

# India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice

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David W. Tushaus<sup>1</sup>

Shailendra Kr. Gupta<sup>2</sup>

Sumit Kapoor<sup>3</sup>

## Abstract

Law school legal aid clinics serve two main purposes. The first is to provide a better legal education to students. The second is to provide access to justice in the community. This article will provide some background on the importance of both of these missions. We will then discuss the results of a study of legal aid clinics across India in 2012–13. Indian undergraduate law school students<sup>4</sup> designed and conducted this study under the direction of Dr Shailendra K. Gupta and Fulbright-Nehru Scholar David Tushaus at Banaras Hindu University. The research team obtained both quantitative and qualitative data from legal aid clinic directors for a view of the state of clinical legal education in India at this time. The service learning process of forming the team and conducting the research is described here.

Findings show the global legal clinic movement has reached India. There are some excellent models for clinical legal education in India and abroad. However, there is great room for improvement. Some legal aid clinics provide excellent educational opportunities. Service learning, where students apply their knowledge in service to the community, is more effective in teaching analytical skills and critical thinking. Much more can be done in India's clinics, where representation is more restrictive than in some countries. Providing legal education in the community through various means, including specialized advocacy, can be effective and educational. There are suggestions for reforms to improve clinical legal education in India, from providing elective credit to allowing direct representation.

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<sup>1</sup> Professor, J.D., Fulbright-Nehru Scholar, Missouri Western State University.

<sup>2</sup> Associate Professor, Faculty of Law, Banaras Hindu University, Varanasi, India.

<sup>3</sup> Advocate, High Court of Uttarakhand.

<sup>4</sup> The research team consisted of Tarun Bhowmick, Meenakshi Dutta, Abhinov Mishra, Arpit Sharma, Amit Kumar Singh, Hraday Pratap Singh, Om Prakash Singh (secretary), Dheeraj Singhal, Varsha Srivastava and Student Coordinator and co-author of this article Sumit Kapoor.

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## Corresponding author:

David W. Tushaus, 204E Wilson Hall, 4525 Downs Drive, St. Joseph, MO, USA 64507.

E-mail: [tushaus@missouriwestern.edu](mailto:tushaus@missouriwestern.edu)

## Introduction

*The end of all education should surely be service, and if a student gets an opportunity of rendering service even whilst he is studying, he should consider it as a rare opportunity and treat it not really as a suspension of his education but rather its complement.*<sup>5</sup>

Mohandas K. Gandhi

Law school based legal aid clinics are an important way to teach students analytical skills, substantive legal material and the ethical importance of providing access to justice. Access to justice and the rule of law is critical for all members of society. Justice is important for everyone, not only to create a fair society; but also to bring people out of poverty. ‘Making the Law Work for Everyone’, a study by the United Nations Commission on Legal Empowerment of the Poor (UN Commission), concludes that ‘by expanding and deepening universal legal protection, poor people will be better able to free themselves from poverty’. Clinical legal education can play an important role in bringing people out of poverty by directly providing access to justice, while teaching legal knowledge, skills and the ethical importance of helping the poor to future legal professionals.

There are many similarities and differences in how countries approach legal education and clinical law. For example, legal and political constraints prevent law school clinics from directly representing clients in all but Public Interest Law (PIL) cases in India. No such constraint exists in the United States (US), where law school legal clinics will typically have state rules that allow for students to engage in the practice of law under the supervision of an attorney. These rules vary from state to state. Student practice rules in the US do have limits on students—cases in which they can be involved, educational requirements and more.<sup>6</sup>

In Uganda, Legal Aid Clinics need to register themselves with the government to provide Legal Aid. In the Kyrgyz Republic students in law school based clinics can represent individuals in civil proceedings, which do not require a license, but not in criminal proceedings.

## Previous Study

Prior to this research, a study of law school clinics in India reviewed by this research team was sponsored by the United Nations Development Program (UNDP) and the Government of India. ‘Access to Justice for Marginalized People: A Study of Law School Based Legal Aid Clinics’. It was published in 2011. There are few other studies of law school clinic practices and effectiveness in India or globally. Scholarship in many cases has tended to focus on best practices and social justice issues.<sup>7</sup> This is discernible from a review of the Ogilvy and Czapanskiy’s annotated bibliographies of clinical legal education and other resources. Legal Aid: Catalyst for Social Change provides a good overview of India Legal Clinic scholarship. There has been little research into the relationship between legal clinics and educational theory.

The UNDP & GOI study focused on 39 law school clinics from seven states to assess the state of these clinics in India. The study found that most law schools were complying with the requirement to have

<sup>5</sup> M.K. Gandhi, *TOWARDS NEW EDUCATION*, 94–95 (Bharatan Kumarappa ed., 1931).

<sup>6</sup> STUDENT PRACTICE RULES: CLINICAL RESOURCE GUIDE, ONLINE GUIDE, Georgetown University. Available at <http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm> (last visited 12 October 2014).

<sup>7</sup> THE GLOBAL CLINICAL MOVEMENT (F.S. Bloch ed., 2011).

a clinic. However, clinics lack resources or incentives to maximize their potential to provide a good educational experience and meet the social justice needs of their community. Many community education programmes are one-dimensional, using an attorney to lecture to a group with no follow up. There is very little collaboration in the community. Representation of clients is limited and falls short of its potential in part because Indian law professors and law school clinics are prohibited from practicing law.

The UNDP/GOI study also describes some of the best practices it reviewed. For example, the National University of Juridical Sciences (NUJS), West Bengal, has a prison outreach programme, taking counsel and advice outside the usual law school clinic setting by collaborating with NGOs to go into the prisons. Other community legal education, capacity building and human trafficking prevention programmes are operated by the NUJS clinic. NUJS also collaborates in its region to spread best practices to other law school clinics.

V.M. Salgaocar College of Law, Panaji, Goa sends students out into 38 locations around its community to provide counsel, advice and paralegal services. It has also conducted 11 PIL cases. The JSS Law College, Mysore, Karnataka and the Symbiosis Law School in Pune offer credit for students in clinics. Most clinics in India do not carry credit, most are voluntary. The JSS clinic must be taken by students in the last year of study. Both LL.B. and LL.M. students are eligible to participate in the Symbiosis Law School clinic. Jindal Global Law School and S.M. Sehgal Foundation have collaborated on some clinical and conference activities. An S.M. Sehgal Foundation initiative created the Institute of Rural Research Development in Gurgaon to address rural poverty through a law, policy and governance initiative.

