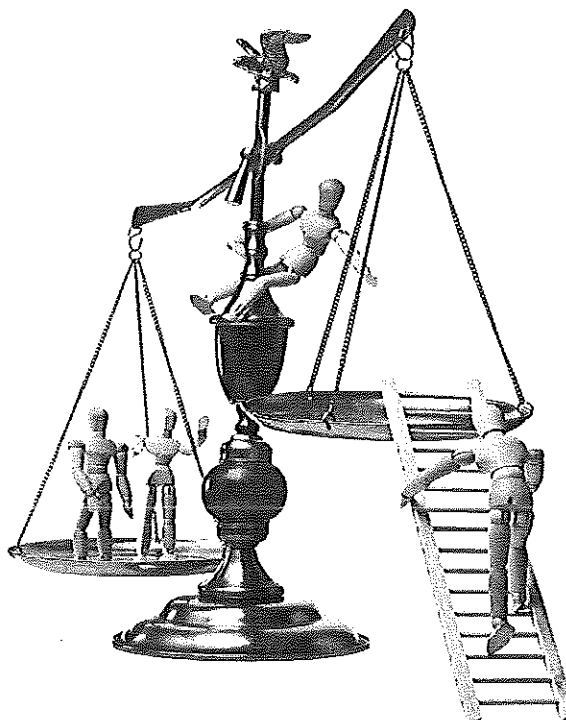


EQUAL ACCESS TO JUSTICE
2ND OECD EXPERT ROUNDTABLE

1 DECEMBER, 2015

OECD HEADQUARTERS, PARIS



TOUR REPORT

DEPARTMENT OF JUSTICE
MINISTRY OF LAW AND JUSTICE
GOVERNMENT OF INDIA

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EQUAL ACCESS TO JUSTICE

2ND OECD EXPERT ROUNDTABLE

1st December 2015

1. Welcome and introduction

Mr. Rolf Alter, Director, Public Governance and Territorial Development, OECD welcomed participants and briefed them about the objectives of the roundtable and its relevance for public governance. The participants came from 24 countries, as well as the Council of Europe, the European Commission and the International Bar Association. India was represented by Shri Praveen Garg, Joint Secretary, Department of Justice, Ministry of Law and Justice, Government of India.

2. Session 1: Business case and modernisation of public legal aid services: Fostering responsiveness to citizens' needs

Mr. Geoff Mulherin, Director, Law and Justice Foundation of New South Wales facilitated participants to explore ways to assess impacts of different models of legal aid including individuals' well-being, public investments and broader socio-economic outcomes and inclusive growth. He highlighted country initiatives to modernise the provision of public legal aid services, including public representation assistance.

2.1 The cost of accessing justice has been cited among the core barriers to access to justice. Public legal aid is provided to people who require legal assistance but cannot afford to pay for private legal services, and do not otherwise have access to legal services, i.e. through legal expense insurance, union representation and so on. In OECD countries, legal aid is the primary public program for ensuring equal access to justice (e.g. in France, the legal aid budget will extend to €405 million (INR 30 billion/3000 crores) in 2016, out of the €8 billion (INR 590 billion/59000 crores (budget for justice). While per capita spending on legal aid among OECD countries varies widely, in the wake of current financial crises and budgetary pressures, many jurisdictions have undergone dramatic budget reductions for various types of legal aid, along with cuts in other policy areas.

2.2 Legal aid models

There are many models for legal aid across OECD countries, which depend on legal and historical contexts. These models range from those fully-funded by government and those which are mixed (e.g., where legal aid can be either provided by private legal firms through pro bono services, or can be through a mandatory subscription to Legal Expenses Insurance system). In some countries, legal aid services are provided through community-based clinics, some of which benefit from both public and private funding. These models are designed to respond to the legal needs of members of the community and often have community members involved in their governance structure. Common legal aid providers include public defenders, private lawyers, pro bono schemes, bar associations and paralegals.

2.3 Traditionally, the focus of legal aid has been primarily or solely on providing legal representation to access courts and tribunals in order to ensure the proper functioning of the court system and the principle of ensuring fair hearings.

2.4 Increasingly, there are discussions on modernising approaches to legal aid to respond to different pathways to justice and to different needs and capabilities of citizens. Currently, it is

possible to distinguish three broad types of legal aid provided across OECD countries, which differ in character, availability and price. These include (a) information and advice (usually provided at pre-trial stages); (b) services that help to negotiate and interact with the other party (e. g. alternative dispute resolution (ADR) services aimed at settlement, such as mediation, conciliation and lawyer assisted negotiation); and (c) adjudication, litigation and procedural assistance (which may include legal representation by a lawyer, and coaching of self represented litigants). In many OECD countries, legal aid covers services provided by others than lawyers helping to negotiate and interact with the other party, such as mediation to prevent judicial procedures or facilitate access to law or other ADRs.

