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## UNIT 1 Client Interviewing

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### 1.1 Introduction

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Client interviewing and counseling is the area where clinical method is better suited. Legal education in India overlooked several aspects of a legal professional's work, the most important among them being Client interviewing and counseling.

Why are these two aspects more important than the other aspects such as representation of the client? The lawyer and client relationship is first established during the interview and it is after the counseling that the client would choose to hire the lawyer or seek some other.

Therefore, focusing on the first meeting point of the client and the lawyer is not only necessary but also mandatory for an effective practice of law. Poor interpersonal skills of a lawyer would result in incompetent representation of his/her client. Building interviewing and counseling

skills would enhance effective client representation and also in securing justice. This course on interviewing and counseling is intended to build skills in factual investigation, interviewing, counseling and resolving ethical issues. Details of the skills that are required are given below

1. Skills of Factual Investigation include:

- Collection of facts
- Plan for factual investigation
- Organizing and memorizing information
- Evaluation of factual information

2. Skills of Interviewing include:

- Skills of listening
- Identifying and formulating legal issues
- Knowledge of nature of legal rules and institutions

3. Counseling Skills include:

- Gathering information relevant to the decision to be made for counseling
- Analyzing the decision to be made
- Counseling the client
- Ascertaining and implementing the Client's decision.

4. Skills for Resolving Ethical Dilemmas include:

- Identifying the ethical issues
- Understanding ethical standards
- Process of recognizing and resolving ethical dilemmas



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## 1.2. Objectives

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After reading this unit you should be able to:

- Understand the skills that are required for interview
- Comprehend the importance of communication function in interviewing the client
- Identify various elements of communication
- Find out how to build rapport with the client
- Learn various types of question that could be asked
- Discover when such questions could be asked during the interview
- Realize various stages of gathering information during interview

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## 1.3. Elements of Interviewing

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Interviewing is not simply confined to gathering of facts. It essentially involves personal interaction in a professional context. Interviewing is not mechanical – it involves persons and persons carry emotions. Therefore, interviews are often affected by several factors such as interpersonal skills of the interviewer, psychological and mental condition of the interviewed, and the physical environment of interviewing (the place). The primary function of lawyer in interviewing is communication function.

Please answer the following Self Assessment Questions:

Self Assessment Question 1

*Spend 2 minutes*

- 1) What is the Primary function of a lawyer in interviewing a client?
- 2) Name two factors that affect interviews

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#### **1.4. Communication Function of Interview**

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Most important part of client interviewing is communication. Communication is the cornerstone of developing relationship between the client and the lawyer. At every level of legal representation, communication may either hamper or develop the competent representation of a client. You learn about the client through interview and you would be able to assess the problems and requirements of the client through interview. To assess the problems faced by a client, you need to gather all required information. This could be achieved only by establishing a good communication with the client. Therefore, the communication function has the following three elements:

- a) Building Trust and Rapport with the Client
- b) Listening during the interview
- c) Gathering facts and ascertaining the client's problem and legal position.

Please answer the following Self Assessment Questions:

Self Assessment Question 2

*Spend 2 minutes*

1. \_\_\_\_\_ is the cornerstone of developing relationship between the client and the lawyer.
- 3) How many elements does communication function have? \_\_\_\_\_

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## 1.5. Elements of Communication Function

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### a) Building Trust and Rapport with the Client

Clients are human beings and they are already having problems or at least they believe that they are in a problem situation. That is why they approach you for your advice. Gathering information is the primary task of interviewing. But information will not flow from the client spontaneously. For example if the client comes to you with a sensitive problem, he/she may feel shy to disclose personal problems. This is particularly so in cases of sexual offences.

So you need to build rapport with the client and thereby win the trust of the client. Absence of trust and rapport with the client would severely affect the revealing of relevant information by the client. It would be difficult to obtain sensitive and personal information in such situations. Failure to get such vital information may harm the outcome of the case. Consequently, if you fail to focus on building trust and rapport with the client, you would not be in a position to render effective professional service.