The UNDP/GOI study recognized, however, that many law schools do not place an emphasis on clinical legal education under the present system. The study included many recommendations for improving clinical legal education and access to justice in India. In general, the government, NGOs and law schools can all play an important role in making these improvements. It concluded that more research in the matters of legal aid and its delivery is still needed. Hence this present study.

## Indian Law Calls for Access to Justice

The rule of law and access to justice for all is a major tenet of the Indian Constitution. The Preamble to the constitution of India seeks to achieve social, economic and political justice. These goals and objectives stated in the preamble are further sought to be clarified, strengthened and concretized through the directive principles of state policy. Article 39-A of the Indian Constitution directs the state to secure the operation of the legal system to promote justice on the basis of equal opportunity. The state shall, in particular, provide free legal aid, by suitable legislations and schemes, or to ensure that opportunities for securing justice are not denied to any citizen by reason of economic status or other disabilities. After judicial notice of this issue was taken by the court in a plethora of cases, the legislature drafted the Legal Service Authority Act, 1987. A system of Lok Adalats set in the act was commended by the Supreme Court. This directive is further extended by the Supreme Court by bringing it into the sphere of fundamental rights under Article 21 of the Indian Constitution. The right to legal aid is now considered as a part of a just and fair procedure.

Entry of the Free Legal Aid in Fundamental Rights chapter started in the *M.H. Haskot v. State of Maharashtra*<sup>8</sup> case. In this case the court called on the state to provide free legal aid to prisoners who are

<sup>8</sup> 1978 AIR 1548. On an appeal of a criminal conviction and sentence the Indian Supreme Court found that a certified copy of the court's judgment must be provided to the accused, in his or her own language if practicable, and free of cost when the judgment is appealable by the accused.

indigent and disabled to secure legal assistance. Later Justice Bhagwati, while interpreting Article 21 of Indian constitution, observed that ‘A procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore have to go through the trial without legal assistance, cannot possibly be regarded as reasonable, fair, and just’. In *Khatri v. State of Bihar (II)*<sup>9</sup> the court barred the state from pleading financial and administrative inability to avoid its constitutional obligation of providing free legal aid to the poor criminal defendant. Later in *Sukh Das v. Union Territory of Arunachal Pradesh*<sup>10</sup> conviction of accused was quashed by the Supreme Court as accused remained unrepresented by a lawyer. So the trial became vitiated on account of fatal constitutional infirmity. The apex court in this case ruled that the trial judge is under obligation to inform the accused that if he is unable to engage the services of a lawyer on account of his poverty he is entitled to receive free legal services at the cost of the state. Notably, the Right to Free Legal Services does not extend to offences involving economic crimes, child abuse, prostitution, etc. So, while the right to legal assistance is recognized in the Indian Constitution and the Courts, the implementation of this right falls short for many people because of exceptions to the rule and a lack of capacity in the system.

## Access to Justice is Elusive

Low-income persons have a high number of legal related problems; but many do not receive assistance from an over-burdened legal services system. Therefore, many low-income persons go without representation. This may affect people in numerous ways, including loss of liberty while waiting for a trial to determine guilt, homelessness, unlawful evictions, state removal of children for failure to provide shelter, unpaid debts resulting in homelessness and bankruptcy, and complicated blended families where legal rights to children and child support are almost impossible to enforce. In India, access to justice is especially difficult for scheduled castes and scheduled tribes, dalits, labourers, agricultural labourers, women, the homeless poor, slum dwellers, linguistic and religious minorities. Legal aid clinics could be used to develop community lawyering, which is needed to serve these groups.

Legal clinics can help create a connection between a law school and its community. In the process, clinics help provide access to justice in the community and educate future legal professionals about the social justice needs in their community. The service learning component to clinical legal education is particularly important. Not only is there a great need for law students to provide access to justice for the poor as students and later as professionals, but this work will enrich the students learning outcomes. Service learning improves academic learning and fosters political and civic engagement. Integrated service learning, where students work on social issues they are studying, is the most effective method of service learning. Studies show integrated service learning may improve student analyses of issues, their perspectives on problem solving, and critical thinking skills.

<sup>9</sup> 1981 SCR(2) 408. Several petitioners filed writs alleging they were blinded by the police while in custody. The Supreme Court noted the provision of legal aid arises from the moment a detainee is first produced before a magistrate. This right is fundamental to ensuring access to courts. States cannot avoid this fundamental, constitutional right regardless of the circumstances.

<sup>10</sup> 1986 AIR 991. In *Sukh Das* the State did not inform a criminal defendant that he was entitled to free legal assistance nor did it ask if he wanted a lawyer to be provided to him at State cost. The defendant went unrepresented and he was ultimately convicted. The Supreme Court found this to be a violation of the fundamental right appointment of counsel for an indigent defendant in a criminal case.

## **Clinic Impact Study in Nigeria**

An 'Impact Assessment of Nigerian Legal Education' by the Network of University Legal Aid Institutions (NULAI) Nigeria shows some of the benefits of legal clinic service learning in Nigeria. The study measured some of the service learning benefits of clinical legal education through self-reporting over several years. The study reported that 75 per cent of law teachers and law students who were engaged in a law school clinic said they will continue in community service after graduation or forge a career in public service. The clinic raised student social justice consciousness and a desire to address the injustices. Nigerian clinics were also valued by 90 per cent of students for building skills such as interviewing and advocacy skills. Students gained confidence, oral communication skills and learned how to work as a team. Students valued the building of interviewing and counselling skills in terms of perceived relevance to their career.

The Nigerian study also asked clinic alumni for their impressions on how helpful clinics were to their transition into practice. Clinic alumni reported that the interviewing, counselling and mediation skills they had learned during their clinic experience were particularly helpful. Clinic alumni found it easy to transition into legal practice, especially developing client relationships. They even found the clinical experience to be helpful in passing the bar examination. Clinic alumni remained enthusiastic about engaging in social justice work too. Forty per cent were either legal aid providers or assisting with training workshops for new clinical law students after graduation.

## **This Study**

The authors of this article studied Indian law school clinics to get a broad perspective on legal aid clinics from faculty who either direct or work in a clinic, a part of the population studied in Nigeria. The study asked directors of legal clinics in India to rate the clinics in India as service learning tools. The goal was to learn from the clinical law directors' points of view what works well, what does not work well and what changes are needed to improve this important institution. More needs to be learned about how well clinics help students learn the law, learn how to practice law and learn about social justice issues in the community and the ethical responsibility to address issues of injustice. How do the clinics help serve the needs of their communities? What can be done to improve the educational and social justice work of law school based clinics? These are critical questions to answer in a region with high poverty rates and difficulties gaining access to justice.