2.5 Legal aid services could potentially be rationed in three ways: types of legal matters covered (coverage); who can access services (eligibility); and the type, depth and quality of legal assistance provided, i.e., whether a client gets full or partial assistance (service delivery). Other rationing measures include financial contributions by clients and limited remuneration of service providers (e.g., below market rates for both staff and judicare lawyers, claw-backs [monies or benefits that are distributed and then taken back as a result of special circumstances] and partial payments). There is a critical relationship between these elements and the strategic policy choices required to ensure meaningful access to justice. There are diverging approaches to providing legal aid across OECD countries (which also results in variations in budgets spent on them per capita), with possible exception of legal aid for criminal defence. In many countries, most legal aid money is spent on criminal problems (e.g., Ireland and Scotland), although in some countries more money is spent on non-criminal legal aid (e.g., France, Belgium and the Netherlands), such as forced hospitalisation of psychiatric patients, immigration, family law problems, debt, etc.

2.6 Enhancing responsiveness of legal aid services

The broad trends in legal aid reforms (also in response to the reduced available funding) reflect the themes and approaches of today's access to justice agendas to respond to needs of citizens and businesses:

- Enhanced information and advice service through a range of channels (e.g. advicenow.org.uk in the United Kingdom or the Maisons de Justice et du Droit in France),
- Adjustments of eligibility areas (e.g., inclusion of new beneficiaries of legal aid such as victims of gender violence, terrorism and trafficking in human beings; minors and people with intellectual disabilities who have been abused; victims of accidents who suffer permanent disabilities and associations aimed to promote and defense the rights of victims of terrorism in Spain);
- Integration of diagnostic tools, triage (the process of sorting people based on their need for immediate response as compared to their chance of benefiting from such a response) and referral services;
- Increased emphasis on outreach, timely intervention and prevention;
- Making legal aid available for a range of dispute resolution processes;
- The development of hybrid and problem-solving services, mainly through specialised lawyers, paralegals and legal expenses insurers (e.g., a new mediation procedure in child custody cases in Finland provides the assistance to a judge by a psychologist and a social worker)
- Increased service delivery by non-lawyers (paralegals and community advocates), including changing regulations for legal profession;
- Increased provision of holistic and comprehensive services to address both legal and non-legal dimensions of people's problems;
- Increased integration of technology in the provision of services;
- Tailoring of services to meet the needs of marginalised communities;
- The simplification of legal procedures for specific types of disputes (e.g., simplified e-court procedure for cash benefits in Poland); and

- Increased service provider collaboration and coordination in such areas as health, housing and education to support the achievement of positive outcomes for clients.

2.7 Impacts of legal aid services: Discussion on impacts of legal aid services, country specific initiatives, impacts and challenges was structured around the following questions:

- i. What is the business case for public legal aid? How can impacts of different types of legal aid (e.g., full representation, self-help materials) be assessed? What model works under which conditions? What impact does the lack of access to legal aid and hence to justice have on low-income groups? On communities, society and economy?
- ii. What are the impacts of legal aid on poverty, health, and education? Can access to legal aid support access to other services (e.g., health, education, social assistance) and improve outcomes in other policy areas?
- iii. Do current approaches to legal aid enable meeting legal and justice needs of citizens, especially in the low income groups? Help citizens resolve clusters of interconnected problems? How is it assessed? What are the biggest barriers for ensuring responsiveness to these needs?

2.8 In the light of these questions, the Joint Secretary highlighted the following in the area of Legal Aid and Access to Justice initiatives in India:

- (a) Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of society and ensures justice for all. Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act was enacted to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities (LSA) Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act.
- (b) Marginalised groups such as scheduled castes and scheduled tribes, women, children, victims of human trafficking or caste atrocity or ethnic violence or any natural disaster, persons in custody and industrial workmen are all entitled to free legal aid under Section 12 of the LSA Act.
- (c) Surveys conducted indicate a lack of awareness of free legal aid services provided by the State. From inception till date, over 17 million people have benefitted through the provision of legal aid by LSAs.
- (d) Inaccessible justice systems contribute to growing poverty and social exclusion and can undermine economic growth. Unresolved legal problems can be costly both to the individuals directly affected and to society as a whole as problems and deprivations (legal, social, economic, health, etc.) tend to cluster and may reinforce each other.

3. Session 2: Harnessing technology in enhancing accessibility of justice services

3.1 This discussion focussed on the role of technology in enhancing access to information, facilitating provision of legal and justice services and enabling integrated access to services in the justice sector, including in remote communities, to marginalised groups and self-

represented litigants. Deliberations also took place on the need to identify necessary capacities and conditions for using technology for justice services and ways to balance it with more traditional channels of service provision (e.g., face to face) in order to respond to the full variety of legal and justice needs.

