

# LEGAL AID CLINICS IN WEST BENGAL

A REPORT

2013

**Written By:**

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## **BACKGROUND & CONTEXT**

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organization, mandated to ensure the practical realization of human rights in the countries of the Commonwealth. The prison reforms programme at CHRI aims at increasing transparency of a traditionally closed system and ensuring accountability. A major area of its work is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this.

As part of our prison reforms in West Bengal, we have been actively focusing on improving access to effective legal aid for prisoners. As part of this initiative we conduct legal aid clinics in some correctional homes in Kolkata in collaboration with students from the National University of Juridical Sciences & Calcutta University. The Legal Aid Clinics entitled as 'Shadhinota – Empowering Inmates of Correctional Homes' – have been quite successful in activating the State Legal Services Authorities towards delivery of legal aid in correctional homes. Since 2010, we have been able to ensure appointment of legal aid lawyers in approx. 80% of the 300-odd cases that were reviewed by students during these legal aid clinics. CHRI has also been able to create legal awareness regarding various legislations such as 436A Cr.P.C, Juvenile Justice Act, and Plea Bargaining etc. amongst inmates of correctional homes.

Legal Aid Clinics are not only beneficial for the inmates but are also an important tool in clinical legal education for students. It gives students an insight into the current system and also gives them an opportunity to learn the practical aspects of criminal procedural laws.

With this success, CHRI seeks to expand the initiative to other cities in West Bengal and with this in mind a meeting was organized with representatives from a few law colleges in West Bengal on 6<sup>th</sup> April 2013, Saturday in Kolkata to discuss in detail how to go ahead with expanding and duplicating these legal aid clinics to other correctional homes.

## **INTRODUCTIONS**

The meeting began with Ms Madhurima Dhanuka, Consultant, CHRI introducing the organization and its work in access to justice and prison reforms. She stressed the need to strengthen the system and the advantages of establishing and conducting legal aid clinics to achieve the same. She added that students had a role to play in these clinics, which would be symbiotic in the sense that students would learn about the practical aspect of the law and those in need of legal services would also benefit. Thereafter the participants, comprising of students and faculty members from various law colleges and universities across of West Bengal, introduced themselves and was followed by the session I.

**SESSION I:**  
**Legal aid in West Bengal: Challenges & Opportunities**

The first session of the meeting was presided over by Mrs. Bichitra Bhattacharya, Additional Inspector General, Correctional Services of West Bengal. She started the session by stating that even though the Constitution of India guarantees the right to free and fair trial to every person of the country, and the same right has been manifested in the form of the Legal Services Authority Act, 1987, the provisions has not been adhered to in letter and spirit.

Mrs. Bhattacharya began with the notion that every society must have a motto about what is to be done in order to deal with a problem. She said there was a want of effective co-ordination between the prisoners at the correctional homes and the lawyers who are supposed to provide legal assistance. The motto was essentially to ensure access to justice for all.

The prisoners who are behind the bars for reasons such as *mala fide* and arbitrary police action, inadequate financial strength, victims of poverty and illiteracy are the ones who were dejected with the justice system. It is essentially these inmates who need legal aid in its truest sense. She pointed out that the very fact that they are bound within the boundaries of the prisons hamper the facilitation of any sort of communication between themselves and their legal advisers, if any. It is of utmost importance that legal aid should be extended to such under-trials who languish in jails for no reason.

Mrs. Bhattacharya went on to use the term '*Legal Poverty*' – *the incapacity of many people to make full use of law and its institutions – which has now been accepted as a function of a 'Welfare State'* impressing upon the fact that the welfare state is expected to, as one of its many duties towards the State, provide efficient access to justice. However such access is often denied. Only a very few section of people can have such access through NGO's or through personally appointed counsels, but majority cannot either afford counsels, or do not have any access to NGO's.

The Constitution of India very expressly has embodied in itself the mandate of providing free legal aid through Article 39A which provides for free legal aid, read with Articles 14

providing the right of equality before the law and equal protection before the law, Article 21 ensuring protection of one's life and liberty and Article 22 providing protection against arrest and detention in certain cases. However, even amidst all these provisions there is a huge lack of its implementation. Of the many reasons for such want, the foremost reason happens to be the lack of awareness about the laws of the country and the rights guaranteed to us. Awareness is perhaps the first step to effective implementation.

