

Legal Aid Reform Meeting with Civil Society¹

Venue: The Golden Parkk, 13 Ho Chi Minh Sarani, Kolkata, India – 700071

26.5.12, Saturday

Minutes/Report on Proceedings

1. Participants and the nature of their work:

i. **Kirity Roy & Biplab Mukherjee – MASUM**

- Provide legal support to torture victims and also complains about instances of torture, sexual assault and even killing in prisons. Look into custodial deaths which have not been inquired into.
- Main focus of work is on torture by the State in Prisons, Police Stations etc.
- Work with marginalized victims.
- Work with the support of the UN and provide medical and legal help to victims. Cases have been filed in this regard.
- Work as defence counsels for people charged with offences.
- 12 writ petitions pending against torture including one in the Supreme Court of India.
- Generally file RTI applications to procure relevant information.
- Hold training programmes for Public Prosecutors.
- However, most Government institutions do not recognize or accept them as a partner to work with. Efforts to contact prison authorities to provide prisoners with legal help have been in vain so far.

ii. **Deep Purkayastha – Director, PRAJOK**

- Provide legal aid to child victims and their families.
- Identify lawyers who are willing to take up such matters in the District Courts
- Engaged in research in Jalpaiguri with the JJB and the JCL and are trying to identify what is ailing the Juvenile Justice system.

iii. **Bipasha Roy – Member, Juvenile Justice Board (JJB), Kolkata District**

¹ Prepared by Deepan Kumar Sarkar, CHRI

- iv. **Ranvir Kumar – IG, Correctional Services (CS), West Bengal**
- v. **Mary Miller Flowers – Program Officer, OSF**
 - Work for the Global Criminal Justice Fund
 - Protect rights of indigent persons
 - Exploring avenues in India
 - Interested in analysing problems of the legal aid system also getting to know more about the legal system in India
- vi. **Jaba Guha & Alok Bera – SLARTC**
 - Provide legal aid to the needy. Have tie ups with 3-4 lawyers to provide such services.
 - Work to oversee implementation of the Domestic Violence Act in North 24 Parganas and Kolkata District.
 - MOU with the State Government to give legal aid and help families in Liluah Home.
 - Working with various Bangladesh NGOs on human trafficking and pursue matters for repatriation in Liluah/Cooch Behar and Jalpaiguri Homes.
 - Organise awareness programmes
- vii. **Bijaya Chanda – Advocate and Justice Makers Fellow, IBJ**
 - IBJ an NGO headquartered at Geneva, Switzerland and having offices in USA and Singapore among others. Works through Fellows in 7 countries.
 - Engaged in
 - Defenders building capacity
 - Awareness programmes
 - Reforms through legal empowerment.
 - B.Chanda is a fellow herself and works for legal empowerment in Subsidiary Correctional Homes like ones in Diamond Harbour and others
 - Subsidiary correctional homes a major focus.
 - Empowerment of UTPs by making them aware of their rights.
 - Have started 40 training programmes in 5 different Correctional Homes. A team of 19 lawyers from the lower courts actively supply legal aid and take part in the awareness programmes.