3.2 Information and Communications Technology (ICT) is increasingly seen as a key enabler for meeting legal needs and providing citizen-centred services by enhancing access to information, facilitating provision of legal and justice services and enabling integrated access to services in the justice sector. ICT is often used to automate current processes and make them more efficient and accessible to citizens and businesses, create new pathways to justice, and provide direct access to justice services. After a slow start compared to other sectors, new tools and applications are now appearing at a rapid rate (e.g. the United Arab Emirates recently implemented a smart phone application to follow judicial cases or to make an inquiry about a document). There is evidence that citizen-centred strategies employing telephone and audio-visual technology, the internet and software applications help to overcome some barriers to accessing justice and have the potential to create justice system efficiencies.

3.3 Technology could have three main benefits for access to justice, such as: enhancing access to information, facilitating provision of legal and justice services and enabling integrated access to services in the justice sector. Five specific developments can be identified:

- Interactive web initiatives;
- Integrated legal assistance services;
- Online dispute resolution (ODR) and telephone-based ADR services;
- Increased use of technology in courts and tribunals; and
- 'One-stop shops' for government services.

3.4 ICT is also employed to provide online tools to assist people through:

- aggregating information from a range of websites;
- providing comprehensive advice and referrals;
- the diagnosis of legal problems and possible steps to take to address them;
- guided interviews;
- guided pathways leading the user interactively through difficult issues;
- guides to procedures before specific courts and tribunals;
- programs that assist a user to build up court forms with a visual interface that fronts automated document assembly;
- assisting with the presentation of evidence.

3.5 Regarding the role of technology in enabling access to justice, the discussion was based on the following questions.

- i. Access to information: In what ways can technology facilitate access to legal information and legal awareness of citizens? What are the successful country examples? How can the governments foster trust in technology as a tool to access to justice services?
- ii. Service delivery and communication: What are the examples of country initiatives and innovations in using technology to improve the delivery and hence access to justice and legal services (e.g., courts, tribunals, alternative mechanisms)? Communication with justice service providers? In remote communities (e.g., e-filing and e-courts)? For marginalised groups? Self represented litigants (e.g., interactive court forms)? Can technology facilitate the delivery of justice services in all legal domains (or whether some areas are more prone to be addressed via traditional methods, such as criminal cases)?

- iii. Seamless and integrated access: How can technology facilitate better triage of cases to identify the most suitable legal and justice services? Are there examples of online "one-stop shops" for dispute resolution services in various areas?
- iv. What are the pros and cons of online justice services? Are there examples of "hybrid" service delivery models (combining online and other service delivery channels)? What are the regulatory barriers to innovation and to the use of technology in promoting access to justice? What is required for successful use of technology in providing access to justice (e.g., special regulations, training of IT and legal experts)?

3.6 The Joint Secretary shared the following IT enabled initiatives towards Legal Aid and Access to Justice in India:

E-Courts Mission Mode Project

- (a) The eCourts Integrated Mission Mode Project is a national eGovernance project being implemented in High Courts and district/subordinate Courts in India. The project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary-2005" by the eCommittee of the Supreme Court of India. It is part of the National e-governance programme and part of the services provided to litigants, advocates and other stakeholders by universal computerization of district and subordinate courts in the country and enhancement of ICT enablement of the justice system. It is similar to what is being done in OECD countries.
- (b) **Process Re-engineering:** eCommittee has initiated the Process Re-engineering (PR) exercise; PR Committees have been set up in all High Courts to study and suggest simplification in existing rules, processes, procedures and forms.

Voice Based Legal Information Kiosks

- (a) 50 voice based legal information kiosks have been installed in the offices of the District Legal Services Authorities (DLSAs) in two States. These kiosks provide legal information and raise legal awareness to local populations through the use of technology.

Integration of Legal Literacy into Common Service Centres

- (a) The Common Services Centres (CSC) Scheme as approved by Government of India for setting up more than 100,000 internet enabled centres in rural areas under the National e-Governance plan (NeGP) is being implemented in a Public Private Partnership (PPP) mode. The CSCs are proposed to be the delivery points for Government, Private and Social Sector services to rural citizens of India at their doorstep. CSC is meant to be a low cost vehicle for Government institutions to deliver e-Governance services to the rural population of India. The Department of Justice has taken on the initiative to spread legal awareness to marginalised sections of society by providing legal literacy through these CSCs.

4. Session 3: Towards understanding impacts of specialised justice services on access to justice?

4.1 Discussion focussed on country initiatives to establish specialised and differentiated justice services (e.g., courts, tribunals, ADRs, early resolution system services) and their impact on access to justice by citizens and business. Participants also discussed advantages and disadvantages of these initiatives.

