

Learning by Doing—Promoting Access to Justice to the Marginalized and Vulnerable Groups in India

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Abstract

This article discusses about the LLM programme of the Tata Institute of Social Sciences (TISS) in the area of access to justice, and how it has promoted access to justice to the marginalized and vulnerable groups in India. The article also discusses the access to justice clinic of TISS—its functioning, supervision, achievements and challenges.

Introduction

Access to law and justice is the hallmark of any civilized and caring society—a basic necessity in a democracy governed by the rule of law. Access to justice means being treated fairly according to the law and if you are not treated fairly, being able to get appropriate redress. It also means having access to law, less complex procedures and everyone having some basic understanding of their rights. Access to justice includes not only access to courts and legal redress mechanisms, but also to good governance, including transparency and accountability in the making of laws and process of their implementation and administration. It also includes awareness and access to government schemes and programmes and entitlements. The current justice delivery system is perceived as expensive, time-consuming, procedure-ridden, technical and difficult to comprehend, which prevents the poor and vulnerable groups from approaching the legal system to redress their grievances. Complex laws and procedures, huge backlog of cases, delays in delivering justice and corruption are some of the challenges to accessing justice. The laws, legal institutions and processes need to be reformed so that they are more responsive to the needs of all citizens, particularly the vulnerable and marginalized groups and individuals in the society. Since India became a social, democratic, republic governed by the rule of law, there have been several achievements, but even today, large masses of Indians still lack legal awareness, resulting in inequality, injustice and disempowerment. If law is equal for all, access to law and legal information should be universally available. The entitlements under various government schemes and programmes must be made available to all. If equal justice under law is to be a reality, there has to be equal access to law and

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justice. This is the mandate of the Constitution of India. To fulfil this mandate, legal education in India must be socially oriented.

Clinical legal education (CLE) attempts to integrate the two objectives:

- Enhancing the quality of legal education
- Service to the community

CLE bridges the gap between theory and practice and promotes deeper interactions between higher educational institutions and local communities. In the USA, ‘clinics’ are small law school classes, where students learn lawyering skills by undertaking legal services on behalf of the marginalized and vulnerable groups and communities. Law cannot be studied only in classrooms, in isolation from grass-roots realities. One has to really interact with the people for whom law is made and understand the practical concerns and issues. The legal professionals should know how to use their legal knowledge and resources to promote access to justice to all—especially the marginalized and vulnerable sections of the society. This is the duty which they must perform. Currently in India, the legal education system generally perpetuates theoretical orientation of students and law teachers and provides no academic credit for students to work in community and there are technical barriers as well, such as lack of student practice rules and grass-roots realities in disadvantaged communities. Since there is no academic credit for students as well as teachers, the law college clinics are voluntary and not taken seriously.

According to some of the findings of the United Nations Development Programme (UNDP) and Government of India (GOI) Report on CLE:¹

- Majority of the clinics were started only to fulfil the mandatory requirement of the Bar Council.
- Generally, the clinics had no proper functional structure, place nor policy on the kind of services they would extend.
- No workload credit was given to the faculty.
- No academic credit was given to the students.
- Most of the activities of the cells were restricted to a few legal literacy camps.
- The study of six national law schools revealed the lack of importance and effort in offering legal aid.
- None of the national law schools offer legal aid as a compulsory clinical course.
- Students and faculty lack the required practical skills.
- No involvement of Bar and the Bench.
- Lack/ineffective collaboration with legal services authority (LSA).

This situation implies that the legal professionals—the lawyers, judges and law students—are just not aware of the social realities. The legal education must, therefore, be socially relevant. For this, CLE must be included in law schools, judicial academies and continuing legal education programmes by the Bar Councils. The Bar Council has recognized its importance, but with no academic credit for students

¹ Government of India, *UNDP Report on A Study of Law School Based Legal Services Clinics*, available at http://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_schoolbasedlegalservicesclinics.html (last visited April 15, 2016). Access to Justice Project on ‘Study of the Law School based Legal Service Clinics’ was undertaken in seven states: Odisha, Bihar, Chhattisgarh, Jharkhand, Uttar Pradesh, Madhya Pradesh and Rajasthan. The study was intended to understand the functioning of legal aid cells established in these states by the law colleges and suggests ways and means to improve their functioning to act as effective instruments of access to justice.

and teachers, no proper training to teachers, full-time law teachers with no practical knowledge as they are not allowed to practice in courts and students not allowed to appear in courts under supervision, CLE and law college clinics in India have become a mere formality.

