their problems.

4.2.1 Experiences from Bihar

Experiences from Bihar were shared by Mr. Kailash Rai, a CJW trained by MARG. He mentioned that crime rates in Bihar are high and yet hardly any cases are filed and few make it to the courts. Landowners and local authorities which are often in cahoots with the landed, strongly resist attempts by community workers to educate the people on their rights. There are many challenges and Mr. Kailash Rai mentioned that when he visited the DLSA²⁵ in Araria in order to collect a list of all the legal aid lawyers practising in the area, he was told that such information was not readily available and that he should return later. The following visit was even more unproductive and he was told that no cases were ever filed in the office, and that it had no records at all.

Even filing an FIR was extremely difficult in the area. Now CJWs in Bihar are planning to reach out to the Panchayats of 3-4 villages, spreading awareness through films, mass meetings, and legal advice.

4.2.2 Experiences from U.P.

Ms. Sahnaz Fatima, a CJW from Chitrakoot, U.P., shared with the forum, the manner in which the training transformed the thinking of CJWs. CJWs were made aware of their rights in a manner so that they could spread awareness in their community. Chitrakoot is a backward district of U.P. where, much like Bihar, lodging an FIR is a tough call. It is not commonly known that FIRs should be registered free of cost at the police station. Most complainants are forced to pay Rs 500 to Rs1000 to get their reports registered. Ms. Sahnaz Fatima and her colleagues organized a foot march through 15 villages, talking to people about the laws, legal processes and their rights. They used posters and educational movies which highlighted daily problems of typical village life and possible ways of tackling them. They campaigned against domestic violence through CDs, banners, and posters and spoke on legal redress for victims. They received active cooperation and participation from the local people in their endeavour wherever they went. They now plan to meet the lawyers of the Bar Council along with the District Judge to discuss matters related to the incidence domestic violence and poor access of marginalized groups to justice.

²⁵ District Legal Services Authority

The discussion ended on the sentiment that in circumstances where even primary village schools are absent or dysfunctional, spreading basic legal awareness seems an almost insurmountable challenge. However, with the intense and sustained efforts within the programme and the enthusiasm and dedication of CJWs, marginalized groups are gradually overcoming their hesitation to approach a lawyer, seek justice in the court, face a judge and fight for their rights.

4.3 Some Activities of Swadhikaar towards Empowerment of Dalit Women Elected Representatives

A critical intervention by Swadhikaar across seven Districts of Rajasthan, U.P. and Bihar, has been in training dalit women elected representatives or Sarpanches who face a host of



discriminatory practices and forms of exclusion while performing their duties, not just from the dominant castes, the police, and the administration, but also from their families and their own communities by virtue of the fact that they are women who have attained a position of relative power²⁶. These

women are mostly illiterate with limited information and awareness about their power, role and responsibilities.

Around 344 dalit women Sarpanches and ex-Sarpanches have been brought into the fold of the training programme which provides comprehensive information on the

²⁶ Swadhikaar presented the case of a dalit woman Sarpanch who was brutally beaten up in her village and compelled to open a mutation notice against her will. Swadhikaar routinely takes up such cases of discrimination and exploitation of dalit women elected representatives. It assists them in lodging FIRs, talking to the police and dealing with the enforcement authorities. They also help in representing and filing cases with the Nodal officers especially under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985 and the District Monitoring Vigilance Committee. The organization also helps in issues related to release of bonded labours.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985, the Panchayati Raj Act 1993, Domestic Violence Act 2005 and related Acts, assists in documentation and also imparts detailed guidance on how they can discharge their duties as Sarpanches.

Swadhikaar has also to set up links with LSAs so that the Sarpanches can organize legal cells or clinics in their respective areas as well as legal awareness camps in their Panchayats.

During 2011, Swadhikaar is planning to connect with District level as well as the State level officials and enforcement officers to discuss the relevant issues with them and create platforms where dalit women Sarpanches can engage with these officials and discuss issues that concern them.

4.4 Activities of the Centre for Promotion of Social Concerns in Engaging with SLSAs/DLSAs and Other Government Institutions

Mr. Henri Tiphagne of the Centre for Promotion of Social Concerns (CPSC) shared with the forum the experiences and activities of the organization under the A2J project. CPSC, with the support of the Department of Justice and UNDP, is engaged in Bihar, Jharkhand, Orissa, Rajasthan, and U.P. and liaising with them to improve justice delivery to the marginalized in these States.

Under the A2J Project, CPSC monitors cases of caste discrimination, domestic violence, and custodial violence by deputing competent grassroots workers and brings these cases for legal intervention to courts. CPSC not only assists the victims in taking their cases to court but also trains and sensitizes the lawyers who take up these cases. CPSC is working towards the ultimate objective of sensitizing the panel lawyers of the DLSAs in order to ensure that cases, such as those of custodial violence, that have thus far been ignored by the DLSAs can be brought within their ambit.

One of the participants wanted to know whether it was possible to involve the Bar Associations more closely with legal aid services and the cause that the A2J project is trying to further. Mr. Henri Tiphagne responded that involving the Bar associations is perhaps a bit premature at this stage because, in his opinion Bar associations are often captured by powerful, elitist, and upper caste groups. Participation of individual members of the Bar Associations is still a possibility. It was concluded in the course of the discussion that time and resources are better spent on engaging with and training legal aid lawyers of the DLSAs/SLSAs.

5. Survey to Identify Gaps in the Legal Empowerment of People and Information Dissemination on Rights and Entitlement to the Vulnerable

SESSION PANEL AND KEY PARTICIPANTS

- Ms. Joanne Lokhande Centre for Social Justice (CSJ), Gujarat
- Mr. Rajat Khanna, Monitoring and Evaluation Officer, A2J Project

5.1 The Survey

Centre for Social Justice presented an overview of a survey being conducted across three



chosen Districts in each of the seven project States in order to create a baseline understanding of legal needs, priorities of the vulnerable, the justice delivery mechanisms, their accessibility gaps in knowledge of people and those assisting them and barriers to justice. To assess

gaps in legal empowerment, discussions and surveys with members of the marginalized communities, duty bearers, and civil society and community based groups were carried out in selected districts in the seven UNDP focus states of Bihar, Chhattisgarh, Jharkhand, M.P., Orissa, Rajasthan, and U.P., The activities targeted people belonging to scheduled castes, scheduled tribes, women, minorities, persons with disabilities and other members of marginalized communities in select States.