#### **Method of building Trust and Rapport:**

The next question is how to build the trust and how to develop rapport with the client? The first step is that you need to concentrate on making the client comfortable before conducting the interview. Making the client comfortable is a continuous process. Various factors influence building a good relation with the client. Following are some of the important factors:

### **Factors Influencing building a good relation with the client**

- **How the advocate is dressed**
- **The way the lawyer's office is organised**
- **The way the lawyer interacts**
- **Keeping time**
- **Proper listening**
- **Showing genuineness and respect to the client**
- **Explaining confidentiality at the initial stage**
- **Providing privacy**

As one's outfit is said to be an external manifestation of one's personality, appropriate dress code would give the client a feeling of competent representation by the lawyer. Systematic office organization would again indicate the competency of the lawyer. Keeping time and having concern for the client would enhance the chances of building trust. Showing genuineness and respect to the client is an essential ingredient of building rapport. The way you expect respect from the client, client also expects respect from you. In fact the onus is on you to convince the client about your competency.

Your need is to make the client believe that you really care about him and that you are genuinely concerned about his problems. Creating privacy during interview is a key factor for gathering all information from the client. Client would not be willing to disclose his/her personal facts and feelings in the presence of others. Therefore, during interview, you should avoid the presence of any other person. It is ideal that no disturbance is caused during

interviewing session. Particularly it would be a good idea not to attend phone calls during interviewing.

To gain trust and develop rapport with the client, it is necessary for you to inform the client in plain language that the facts disclosed in the interview is confidential and the lawyer would not disclose it to anyone. In fact, it is better to explain to the client the legal position that any communication made to you cannot be revealed to any one, and that your are under the professional obligation not to disclose the contents of the interview to any one without the permission of the client.

This information must be conveyed to the client in the beginning of the interview. Disclosing confidentiality clause in the initial stage of interview would make the client to reveal information which may affect the case or which the client thinks may affect the case. The whole atmosphere during the interview should assure that the communication to the lawyer would be kept confidential.

Please answer the following Self Assessment Questions:

Self Assessment Question 3

*Spend 2 minutes*

1. Confidentiality clause must be brought to the notice of the client at the \_\_\_\_\_ stage.
2. The way the lawyer is dressed improves building the good relationship. True/ False

**b) Listening during interview:**

Interviewing is a two way process involving asking of questions as well as listening to the client. Effective listening is as important as asking relevant questions. Though many would claim that they know how to listen but in fact very few are good listeners. It is true that



listening is a very natural act, even newborn babies listen, however though what many people do in reality is just hear.

Listening is a very powerful means of communication and also a way to persuade people to talk. Listening is not the same as hearing. Listening makes you to understand your client's problem. Listening is nothing but understanding the other person. How you listen is also as important as you listen. If you could demonstrate that you are listening to the client, it would improve building rapport with the client. Demonstrating listening does not mean concur with or appreciate whatever the client has done. It means you should not ignore the client's feelings at the same time do not criticize the client what he/she had done or failed to do.

**Methods of good listening:**

The following are some of the useful hints for listening:

- ☺ Pay full attention (stop all other activities while listening)
- ☺ Respond to the client (it could verbal or non verbal like nodding head)
- ☺ Show that you understand the client (narrating back to the client about his problem in your own words)
- ☺ Show empathy

How do I listen effectively? There are three elements of effective listening:

1. Passive listening

In the initial stage you allow the client to speak without many interruptions. Why should I not ask too many questions in the beginning? Many interruptions may stop the flow of the information. They may derail the thoughts of the client. While the client is speaking, you may make non committal acknowledgements like “Yes”, “Ok”, “I see” etc to

continue the flow of the speech and at the same time to demonstrate that you are actually listening.