Masters Course in Access to Justice—An Innovative Approach to CLE²

This is an innovative Master of Laws (LLM) course in ‘access to justice’. The main objective of the course is to provide the community with lawyers who will be for the people to help them access justice. The one-year, full-time, Master’s degree programme in access to justice (LLM) aims at developing legal professionals with greater skills, sensitivity and commitment to deliver basic, high-quality legal services to the poor, marginalized and vulnerable groups in society. The graduates of this course will also help in socio-legal research and law reform. Field-based legal research forms an important component of the course. The course gives credit to teachers and students for working in legal aid clinics. Working in legal aid clinics is included in the course curriculum as a compulsory module. In fact, fieldwork or field-based dissertation, forms an integral part of this course and is given almost half of the credit as the theoretical course. After completing this course, the students can work for the community through socio-legal research, advocacy, legislative reforms, policy-making and policy analysis in support of the vulnerable groups, as community lawyers, with academic universities, legal advisors, legal researchers and scholars, civil society groups and legal services commission, judicial services and agencies that share the socio-legal cause.

The curriculum was designed after intense rounds of consultations with legal experts, law teachers, law researchers, non-governmental organizations (NGOS), law enforcement officials, social workers, retired judges, governance specialists, and social and legal activists.³ The group raised alarm at the failure of legal education to inculcate social change and justice among its students and the society at large. After several rounds of consultations, a curriculum was brought together that inculcates social action and social change through intense academic teaching, research, field practice, clinical programmes, law reform and policy engagement. The course provides equal number of credits to theoretical inputs as well as fieldwork and legal services, both to the teachers as well as to the students. Besides the mandatory courses like law and justice in globalizing world, comparative public law: systems of governance, and research methods and legal writing, the course curriculum includes the following subjects:

Law and development, community development and citizen participation, legal and justice institutions including court and case management, legal strategies for empowerment, alternative dispute resolution, public interest litigation, community and pro bono lawyering and legal advocacy, theories of practice of law, vulnerable client interviewing and counselling, professional legal ethics, legal literacy, legislative reforms in support of vulnerable groups (including constitutional, administrative and judicial reforms). Working in legal clinics, field-based placements and internships or field-based dissertation forms an integral part of the course and is included in the course as compulsory and credited. A clinical work manual has been prepared and students are assessed on field-based dissertation/internship/clinical programmes/exam performance. Equal weightage is given to both class rooms and fieldwork that includes providing legal services.

² LLM course in access to justice commenced in the TISS in 2012.

³ The team was led by Professor Asha Bajpai and included experts such as Professor Madhava Menon, Professor S. Parasuraman, Professor B.B. Singh, Professor Jane Schukoske, Dr Usha Ramanathan, Justice Suresh, Professor Jaya Saagde, Mr S.S. Puri and Dr Sadanand Date.

TISS Legal Services Clinic—Integrally Linked

After students are prepared by a pedagogical programme that prepares them in what is called the ‘theories of practice of Law’, the LLM students start working in the clinics. TISS Legal Services Clinic is integrally linked to the LLM in access to justice. Its objective is mainly to provide experiential and professional learning to the students of LLM in access to justice course. The other objectives of the TISS Legal Services Clinic include:

1. To promote access to justice for the marginalized and vulnerable groups by providing free legal services, including legal advice, legal awareness, legal counselling, mediation and other legal services to the vulnerable groups in the society by the staff, faculty and students. The students will also help in Right to Information (RTI) applications and helping the vulnerable groups in accessing government schemes and facilities.
2. To simplify and create awareness regarding laws, legal procedures, legal institutions, and government schemes and programmes for the vulnerable groups.
3. To assist the community in accessing government schemes and programmes meant for the vulnerable and marginalized sections of the society.
4. Research for filing PILs on behalf of the vulnerable section of the society.
5. To collaborate with and strengthen the State Legal Services Authority to provide legal services to the vulnerable groups in the society.