Mrs. Bhattacharya felt that such awareness can be best spread by the student community. Student interaction and counseling, according to her establishes better communication with the jail inmates than the officials working within the correctional homes and sometimes better than the lawyers as well. The jail inmates feel that there is still a connection with the outside world when students and members of the civil society come to interact with them, with respect to their needs of legal assistance. Thus, she felt that student interaction can be very helpful in filling in the gap between the law and its implementation.

She further spoke about entitlement to legal aid for persons in custody whereby if a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, it is obligatory upon the court, under Article 142 read with Article 21 and 39-A of the Constitution, to assign council for such individual. However, even after the appointment of such lawyers the inmates complain that they are not satisfied with the lawyers. Such problems may be tackled by informing to the Court that the legal aid lawyers are not working efficiently. Mrs Bhattacharya elucidated the provisions of Section 12 of The Legal Services Authority Act, 1987 that provides for classes of persons entitled to legal aid and includes all persons in custody.

In addition to the above she pointed out the guidelines issued by Ministry of Home Affairs:-

- For the purpose of his defence, an undertrial prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view for his defence.

- Legal Aid Cell in each prison shall be maintained to help in processing the legal aid applicants.
- For this purpose even NGOs and Law students could be encouraged to contact the prisoners and their families on a regular basis to fulfill the requirements of approaching the court
- Lok Adalats / special courts should be held in each prisons to expedite disposal of cases

However in adherence to all the above, results were not very satisfactory because the jail inmates were not very convinced by the government appointed lawyers or even the jail authorities. It is here that student participation is required because it helps in winning their trust and confidence. But there are still some issues to be kept in mind in order to bring the best results:

- A problem lies in the fact that the interaction although initiated often breaks away mid way. This is a huge deterrent in the progress of spreading awareness. One must be regular on his/her visits to the correctional homes. The students and the NGO officers must regularize their visits as much as possible in order to attain the confidence of the jail inmates. One visit in order to satiate one's curiosity to visit a correctional home is not enough to bring a change. One must have the perseverance to continue trying to be a part of the system and change it. Results maybe slow but they are nevertheless inevitably positive.
- Secondly, most correctional homes have legal aid clinics but there is hardly anybody to attend to the jail inmates or "provide" legal aid or assistance. Hence, even in the presence of sufficient laws the prisoners suffer immensely.

The National Legal Services Authority is a statutory body which has been set up for implementing and monitoring legal aid programs in the country. The Legal Services Authorities Act, 1987 also provides for constitution of the Legal Services Committees, High Court Legal Services Committees, District Legal Services Committees and Taluk Legal Services Committees.

The National Legal Services Authority (NALSA) has also called upon the State Legal Services Authorities to set up legal aid cells in jails so that the prisoners lodged therein

are provided prompt and efficient legal aid to which they are entitled by virtue of section 12 of Legal Services Authorities Act, 1987. But, lack of efficient and dedicated lawyers in such cells, have rendered them ineffective and of little use. The number of undefended and helpless under-trials has been nonetheless ever increasing.

Apart from government agencies, the role of the civil society is huge. They can in the following ways increase and improve the levels of interaction between the prisoners and themselves, thereby significantly spreading awareness about their rights. She said that they can:

- Provide oral, written advice;
- Represent clients before State agencies, organizations and courts according to the law;
- Provide legal aid at the correctional homes;
- Combine legal aid with justice and mediation activities at grassroots levels;
- Provide legal information through legal talks or leaflets;
- Transfer legal complaints to competent bodies;
- Provide legal aid through mass media, etc.

She contended that the above can mainly be implemented in the following three ways:

- Charitable Model
- State-funded model
- Mixed Model - The mixed model combines the operation of State legal aid organizations and services provided by private lawyers, and paralegal that work voluntarily or are supported by the State.
- Besides providing legal aid services, State legal aid organizations work as bodies that connect lawyers and clients, manage legal aid budget and pay fee for lawyers.



## **SESSION II:**

### **Legal Aid Clinics: Role & Advantages**

The next session was conducted Ms Madhurima Dhanuka of CHRI. She referred to the importance of the word 'practicality' and how conducting legal aid clinics were a practical exercise of rights contained in theory. As far as providing legal aid to prisoners is concerned, she highlighted CHRI's motto viz. "**behind bars not beyond justice**". Madhurima then proceeded to explain what legal aid clinics were and how they functioned. The key facets of legal aid clinic are serving people, improving the quality of access to justice and upholding the constitutional provision of equality in front of the law. Legal aid clinics help aid identifying the accused who remain unrepresented in the courts because they do not get access to a lawyer and also is a way of providing legal counselling.