## **Research Design**

Flexibility in design and execution of a research project of this nature is important to ensure its success. The design of this study is a model of service learning that can be adopted by other law school based clinics. This study was done as a service learning project, teaching students about research design, execution and presentation while learning about legal aid clinics and social justice in India. Therefore, the process of creating the research team and carrying out the research will be included in the methodology of the study. This research design is replicable in any clinic for a wide range of purposes. A clinic may study its effectiveness in terms of delivering legal education, addressing the community's needs and how the clinic is meeting those needs.

Dr Shailendra Gupta, Associate Professor and Legal Aid Clinic Director, Banaras Hindu University (BHU), Varanasi, teamed up with Professor David Tushaus, Fulbright-Nehru Scholar on this study of law school based legal aid clinics in India. They worked together to form a law school student research team in 2012 to perform a study of legal clinics in India. BHU law students were given an opportunity to apply to work as a research team to study the law and literature on legal clinics in the country, develop a survey instrument and conduct the survey of clinic directors across India. Professors Gupta and Tushaus directed and supervised nine Indian undergraduate law students in this study much like graduate assistants are mentored as research assistants. Students worked on this team as part of a volunteer clinical law experience on a minimal budget.

Law student Sumit Kapoor took on a leadership role early on in the research process and was appointed the Coordinator of the research team. He divided the members up into teams of two or three students to perform different tasks. Team members were assigned various tasks based on their experience and interests. Some teams performed a literature review on a given topic. For example, one team did a literature review of access to justice issues in India and the US. This team looked at the legal needs of the poor in each country, how legal aid clinics are meeting the needs of the poor and in what areas legal aid clinics are lacking. Another group looked at legal aid clinics in the US. This group provided a historical background for legal aid clinics in the US and how the clinic movement in the US then spread to other countries. The group also provided some insight into the characteristics of legal aid clinics in the US.

A Google account was created for the team to share information and resources. Students learned how to work together electronically in ways they had previously been unaware were available. The literature reviews gave the team an overview of Indian legal aid clinics, their background and characteristics. All of these literature review teams fed information through the Google drive to the survey team that was tasked with creating the assessment instrument. This team developed the questionnaire to be disseminated to most of the nearly 900 law schools in India. For example, Google Docs was used to save and share research and draft surveys among all team members and the faculty for review. File sharing continued after Professor Tushaus returned to the US, creating an international team project that reached across international boundaries and oceans.

The smaller teams of students worked together to teach the entire team about the important issues involving access to justice and legal aid clinics. The entire team developed a better understanding of legal aid clinics in law schools in India and the US. The team learned about India's legal constraints on clinics and how these constraints affect the work that clinics do and the learning environment for students.

Through this process the survey team was able to develop a four part questionnaire. The team determined that the survey should obtain both quantitative and qualitative data. Quantitative questions used a Likert scale. A Likert scale is typically used for measuring attitudes in surveys by assigning a series of numbers to statements of varying degrees of agreement according to the SAGE Dictionary of Research Methods. This would give the team a wider variety of information to learn about clinics in India, some of which was quantifiable in terms of opinions about clinics. The questionnaire first requested general, demographic information from its audience. Some demographics were necessary to determine from where the surveys were coming. Second, the students developed some general questions about the legal aid clinic the faculty member was working in. Third, the research team wanted to learn what legal aid clinic faculty think about the state of India's legal aid clinics. This section of the survey really got to the central issues the team wanted to explore in this study. The fourth section of the survey explored what kind of support was provided for legal aid clinics.

The team wanted to disseminate the survey electronically through emails. This would save a great deal of time and money involved in doing telephone interviews or paper surveys that would have to be tabulated. Missouri Western State University's Information Technology department put the surveys in electronic format. The surveys could be accessed by each subject through an electronic link. Completion

of the electronic survey would be automatically tallied by the computer programme. However, a significant problem arose in carrying out this plan. There was not a complete database to draw from for clinic faculty directors with email addresses. The Bar Council of India had a listing of law schools with some names and a few email addresses. The research team had to work off of this very incomplete database to create a sufficient database with which to carry out the study.

Through telephone calls and web research the team created a complete database of names, emails and phone numbers for law school clinic directors or faculty. Surveys were sent electronically to more than 600 institutions by using this database. When response rates were low, subsequent emails were sent every other week for several months. After that, research team members called survey recipients to request that they complete the survey. Unfortunately, only 35 surveys were completed by the nearly 600 law schools in India. Just over 5 per cent, however, is not an unusual response rate for external, internet-based surveys. Internet access can be unreliable in India, which may have suppressed the response rate. Many faculties do not check emails regularly. It is also likely some of these law schools do not have an active clinic and did not want to participate in a survey about clinics that might expose the school's non-compliance with the law. Design problems were also likely contributors to the low response rate. The email to the subjects provided thorough, but somewhat long, explanations for the survey and the process for answering it. The survey required using a link and password to access it without any visual point of reference for how long the survey would take to fill out.