The objectives of the survey on gaps in legal empowerment are to identify:

- Priorities of the people
- Awareness of the legal processes that govern these priorities

- Ability to access these legal processes
- Extent of awareness of their rights and entitlements
- Obstacles that people face in accessing their rights and entitlements
- Awareness of the existence and role of Legal Services Authorities
- Perception about Legal Services Authorities
- Response of the duty bearers
- Role that CSOs/CBOs adopt to help the poor in accessing justice
- Support they require for this
- Suggestions of the people and CSOs/CBOs on the way forward

The methodology used includes:

- Household survey
- Focused group discussions (FGDs) with select vulnerable groups in sample villages in every District
- Interview with the litigants on their experience of accessing the courts
- Interview with the officials regarding the problems that they face
- Applications under the Right to Information (RTI) Act 2005 on performance of various departments
- Desk study
- Case studies to document experiences of the vulnerable groups
- Focus group discussion with the civil society organization on their experiences and suggestions.

5.2 Preliminary Findings of the Survey

Levels of legal awareness and education were by and large low. However, it was been observed that while availability of basic amenities as well as literacy across all the seven States is extremely poor, wherever NGOs or CBOs are actively working with the community, awareness levels are high, though the information may be limited to the issues being narrowly focussed upon by the particular organization working in their midst. **On**

the particular issue of accessing justice, a large proportion of the respondents were not aware of the existence of free legal aid services. In the absence of awareness about legal aid, there is no other structure that allows poor people seeking redress.

The survey found that it was fairly common for lawyers on the panel of Legal Services Authorities to demand money from victims of marginalized communities in contravention of the law. Preliminary findings also revealed that courts were understaffed and the working staff so overburdened with the nitty-gritty of mandatory paper work that it did not have the time or the enthusiasm to provide any information to the people. The non-dispersal of proper information to the people created communication gap and bred mistrust in the system.

The situation was not ameliorated by the fact that courts are not always accessible and within close proximity of villages. In Barmer (Rajasthan) and Pratapgarh (U.P.), there were no courts at the block level which made it difficult for the ordinary person to travel to far off courts and seek justice. This creates impediments in the way of access to justice right at the first step of reaching a court.

Ms. Lokhande also highlighted that the survey has revealed that many judges and lawyers and other officials did not have complete information about various laws. In the case of Domestic Violence Act 2005, often the Protection Officers were not deputed. Where they did hold office, they had limited understanding of their role and were therefore unable to discharge their duties effectively.

CSJ also observed that in cases which merit the invocation of say the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985, a lot of the focus tends to shift from the atrocity and the social repugnance that it should elicit to the pecuniary compensation. Proper representation of the victim's case and the social deterrence of future acts of such atrocity (which is the spirit of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985) pale in significance. The struggle over getting the compensation

attains primary importance over justice delivered. Just compensation is sometimes not received in practice even when it has been disbursed on paper.

5.3 Learnings and Challenges

Working on the survey has been an incredible learning experience for CSJ in understanding complexities across geographies, processes, cultures and methodologies of working.

It was not easy to track and record minute details, work in a pre-determined time frame with the government and co-opt households at the grassroots to participate in the survey.

It was very difficult to get the entire village to sit in one place and discuss their problems. Moreover, issues being faced by the dalits had to be taken up separately because they had grievances, not just against the authorities but against other members of the village community as well.

Faith among the people had to be built painstakingly with repeated meetings and discussions. Key influencers and opinion makers within the village had to be identified and co-opted first so that their participation in the discussions could increase the comfort level of the community.

6 Women and Children

SESSION PANEL AND KEY PARTICIPANTS

FACILITATOR

- *Ms. Kanta Singh*, Programme Analyst, Governance Unit, UNDP

KEY DISCUSSANTS

- *Ms. Anju Talukdar* Multiple Action Research Group (MARG), Delhi
- *Mr. Saji Thomas* Centre for Promotion of Social Concerns (CPSC), Madurai, Tamil Nadu
- *Mr. Henri Tiphagne* Centre for Promotion of Social Concerns (CPSC), Madurai, Tamil Nadu
- *Ms. Joanne Lokhande* Centre for Social Justice (CSJ), Gujarat

This session was devoted to the issues faced by vulnerable women and children, particularly from excluded groups and the experiences of partner organizations in working on these issues. MARG focussed on the issues faced by women while CPSC led the discussion on upholding child rights.

6.1 Women's Rights: Issues of Concern

Ms. Anju Talukdar from MARG highlighted that awareness among women both in urban as



well as rural India regarding legal protection against domestic violence is pitifully low. In so far as institutional responses are concerned, she highlighted the fact that for every Protection Officer who is responsive, sensitized and sincere, there are many others that are unhelpful and

irresponsive to the plight of the complainant.

Ms. Anju Talukdar also mentioned that even when in position of 'power', it is not uncommon for a woman Sarpanch to be reduced to a nominal head installed in her chair as a consequence of Constitutional legislation that reserves 33 per cent of the seats for women. It is her husband or the '*Sarpanch Pati*' (a self declared and entirely unconstitutional title) who wields the real power. He takes the decisions and calls the shots. She is a mere signatory on the cheques that he decrees that she should sign.

MARG trains cadres of community justice workers (CJWs) on legal issues and the rights of SCs/STs and marginalized women in particular. During the training programme, the organization circulates a series of 12-13 booklets on simplified versions of fundamental rights, rights against domestic violence, right to information, land laws, inheritance laws, and labour laws.

When such sessions on laws get too intense or monotonous, films are screened to provide breathers and breaks while strengthening key messages through the visual medium. The films reach out not just to the CJWs but they are also carried to the larger communities served by the CJWs as they are very powerful tools to communicate with an audience that may be largely unlettered.²⁷

It was emphasized time and again that women in India, by and large, do not know their rights. They have no information on the series of legislations that exist to protect them from a range of crimes from dowry harassment to domestic violence and rape. In situations where they are aware of their rights they are not in a position to seek redress and justice without a degree of support from NGOs or CSOs. For instance, when a woman is facing dowry harassment and abuse and has moved to her parental home in distress, she needs to know that she has the right not to face abuse and the right to return to her marital home with dignity. The law mandates that she has the right to life and security.

²⁷ The film *BOL BASANTO* is a 25 minutes series where the chief protagonist, *Basanto Chachi*, who is a paralegal, helps people fight for their rights.

That is as far as the knowledge goes. In practice, in order to preserve her life in her marital home which has thus far been violent and dangerous, she requires a support system. Here just knowing one's rights is not enough. She needs the CJWs to assure her that there is an organization which is there to help her, the Protection Officer and the police are on her side. This information will inspire confidence in her. Also for the information to actual transform to faith, the systems have to be in place and working properly. There have to be shelters where women can go to if she refuses to stay at her abusive and violent marital home.