## 2. Active listening

Unlike passive listening where the client would be allowed to speak without interruption, in active listening you need to make some reflections about what is said by the client. While making reflection, you are not judging the client but merely acknowledging what the client says. For example you may convey back to the client what he/she narrated to you. Narrating back to the client serves two purposes. 1. It shows that you are not only listening but understanding what client said. 2. Client would correct you if you miss anything or misunderstood anything.

## 3. Listening to the Body Language.

In an interview both the lawyer and the client constantly communicate to each other through body language. Body movements and gestures convey many things such as anger, pleasure, confidence, distrust, evasiveness and a host of other feelings and attitudes. As the saying goes “face is the index of the mind”, facial expressions form very important part of communication.

Observing the client’s body language would give you an idea as to the reliability of the client’s story. Many a times one may need to look at the body language to ascertain whether what is verbally expressed is true or not. For example a client who never looks at you indicates a severe state of total breakdown in trust, dislike, extreme nervousness, psychiatric or physical illness or some combination of these. None of them are good for fostering healthy professional relationship with the client.

Similarly, your body language also communicates to the client. Therefore, you must be conscious about his/her body language. You have to maintain eye contact with the client. Confidence, genuine concern about the problem of the client and empathy towards the client could be better communicated by body language. A perfect body language of a lawyer would definitely reassure the client.

Please answer the following Self Assessment Questions:

Self Assessment Question 4	<i>Spend 2 minutes</i>
1. Identify two processes of interviewing: _____	
2. How many elements does listening have? _____	

As it was discussed above, asking too many questions in the beginning may hamper the flow of information but you need to ask questions to gather relevant information from the client. Asking questions becomes particularly important if the client is wayward in explaining his problem. If a client is shy in nature you may require asking questions even at the initial stage to encourage the client to speak. So let us concentrate on when to ask questions and what kind of questions you could ask the client during the interview.

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### **1.6. Questioning during Interview:**

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Often the dilemma for the lawyer is what kind of questions may be asked during interview and what would be the appropriate time to ask such questions. Questioning may involve the potential risk of stopping the flow of information. If questions are not asked then the client may not give

relevant information. Therefore, designing proper questions and deciding the time when they should be asked is a serious challenge to the lawyer.

Please answer the following Self Assessment Questions:

Self Assessment Question 5

*Spend 2 minutes*

1. \_\_\_\_\_ involves a risk of stopping the flow of information.
2. What is the serious challenge for a lawyer in interviewing?

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### 1.7. Kinds of Questions

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Usually in an interview three types of questions may be asked.

#### 1. Open ended questions

The main purpose of client interviewing is to encourage the free flow of expression of the client's problem, his/her concerns and feelings. Therefore, you should allow the client to narrate his/her problem with least interference. Too much interference may derail the thoughts of the client which may result in breaking the flow of information. Open-ended questions give liberty to provide the information without any break and it allows the client to give the information the way he/she wants. Clients naturally will have the control over the sequence of information.

#### **Advantages of open ended questions**

- ☺ Allows the client to give information without any interruption
- ☺ Encourages the client to give more information
- ☺ Promotes empathy

- ☺ They act as ventilators for expressing the feelings of the client
- ☺ Minimizes inhibitions in communication.
- ☺ Builds rapport.

### **Disadvantages**

- ☹ Talkative clients and clients who are poor in differentiating relevant and irrelevant information waste time.
- ☹ Narration many not contain sufficient information
- ☹ They may not stimulate the client's memory.
- ☹ They may cause discomfort to shy and reluctant clients (these kind of clients needs be encouraged to give information)

### **When to Use**

After weighing the advantages and disadvantages of open-ended question we may conclude that if open ended questions are used in the beginning of the interview, it will yield good result.