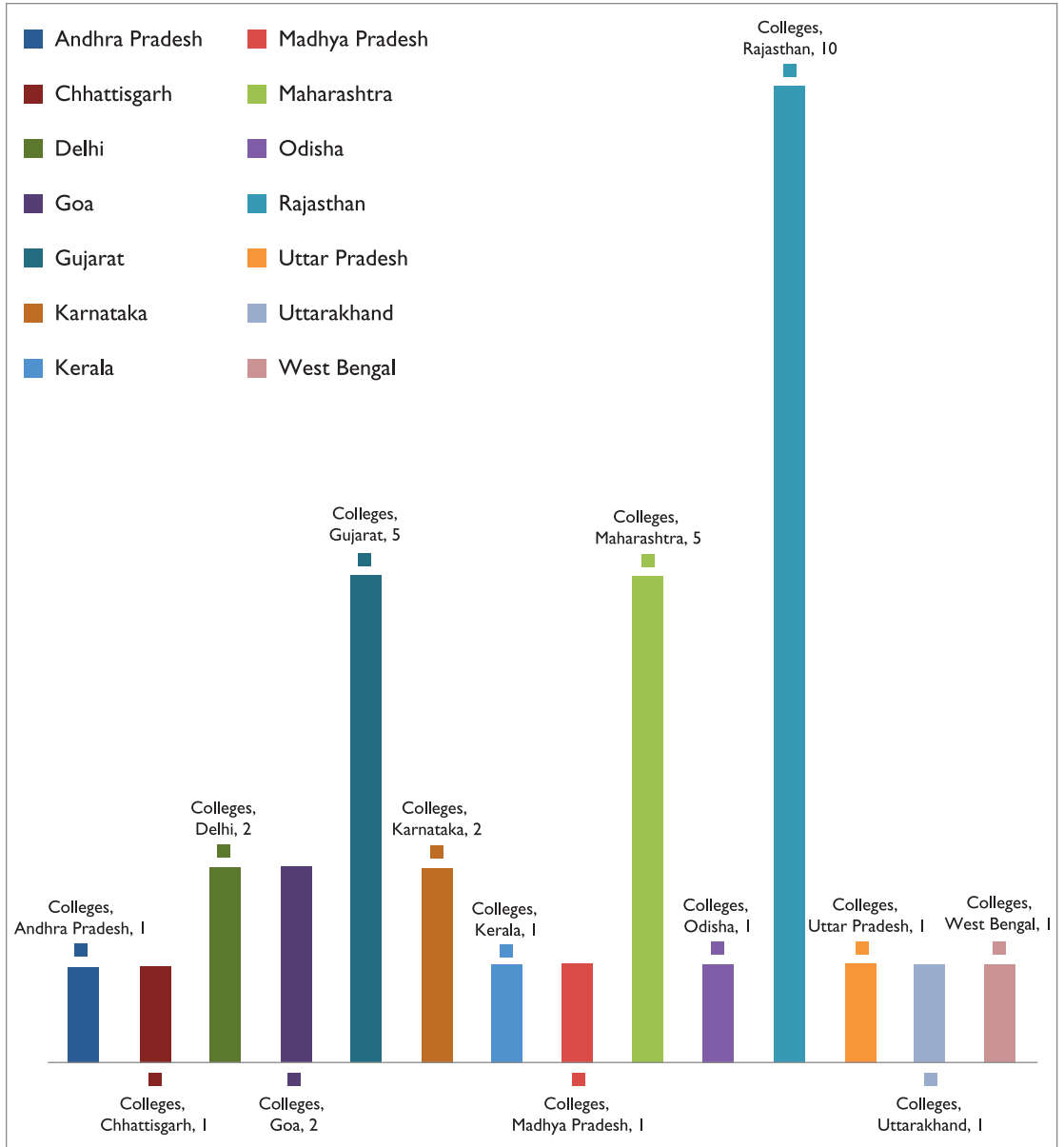
Although this was a disappointing response rate, those who completed the survey represent a knowledgeable group of clinical law directors from which we can draw some useful conclusions. The opinions are probably those of directors who are particularly interested in and concerned about clinical legal education in India.

A unique form of clinic style service learning was modelled in this way. Students learned about clinics and social justice through the experience of carrying out this research project. This 2012–13 study has been presented at over 10 national and international conferences. Indian students and faculty have participated in several of these presentations.

## **Results**

Clinical law directors participated in this study from 14 states across India. The highest number of participants was from Rajasthan with 10 responses. Gujarat and Maharashtra were next with five responses from each of these states. Over one-half of the 14 states from which a response was received had only one response. Figure 1 provides a graphic representation of the number of clinics by state participating in the study.

Clinics may be understaffed to have much of an impact on the community or legal education. The study found that nearly 3/4th (71 per cent) of the responding clinics have a small staff of three or fewer faculty. Most of the rest of the clinics had four to six faculty members. Only one clinic had a faculty of 9–12. However, respondents felt that faculty numbers are sufficient to run the clinic, at least in its present configuration. Respondents also thought that there are sufficient student numbers and hours worked in the clinic. Unfortunately, most respondents noted a lack of commitment among the legal aid clinic members. Most clinics showed 20 or fewer students participating in the clinic (Figure 2). Only one law school reported 80 to 100 students working in its clinic. The average amount of time spent in an Indian legal aid clinic is reported to be four to six hours per volunteer; however, many schools reported 10 to 12 hours served per week. The average total number of hours worked in a week was 120. Figure 3 demonstrates how many hours volunteers work in the clinic.