The clinic initially primarily focused on reaching out to the communities in the M-east ward of Mumbai. This ward has the worst human development indicators in the city. It has the lowest infant mortality rates (66.47 as compared to Mumbai’s average of 34.57), largest proportion of slums and lowest literacy rates.⁴ With a slum population of 77.55 per cent, the entire municipal ward has a human development index of a shocking 0.05.⁵ It has a large migrant population, low and insecure levels of livelihood activity, large-scale unauthorized housing and poor education and health facilities.

The clinic provides students with linkages to the community as well as the district legal aid society to deal with any legal issues that they take up during their fieldwork internship. The LLM students placed for fieldwork are supported by the clinic during the academic year. The students were placed with NGOs, rights groups, TISS field action projects and selected slum communities. The students identified cases for various kinds of legal intervention such as legal awareness, legal counselling, legal advice, accessing government schemes, mediation, bail, etc. including filing court cases and PILs. The TISS panel of lawyers and panel of lawyers provided through the state legal aid services followed up on these cases as required. Students were placed in various settings such as prisons, community-based organizations and rights groups. They took up cases of under-trial prisoners’ bail, children kept in prisons, HIV +ve people and tribal, among others. These cases were discussed at the legal services clinic (LSC) and the students were given advice on how to proceed on these cases. Many of the prisoners subsequently got bail. Two children were transferred to the Juvenile Justice Board (JJB), following intervention by the

⁴ *Mumbai Human Development Report 2009*, available at <http://mhupa.gov.in/writereaddata/Mumbai%20HDR%20Complete.pdf> (last visited 15 April 2016). With a slum population of 77.55 per cent, the entire municipal ward has a human development index of a shocking 0.05. The ward was ranked as the lowest in *Mumbai Human Development Report 2009* as well. According to the 2011 census, 34 per cent of the 41.85 per cent of slum population in the city resides in the M-east ward.

⁵ *Report on M/East Ward Reveals the Poor Picture of Mumbai’s Unequal Development*, DNA, Mumbai, Thursday, 30 April 2015, available at <http://www.dnaindia.com/locality/mumbai-north-east/report-meast-ward-reveals-poor-picture-mumbai%E2%80%99s-unequal-development-58740> (last visited April 15, 2016).

students. The TISS LSC helped them file the necessary applications. Through the clinic, the students conducted a rapid study at the family court services. They interviewed litigants in the family court to understand their views about the services at the court. They were trained in street play and used this skill in the community. The students placed at the family court scripted and performed a street play on joint guardianship and shared custody. Students developed legal literacy materials on Muslim personal law, women's laws, domestic violence, right to education, child rights, women's rights, rights of undertrials, environmental laws, etc.

There is a university-based clinic located in the campus and there is a community-based clinic. The community clinic was established in the Sathe Nagar community, which is a slum area in Mumbai and is a home to several disadvantaged and marginalized groups that have no access to legal services and basic amenities like water, sanitation, etc. It established contact with the NGOs working in the area. Interventions started with awareness sessions with women and youth in the community. One of the key groups that this clinic reached out to was that of *anganwadi* workers.⁶ These are usually women from the community who have a good understanding of the problems in the community. The clinic team conducted sessions on women's rights and legal rights for the vulnerable groups and the *anganwadi* workers in collaboration with the ICDS department.⁷ Eventually, the *anganwadi* workers began referring women in need of legal support and advice to the community clinic.

Even after six years of the Right to Education (RTE) Act, education still eludes the disadvantaged. The community clinic is initially focusing on creating awareness on the RTE Act⁸ to the managements, teachers, parents and school management committees of all the neighbouring schools in this community.

Some Cases Dealt with Student Involvement and Supervised by Faculty and an Advocate

1. A 35-year-old HIV +ve woman from West Bengal who was separated from her husband came to Mumbai in search of a job. She got a job as a daily wage labourer. She was apprehended red-handed by the police while stealing a mobile phone at railway station. She was arrested under section 379 of the IPC (Theft) and kept in prison. Her two minor children were placed in a children's institution.