MARG's main approach is to spread awareness about the rights of vulnerable people, particularly women. Families are also counselled and protection of its women prioritized. Ms. Anju Talukdar cautioned that counselling or bringing the families into the discussions must not be misconstrued as approval of the treatment meted out to the victim or condoning of their conduct. Hence CJWs have to be extra cautious so as not to give out that message. While in theory, every case of domestic violence should be referred to the Protection Officer, it is not always practical because the number of cases is much more than can be handled effectively by the few Protection Officers deputed. Hence a lot of time is invested into counselling and settling the matter through mutual discussion so that victims can feel safe, and where possible, the broken marriage can be reinstated. An alternative to that could be to approach the courts, but many women are not keen on taking that route.

Ms. Kanta Singh highlighted that access to justice for women is strongly determined by their freedom of mobility and access to resources. For victims to gain confidence and seek justice, peer support within each community is as significant as garnering support from NGOs and CBOs active in the area. The biggest challenge that the organizations face today is in empowering women to not only understand their rights but to have the wherewithal to realise them with full access to the judicial system without long term dependence on CBOs and NGOs for hand-holding.

6.2 *Child Rights: Corporal Punishment and the Law*

The most common cases of child abuse that CPSC focuses on are those relating to corporal punishment and sexual abuse. Neither area is covered under any comprehensive legislation though they are proscribed by law. Most cases go unreported and incidence is far more frequent than is captured in official records.

After the Right of Children to Free and Compulsory Education (RTE) Act 2009 came into effect, the children have a statutory right to be free from corporal punishment. Notably, only 10 States in India have established commissions to protect children's right to education. Corporal punishment in schools and other places are extremely common, and unless there is a severe hurt, such cases do not get reported. Ordinarily, the aggrieved students prefer not to complain against their teacher as they have to go back to the same school. Moreover, the support from the parents in minor cases of hurt is negligible. Even the legal system is not very keen on taking these cases as lawyers find it difficult to identify appropriate laws to support the cases.

The main issue with the corporal punishment is that it is very difficult to get the complaint registered. Even if the parents of the aggrieved child decide to go and lodge a complaint against any teacher, the educational institution will turn against them and in turn lodge cases against the parents of the child.

For CPSC, violence in school is synonymous with violence in custody. Parents are sending their children to the custody of the State Education Department. So any violence within this context should be dealt with in the same manner as custodial violence and attract similar punishment. Therefore the custodian has to step into the shoes of the complainant. The young victim should not be expected to go to the police station or the court. The Education Department should take upon itself the responsibility of preparing the witnesses and preparing the ground for a thorough inquiry.

In the State of Orissa, the Secretary, Education herself meets the parents of children who have suffered corporal punishment and listens to their plight, but this is only in cases of serious torture inflicted on the child.

Mr. Saji Thomas of CPSC highlighted the plight of children who are also subjected to caste discrimination in the school. Dalit children are reported to have been excluded from school activities, made to clean the school toilets, eat and sit separately. Young impressionable children have been even driven to suicide in dire situations. Though such treatment is unconstitutional there has been very little done to address the issue. The Right to Education cannot be honoured in its true spirit unless such discriminatory treatment is rooted out of the education system.

The National Commission for Protection of Child Rights has sought strict legislation by the government to abolish such practices and make them punishable by law, as well as institute a complaints and grievance redress mechanism. It has also asked for the regulations and procedures to be posted on government websites so that civil society gets a chance to see what these norms are and has a forum to react to wrongdoing. Moreover, the NGOs can assist in the development of the body of these regulations.

CPSC emphasized that irrespective of whether it is corporal punishment, or child sexual abuse, or caste discrimination on campus, the custodian of the child is the State Education Department and it should be held responsible for ensuring redress and mitigation and should be the de-facto complainant against the erring educational institution. CPSC is advocating the inclusion of this in the Rules and Regulations under the RTE in Tamil Nadu. It also intends to bring the issue of violence against children clearly into the purview of the LSAs and institute the LSAs as the protector of rights where ever and whenever they are violated.

7 Review and Sharing with Partners Dealing with Rights of Scheduled Castes, Scheduled Tribes and Other Traditional Forest Dwellers

SESSION PANEL AND PARTICIPANTS

FACILITATORS

- *Ms. Swati Mehta* Project Manager, Access to Justice for Marginalized People, UNDP India.
- *Mr. K.T. Arasu* Director, Alternative for India Development (AID)

LEAD DISCUSSANTS

- *Mr. Srivella Prasad*, Swadhikaar and General Secretary, National Dalit Movement for Justice and National Campaign for Dalit
- *Mr. Sanjay Upadhyay* Founder and Managing Partner, Environment Law and Development Foundation (ELDF)

OTHER DISCUSSANTS

- *Mr. Henri Tiphagne* Centre for Promotion of Social Concerns, Tamil Nadu
- *Mr. Tolaram Chauhan* Unnati, Jodhpur
- *Dr. Jacob John* Kerala Development Society
- *Mr. Ashutosh Mishra* ELDF Jharkhand
- *Mr. J.P. Srivastava* ELDF Chhattisgarh
- *Mr. Suresh Kumar* AID Community Radio, Jharkhand and Chhattisgarh



7.1 *Guaranteeing the Rights of the SCs/STs*

Pointing out that discrimination against SCs, STs and forest dwellers continues to prevail in contemporary India, **Mr. Srivella Prasad** remarked

that although Acts like PESA²⁸ and FRA²⁹ have been passed by the Parliament for the benefit of forest dwellers, they are seldom upheld in practice and rampant corruption at the grassroots makes implementation of such laws less useful. The same may be said for the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and other laws which provide constitutional safeguards to the interests of SCs, STs and forest dwellers. Communities are largely unaware of these laws and the rights they enshrine. In any case, if they manage to approach the authorities, they are usually overwhelmed by demands of residential proof and variety of other paperwork that they cannot cope with.

Mr. K.T. Arasu shared his experiences in Jharkhand where violence in terms of caste atrocities and police brutalities towards vulnerable communities is common. The police are viewed more as perpetrators and partners in violence than protectors and preservers. Gross malpractice exists around ownership of land holdings and land distribution. Practice of bonded labour is still rampant in many rural areas where feudalism is deep rooted.

Dr. Jacob John, Kerala Development Society highlighted the fact that caste-based rural societies are extremely hierarchical and every social and economic decision in the village is determined by these equations. One cannot even lodge an FIR against a misdeed without taking into consideration the ramifications of the same in terms of the existing caste structure.