- 11 Community Outreach Programmes in 3 districts have been started and have secured the attendance of over 1000 people so far. In addition, books on training have been released.
- viii. Shuvro Prosun Sarkar – Member, WBNUJS Legal Aid Society**
- Hold regular legal aid camps in rural areas of West Bengal
 - Collaborating on the programme ‘SADHINOTA’ with the Commonwealth Human Rights Initiative to empower prisoners legally in Correctional Homes.
 - Helping North-Eastern Universities to establish Legal aid clinics
 - Helping in creating a network of legal aid clinics in West Bengal
 - Associate students with NGOs to teach them social work
 - Contemplating a full-fledged Legal aid clinic inside the JJB
 - Contemplating sending students to Police Stations to ensure just treatment of arrested persons.
- ix. Paromita Chowdhury – Consultant, OAK Foundation**
- x. Mr Satyajit Das Gupta, LASWEB**
- xi. Prasun Kumar Majhi – Welfare Officer, Department of Prisons, West Bengal**
- xii. Debashis Banerjee – Coordinator, HRLN**
- Organisation of Lawyers and Social workers
 - Provide legal support
 - Publish legal materials and books.
 - Advocacy
 - Work mainly in the grass-roots
 - File PILs to achieve greater results
 - Work with the Criminal Justice System in all districts of West Bengal as Defence Counsels.
- xiii. Michael Anthony – CEO and Founder Trustee, TRACKS**
- Works with juvenile children/women and educate them – those who live beside railway tracks and in Railway Stations – teach them their rights and rehabilitate them
 - Give legal support
 - Hold programmes and teach GRPs about the Juvenile Justice Act
 - Home at Amtala and have also started work in Dum Dum with women.

- Work closely with other NGOs
- xiv. **Taj Mohammad – Ex-Director of Public Prosecutions**
 - Hold training programmes for Public Prosecutors, Police and lawyers
 - Work to prevent trafficking and also work with different NGOs such as SANGLAP and different Universities and Colleges
 - Teach in Universities and Colleges to make people aware.
- xv. **Sarfaraz Ahmed**, Assistant Professor, **WBNUJS**
- xvi. **Madhurima Dhanuka**, Consultant, Prison Reforms Programme, **CHRI**
- xvii. **Deepan Kumar Sarkar**, Volunteer, **CHRI**

2. Introduction by Madhurima Dhanuka of CHRI and Mary Miller Flowers of OSF

The agenda was circulated to the participants.

3. Session I – State of Legal aid in West Bengal: Challenges and Opportunities:

The session started with a presentation by Mr Ranvir Kumar, IG who began by reiterating the fundamentals of a Welfare State, an integral function of which is the citizens' access to justice and spoke of how many in our country do not have access to justice, for a multitude of reasons. He highlighted poverty and its consequences on the accused, prisoners and their families though the laws provide for free legal aid to such people. **He asserted and suggested that UTPs were indeed aware of their rights and it would be expedient for the system to give them the chance of appearing and defending themselves in court. The UTPs seem to have lost faith in their legal counsels and often wish to argue their cases themselves.** He invited NGOs to form pressure groups to implement the above.

Mr Kumar spoke about the problems of Jan Khalash prisoners among others and said that he had already listed the problems faced by the inmates and was already acting on them. Next he chose to discuss the problems regarding the Mentally-ill prisoners and added that they were doing everything within their powers to improve the situation and adhere to relevant guidelines. The problems and recent successes relating to the plight of juveniles were

discussed. As a sign of hope, he elucidated that recently more and more lawyers and counsellors have been adopting a more active role to help those who are in need of it.

Finally, Mr Kumar concluded by summarising the needs of the hour intertwined with his suggestions to satisfy the same:

- According to him, legal aid facilities would have to be started in all Correctional Homes, including the Subsidiary ones.
- Proper mechanism should be formulated even though it would take time for it to be regularised. The time taken would be worth taking.
- NGOs should step in more actively to bring about legal literacy and awareness, And for this, students should be tapped very effectively.
- Prisoners can write directly to the authorities and to institutions like the NHRC for help in case of any problems.
- The issue of plea bargaining can be looked into.
- Take steps to allow legally literate and aware prisoners to fight their case themselves without depending on a legal practitioner. Even SLSA has said that it was in favour of such a move.
- Civil Society groups have an important role to play. Firstly they need to formulate a model through which they will provide legal aid. The following models could be adopted:
 - **Charitable Model** – Help by financial and like means, for example by providing the financially weak prisoner with the unpaid surety for bail.
 - **State Funded Model** – Help by using funds or facilities provided by the State.
 - **Mixed Model** – a mixture of the charitable and the state funded model.