4.2 Specialisation of justice services is a rapidly growing trend in OECD countries. Specialised and differentiated justice services have been demonstrated to contribute to efficiency and quality of decision-making, but have also been found to require important investments. The drive to greater specialisation in the justice sector has mostly been the result of increased complexity in the law and specialisation of lawyers and prosecutors. Specialisation can also be utilised as a citizen oriented response to the legal needs of individuals and businesses, particularly where it leads to service integration responding to specific problems.

4.3 Specialisation may take a number of forms including: alternatives to the courts such as specialised ADRs and ODRs (e.g. EU countries) or various administrative tribunals (e.g. United Kingdom and United States), specialised mechanisms for resolving disputes and judicial specialisation and problem-solving courts and approaches (e.g. Belgium, France, Poland, United Kingdom and United States). One common element among these efforts is the idea that specialised justice services might better address the contextual nature of a dispute because of the judges' or dispute resolvers' experience and familiarity with the underlying issues.

4.4 Specialisation may create advantages through a division of labour, honing of expertise, as well as greater flexibility and simplification of procedures. Specialisation goes hand-in-hand with innovation. The focus on specific categories of legal problems or needs of a particular and vulnerable group in many OECD countries (e.g. women, indigenous groups) creates the scope for implementing tailored, proportional justice services and greater responsiveness to users.

4.5 Following questions were discussed during this session and countries shared their relevant responses towards understanding the impacts of specialised justice services:

- i. What are the country practices in establishing specialised justice and legal services (e.g., specialised courts, tribunals, ADRs, specialised processes within regular courts)?
- ii. What is the business case for and impact of specialised justice services? What are the country approaches to assess costs and benefits of specialisation? What impacts may specialisation have on access to justice? On inclusive growth? On meeting citizen needs? Under which condition is specialisation effective and may promote accessibility of justice services, and under which may it hinder it?
- iii. What are the examples of areas and subjects which could benefit from specialised consideration? Are there successful country examples to developing specialised approaches to court adjudication and dispute resolution which respond to citizen / business needs (as opposed to legal issues)?
- iv. *What are the countries' considerations in specialisation of justice services? What are the pros and cons of specialisation? Country specific lessons learned? For example, what are the country experiences with the kinds of procedures that may be used in specialised courts? Which mechanisms could*

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enable procedural simplicity in those courts? What are the examples of enabling access to specialised justice services in remote areas?

4.6 In response, the Joint Secretary highlighted the following specialised justice and legal services in India:

- Specialised courts/specialised processes within regular courts: The Government has recently cleared an ordinance that creates commercial courts, and commercial benches in existing courts, to deal specifically with commercial disputes, subject to pecuniary limits. India also has "family courts" that deal with family matters, such as marital disputes and child custody.
- Tribunals: Many tribunals have been set up under various legislations, dealing with sector specific disputes, e.g., securities market; telecom; intellectual property; environment; etc.
- The National Legal Services Authority periodically organises Lok Adalats and "Mega Adalats", to resolve several thousands of disputes between consumers and public service providers through ADR. These Adalats have been able to settle thousands of cases in a single day, and in doing so, they manage to cover a variety of issues. While it is not an example of specialisation, these Adalats do have an impact on access to justice. For example, they help cut pendency, by taking citizens out of the court system, and allowing them an alternate form of dispute resolution. They also reduce delays for litigants, because the solutions are reached much quicker.

5. Outcome of the Visit

5.1 The Joint Secretary who looks after Access to Justice Project of UNDP and GoI and working of NALSA had an exposure to the legal aid mechanisms of the various OECD countries. The legal aid mechanisms in these countries are different as those in India and several innovations have been attempted to reach out to deprived and marginalised sections of society to provide legal aid and assistance in different forms. It was also observed that in these countries legal aid is an executive function and the judiciary is not involved directly in the administration and dispensation of legal aid to the needy.

5.2 There is a wide range of per capita spending on legal aid among OECD countries. Yet in the wake of the current financial crisis and budgetary pressures many countries have undergone dramatic budget reductions for legal aid. In the face of these budget cuts countries are trying to device novel and less resource heavy ways of reaching out to those in need.

5.3 In some countries Universities are also actively roped in to provide legal aid services. This has proved beneficial in achieving the mandate of access to justice for all. This is something that could potentially be explored in India.

5.4 The conference also witnessed a deal of sharing in relation to a variety of models for legal aid ranging from those which were fully funded by government those where legal aid was provided by private legal firms through *probono* services. There is however a need for a more inclusive, fine tuned and organized system of pro bono lawyering in India. The experiences shared can be learning for the Indian scenario.

5.5 The discussions also focused on the increasing trends in several countries to provide information and limited assistance – putting the onus on the individual to 'self help' with various levels of support – particularly for self represented clients including from the middle income groups. This is a possibility that can be explored in the Indian context.