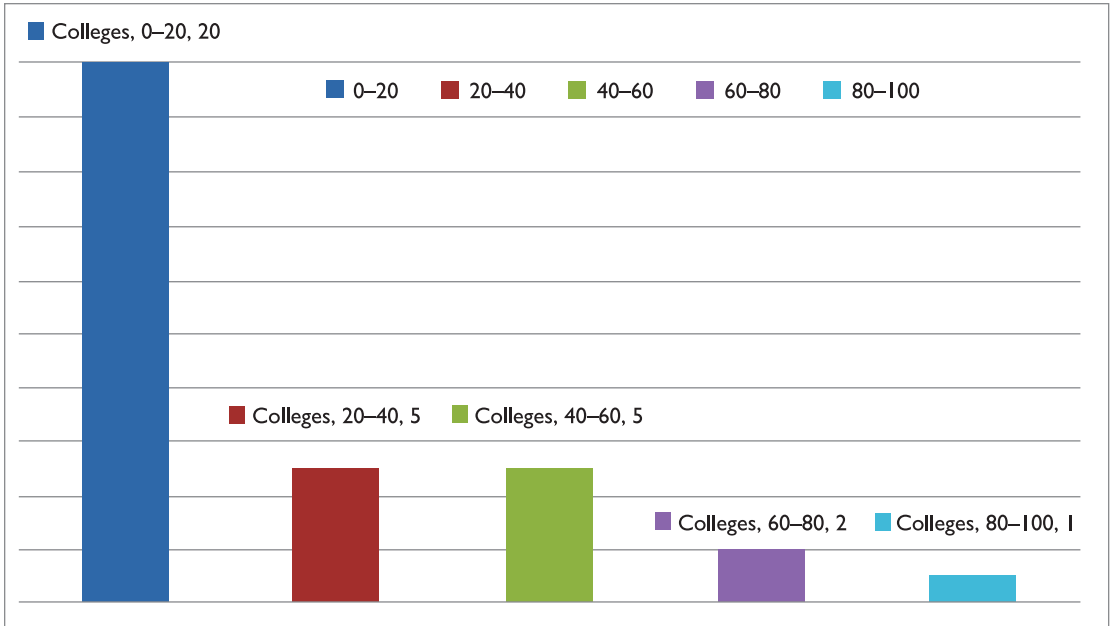


**Figure 1.** Clinic Participation by State in India.

**Source:** Authors' calculations.

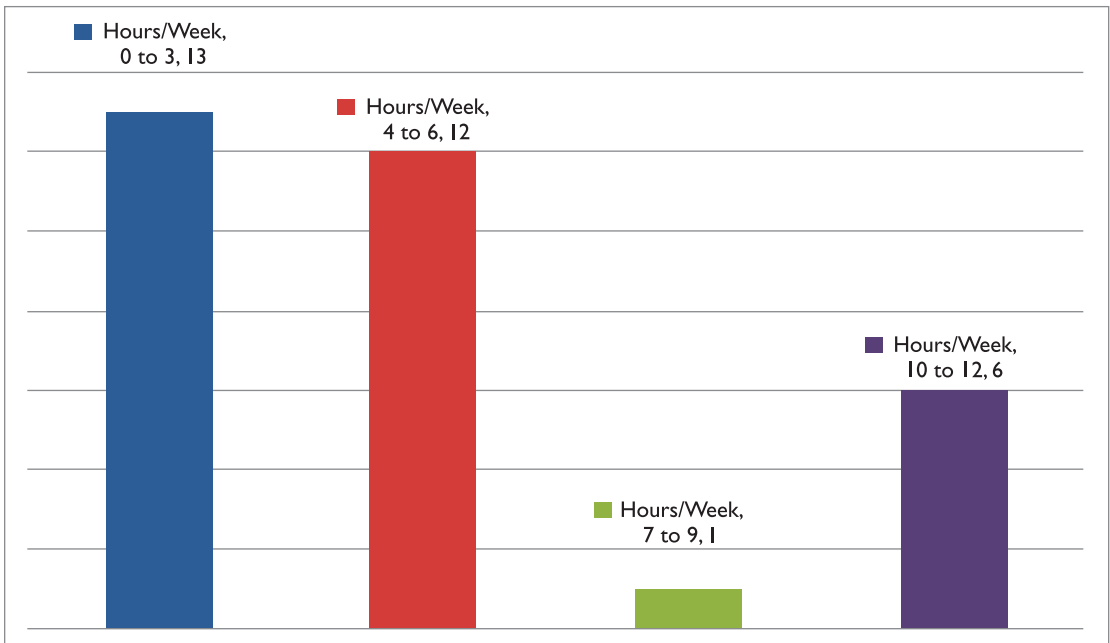
Funding of law school clinics may prevent them from being effective. Most of the respondents strongly agreed or agreed that funding of legal aid clinics is a key issue in clinic effectiveness. Most clinics are completely voluntary. Most of the responding clinics receive no financial assistance. Most clinics rely on volunteer faculty and student labour. Most respondents agree that alumni could be of great





**Figure 2.** Student Volunteers in Legal Aid Clinics.

Source: Authors' calculations.



**Figure 3.** Hours/Week Volunteers Serve Legal Aid Clinics.

Source: Authors' calculations.

help to the legal aid clinic. Indian law professors must forfeit their license to practice law when they become professors. This is a key difference from US law schools, where faculty serve as practicing lawyers supervising students who take cases to trial and appellate courts.

Most respondents marked that legal aid clinics are accomplishing the most common goals associated with clinics. Over one-half of the respondents strongly agreed that legal aid clinics enhance lawyering skills, consistent with the results in Nigeria study noted above. Most (77 per cent) strongly agree that the legal aid clinic is an effective tool to provide social justice. Almost all respondents agreed that the legal aid clinics should at least be offered for elective credit.

Most respondents to the survey agree that legal aid clinics can play an important role in alternative dispute resolution delivery. Access to justice issues include an overburdened justice system. Grass-roots level justice systems such as the Gram Panchayats and Lok Adalats are being turned to by the courts to address these backlogs. Legal aid clinics may be one way to increase the capacity to use these alternative dispute resolution methods as recognized by the participants in the study. More study should be done on this issue. Of course, if students are to provide such direct service in real cases, issues will have to be addressed in terms of expertise of faculty to train and supervise these students, capacity to address the need for students to provide services during exams and between semesters and other concerns.

Most respondents disagreed or strongly disagreed that poor people are aware of legal aid clinics. So, faculty connected with these small, volunteer clinics probably find clinics are sufficiently staffed only because no one in the community knows the clinic exists, much less can assist them with a problem. Participants also disagreed that the volunteer students are overburdened by serving in the legal aid clinic. While most respondents agreed that legal aid clinics should only give advice to clients, some respondents disagreed with this statement. Most also agreed faculty should be allowed to handle court cases directly.

Community education is a popular activity for clinics. Clinics are seen as a positive way to provide social justice. Participants follow the legal restrictions placed on clinics in India. There are many methods used to provide assistance without directly representing clients. Some clinics collaborate with community partners like NGOs and media. Some clinics put on legal literacy camps and train paralegals.

Most clinics claimed they were aware of the National Legal Service Authority rules requiring law schools to operate legal aid clinics. However, three schools, nearly 10 per cent, were not aware of this requirement. Most schools had not been contacted by the authorities about the establishment of a clinic. Less than 10 per cent had received financial or technical assistance from National/State/District Legal Service Authority (hereinafter referred N/S/DLSA).

Participants expressed opinions on how to strengthen the activities of legal aid clinics. For one, service learning clinical components should be introduced into regular law school courses. National Legal Services Authority (NALSA) Legal Aid Clinics Regulations, 2011 should be enforced, which would help develop a better infrastructure. These regulations provide for establishment of law school based legal aid clinics. DLSA is entrusted with administrative control over such clinics. Regulations mandate legal service authorities to deputize panel lawyers and paralegals to visit the clinic on frequent basis. It also mandates authorities to provide basic infrastructure, financial and technical support to establish and run legal aid clinics. Regulations also provide for basic remuneration to be paid to paralegals who can be students volunteering in legal aid clinics. These regulations provide for mobile Lok Adalats and require legal aid clinics to develop alternate dispute resolution mechanisms. This will help student volunteers to participate in a justice delivery system and enhance the clinical component in legal education.<sup>11</sup> Requiring students to serve in legal aid clinics, instead of just volunteering their time, would

<sup>11</sup> Regulations can be accessed at: [nalsa.gov.in/Schemes/NALSA%20LEGAL%20AID%20CLINICS%20REGULATIONS,%202011.doc](http://nalsa.gov.in/Schemes/NALSA%20LEGAL%20AID%20CLINICS%20REGULATIONS,%202011.doc)

strengthen clinics and legal education. Participants also saw academic institutions and government bodies, especially the Bar Council of India, as needing to provide strong support for law school based legal aid clinics so they are more effective in providing access to justice and better educated new lawyers who understand the ethical importance of providing assistance to low-income persons.