Action taken by students: The LLM students during their prison visit found that she had not been produced before the magistrate, nor given the option of bail nor provided with any medical treatment. Her health was deteriorating and she had no access to Antiretroviral Therapy (ART) in the prison. A lawyer was assigned to the case by the LSC, and arrangements were made to send

⁶ *Anganwadis* are the government-sponsored child care and mother care centres in India. They cater to children in the 0–6 age group. The word means 'courtyard shelters' in English. They were started by the Indian government in 1975 as a part of the integrated child development services (ICDS) programme to combat child hunger and malnutrition. The *anganwadi* system is mainly managed by the *anganwadi* workers. They are the health workers chosen from the community and given four months training in health, nutrition and child care. They are in charge of *anganwadis* which cover a population of 1,000. Twenty to twenty-five *anganwadi* workers are supervised by a supervisor called *mukhyasevika*. Four *mukhyasevikas* are headed by a child development projects officer (CDPO). *Anganwadis* are India's primary tool against the scourges of child malnourishment, infant mortality and curbing preventable diseases such as polio. While infant mortality has declined in recent years.

⁷ ICDS aims at providing services to pre-school children in an integrated manner so as to ensure proper growth and development of children in rural, tribal and slum areas. ICDS is a centrally sponsored scheme.

⁸ Right of Children to Free and Compulsory Education Act 2009 came into force from 1 April 2010. The right to education was accorded the status of a fundamental right in the Indian Constitution. According to it, every child in the age group of 6–14 years will be provided eight years of elementary education in an age-appropriate classroom in the vicinity of his/her neighbourhood.

her to hospital for CD4 (white blood cells) count. The students made an application for probation and she was out on probation. She was shifted to shelter home and obtained custody of her minor children.

Student learning: Rights of under-trial prisoners and drafting applications for probation and for custody of children.

2. M supports his family of eight people. He was evicted by the municipal corporation from his residence due to expansion of the road. He was provided with alternate land for his displacement. This alternate land was illegally occupied by another person who claimed to have property rights over it.

Action by students: A civil suit was instituted. An order in favour of M was obtained. But, there was no execution of the order. The students scrutinized the documents and sent a letter to the Assistant Commissioner of Bombay Municipal Corporation (BMC). Students also approached the legal department and filed an application under RTI to find protocols and proceeding for legal eviction. Relief was finally given to LSC client M.

Student learning: Drafting and filing of a civil dispute and implementation and execution of orders.

3. A 25-year-old woman had two children—one was disabled. Her husband was having relationship with another woman and deserted his wife and children. Students met the client and filed a domestic violence complaint under the Protection of Women from the Domestic Violence Act (PWDVA) at the metropolitan magistrate court. She was provided with a legal aid lawyer and notice was sent to her husband. The husband after receiving the notice came and took wife and children back. They were happy to go back home.

Student learning: Filing of domestic violence report and helping in getting basic documents like ration card and proof of marriage.

Significant Achievements of the Clinic and Challenges

1. A university-based clinic has been established in the campus and one in the community. The second community-based clinic will commence soon that will focus on child rights in the community.
2. Students placed in various settings have referred cases to the clinic. NGOs and *anganwadi* workers have also independently referred.
3. The clinic with the involvement of students has also advocated for good governance in providing basic amenities like water, food, shelter, health services, education, housing and employment.
4. Legal awareness programmes have helped to reach out to various slum communities and people living in the slums and also helped them in understanding their rights. Legal literacy materials have been prepared with the help of students through simplification of the laws in English, Hindi, Marathi and Urdu.
5. Collaborations have been forged with district legal services authorities (DLSA), local NGOs, Department of Women and Child Development, Sarva Shiksha Abhiyan,⁹ *anganwadi* workers and local youth groups.

⁹ Sarva Shiksha Abhiyan (SSA) is Government of India's flagship programme for achievement of universalization of elementary education (UEE) in a time-bound manner.

6. Legal literacy material through simplification of the following laws¹⁰ in English, Hindi, Marathi and Urdu.
7. Tools have been developed for student assessment and evaluation of their work in the field and in clinics.
8. TISS clinic collaborated with the National Legal Services Authority (NALSA), Maharashtra State legal Services Authority (MSLSA), GOI and UNDP in providing paralegal training and developing a cadre of paralegal volunteers who will be available to the community and the NGOs when required. Criminal laws, laws relating to women and children, and rights in police station were taken up during the training. Resource materials and manuals have been prepared for paralegal volunteers (PLV)¹¹ training.

