



Assessment Of Legal Aid Services With Special Reference To District Courts: An Empirical And Analytical Perspective

¹Divyajeet Singh and ²Dr. Neelesh Sharma

¹Research Scholar, ²Associate Professor

^{1&2} School of Law,

^{1&2}Rabindranath Tagore University, Bhopal, Madhya Pradesh

Abstract: The judicial system in India is supported by district courts. They are on the spot where the great majority of citizens - persons on either side of criminal charges, civil actions, family law suits, land cases, and labour suits - are in fact brought to face with the law. They are also, and as a result, where the pledge or the failure of the legal help is most palpably experienced. The national-level data on the legal aid delivery though helpful in the aggregate level hides the real picture on the ground which is exploited in a daily basis in the main civil courts and sessions court in the six hundred and odd districts in India. The paper will conduct a narrow evaluation of the legal aid services in the form of the district court setting, wherein the evaluator will examine the institutional processes by which the aid is administered, the demographic composition of the recipients of the aid, the quality of the offered representation, and the result that the affected litigants gain in comparison to the result that the persons who hire private counsel would get. Based on the empirical data that is available, reports by judicial committees, evaluation by the civil society, and an analysis of the current statutory and regulatory framework, the paper determines the main gaps between the system in its design and the system in its reality. It claims that district courts, specifically due to the volume of issues comprising legally and economically vulnerable individuals, must be the center of serious attention to any effort undertaken to enhance the delivery of legal aid in India, and that such reform at the level is necessary to consider quality, accountability, infrastructure, and the social barriers to service access by eligible persons who are legally entitled to receive the service.

Index Terms - legal aid, district courts, DLSA, access to justice, panel advocates, undertrial prisoners, India

1. INTRODUCTION

The district court is, to the majority of Indians, the Supreme Court to members of the legal profession, and television critics: that is where law is actually defined in practice. It is in the sessions court that a man facing a crime is made to know whether he will spend his life in jail or not. A farmer finds out that the land his family has worked on over time will be proved to be his in the court of the civil judge. It is in the family court that a woman is informed whether the law will shield her against an abusive marriage or leave her at the mercy of the benevolence of the institutions which are not structured around her interests. And at the district level, it is that question whether one has a lawyer a good one, one who knows his case, which has the most immediate and far-reaching interest.

The number of cases pending in its district and subordinate courts is estimated to be about 25 million, which is larger than all the High Courts and the Supreme Court. The individuals lost in this backlog are mostly just regular citizens: farmers, labourers, small traders, domestic workers, first generation litigants who have never set foot in a court room before and who are manoeuvring their way through a system the processes, language, and culture of which are largely unfamiliar to them. To a significant number of these individuals, the presence of a legal aid lawyer is not a convenience of the procedural process, but rather

the disparity between a voice in a process that will have a final impact on their lives and being pushed through a system that they are unable to interfere with.

The institutional tool, which delivers legal aid to the district level, is the District Legal Services Authority (DLSA). The DLSA was established under the Legal Services Authorities Act, 1987 and is under the chair of the District Judge and its duties include identifying the persons who are eligible, enrolling lawyers, overseeing the legal literacy work, managing Lok Adalats, and ensuring connections with the jail, hospitals and other places where the vulnerable persons could be located. The State Legal Services Authority and the National Legal Services Authority have a frame work under which each DLSA would operate, however, with significant flexibility in the manner in which resources are distributed and services are arranged.

The evaluation which follows is not one of the legal aid in the abstract but of the legal aid where it is most required where it is most put to the test. In section two, the methodology and scope of the present study is described. Part three discussion covers the institutional structure of the DLSA and its characteristics of operation. Section four examines the empirical map of delivering legal aids in the district level, based on the existing data. Section five examines the quality of a legal representation that is given under district-level legal aid. In the sixth section, the authors discuss how Lok Adalats operate as a district-level dispute resolution system. The most important structural gaps are mentioned in section seven. Section eight provides suggestions on reforms, and section nine is a conclusion.