## Discussion

### *A Step Forward: Permitting Law Teachers and Students to Plead Cases in Court*

Access to justice has various facets, which aim at delivery of justice. The Indian justice delivery system is complex, cumbersome and expensive. This either closes the door to justice or makes it too stiff to move on its hinges for the poor or marginalized section of society. Thousands of people languish in jails due to lack of proper legal assistance and many go unrepresented. University based legal aid clinics in India are primarily focused on creating awareness by undertaking various activities. Some clinics restrict themselves to client counselling. A few pro-active clinics do jail visits, file public interest litigation, engage in legislative advocacy or collaborate with NGOs and commissions. Legal aid clinics in India are playing a limited role as compared to other law school based clinics, where faculty and students serving in clinics are allowed to represent their client in courts/tribunals.

India has an adversarial system with the opposing sides to a dispute represented by professional advocates. British-Indian heritage involves the Bar as integral to the system. Therefore, access to justice makes access to the Bar a sine qua non. If advocates and the other formalities become too expensive, a large majority of the poor are priced out of the judicial market. In this backdrop it becomes imperative to discuss alternatives of providing representation to low-income clients via faculty members and students serving in law school based legal aid clinics. Direct representation in courts/tribunals by faculty members and students will not only help low-income clients' with inexpensive representation, it could also help reduce a backlog of cases pending in courts. This will further give students an opportunity to 'learn while doing'. Students participate more actively in such processes when they plan and work on finding a solution to client's problems.

Respondents were of mixed opinion on whether legal aid clinics should limit themselves to give advice to clients. Many clinic directors mentioned undertaking various awareness activities. While many of them suggested participating in alternate dispute resolution, particularly mediation, one of the directors strongly suggested clinics play an active role in legal representation.

LAC should not confine itself to just giving legal advice but play an active role in providing legal representation, legal awareness and giving exposure to students in court functioning wherever they can represent e.g. consumer forum and family courts. There should be strong network between the LAC, NGOs and social activists working at the grass root level.

Though almost every clinic director agreed or strongly agreed that clinics should assist Lok Adalats and Gram Panchayats, many directors also agreed that law students are capable of giving good advice to clients. Many of the directors thought that faculty members should be allowed to plead clients based on their current legal knowledge. This assertion may be based on the fact that many clients who turn to clinics are economically weak, marginalized and are unaware of procedure followed in courts. These clients, if only shown the way to court or advised will fetch very little or no benefit. Clients should

be able to obtain representation by law professors and final year law students to meaningfully assert their rights. Arrangements can be made with the N/S/DLSA to arrange some panel lawyers to supervise such proceedings.

For this reform to take place there must be a change in the law. Under the Advocates Act, 1961, except otherwise provided; only a person who is enrolled as an advocate can practice in court. This act does give discretion to courts to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case upon an application made in this regard but courts seldom use this discretion due to pressure from the bar. Justice Krishna Iyer in his Report, *Processual Justice to the People: Report of the Expert Committee on Legal Aid 1973*, also suggested an amendment to the Advocates Act in this regard to allow for law professor and student representation of indigent clients, clients who could not afford to pay a private attorney any way.<sup>12</sup>

Few clinics in India take advantage of the legal exception to allow them to file PIL. Most of the clinics that file PIL do so by engaging some panel lawyers. Clinics can provide direct representation in some specific matters (consumer forums; family courts, etc.) by obtaining consent of the client; in other petty civil matters or criminal matters application can be made to court to invoke the provisions of Section 32. Very few or none of the clinics make such application, which might allow their students to represent clients in court. The judiciary, and particularly lower judiciary, must be liberal in granting permission in this regard. A District Judge who is administrative head of court and also ex-officio chairman of the District Legal Service Authority must issue directives in this regard to all the courts under the judge's jurisdiction, at least for those clinics that work in collaboration with DLSA.

One may be skeptical as to the quality of legal work in cases represented by clinic students. Representation made carefully and under supervision of some lawyer will certainly fetch some positive results. Students divided in teams such as litigants/researchers/drafters, etc., as per their capabilities and interest can assist court more effectively by bringing up relevant facts, precedents and law along with a well drafted complaint presented to the court. Many law students in India and elsewhere are already engaged in such activities in the form of moot courts. These Moot Court Competitions are often presided over by the Supreme Court and High Court Judges. Justice A.K. Sikri appreciated capabilities of students participating in moot court competitions. He said many of the memorials drafted by students that he has gone through are better than those drafted by practicing advocates. These efforts and skills of students can be utilized in a more useful manner, while bringing justice in reach of the poor and marginalized. This will help to reduce the backlogs of cases pending in courts, which is almost 300 million as of now. In this regard one of the respondents to the survey rightly mentions:

Law Students participate widely in many National and International Moot Court Competitions and everything ends up, with the end of the competition, I believe if they are given an opportunity to work and appear before various forums, such as consumer forums and various commissions, students would turn out to be more responsible, further honing out their leadership skills.

The Ministry of Justice, along with Bar Council of India and National Legal Service Authority must draft 'Student Practice Rules' along the lines of what exists in the US. All 50 states and all but one Federal Circuit have adopted rules to allow law students to practice law under supervision in the US.

<sup>12</sup> V.R. Krishna Iyer, *The Dynamics of Access to Justice*, THE HINDU, 29 May 2007. Available at <http://www.thehindu.com/today's-paper/tp-opinion/the-dynamics-of-access-to-justice/article1848798.ece>

## **Effective Collaboration between Legal Service Authorities and Law Schools**

Various Legal Service Authorities constituted under Legal Service Authorities Act, 1987, tend to provide free and competent legal services to the most needy sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These authorities have played an important role in promoting access to justice. The National Legal Service Authority claims that 13,557,631 peoples were benefitted through Legal Aid and Advice tendered by these authorities in 2013.

These authorities are also required to collaborate with the nearest legal aid clinics to undertake legal awareness programmes and provide them with technical and financial assistance. In this study we found that very few law school based legal aid clinics were offered any kind of collaboration or technical assistance. Only one out of 34 institutions was awarded a small financial grant. Legal service authorities have failed to appreciate the potential of law schools in providing legal aid and advice to local communities. Efforts of authorities in this regard were limited to asking law students to witness proceedings of Lok Adalats or organize legal literacy camps.