The victims of caste-based violence face many challenges in accessing justice at every step. Mr. Prasad mentioned that incidents of violence seldom get reported to the police stations; of the ones that do get reported, not all are registered; many that are registered, are entered under incorrect sections of the laws. Victims are routinely threatened and terrorized into withdrawing their cases. If all else fails, slowing down the judicial machinery often seems an easy and entirely viable option.

²⁸ Panchayats (Extension to the Scheduled Areas) Act 1996

²⁹ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 or Forest Rights Act 2006

With greater awareness among community members, people have gradually begun to approach authorities for justice. Victims are now becoming increasingly vocal about registration of cases under proper sections and rigour of investigation conducted by the Deputy Superintendent of Police. If the victims are not satisfied with the process, they can approach the courts or the District Monitoring Vigilance Committee established under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985 to ensure proper fact finding.

***Purported Misuse of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act 1985 for Compensation***

There was a discussion around purported misuse of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985 by people belonging to the Scheduled Castes who have filed false cases or claimed compensation under the pretence of perpetration of atrocities based on caste. Some participants mentioned cases where people belonging to the Scheduled Castes have misused the law to grab land.

However, it was pointed out that available data clearly indicates that up to 67 per cent of the cases do not even get registered properly under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1985 for it to be misused.³⁰ Such allegations are often levelled against all laws meant for the protection of the marginalized sections of the society. Laws meant to protect women from domestic violence also face similar criticism. Clearly, any law can be misused and it is possible that some people may be misusing it, but the overwhelming majority of the people belonging to vulnerable groups are not even able to use these laws, let alone misuse them. The participants also pointed out that often it is the lawyers who convince the victims to 'misuse' certain provisions of the law. Later, these very lawyers turn around and accuse the victim of misusing the law and 'kicking up unnecessary fuss'.

In nearly all social legislation, the law is invariably abused by the powerful; the marginalized are, by definition, not in a position to do so; if they were, they would not be marginalized any more.

³⁰ Mentioned by Mr. Srivella Prasad, Swadhikaar

7.2 Can FRA and PESA be more Meaningful for Forest Dwellers?³¹

ELDF works in the area of forest governance and scheduled area governance and examines how innovative tools like *Panchayat Shivirs* (see Box 7.2.1) can be used to spread the message across the people in remote areas. ELDF is trying to use *Panchayat Shivirs* or legal literacy camps in 5 Districts in 3 States of Chhattisgarh, Jharkhand, and M.P., to enhance legal awareness and enable a shift of power to the Gram Sabhas.

Panchayat Shivirs

Legal literacy camps (*Panchayat Shivir*) have been set up in select villages in M.P., Chhattisgarh and Jharkhand, designed to improve the participation of marginalized tribal people in debates about access to and use of natural resources. Participants in the camps have rarely had the opportunity to contribute to policy debates about their environment. Even when such channels exist, communication can fail due to fundamental differences in perception, expression and power between the groups.

The interactive sessions aim to familiarize people with legal concepts and current legislation in terms of PESA and FRA, using such techniques as role-playing, focus group discussions, pictorial representation of legal issues, triangulating incidents with legal implications and informal sessions.

Lawyers already practising in these geographies are identified, co-opted and engaged in forest and scheduled area governance and a team of legal professionals competent in issues that impact forest communities is built to provide legal support right up to Supreme Court. ELDF trains its associated lawyers by eliminating basic confusions that exist at the field level in:

- differentiating between political, social and legal conflicts



³¹ This section is entirely drawn from representations from ELDF by Mr. Sanjay Upadhyay, the Founder and Managing Partner as well as Mr. Ashutosh Misra from ELDF Jharkhand and Mr. J.P. Srivastava from ELDF Chhattisgarh.

- distinguishing between reserved, protected and unprotected forests, National parks, wildlife sanctuaries.
- distinguishing between legal terms like rules, laws, regulations, order, circular, policy etc

The training sessions emphasize on techniques of communicating with the communities that the lawyers need to work among:

- How to use some humour and empathy to break the ice?
- How to create free flow of information?
- How to make people comfortable in their surroundings ?
- How to choose the right season for running the legal services programme so that communities are not busy in sowing or harvesting?
- How to break a complex legislation into smaller steps so that it is easier to explain the structure, the spirit and the provisions of the law?
- How to relate each law or Act to the problem on the ground so that the relevance and applicability of each Act is clear?
- How to use local examples and contexts to illustrate common issues and concerns?
- How to elicit responses and bring down barriers of reticence and hesitation?
- How to track audience responses through periodic review?

ELDF mentioned that often many collectors and judges are confused about the relevant laws and their applications in the context of forest dwelling communities. Consequently, ELDF is actively involved in retraining and refreshing the technical knowledge of lawyers, judges, and bureaucracy on the latest advances of forest governance law.

The organization also simultaneously attends Gram Sabha proceedings, takes up the live issues, answers questions and provides legal services. It responds to queries and issues such as:

- What is a transit permit and why is it required?
- Can cess be levied on sand which is from local stream?
- How do you use PESA provisions to actually ensure control of the community over its resources?

- How do you access your minor forest produce?

Issues of common concern to the villages are related back to the law or the legislation.

7.2.1 *Challenges to Successful Legal Awareness Programmes in Forest Areas*

An important challenge lies in attracting able lawyers and retention of their interest in such issues. There is not enough money in social legislation and competent lawyers seldom engage in these areas.

Forest communities are often not ready to give up their rights of traditional forest governance and avail of the benefits of legislation given the historical exploitation of tribal communities by both governmental as well as non-governmental agencies. Low levels of literacy and complexity of existing legal structures compound the problems. Simplifying legalese and explaining legal structures and processes to the community is another significant challenge. ELDF suggests that the training material development should focus on two distinct areas: technically accurate manuals for the lawyers and user-friendly manuals for the ordinary person that defines PESA and FRA for them in simple terms and highlights the applicability of these acts to the community.

Multiple Agencies and Turf Wars

Wherever issues relate to FRA or PESA, several Government Departments and agencies get involved. Ministry of Tribal Affairs and the Ministry of Environment have roles to play, as do the Governor, the Scheduled Area Administration, the Ministry of Panchayati Raj as well as the Government Working Committees. Instead of a coordinated effort across the line Departments, turf wars are more common with no single Department willing to shoulder the full mandate.