All stakeholders like the different organisations and the NGOs can participate more actively and work together and coherently instead of individual fragmented efforts.

Mr Kumar's presentation was followed by open discussions. Bipasha Roy from the JJB stressed that due a lack of an independent system of providing lawyers, juveniles and the needy ones were being greatly inconvenienced and therefore a legal aid centre was an immediate need inside the JJB and the Mixed Model could be of help in this regard.

Madhurima Dhanuka suggested that Welfare Officers of prisons could be helped by NGOs in their legal work for more efficiency. A major problem that was identified by the participants was the lack of public awareness and public faith in the system which contributed to the system's inefficiency resulting in a vicious cycle. It was observed that the mindset of the outside society was a problem, and had to be changed. The competence of legal aid lawyers was questioned by participants like Jaba Guha.

A law student among the participants said that if a provision could be made that law students could appear for juveniles before the JJB, it would enthuse students like him greatly and would act as a great motivation and contribute to the improvement of the quality of legal aid services.

Mr Banerjee, however, said that there were people in the Government machinery who were doing good work in legal aid services but noted that without monitoring they would take advantage and not work. Everyone agreed and suggested various measures.

After the presentation by Mr Kumar, Madhurima asked all the participants to voice out their views with regard to NGO interventions at the time of:

- Arrest/Police lock-up
- First production
- Trial
- Bail
- Appeal

The participants recommended steps such as independent monitoring in police stations to oversee their functioning and making newly arrested persons aware

of their rights, as well as requesting the Bar Council to take steps by making it mandatory for lawyers to have SLSA stints and requesting the media to highlight these issues to bring about awareness and sustain pressure for implementation.

Finally Michael Anthony from TRACKS summed up the mood by saying that the important thing was that the NGOs should communicate with each other regarding the work they do, to promote sharing and more effective functioning. Regular programmes should be held at different levels. The mood should be positive and not negative.

Some of the problems listed in this session were:

- Dispensing of Legal aid services
- Incompetency
- Lack of professionalism
- Lack of resources
- Lack of understanding and agreement
- No monitoring
- Lack of infrastructure

Among others

4. Session II: Problems faced and relevant work that can be done by Civil Society:

Moderated by Madhurima Dhanuka

The session started with the participants describing the nature of work each of them was engaged in before resuming the open discussions.

Jaba Guha started by saying that there was no follow up on favourable court orders. She also complained about the lack of infrastructure. She gave an example of the Liluah Remand Home where relevant cases were being identified by the authorities themselves. She argued that identification of cases should be done by independent authorities for proper results. Kurity Roy said that Homes for Women were being increasingly used for racketeering and prostitution. These had to be stopped. Mr Sarfaraz Ahmed recounted a recent Government order directing States to avoid booking under Section 14 of the Foreigners Act for trafficking victims. Their cases can be withdrawn. He

suggested this matter should be taken up with the Government to persuade Prosecutors to drop charges.

Mr Banerjee then said that trafficking cases were easier to handle for juveniles, for they could be deported back right after withdrawal. However, Some participants felt that the important thing here was first to devise a method to identify which woman is a victim which was then discussed in detail.

Next, Prasun Kumar Maji, Welfare Officer, spoke about the inability to follow laid down procedures for prisoners in correctional homes due to lack of infrastructure. As opinions were sought and discussed he agreed that the NGOs had a role to play since they are the ones who actively participate in aid activities in correctional homes. The need for intervention at the time of arrest and the accused having the right to ask for a lawyer at the Police Station was reiterated repeatedly. Mr Suvro Prasun Sarkar suggested that students could take turns in going to the Station to oversee that no injustice was being done and also make the arrested person aware of his rights. Mr Banerjee suggested that such a visit take place at 10 am in the morning for the most productive results. Mrs Dhanuka added that NGOs could accompany. More importantly, a pilot project should be started very soon and its report could be tabled before the Government.