Trained law students serving in clinics can serve as a means of social change. Many law schools have proved their worth by undertaking various activities like prison reform programmes, legislative advocacy, clinical workshops, internships, legal advice, etc. Students have been actively participating in community outreach programmes, called legal literacy camps, to benefit communities by making them aware of their rights and obligations. Realizing this, NALSA in its five year vision document titled 'NALSA—A Quinquennial Vision & Strategy Document' recognized the need for law school based legal aid clinics to promote various legal aid activities including Alternate Dispute Resolution. It further mentions that each State Authority shall prepare a law school legal aid manual depending on the local needs of the State. Various provisions of Legal Services Authorities Act, 1987, also suggest authorities to coordinate with universities to discharge their functions. Despite all this, it appears that in 2012 and 2013 only a few legal service authorities desired to collaborate with law schools to carry out their activities. News from state legal service authorities published by NALSA for year 2012 and 2013 seldom mentioned any collaboration with law schools.

An effective collaboration between authorities and law schools may serve a twofold purpose. This will provide authorities with access to adequate infrastructure of law schools and most importantly appropriate human resources in the form of faculty and law students to carry out its objective. On the other hand, various needs of law school based legal aid clinics like technical assistance, financial assistance, panel lawyers, etc., can be fulfilled by NALSA in return. As mentioned earlier there is a lack of financial and technical assistance extended by these authorities. There were various instances recorded where SLSA & DLSA were unable to spend funds allotted to them and they were sent back to NALSA. Collaboration between these two bodies will ensure effective management and use of this fund. Further, it will certainly benefit law students who will get firsthand experience of working in the system and will get a chance to learn by practical application of various techniques of mediation, conciliation and ADR under supervision of experienced lawyers.

NALSA should take steps to promote collaboration with law schools. NALSA must issue directives to SLSA & DLSA for mandatory collaboration with law schools. A committee comprised the Executive Chairman of DLSA, members of DLSA, Clinic Directors of Law Schools in Jurisdiction of DLSA & Clinic Students should be formed in this regard; which shall be entrusted with the charge of carrying out collaboration with various authorities and efficiently carrying out functions entrusted upon them.

## Restructuring Legal Aid Clinics

The Clinical Legal Education movement is gaining momentum in India as in other parts of the world. Many law schools have set up legal aid clinics as required by law. Some of these clinics are functional, while others exist only on paper or are not operational. There is a need to restructure and modify India's clinics on some national or international set of standards or best practices.

The most basic and common activity performed by clinics is community awareness. With approximately 26 per cent of India's population illiterate, people here are in utmost need of awareness about the law and their rights, duties and government policies. Law school clinics carry out community awareness via legal literacy programmes. Street plays, workshops, public talks, rallies, and poster displays are common methods used in legal literacy programmes. No doubt that these activities are sine qua non for any legal aid clinic and must be carried out extensively; but a different approach towards them would fetch much better benefits.

Clinics have to move towards involving the community in their activities. First, clinics have to locate the target community and find out the needs in the community that the clinic can meet. Involving the community at the planning stage will make clinics understand their needs in a more sensitive manner. Communities can also be involved at the implementation stage. This will further strengthen the link between the community and clinic. Implementing these strategies will make the community aware of its rights. Involving the community at this level will also inculcate in the clinic and its participants a sense of an ethical responsibility, which they have towards others.

Collaboration is another area which could be of immense importance for Indian clinics to function smoothly. Unfortunately most clinics here are lacking in this area. An effective collaboration with local NGOs, government departments, authorities and commissions will prove to be very effective. NGOs work in specific fields. They are well versed with issues involved therein. Similarly collaboration with commissions, government departments and authorities will help clinics to elaborate their activities. These ties will help clinics to build a network, which can be of great use for their future plans.

Linking and networking among clinics is an area where little is presently done. All emerging clinics can be benefitted from this. Conducting small workshops or seminars could help one to learn from others' experiences. Clinic faculty and student exchange programmes will help start new clinics and assist in their operation. This networking and linking must not be restricted to the local or national level. It should also be promoted at the international level. In this age of technology this could be done at no or very minimal cost.

Indian clinics also need to work on establishing specialized law clinics. The specific specialty chosen for the clinic depends on the needs of the local community, availability of faculty, volunteer lawyers, student interest and the communities' needs. The choice can be made from a wide range of options like a Family Law Clinic, Consumer Law Clinic, RTI Clinic, Property Law Clinic, Human Rights Law Clinic, Environmental Law Clinic and others. Law Schools can also operate two or more types of clinics on different days and appoint faculty specialized in particular subjects to head each clinic. This approach could help clinics in collaboration with agencies working in the specialty. Students serving in the clinic would be more focused. Communities would also find it useful, as one could reach clinics on specific days in accordance with his or her problem and find expert advice on it. This will further enhance goodwill between the clinic and the community. The resulting trust would be helpful to clinics in carrying out their activities. Indian clinics can learn from foreign clinics in the establishment and operation of such clinics.

Course credit is another area where Indian clinics need to change. By making Clinical Legal Education an elective subject, students can be awarded credits for their service in a clinic. Almost all the directors undertaking surveys either strongly agreed or agreed this would be a positive reform. Credits will act as motivation for students and will also give them a sense of responsibility. This can enhance student and faculty commitment towards clinics, which many of the directors surveyed expressed concern about.

Establishing a mediation centre at legal aid clinics is another positive reform that could be undertaken. Retired Judges of District Court and High Court can be contacted by clinics with the help of DLSA. Assistance can also be sought from the relevant High Court Mediation Centre. No or very little additional infrastructure and resources would be required to initiate mediation proceedings at a law school. Adequate advertisements in this regard propounding the merits of the mediation process would certainly motivate people to resolve their dispute through mediation. Clinic volunteers can represent individuals before a mediator on a date fixed in advance. If implemented properly, this process would help resolve the tremendous backlog of cases pending in courts.

## **Limitations**

Although surveys were sent to more than 600 law colleges around India covering all states, only 5 per cent of them responded. The responses received were mostly from top tier law schools in India, so it is hard to know the attitudes of all of Indian clinic directors. Since average and below average law schools are underrepresented in the survey, it may be the state of the law school clinic is much worse than this survey indicates. Law school clinics are required by law in India, yet many law schools may not be complying with this requirement because of lack of funding and attitudes towards the clinics.