A common problem with which NGOs and local communities are grappling has much to do with these turf wars. **How does one co-opt the Ministry of Tribal Affairs which is primarily responsible for FRA? How does one get the Ministry of Panchayati Raj responsible for implementing the PESA to uphold ones rights? What can be done to engage with all three line Departments which are centrally responsible for these two legislations? How does a victim orchestrate a coordinated effort across so many unwilling and unwieldy entities, which need to deliver on their promises and mandates simultaneously, for justice to be meaningful?**

7.2.2 *Some Suggestions for Conducting Legal Awareness Programmes in Forest Areas*

In case there is a live conflict that needs to be dealt with *in situ* then immediate legal aid and advice needs to be provided. Communities need to be made aware of their right to information as well as the importance of making sure that their case is complete, timely and watertight; that too much time is not lost between the incident and the official complaint; that the conflicting parties have a clear idea of what the conflict is and where the resolution may lie.

If local authorities need to be approached then the complainant should, besides the NGO, be accompanied by a lawyer who can demonstrate the transgression of rights through an unbiased legal lens.

Mr. Sanjay Upadhyay concluded his presentation with a word of appreciation for the effort being made under the A2J project by the Government, the UNDP, and the partner organizations in order to ensure that legal services are now more accessible to marginalized groups to enable official interaction with the State law and order machinery.

7.2.3 *Implementing FRA and PESA: Experiences of ELDF in Chhattisgarh*³²

With the PESA 1996, every Gram Sabha became the owner of its natural resources. No acquisition of land for development projects and for resettling or rehabilitating persons affected by such projects is possible without prior consultation with it. For example, the management of the minor water bodies resides with the Gram Sabha. Its recommendation is to be sought prior to issuing prospecting license or mining lease for minor minerals. However, the experiences of ELDF in Chhattisgarh reveal that on the ground, this kind of empowerment of the Gram Sabha is unheard of. The Act merely puts a lot of land and resources at the disposal of an institution that is routinely abused and misused.

After the Gram Sabha has been formed, it should invite claims for rights, keeping in mind the time of the year when seasonal users can also participate. Once the Gram Sabha passes a resolution inviting claims for rights, applications for these rights have to be filed within

³² Experiences shared by Mr. J.P. Srivastava, ELDF Chhattisgarh.

three months of the resolution (however, the Gram Sabha can extend this time through another resolution, but only if it records reasons for doing so). Each of these rights has to be claimed through an application (many rights can be claimed through one application) to the Forest Rights Committee. As per Sections 5 and 7 of FRA, Forest Rights Committee should include in its members, individuals from primitive tribal groups or a long term resident of the forest. However, in practice this is seldom seen.

In Bastar and Sarguja in Chhattisgarh, where the ELDF actively attends Gram Sabha meetings in various villages, it has been found that three of four Gram Sabhas are not constituted on mandated lines. The norms for the quorum are flouted often with the connivance of local officials and political leaders to serve their vested interests. Mr. J.P. Srivastava shared an incident from Bastar where the Collector illegally declared himself a member of the Gram Sabha to be able to drive a decision to sell land to India Bulls.

In so far as FRA is concerned, it was originally created with a view to benefit the Scheduled Tribes but a Joint Parliamentary Committee added other groups as well and brought the Forest Department into the purview of this Act. Eligibility to get rights under the Act is confined to those who "primarily reside in forests" and who depend on forests and forest land for a livelihood. Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area or must have been residing in the forest for 75 years. This last clause about residing in the forest creates confusion and lends itself to misuse and misinterpretation. What is required is residence in the area and not occupation of a particular piece of land.

In response to the queries, it was clarified that the FRA which recognizes individual rights to forest produce does not conflict with other Acts such as the Chhota Nagpur Tenancy Act 1908 or Santhal Pargana Tenancy Act 1949, which also recognize community rights. The FRA is not in derogation to but in addition to these rights and they strengthen each other rather than creating conflict and confusion.

8 Communicating for Legal Awareness

SESSION PANEL

Part I: Branding and Media Advocacy

- *Ms. Priyanka Khanna* Communications Head, UNDP India.

Part II: Using Technology for Spreading Legal Awareness

FACILITATOR

- *Mr. Ashutosh Srivastava* Project Officer, Legal Aid & Legal Empowerment, A2J Project

LEAD DISCUSSANTS

- *Mr. K.T. Arasu* Director, Alternative for India Development (AID)
- *Mr. Rex Mehta* Jan Jagriti Kendra (JJK)
- *Mr. Prem Kumar* Knowledge for Development Foundation (KDF)

Communication through the use of latest technology enables reach to larger number of people in shorter periods of time and the message can be communicated repeatedly, often at minimal cost.

The first part of this session dwelt on the importance of branding and media advocacy for partner CSOs and CBOs so that significance and magnitude of their efforts and challenges are communicated effectively to policy makers, donor agencies and Government Departments. It also focussed on communication techniques that partner organizations



could use to have a deeper impact and drive fundamental behavioural change that is necessary for any social transformation to occur.

In the latter part of the session, presentations from AID, JJK, and K4D showcased how these organizations have

leveraged available technology to reach out to the people and spread legal awareness in a way that is faster and surer.

8.1 Importance of Branding and Media Advocacy

The objective of the presentation was to highlight the importance of branding and the use of Government and UNDP logo. The importance of media and media advocacy in brand building and how to effectively use media to get the issue or cause highlighted was also discussed. The session also focused on the communication for development (Behavioural Change Communication) so that the community is able to use the information to demand rights.

8.1.1 Leveraging Brand Image

Branding is an important tool to support different programmes run by the organizations to spread maximum awareness. Effective branding can reinforce the good work being done in the field while reinforcing organizational credibility. To arrive at a brand identity, organizations need to evaluate the underlying driving cause behind for their work and the ultimate aim of their work. This will get them their common tag line which transcends the work done across different sectors and with different partners.

8.1.2 Use of Logos

The UNDP logo is available on the internet in different formats – digital and offset. It is advantageous to use the UNDP logo wherever there is UNDP support—technical or financial for workshops, banners, publications.

However, in order to use the logo, guidelines need to be followed. The logo needs to be ideally placed on the top right hand side as a thumb rule, however in case of participation by Government of India and or other organisations the placement may be decided by mutual agreement.

In all situations where UNDP or Government logos are to be used, prior permission from the Project Team should be taken. Sometimes in case of smaller publications where getting approvals for logo usage might result in delay, an alternative could be to incorporate a

comment—‘This publication is supported by Government of India and UNDP Project on Access to Justice for Marginalized People’.

8.1.3 *Media Advocacy as a Tool*

Media is a very strong advocacy tool and needs to be used effectively. While speaking with the media, the key message should be well defined, short, clear and concise. Otherwise, the communication loses its purpose. In the absence of a clear message it may result in being mis-communicated or not being communicated at all. UNDP has chosen the Country Director and Resident Representative as the official spokespeople. Partner organisations may also consider identifying a spokesperson to ensure that the right messages are being communicated.