#### **Legal Aid Clinics - Advantages**

Madhurima then proceeded to set out the major objectives of establishing legal aid clinics. First was **redressal of injustice**. She gave the example of bail, applying for which was a legal right irrespective of the crime the accused was alleged to have committed. However, many were being denied bail for failure to furnish bail bonds or not being able to afford an advocate etc. The lack of physical production in courts is also a major issue that needed redressal. She pointed out that there were many injustices that could be redressed and comprehended through legal aid clinics in correctional homes. Madhurima cited the example of a mother who was not allowed to keep her 3 years old daughter with her. Only after CHRI intervention, coupled with the efforts of the welfare officer, order was passed by the competent authority for the stay of her child with her in the correctional home.

Thereafter, Madhurima referred to the working of other legal aid clinics, in countries of Africa mainly, like Mozambique, where access to justice was a problem, and highlighted the efficacy of such endeavours. In all the examples she cited, it was students interested in human rights who had taken it upon themselves to help run these clinics.

Secondly, she said that this endeavour was all **about fostering professionalism and a sense of public service**. She emphasized that a major problem in providing effective legal services is a shortage of lawyers with the above qualities. The fact that most lawyers never speak to their clients and many inmates do not even know who their lawyer is a major problem. Interaction between a lawyer and his client is a basic requirement for efficient discharge of professional duties of a lawyer. Furthermore, lawyers give preference to their private heavy paying clients and neglect those availing legal aid with the idea that the latter is mere charity, which is not the case. She said these were practices that students must refrain from divulging into.

However, she continued, working in a legal aid clinic often brings about that sensitization among students and it helps foster a humanistic approach among the budding professionals.

Thirdly, Madhurima highlighted that legal aid clinics help **strengthen civil society and the rule of law**, by increasing awareness and developing an understanding of the society. The understanding of rule of law would also be strengthened in lawyers through working in legal aid clinics. She called upon the teacher and student community of various law and other colleges of West Bengal present at the meeting to start such clinics for the benefit of prisoners who are in need of it.

This was followed by an open discussion. In reply to a question by one of the participants regarding how legal aid services can be made more efficient, Madhurima explained that a good District Judge, being the head of the respective DLSA was the key to an efficient discharge of legal aid duties in that district. However, there was need for good monitoring. Ms Bhattacharya added that sensitization of the judiciary was also a must.

### **Legal Aid Clinics – Roles**

At first, Madhurima explained the need to empower inmates by making them aware of their rights, as majority of inmates are not even aware of their right to legal aid and what it entails. Awareness also needs to be created about the various beneficial legislations such as plea bargaining, juvenile justice act and many others.

She explained the role of "Shadhinota", a joint initiative of CHRI and NUJS, Kolkata. The principle task of Shadhinota is to provide a bridge between the inmates and state sponsored legal aid services and also to provide legal advice and counselling. Volunteers, who were students of law colleges, regularly visit the Correctional homes (mainly Dum Dum CCH and Presidency CCH) and speak to the inmates and note down their requirements or grievances if any. Consequently, where legal aid is required, Shadhinota applies for legal aid lawyers to the Legal Services Authority. In case of other needs, Shadhinota tries to make appropriate arrangements. Thereafter, post appointment of lawyers, they act as a monitoring authority to ensure that the cases are dealt with in the deserving manner. Volunteers also document all the information like number of inmates spoken to, action taken, follow up and status. This helps in arriving at statistical data to evaluate the efficacy of the project. This model has been replicated by the CHRI in Rajasthan in collaboration with NLU, Jodhpur, with a fair measure of success.

However, she elucidated that sub-jails in districts were the most neglected. Law colleges and universities in the districts could play a proactive role in creating awareness about the rights of inmates and also conduct legal aid clinics for a large number of inmates in these jails who do not have access to lawyers. Again, for creating awareness, colleges and universities teaching humanities or the sciences and are interested in human rights, could also play an equally important role in creating awareness among the inmates, by conducting short plays based on rights inside the correctional homes at regular intervals.

**SESSION III:****Next Steps: Setup of Legal Aid Clinics across WB**

After an indepth discussion on the roles and advantages of legal aid clinics, the floor was left open to discuss the next steps to move forward in the setup of legal aid clinics in West Bengal. Suggestions were invited from the participants on the issue.