Time, resources and funding constraints restricted our research team from doing site visits, which could have fetched more authentic and relevant information about clinics. The online survey was economical and still pointed to the need for reform of India's clinical legal programme. The questionnaire was designed in a way to obtain comments to specific questions in place of personal interviews. Although voluntary efforts were made by the research team to make calls to clinic directors requesting them to take the survey, many directors were either unavailable or gave mere assurance to undertake survey online which they did not.

This study only asked for opinions from one faculty member per clinic. Other faculties have not provided input. More importantly, there is no assessment in place for students, alumni or to assess community needs. Inputs were not asked from N/S/DLSA, which would have given a different approach to the study. Problems related to collaboration, functioning, technical & financial assistance could be better understood by comparing responses received from these groups with those received from clinic directors. A client based community needs assessment could further benefit future studies by giving insight into community needs and expectations from clinic. This would make it possible for clinics to be more responsive to their communities.

## **Conclusion**

Clinical legal education is an important and effective way of teaching students the law and the ethical importance of providing access to justice in the community. Studies show there are some excellent clinic models for law schools to emulate. However, legal clinical education as a whole has much room to improve. There are many reforms that can help to improve the standing of clinical legal education in India and elsewhere. Further study is needed to obtain input from clinic students, professors and the community. This model of creating a research team of students to study legal aid clinics' effectiveness and the needs of the community improves understanding of best practices and the greatest needs in the community. It also creates a service learning opportunity for students, who learn how to research access to justice and the ethical importance of providing assistance to low-income members of the community.

## Appendix A

Dear Participant

This is Professor David W. Tushaus, a visiting Fulbright-Nehru Scholar at the Law School, Banaras Hindu University (BHU) last fall and Dr. S.K. Gupta, BHU. Our team of volunteer students from Banaras Hindu University Law School is working on a project titled ‘Social Justice and the Role of Legal Aid Clinics in India and the United States’. Since you are an institution delivering legal education in India, we ask you to participate in this research study by completing the survey available in the following link:

Survey location:

<https://cclimate.missouriwestern.edu/classclimate/online/>

The password: lactest

Thank you for taking the time to assist us in our educational endeavors. All the information provided by you will be kept confidential by our research team. If you require additional information or have questions, please contact:

Professor David W. Tushaus: [davidthushaus@gmail.com](mailto:davidthushaus@gmail.com)

Dr. S.K. Gupta: [shailendragupta.bhu@gmail.com](mailto:shailendragupta.bhu@gmail.com)

Or

Student Coordinator Sumit Kapoor [sumit.kapoor007@yahoo.co.in](mailto:sumit.kapoor007@yahoo.co.in)

## Appendix B

### *Draft Survey*

This is the survey the research team created. Missouri Western State University’s Instructional Media Center converted this survey into a class climate instrument and generated automatic emails to go to email addresses for clinic faculty or directors in over 600 of India’s law schools. The research team had to build the database from internet research of various sources, starting with the Bar Council of India. If anyone would like assistance in conducting similar research projects please feel free to contact the authors.

1. Name of your law school \_\_\_\_\_
2. Is your law school Government or Private? \_\_\_\_\_
3. Name of Faculty filling out this survey \_\_\_\_\_
4. Faculty member’s position \_\_\_\_\_
5. Is there a Legal Aid Clinic (LAC) operating in your law school?
  - a. Yes
  - b. No

If your answer to Question 5. is yes then please answer the following questions:

6. Contact information:
  - a. Telephone No: \_\_\_\_\_
  - b. Email: \_\_\_\_\_



- 7. How many teachers supervise the LAC? \_\_\_\_\_
- 8. How many students volunteer in the LAC? \_\_\_\_\_
- 9. Are there any outside members (e.g., private attorneys) associated with the LAC?
  - a. Yes
  - b. No

If any outside members are working with LAC please indicate their profession(s):

- i. Practicing Advocates
- ii. Public Prosecutors
- iii. Judges
- iv. Counselors
- v. NGO's
- vi. Any Other; Please specify \_\_\_\_\_

10. What is the average number of cases handled by LAC in a month?

0-10	10-20	20-30	30-40	40-50	50>

- 11. How many hours does a volunteer in LAC work per week? \_\_\_\_\_
- 12. Does LAC get any kind of financial aid from any source? \_\_\_\_\_
- 13. Does LAC run any kind of legal education programs? \_\_\_\_\_
  - a. No
  - b. Yes

If yes then specify

S. No.	Particulars	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
1.	There should be an LAC in every law school.						
2.	LAC is an effective tool to provide Social Justice.						

Please briefly explain your answer in No 2.

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S. No.	Particulars	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
3.	LAC should be a mandatory credit carrying subject in an LL.B program.						
4.	Alumni can be of great help to LAC.						
5.	LAC should involve practicing lawyers as its fulltime members.						
6.	LAC should confine itself only to give advice to its clients.						

Please briefly explain your answer in No 6.

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S. No.	Particulars	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
7.	LAC should conduct educational seminars in communities.						
8.	LAC should conduct community services programs.						
9.	LAC should assist Local Gram Panchayats						
10.	LAC can play an important role in assisting Lok Adalats.						
11.	Serving in LAC should be compulsory for every law student.						
12.	LAC should be an elective subject for credit in the law curriculum.						
13.	Students serving in LAC should be paid stipends for their services.						
14.	Students surveying in LAC should get scholarships for their services.						
14.	Law students are capable of giving good advice to clients.						
15.	LAC enhances lawyering skills of law students.						

Please briefly explain answer No 15.

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S. No.	Particulars	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
16.	Students are overburdened by serving in LAC.						
17.	Faculty and staff serving at LAC should be given extra salary for their services.						
18.	Faculty serving at LAC should be allowed to plead their clients as they are well acquainted with legal knowledge.						
19.	Every faculty member should mandatorily serve at LAC.						
20.	Working at LAC overburdens the staff.						
21.	B.C.I (Bar Council of India) is lagging behind in providing effective provisions for LAC.						

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S. No.	Particulars	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
22.	LAC in India is able to provide legal aid to marginalized and underprivileged society members.						
23.	Funding of LAC is a key issue in its effectiveness.						
24.	There is lack of commitment among the LAC members.						
25.	Indigent people are aware of LAC.						
26.	LAC should promote itself through advertisements.						
27.	LAC is a good educational tool?						

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Please briefly explain answer No 27.

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Please provide any other comments:

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