While speaking with media, it is imperative that the communication be of interest to the media as well as the public. The message should be taken to the correct media house and media should be used as an ally. For mass communication, the message should be complete and the different angles to a story should be presented over a period of time to keep the issue alive and garner maximum interest. The story should be treated as a campaign. **In addition, policy makers who can effect change, should be made aware of the effort by including their names on a mailing list and sending them emails or print outs of the newspaper articles.**

8.1.4 *Behavioural Change Communication*

The session highlighted the importance of working in such a manner that the behaviour and attitude of the people change. There is no point in doing a one-time awareness session, if people’s behaviour remains unchanged – i.e. if women refuse to report cases of domestic and sexual violence because of fear of social stigma, or men continue to beat their wives, then the legal awareness training cannot be said to have much impact. For impact to be measured qualitatively a change in behaviours is an important indicator and for this, specific communication techniques need to be adopted and adapted.

Community mobilisation is an important element in driving behavioural change. Local religious leaders, postmen, teachers working in remote areas are important

influencers. They are trusted by the community and often enjoy high credibility with the locals and can help effect change in the community. Rallies and programmes that involve children have also emerged as huge influencers in recent times.

Exchange of viewpoints amongst participants may also highlight specific cases of individuals who are able to share instances where they have directly and personally gained by availing the provisions under certain legislation. For example, the Right to Information Act 2005 may first be communicated well, discussed and understood. Then some individual who has invoked the Act to seek information and benefited from it may share his/her personal experience with the community. This can pave the way for instilling faith in the community that systems do work and encourage others to avail benefits of the provisions of the Act.

All communication needs to be adequately analysed, designed, and tested. Implementation needs to be monitored and the impact needs to be evaluated. **Effective communication may be ensured if the '7Cs' of communication provided below can be integrated into the messages and the mediums by which these messages are sent out³³:**

- 1. Command attention**
- 2. Clarify the issue**
- 3. Communicate a message**
- 4. Be Consistent**
- 5. Cater to the heart (emotional appeal) and head (rational appeal)**
- 6. Create trust**
- 7. Call to action**

³³ An example of successful commercial advertisement would be the Jaago Re campaign on television which incorporated all the '7Cs'. Similarly, print ads on polio, H1N1, Access to Justice, NACO, and AIDS awareness have also created a very high degree of awareness in the public forums.

8.2 Use of Community Radio for Legal Awareness: The AID Experience

Alternative for India Development (AID) has successfully used the Community Radio through AIR³⁴ to spread legal awareness in three Districts of Jharkhand. This community radio endeavour has an outreach of about 5 lakh people as of now. Using AIR as a platform provides the exceptional advantage of a pan-India reach. Mr. K.T. Arasu mentioned that in States such as Jharkhand where 75% of the villages are not electrified, a local community radio station is not feasible, and often, there is no access to print media or TV either. Here, the advantage of using AIR becomes apparent.



Within this project, messages are aired in local languages. A lot of the communication content is in fact developed by the local people with minimal involvement of technical staff. AID trains the local people in programme development and also helps

set up the studio to produce the programme. This programme is then handed over to AIR for broadcasting.

A community radio programme was presented at the meeting in the form of a musical play by the team of Alternate India Development (AID) from Jharkhand. It focused on creating awareness on *Lok Adalats*. *Lok Adalats*, roughly translate as people's courts, but are in fact part of the formal legal system of Alternation Dispute Resolution, whereby through mediation and conciliation, cases relating to motor accidents, other civil and matrimonial disputes, and petty crimes (that are compoundable in nature) are dealt with in a short span of time. The play presented a case of a person who had been imprisoned for a long time over a petty dispute. He was advised to make an application for a hearing by the Judge of

³⁴ All India Radio

the Lok Adalat. He had already stayed in prison for a period longer than the period for which he would have been punished, had he been convicted. He was released by the Lok Adalat. The AID drama troupe often enacts such cases, which are then recorded at the community radio station and broadcast by AIR.

8.2.1 Broadcasting as a Tool to enable Access to Justice

To begin with, the most pertinent issues and concerns of the particular community are identified. For instance, the most relevant issue may be that of land rights. AID collects evidence from the field including voice bites from local people thus capturing their points of view and emotions around the issue. The issue is also brought to the notice of the revenue officials, collector, and any other government official who is part of the process, and their responses are also captured.

The field workers visit the village, involve the locals, collate the content and develop the story. The programme is then produced in the local language in the form of a skit or a song and dance sequence whereby the laws are explained in a simplified manner.

So far programmes have been created around many issues including:

1. NREGS
2. Lok Adalat
3. The LSA 1987
4. Land rights
5. Protection of Civil Rights Act 1964
6. Dalit rights
7. Protection of Women from Domestic Violence Act 2005
8. Old-age and Widow Pension Schemes
9. BPL cards and PDS

Field workers of AID work closely with the panchayats, dalit forums, child labour forums, women's forums etc, and alert them to the imminent broadcast schedule and content to ensure that the intimation reaches all the people of the village and higher levels of dissemination are achieved. The programme is then broadcast through AIR.

Once broadcast, the recording is provided to the people either on tape or CD so that they can listen to it again, if they choose to. Discussions around the theme of the broadcast are encouraged.

Overall, the community radio is a local media which gives a voice to the local people and therefore leads to high levels of empowerment and awareness on legal issues and the people's rights. The involvement of the government officials in the discussions is also an important advantage.

8.2.2 Narrowcasting as a Tool to enable Access to Justice

In hilly regions or thickly forested areas, broadcast is not feasible. There, the option is to narrow cast the recorded programme in large gatherings over a loudspeaker system. The forum could be the local market place or a Gram Panchayat or Gram Sabha meeting. Local events are also held to encourage discussions.

8.2.3 Major Challenges Faced by the Community Radio Endeavour

The major challenges that confronted AID in executing the community radio endeavour were articulated by Mr. K.T. Arasu as follow:

1. Government officials are reluctant to speak freely on any of the issues and part with pertinent information.
2. Naxal-controlled districts of Chhattisgarh and Jharkhand are particularly vulnerable because instances of transgression are routine and yet State infrastructure to enable judicial remedies is pitiful. Basic human development indicators in these areas are appalling. Naxalites do not allow community radio programmes to run here. Freedom of speech and action among the locals is seriously curbed who live in fear. Discussion around issues that empower people, or touch upon areas of social relevance is not encouraged. There have been instances where AID vehicles have been banned or even impounded by the non-state actors to discourage activity.
3. Finding volunteers for legal aid work is a challenge. Many volunteers are not keen to travel to the interiors.
4. **Although, community radio is a low cost medium the process of licensing is complicated and finance is still a problem in villages.**

8.3 Legal Aid through a Telephonic Helpline: A JJK experience

Jan Jagriti Kendra (JJK) runs a telephonic helpline *Nyaya Rekha* to provide legal aid under the A2J Project³⁵. *Nyaya Rekha* was started on the basic premise that it had to play the role of a facilitator between ‘the victim and the problem’ and the ‘means to access possible solutions’ that is, taking the ‘the *samsyagrasth* and his/her *samsya*’ closer to the ‘*samadhaan*’.