### **Examples of open-ended questions:**

- What is your problem?
- What happened to you?
- Why did you want to see me?
- What do you want?
- What help do you want?
- Tell me more

Please answer the following Self Assessment Questions:

Self Assessment Question 6

*Spend 3 minutes*

1. The main purpose of the interview is to encourage \_\_\_\_\_ of information.
2. When open ended questions may be asked during the interview?

## 2. Narrow/specific questions

Gathering necessary facts is one of the important skills of a lawyer. Relevant information is essential for effective representation. The information gathered by open-ended questions only gives an overall idea about the problem of the client. You are required to plug gaps in the information so gathered for formulating the problem faced by the client and for theory development. Further, the client may not give important information such as dates and the place of incidents. Client also may not give information which he/she thinks not important. Therefore, asking specific questions to collect such information become necessary.

### **Advantages**

- ☺ They guide the flow of information
- ☺ They will help in motivating the client to give more information
- ☺ They help the client to remember the details of the problem
- ☺ They are good to get information from clients of shy nature
- ☺ They are good at probing into details of a particular event
- ☺ Helps in getting more information on specific area

### **Disadvantages**

- ⊗ Limits the scope of information
- ⊗ If they are asked at an improper time, may adversely affect on development of trust and rapport
- ⊗ If they are asked in the beginning of the interview it may restrict the flow of information
- ⊗ Too many questions may create hostility in the mind of client

### **When to Use**

Specific or narrow questions may be asked after the client has completed his/her narration.

#### **Examples of Specific Questions:**

- When it happened?
- Where it happened?
- Who are the witnesses?
- What is the time?
- What is your relation?

Self Assessment Question 7

*Spend 2 minutes*

1. Identify two important advantages of specific questions.
2. Specific questions may \_\_\_\_\_ the scope of information

### 3. Leading questions

Leading questions means questions that contain the answer in them. Leading questions as the name suggests, lead the client to the answer. You will be in command in asking these questions. As these questions lead the answers they must be asked with due care. These questions help you to confirm the details already collected during the interview. They allow you to check the authenticity of the information gathered from the client.

#### **Advantages**

- ☺ They help in affirming or denying the information already in your possession.
- ☺ They are useful in eliciting information which the client is consciously withholding.

#### **Why clients withhold information?**

When a client comes to you for help why would the client withhold information? Client may withhold information because:

- The client may have thought that it may not be important or does not support the case
- The client had done something immoral/illegal
- Or the client thinks that what he/she has done is immoral/illegal which he/she thinks not wise to disclose

Why should you know such facts?

To identify the legal problem you need all relevant facts. Client's involvement in the problem would many times define the legal problem. You should know the complete story to evaluate the legal risk the client is facing or going to face.



Further, you need to know all the facts to avoid surprise when opposite party makes a reference to it. It allows you to develop a possible defense when the opposite lawyer makes a reference.

### **Disadvantages**

- ⊗ It may embarrass the client
- ⊗ Sometimes if client is not sure of the answer he may pick up the answer from the question
- ⊗ Too many leading questions may give an impression that the lawyer does not trust the client
- ⊗ It has the potential of breaking mutual trust and confidence.

### **When to Use**

Leading questions may be asked at the concluding stage of the interview.

Please answer the following Self Assessment Questions:

Self Assessment Question 8

*Spend 3 minutes*

1. Leading question means question that contains the \_\_\_\_\_ in them
2. Why does the client withhold information?

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## **1.8. Stages in Gathering Information.**

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Gathering information in an interview could be in three stages

### 1. Preliminary Problem Identification

At this stage you need to get an idea of what is the client's perspective of the problem and what legal relief the client is looking for. At this stage you should encourage the client to narrate his problem with least interference possible. When you are sure that the client has completed description of problem, you may conclude the session by summarizing the problem and the relief. The purpose of such summarization is to convey to the client that you understood the problem and the relief the client is seeking. Another advantage is that if you did not understand any particular fact or misunderstood any fact, the client gets an opportunity to correct it. At this stage you could ask open-ended questions.