Mr Banerjee also highlighted that for lawyers giving legal aid becomes difficult because of the lack of opportunity of meeting the accused in court lock up, which is often too crowded and hence not conducive for lawyer-client meetings. Since such lawyers are not paid it is neither feasible for the lawyer to go to the prisons to meet the client. He further contended that legal aid lawyers are paid rather meagrely so many of them are not interested to work with vigour. In addition to that, according to him, legal aid lawyers in the lower courts are hardly equipped professionally to fight cases with competence. He wondered whether such lawyers could be trained by NGOs through workshops.

Mr Das Gupta stated that before commencing on any work, the first thing that should be done is documentation by way of collecting data and information on the situation prevailing in the Correctional homes.

Ms Paromita Chowdhury and others asked for a database to be created, of legal aid lawyers working in the districts and also to gather information on child abuse in juvenile homes. That way, the demand and supply equation would emerge paving the way for further studies and measures.

Mr Sarfaraz Ahmed recommended that a leaflet be prepared which would be handed over to the arrested person as soon as he is brought to the PS. One could also agitate before the competent authority to display rights of an arrested person at the P.S itself. In that case, if the arrested would get to know of any violation in procedure he could raise it in court during the first production itself.

5. Session III: Detailed open discussions on specific levels:

Moderated by Mary Miller Flowers of OSF

a. First Production of accused:

While Mrs Dhanuka pointed out non-production of accused in court, Mr Banerjee referred to the non-implementation of the favourable court orders. This issue was discussed in detail. The issue of lack to access of lawyer to accused at the first production stage, the severe shortage of space and the

Mrs Dhanuka also pointed out that there was no access to lawyer at the first production stage and that there was severe shortage of space. Mr Kurity Roy alleged that though accused were not being produced physically, the records were being manipulated to show that they were indeed produced. The steps to be taken were discussed which included study of function of GROs in court to filing of PILs to the institution of a pilot project of monitoring first production in courts by NGOs. The issue of Section 39A and 54 could also be taken up with the authorities. Ultimately it was decided that a two pronged strategy consisting of direct intervention and filing of a PIL should be adopted.

b. Bail:

The issue of bail sureties were discussed and it was felt by the participants that it was the right time to challenge regulations on bail sureties in West Bengal. Such provisions were absent in places like Delhi. That such a programme should be taken up notwithstanding Government pressure received a unanimous approval from the participants. It was added that recent CrPC amendments, the Motiram judgment, not getting bail for hailing from another State in India were things which should be taken up alongside.

c. Trial:

Mrs Dhanuka mooted the possibility of pushing for the implementation of

- Plea bargaining u/s 465A, and
- The Probation of Offenders Act, 1958

This issue was debated with some agreeing and some like Mr Ahmad & Mr Banerjee disagreeing saying that about 4% expect conviction in India and hence this would be a risk for them. However, for offences punishable with less than 3yrs imprisonment it could be a possible option.

A step by step approach to mitigate the problem of long pendency of cases in Indian courts was decided upon ultimately leading to pressurising for introduction of fast-track courts at the Magistrate level. The support of Government agencies RICA could be sought to undertake studies and determining a course of action, it was decided.

Ultimately, all the participants agreed that the eventual goal was making the authorities self-reliant and capable of efficient functioning without major help from outside. Everyone also accepted the proposal to adopt a pragmatic one at a time approach.

6. Possible avenues that emerged:

- Charitable/State-funded/Mixed Model to provide legal aid
- Pushing for literate and capable inmates to appear and defend themselves in court, without the help of a practitioner
- Legal aid cells inside JJB

- NGO intervention at the Police Station itself through lawyers/students etc to oversee treatment of arrested person and making them aware of their rights. Printing of leaflets etc. Pilot project.
- Detailed study on bail sureties.
- Study on the possible implementation of plea bargaining and Probation of Offenders Act
- Pilot project to oversee and study first production of accused in the courts.
- NGOs helping the Welfare Officers in carrying out their tasks.