It took about 7 months for *Nyaya Rekha* to become functional from when it was first conceptualized. It used to initially run 8 hours a day. The workload this generated was so large that JJK, in recognition of its limitations, was compelled to narrow the working hours down to 1800–2200 hrs.

Technically, all one needs to set up a helpline is a phone number, a place to operate out of and a person who will dispense information. However technology is not stand alone, and has backward and forward linkages. Further, wherever there is a human interface, behavioural aspects also play a role. Therefore, the implications of starting and running a help line go much beyond a telephone connection and a person to receive calls.

To run a successful helpline, one needs to have proper information, knowledge and understanding of the legal situations at local areas. The name of the helpline should be in the local dialect which is clearly understood by the local people and fully describes the purpose of the helpline. A comprehensive helpline manual should be created. Volunteers must be trained on how to attend calls in terms of voice modulations and voice clarity. Some of these aspects are detailed out below:

8.3.1 Being Fully Prepared

There should be clarity on the purpose of setting up the helpline and thorough training so that the operators know exactly what they are supposed to do and the service that a caller expects them to provide. Jan Jagriti Kendra runs a 7 day training program including 3 days

³⁵ A help line is a telephone number which can be called in order to seek advice or information on the issue being faced by the caller. The government runs many such help lines on issues related to HIV, farmer help lines and many others.

of fieldwork for all volunteers who are expected to receive the phone-calls. **Volunteers are given a chance to familiarize themselves with the local demographic conditions, common issues, dialects and expressions. They are trained to adhere to a standardized code of conduct for every call, every day, every time. They are trained to remain unbiased and non- judgmental about issues, document all cases that come through the Nyaya Rekha line comprehensively and serve as a conduit between the *samsyagrasth* and the solution provider.**

8.3.2 *Building the Right Image*

Conscious effort should go into image building so that people identify the organisation / helpline as a responsible support and partner. False hopes should never be raised. The image portrayed by the helpline should not one of providing instant or quick-fix solutions. **A helpline should provide only basic information and should not pose as a solution provider. The helpline could create networks with credible partners such as law colleges, lawyers or SLSA/DLSAs and share this information with the callers. This would build credibility around advice and guidance dispensed by the helpline.**

8.3.3 *Building Synergies with the Media*

It is advisable to choose a media house that is locally popular and that caters to the intended users of the helpline. In order to create awareness on the helpline, on-air promotions are extremely effective. For instance, in Bilaspur District, issues on legal aid and awareness were introduced into the RJ Talks on the MY FM radio channel. The helpline was scheduled to start on August 26th 2010 at 1830 hrs however as a result of the on-air promotions, calls began pouring in as early as 1630 hours. Nyaya Rekha is also presently partnering with the daily newspaper *Dainik Bhaskar* to create more awareness among the people about the helpline.

8.3.4 *Anticipating Common Issues and FAQs and Being Ready*

Helpline needs to anticipate and help/train the operator respond to issues that might be raised by a caller. Initially when the Nyaya Rekha was catering to urban areas, the calls pertained to issues relating to pan cards or ration cards. As the paralegal workers or volunteers of JJK moved to the rural areas, the helpline started receiving calls pertaining to problems of land encroachment and grabbing of land belonging to the 'lower' caste

farmers by 'upper' castes, or those of forest dwellers. The volunteers need to be prepared for situations where, say, the caller calls from a District that is not covered by the helpline or needs advice on a law which is not being advised on by the helpline. In such situations, there should be a standardised course of action.

8.3.5 *Creating a Helpline Manual/Reference*

It is very important to have a compiled set of documents that the helpline worker can refer to in order to give aid to the caller. This should be a standardised format which should offer standard advice irrespective of the identity of the helpline operator. For the Nyaya Rekha, a web based portal has been set up which the helpline operator can access while taking a call. The operator can type in key words and all the relevant laws and information shall come up on his/her screen. Information on about 25-30 laws has been placed on the portal. A primary call log format is available online, which captures the nature of the problem, the concerned Act and gives a Unique Identification Number (UID) to each call. The next time the caller calls from the same number or quotes the UID, all the information is displayed on the screen automatically. Relevant information is shared instantly with the caller and credibility of the helpline is enhanced. Opinions expressed by lawyers on various issues as part of a discussion forum are posted online. The helpline worker collates all the updated points of view and validates them with the panel lawyer before offering detailed and holistic advice to the caller.

8.3.6 *Creating a Credible Platform for Legal Discussion*

A helpline is incomplete without a platform for legal discussion. Experience of running Nyaya Rekha in Durg and Bilaspur Districts highlighted this need and this aspect was incorporated in the project. Hence, if a call comes through the *Nyaya Rekha* and it is felt that the caller is required to put together some documents before approaching the grievance redressal mechanism or the appropriate authority, then the case is referred to the *Nyaya Vimarsh* which is a panel of lawyers that advises on documents required from specific legal problems. Nyaya Rekha then connects with the caller again and informs him/her that the specified documents may be taken to the *Nyaya Vimarsh Shivar*. Loosely translated to legal deliberations camp, these are bi-monthly face to face interactions with

lawyers of repute.³⁶ Based on the interactions at the *Shivir*, the helpline then leaves it to the caller and lawyer to decide on future course of action. In case, a caller is entitled to receive legal aid from the SLSA or DLSA, the helpline links her/him to the concerned LSA.

8.3.7 *Ensuring Clarity of Communication*

It is important to have technology that can reach the most far flung places. Voice of all the parties involved should be clear so that communication on legal aid is unambiguous.

8.3.8 *Ensuring Long Term Technical and Financial Feasibility*

The organization funding the helpline should have a long term interest in running it as well as the technical, financial and intellectual resources needed to ensure sustainability. It is advisable to ensure this at the outset.

³⁶ The *Nyaya Vimarsh Shivir* often shares with attendees, a *Nyaya Pat* which is a simple snakes and ladders game that has been converted into a legal tool to learn and understand law in an interesting manner.