### 2. Chronological Overview

At the second stage you have to check the story in a chronological order. This enhances your task of understanding the problem of the client. At this stage you would gather facts that lead to the event, facts immediately surrounding the event and facts following the event. You could ask questions to fill the gaps left in the client's narration. Asking specific questions at this stage would immensely help you to comprehend the problem.

### 3. Theory development.

After chronological overview of the problem, you have to develop the theory i.e. giving name to the problem for example that it is a case of theft, robbery or dacoity. Once the theory is developed then apply the theory to the facts to check whether it fits with the facts given by the client. While doing such an exercise, you may need more information or sometimes need to check the client's story. This becomes necessary to decide the probable cause of action and the defenses available. In such a case you would require to continue the interview. At this stage leading questions could be asked.

On the whole, interviewing is maintaining a healthy relation with the client. Making the client comfortable, actively listening to the client and asking the right questions at the right time is the essence of interviewing.

Self Assessment Question 9

*Spend 3 minutes*

*True/False*

1. At the beginning of interview you should encourage the client to narrate ( )  
his problem with least interference possible.
2. Specific questions should be asked at the initial stage of interviewing ( )
3. Leading questions may be asked during the development of theory. ( )

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## 1.9. Summary

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- The lawyer and client relationship is first established during the interview and the counseling.
- Building interviewing and counseling skills would enhance effective client representation
- Most important part of client interviewing is communication.
- Communication function has the following three elements:
  - Building Trust and Rapport with the Client
  - Listening during the interview
  - Facts gathering and ascertaining the client's problem and legal position.
- Usually in an interview three types of questions may be asked.
  - Open ended questions are asked in the beginning of the interview. At this stage you identify the problem of the client.
  - Specific/narrow questions may be asked after the client completes the narration. These questions help you in arranging the story in a chronological order
  - Leading questions may be asked at the end of the interviewing to confirm the details. These questions may be necessary for final theory development.

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## 1.10. Terminal Questions

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1. What skills are the interviewing and counseling intended to build?
2. What are the elements of communication function in interviewing?
3. How do you build trust and rapport with the client?
4. Explain the importance of Active listening.

5. What questions can be asked during interview?
6. What is a leading question? Explain the advantages and disadvantages of asking leading questions.
7. Briefly enumerate various stages of gathering facts during client interviewing.

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### **1.11. Answers and Hints**

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#### **Self Assessment Questions:**

1. (i) Communication, (ii) Interpersonal skills of the interviewer and psychological & mental condition of the interviewed.
2. (i) Communication, (ii) Three
3. (i) Initial, (ii) True
4. (i) Asking questions and listening to the client, (ii) Three
5. (i) Questioning, (ii) Designing proper questions and deciding the time to ask them.
6. (i) Free flow, (ii) In the beginning of the interview.
7. (i) Guides the flow of information and motivates the client to give information, (ii) Limit
8. (i) Answers, (ii) may not be important or supportive, done or thought to have done something immoral or illegal
9. (i) True, (ii) False, (iii) True.

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#### **Terminal Questions:**

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1. Refer to Section 1.1. of the unit.
2. Refer to Section 1.5 of the unit.
3. Refer to Section 1.5. (a) of the unit.
4. Refer to Section 1.5. (2) of the unit.

5. Refer to Section 1.7 of the unit.
6. Refer to Section 1.7. (3) of the unit.
7. Refer to Section 1.8 of the unit.

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### **1.12. References and Suggested Readings**

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1. N.R. Madhava Menon, *Clinical Legal Education* (Chapter – 6 Interviewing and Counseling by V.Nagaraj & Frank Bloch)
2. Sherman K. Okum, *How to Be a Better Listener*.
3. Philip Morgan and Kent Baker, *Building a Professional Image: Improving Listening Behavior*.
4. Dr. Richard Sheehy, *Counseling skills can help you become an effective helper. (Practice Tips)*.