The LLM course and the clinic faced several challenges. Some of challenges faced and lessons learnt include:

1. Working in legal clinics as an integral part of the course motivated and energized some students and faculty but not the entire class and the entire faculty. These students and faculty stuck on to the idea of voluntary clinic as they had done at the undergraduate level. They completely resented the idea of a compulsory legal clinic with credits.
2. Many DLSA lawyers assigned to the clinic were irregular. It was given to understand that these lawyers would be paid by DLSA, but it was found later that they were only paid for the cases they took up. As a result, the lawyers were not regular and this resulted in gaps in referral of cases to DLSA. This was later addressed by empanelling them and paying them through the LSC for the days attended.
3. DLSA has lawyers registered with them but they need training on dealing with vulnerable groups and also the social laws and schemes affecting them. All legal aid lawyers need to be sensitized on communication with the clients, especially those who are vulnerable and marginalized.
4. During election time, the challenges increase in the community as the politicians feel threatened by teams that are 'helping and empowering the communities'.
5. The people in the slum communities do not have adequate support systems to pursue their cases to the logical conclusion.
6. Despite having laws to protect them, women are often deprived of their entitlements due to cumbersome legal procedures, litigation expenses and poor enforcement of the judgments given in their favour.
7. NGOs generally have their own agenda, internal dynamics and ownership of communities. Collaborating with NGOs needs a lot of discussions and negotiations, many a times leading to delays in commencing programmes.

¹⁰ Protection of Children Against Sexual Offences Act, Domestic Violence Act, Hindu and Muslim Inheritance and succession laws, Right to Education Act, Sexual Harassment of Women at Workplace Act, Right to Information Act, juvenile Justice (Care and protection of Children) Act, Child Marriage Act, Child Labour Act, PCPNDT Act, marriage laws, rights of women in the criminal justice system, labour laws and offences against women and children.

¹¹ During the year 2009, NALSA brought out a scheme called the Para-Legal Volunteers Scheme which aimed at imparting legal training to volunteers selected from different walks of life so as to ensure legal aid reaching all sections of people through the process of Para-Legal Volunteers Scheme, ultimately removing the barriers to access to justice. The PLVs are expected to act as intermediaries bridging the gap between the common people and the legal services institutions to remove impediments in access to justice. Ultimately, the process aims at legal services institutions reaching out to the people at their doorsteps, rather than people approaching such legal services institutions.

8. Lack of trained teachers, lawyers and staff, poverty law resources and expertise.
9. Sustainability of the clinics and their programmes is an issue of concern. This clinic has started with initial funding from UNDP, but for sustainability, funding must be assured from the university or from the LSA.

Conclusion

Undoubtedly, university-based legal clinics that are integrated with the academic course and credited are effective instruments for empowering and changing the status of the disadvantaged, marginalized, discriminated and vulnerable in India and are a strong tool for social justice. CLE must be taken seriously and must be promoted and sustained by the Bar Councils, government, judiciary, academic institutions, and college and university managements. Student's attitude and motivations also need to be changed through counselling. It is necessary that proper financial as well as infrastructure resources be given to legal aid clinics. A suitable budget must be kept aside. Teachers and staff of the clinics must be on par with the other universities' staff and not treated as 'project staff' on ad hoc basis. Teachers must be trained for running and teaching in clinics. Academic credits be given to students as well as teachers for working and teaching in clinics. Law teachers must be allowed to practise in courts to gain practical knowledge. There must be regional and international collaboration to deliberate upon the issues and challenges in sustaining CLE programmes drawing on the comparative experience of different country jurisdictions.

Today, there are all kinds of clinics—some run credited course, some are non-credited, some have only written exam papers, some are field-based and some have a combination of both. There is a need to network all the university- and college-based law clinics in India. Standards must be laid down for the running of clinics and those must be monitored. Regular audits of legal aid clinics must be conducted. Dealing with ethical issues while dealing with the community cases is a matter of concern and many are unaware as to how to deal with them. Professional ethics must be a compulsory subject taught to all teachers, lawyers and staff who work in clinics. If the mandate of the Constitution of India is to be fulfilled and if the vision of legal education as a tool for social development must be vigorously and seriously pursued, democracy must mean inclusive democracy, involving all sections of the society in decision-making and governance. The Indian law student must not only have improved legal skills, but most importantly embody social responsibility and a strong professional ethic—a commitment to the integrity and working of the legal system. This will, in future, lead to a legal system based on the constitutional values of equality, liberty and fraternity, with justice for all.