9 Training and Sensitization of Judicial Officers: The Role of State Judicial Academies

SESSION PANEL

- *Ms. Abha Singhal Joshi* Lawyer

FACILITATOR

- *Ms. Ved Kumari* Chairperson, Delhi Judicial Academy

DISCUSSANTS

- *Mr. Manohar Mamtani* Additional Director, Judicial Training and Research Institute, Madhya Pradesh
- *Mr. V.K. Mathur* Director, Institute for Judicial Training and Research, U.P.
- *Mr. G. Minazuddin* Director, Chhattisgarh Judicial Officers Training Institute
- *Mr. B.N. Bhatt* Director, Rajasthan State Judicial Academy
- *Mr. Ravinath Verma* Director, Jharkhand Judicial Academy
- *Mr. Manoranjan Prasad Srivastava* Director, Bihar Judicial Academy
- *Dr. D.P. Choudhary* Director, Orissa Judicial Academy

Also, Member Secretaries of Bihar, Chhattisgarh, Jharkhand, M.P., Orissa, Rajasthan and U.P., and representatives of various NGOs.

The project is preparing a module for training judges on laws and issues relating to the marginalized communities, which will be utilized and implemented by the State Judicial Academies. The session aimed to discuss the role that judicial academies can play in



sensitizing judges and the priority laws that must be covered in the module. The session also included a group activity to discuss the contents of the proposed module and provide suggestions for sensitising the judiciary.

9.1 *Training Module for the Judges*

The attempt, under this project, was to put together a compendium, a sort of ready and quick reference on points of law relevant to issues faced by marginalized communities. This hardcopy compendium will facilitate access to appropriate information in a way that is perhaps more convenient than dredging the internet for verifiable and dependable information. The judicial officers targeted within the programme are primarily affiliated with the subordinate courts as it is well recognized that these courts are at the cutting edge of justice. They deal more directly and immediately with people and their real life problems rather than laws on 'paper'. The subordinate courts are very much aware that they are the protectors of the Fundamental Rights enshrined in our Constitution, and that the judiciary at the trial court level forms the first step to access to justice.

Sensitization to issues of vulnerable communities and skill enhancement of judges are both equally important. **The compendium focuses on skill development of judges to ensure that motivated and committed individuals are able to deliver justice within the prescribed legal system in a way that honours the spirit of the law and follows the standard operating procedures that are well-defined in judgements and legislations.** Legal decisions cannot be driven by passion and strong feelings, without the restraint and objective lens of the legal framework. We need competent legal professionals at every level to ensure that justice is delivered.

Judges need to be aware of the vulnerability of the litigant and develop a more thorough understanding of the essentials of the laws related to their situation, the spirit in which these laws were passed and how they are to be applied in each case in a way that this spirit is honoured. This can be done by creation of an information pack supported by training methodology which can be used across the board. Awareness can be generated by a training module which enables easy access to information as well as serves as a practical guide to training, which can be used by various training academies and others interested in conducting training.

- The module will cover key provisions of different laws³⁷, under which marginalized persons are likely to be in litigation/court processes
- It will highlight judicial developments in these laws
- It will also contain exercises to sensitize judges to the vulnerability of groups and communities that have historically, routinely and systemically been denied access to justice.
- Further, it suggests practical ways in which the justice system can be made more accessible

Key provisions and laws particularly relevant for marginalized communities were listed in the presentation. Ms. Abha Singhal Joshi, who has been selected to create this training module, mentioned that this was a dynamic list which can be enhanced based on feedback from the State Judicial Academies, judges, experienced lawyers and practitioners in field. However, she emphasized that what is of specific importance is the challenge of identifying gaps in the law and filling these gaps. For example, if there is a case where the accused is mentally challenged, then how does one deal with the situation? It is not appropriate to send the accused to the lock-up but there may be nowhere else to send him/her. What should the judge do in such cases?

The module is designed in a way that it does not impose too much on the judges' time because they are already over-loaded with work. It is being created in the form of an easy to use handbook that is attractive to read. It is expected to generate thought, reflection, analysis and application.

The research component for the module will be created by lawyers, from research conducted in seven states. An outline will be created on the basis of this research, and it will be shared in a series of workshops with judicial officers. The modules will be used in seven workshops conducted in each state, followed by a final conference, to get the feedback from the officials and to explore ways in which learning from the research and training may be inculcated in practice. Though the training module is primarily aimed at

³⁷ For a list of the laws, please see Annexure 2

the judiciary, it is also of pertinence for the civil society, lawyers and the Legal Services Authorities.

9.2 Group Discussion

In the last session, all the participants were divided into 4 groups. Each group had 20 minutes for discussing the laws that must be covered in the module as well as ways for sensitizing the judges. Then each group was required to present the gist of their discussion in 5 minutes. The groups discussed the list of laws circulated and some suggestions were made. However, it was agreed that the time for the discussion was not sufficient and the participants agreed to provide written suggestions. Ms. Abha Singhal Joshi agreed to share the list with the State Judicial Academies and invite specific suggestions.



Some suggestions did emerge from these discussions which provided insights into how judicial academies can make a difference. **It was felt that training of judges should be such that fundamental shifts in mindsets can be driven, where in judges feel**

morally responsible for delivering justice to the marginalized communities. Judges need to be more in touch with issues and concerns of the communities that are deprived of justice. Training should also incorporate modules on how judicial officers can gain familiarity with the people and their problems while maintaining the unbiased distance that their role demands. A well trained and sensitized judge can make a significant difference to the justice delivery system, and reduce the enormity of the challenge. Empathy of judicial officers goes a long way in giving access to justice to the marginalized. Training methodology should be participative and interactive. Various tools such as lectures, demonstrations, case studies, mock-sessions, and workshops on campus should be used to sensitize the judicial officers.

10 Concluding Observations

The participants agreed that an important outcome of the consultation was that it brought together different stakeholders from the government, judiciary and the civil society to discuss their work with each other. Participants appreciated the opportunity to learn about what others were doing in their area of work and for their target groups. The consultation was also very helpful in determining areas of priority and discussing gaps that limit people's access to justice. The focus was not only on sharing problems and challenges but also on ways to surmount these. The participants appreciated the opportunity to share good practices that can be adapted and replicated in other parts of the country.

The meeting emphasised the importance of empowering people through innovative legal awareness activities including those using technology and multi-media as well those creating paralegals, and brought out many actionable points that could be followed up by the Project, Government Departments, NALSA, SLSAs, the Commissions and the civil society organisations. It was agreed that the Project would organise such meetings annually bringing together the civil society and the government, with a view to share good practices and discuss ways to overcome challenges that besiege those who work with the communities at the local level.