Mahua Mitra Bagchi, Welfare Officer, Midnapore Central Correctional Home, suggested that in Midnapore, a panel of such legal aid volunteers needed to be set up who would make regular visits to these sub-jails to provide legal aid as well as carry out documentation to build up a statistical data, which is immensely beneficial in evaluating efficiency of the project. The law colleges in the district should be at the forefront of this project. To this the Haldia Law College principal promised all cooperation to start the project and said he would request ex-students of the College to get empanelled in this panel of volunteers.

Pampa Chakraborty, Welfare Officer, Alipore Central Correctional Home also suggested a few measures for its effective functioning such as starting the project with a small number of students instead of many and continuing the project with the same core group over a considerable period of time.

Madhurima suggested that one could start with the Committee of Legal Aid for Prisoners, which was empanelling lawyers through SLSA.

Eventually it was decided, that after the colleges reopen in August for the new term, meetings could be held in each of the interested districts. The meetings would be attended by the Principal and students of the law colleges, the superintendent and welfare officer of the correctional homes falling within that district and the chairman or secretary of the legal aid services authority and Smita Chakraborty, Programme Officer, Prison Reforms Programme, CHRI. The meetings would seek to obtain consensus amongst the stakeholders for the setup of such clinics and finalise an action plan on taking this forward.

Once this task is done, CHRI will conduct an orientation session with the students who will be part of the legal aid clinics and share experiences from the Shadhinota project in

Kolkata. The law colleges would also be required to prepare monthly reports and submit to CHRI, SLSA and the Superintendent of the Correctional Home – for evaluation and assessment of the project.



**SESSION IV:****Student Experience: Knowledge gained & Challenges Faced**

The concluding session began with students associated with the Shadhinota Legal Aid Clinic project sharing their experiences. Deepan Kumar Sarkar of Department of Law, University of Calcutta, who has been associated with the project since 2011, said that working with the legal aid clinics can be looked at from various angles. Firstly, since he had started working when the mechanism was being laid down for the running of these clinics, it had taught him the importance of a good, strong and efficient mechanism. Secondly, working with the project had been a great professional lesson because it was teaching him the practical aspects of the law while still being a student, something that is most important, because the profession in theory and practice differed considerably. These were lessons which, he felt, would prove crucial for him later in his professional life. Thirdly, the interaction with prisoners had been greatly beneficial, both professionally and personally. These interactions have taught him the art of conversing with clients, especially those coming from the more deprived sections of the society.

Deepan, explained that for him working at the legal aid clinic has been an eye-opener. Getting into the minds of inmates and discovering that there were indeed circumstances which compelled them to act in a certain manner. Finally, all this had enhanced his understanding of society and its problems. It had helped him nurture a humanistic outlook and instilled in him a stronger set of professional ethics. It made him realize that helping someone, having empathy, not sympathy, was a source of greater happiness. However, in order to build up a connect with an inmate, he had to be made to feel comfortable and cared for, from the attitude of the volunteer. The volunteer had to gain the inmate's trust. That was crucial. It had taught him that if there is something wrong with the system, it is incumbent upon those connected with the profession to try and rectify it.

Thereafter, Ashika Dabholkar, Student Coordinator, Shadhinota Project, National University of Juridical Sciences, Kolkata shared her experiences, focusing on the practical aspect of being associated with the legal aid clinics. She spoke about the methodology of work, of the very important aspect of time management, being a busy

student herself. She said it was a matter of priority and commitment. If a particular student considered this to be important, it was not impossible to cull out time from studies to devote towards this endeavour. All that was required was the desire to do good. She also focused on the process of interaction with inmates, about how it takes time to allow the inmate to develop trust in the volunteer and slowly but surely they open up. She further emphasized on the fact that regularity and perseverance is a must to achieve the goal sought for.

Finally, the meeting ended with a unanimous pledge by the participants that similar models like Shadhinota would be set up in the districts with the help of CHRI and continue and spread this noble endeavour to ensure a better system and giving access to justice to as many as possible.

**PARTICIPANT LIST**

<b>S. No.</b>	<b>Name</b>	<b>Organisation</b>
1.	Ahana Mustafi	Student, Loreto College, Kolkata
2.	Ashika Dabolkar	Student, NUJS, Kolkata
3.	Atrayee Panja	Student, Loreto College, Kolkata
4.	Bichitra Bhattacharya	Addl. Inspector General (South) of Correctional Homes, WB
5.	Biswaranjan Acharyya	Student, Haldia Law College, WB
6.	Caesor Roy	Asst. Prof., Midnapore Law College, WB
7.	Deepan K Sarkar	CHRI
8.	Diya Sarkar	Student, Haldia Law College, WB
9.	Dr R.K. Singh	Principal, Haldia Law College, WB
10.	Dr. Avimanyu Behera	Principal, Midnapore Law College, WB
11.	Madhurima Dhanuka	CHRI
12.	Mahua Bagchi Mitra	Welfare Officer, Midnapore Central Correctional Home
13.	Monomita Chaudhury	Student, Loreto College, Kolkata
14.	Pampa Chakraborty	Welfare Officer, Alipore Central Correctional Home
15.	Rishi Ray	Student, NUJS, Kolkata
16.	Sangramesh Talukdar	Student, Haldia Law College, WB
17.	Sk. Md. Wasim	Student, Midnapore Law College, WB
18.	Smita Chakraborty	CHRI
19.	Sreyasi Mukherjee	Student, Loreto College, Kolkata
20.	Susmita Sarkar	Student, Midnapore Law College, WB
21.	Ujjaini Chatterjee	Student, Dept. of Law, Calcutta University



## Legal Aid Clinics in West Bengal

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Saturday, 6<sup>th</sup> April 2013

### AGENDA

<b>REGISTRATION</b>	<b>10.45 – 11.00</b>
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Welcome & Introductions	11.00 – 11.15
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### **SESSION I: Legal aid in West Bengal: Challenges & Opportunities**

**11.15-11.45**

**Speaker: Mrs Bichitra Bhattacharya, AIG, Correctional services, WB**

**Context & Aim:**

The Constitution of India guarantees to every person in India a right to fair trial and effective legal representation before the judicial forums. However, even with the enactment of the Legal Services Authorities Act 1987 this constitutional promise is not observed in letter and spirit in reality. Taking note of this situation, the government has acknowledged the need for criminal justice reform in the nation. Can the law students take advantage of these to push for legal aid reform?

This session seeks to identify the gaps in the functioning of the legal services authorities and explore opportunities where law students and universities can intervene esp. in raising awareness. To highlight the issues, this session will focus on the current state of legal aid in context of persons in custody i.e. indigent persons detained in correctional homes in West Bengal.

<b>Discussion:</b>	<b>11.45 – 12.00</b>
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### **SESSION II: Legal Aid Clinics: Role & Advantages**

**Speaker: Madhurima, CHRI**

**12.00 – 12.15**

**Context & Aim:**

CHRI has been conducting legal aid clinics in Presidency & Dum Dum Central Correctional Homes since 2010. The clinics have been quite successful in bridging the gap between the inmates and the legal aid services authorities. Not only are legal aid clinics beneficial for the inmates, but they also sensitise law students towards the practicalities of criminal procedural law.

This session will also invite welfare officer/superintendents to discuss what areas of intervention by law students will be beneficial for the inmates in their correctional homes. This session thus aims to discuss the role legal aid clinics can play in revitalising the legal aid system in the state. Legal awareness & legal counselling are both important aspects of legal aid clinics. Reporting and documentation too are important aspects of these clinics.

<b>Discussion:</b>	<b>12.15 – 13.15</b>
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<b>LUNCH</b>	<b>13.15-14.15</b>
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**SESSION III: Next Steps: Setup of Legal Aid Clinics across WB****Moderator: Madhurima Dhanuka, CHRI****14.15 – 15.45****Context & Aim:**

The session will be interactive inviting one representative from each college to share the work that they are doing on legal aid and how they can include legal aid clinics in correctional homes as part of their work.

This session will discuss how the legal aid clinics can be setup in other colleges across West Bengal; what role they can play; support that will be provided by CHRI; reporting and documentation; and how to liaise with the legal services authorities in the district.

**SESSION IV: Student Experience: Knowledge gained & Challenges****Speaker 1: Deepan Kumar Sarkar****15.45 – 16.00****Speaker 2: Ashika Dabholkar****16.00 – 16.15****Context & Aim:**

Legal Aid Clinics are a part of clinical legal education. It provides students with first-hand experience in client counselling and gives them an opportunity to apply laws and procedures in practice.

In this session, students will share their experiences of being part of legal aid clinics and what in their opinion have been the challenges they faced in conducting the legal aid clinics.

**Discussion:****16.15 – 16.30****TEA & CLOSING****16.30 – 16.45**

*"Legal aid means helping backward classes and indigent persons"*

*"Legal aid is something that comes from the heart and one shouldn't forget about it after becoming lawyers"*



*"Legal aid is a way of returning debt we owe to society"*

*"Legal aid is the means by which lawyers should discharge their social duties by helping backward classes and people in need"*