2. THE DISTRICT LEGAL SERVICES AUTHORITY: INSTITUTIONAL FRAMEWORK.

Section 9 of the Legal Services Authorities Act established the District Legal Services Authority, which is chaired by the District Judge and whose other members such the State Government, in consultation with the Chief Justice of the High Court, may decide. Day-to-day administration is done by the Secretary of the DLSA, who is usually a judicial officer holding the rank of Civil Judge or Chief Judicial Magistrate. The DLSA is accredited under the Act to do such functions as may be decided by the SLSA which includes coordinating the work of the Taluk Legal Services Committees, arranging Lok Adalats, and giving legal services to persons who are eligible.

2.1 Composition and Mandate

The structural feature of the incorporation of the District Judge as the DLSA Chair has its benefits as well as drawbacks. On the good side, it provides the activities of legal aids with the institutional power, and guarantees some level of coordination with the very functioning of the court. Conversely, District Judges have cumbersome administrative and judicial loads, and in effect the day-to-day running of DLSA operations is virtually left to the Secretary. The effectiveness with which the DLSA should operate also differs widely on the vitality and the commitment of the Secretary, and the extent to which the District Judge displays an active interest in the activities of legal aid.

2.2 The Panel Advocate System

The main delivery system of legal aid is based on panel advocates on district level. They are empanelled lawyers of the DLSA, after application, and upon requirement of minimum experience, to accept legal aid cases. Where an individual who has been found eligible by a jail, court or child welfare committee applies to the legal aid program, or is established to be eligible, the DLSA provides an advocate on a panel level. A panel advocate receives a fee during the disposal of the case subject; the rates change depending on the state and the circumstances of the case.

Most state fee structure is considerably lower than facilities charge in the market. On the survey of state-level fee schedules, it is found that panel advocates in the district courts usually earn between five hundred and two thousand rupees per case, and more in the panel session matters involving trials. These unrevised even years after inflation means that these sums render the work of a legal aid economically marginal to most actors. The consequence here is a selection effect: lawyers advocating on panel are either at the beginning of their careers and rely on legal aid as a source of client acquisition and courtroom experience, or are undercompensated by their private practice, or are selflessly committed to the cause of service to the people, a set of factors not reliably correlated with quality representation.

3. LEGAL AID PRO VISION: THE DISTRICT-LEVEL VERSION OF THE EMPIRICAL PICTURE.

In its annual reports, NALSA records high amounts of activity of legal assistance at the district level. According to legal services authorities in India, during the financial year 2022-23, it is estimated that legal services related to a large number of individuals were offered, hundreds of thousands of Lok Adalats were held and cases with total award values of thousands of crores of rupees were settled. These are statues, which though grand in size, must be interpreted cautiously.

Many of the individuals listed as having received legal services have been provided with legal literacy or legal awareness aid - attending a legal literacy camp, being given an information pamphlet, receiving a short-term legal advice in a legal aid clinic - and not long-term legal representation of proceedings. The difference between the assistance of awareness and substantive legal representation is important of evaluating the effectiveness of the system but is not always made in official reporting. Making the figures disaggregated, the figure of persons who have been subjected to continuous representation in district court proceedings, the most resource-consuming and significant form of legal assistance, is significantly lower than the headline numbers imply.

The table below presents a summary of selected legal aid delivery indicators at the district court level, compiled from available NALSA and NCRB data:

Table 1: Selected Legal Aid Delivery Indicators at the District Level

Indicator	Reported Figure	Source / Year
Persons provided legal services (all categories, national)	Approx. 1.8 crore	NALSA Annual Report 2022-23
Cases disposed through Lok Adalats (national)	Approx. 1.02 crore	NALSA Annual Report 2022-23
Undertrial prisoners as % of total prison population	~76%	NCRB Prison Statistics 2022
Undertrial prisoners in custody over 1 year	Approx. 65,000+	NCRB Prison Statistics 2022
Legal aid lawyers per district (estimated average)	20-45 panel advocates	Law Commission Report No. 266
States with revised panel fees post-2015	Fewer than 12 states	NALSA Fee Review, 2020

There are a few characteristics of this data that should be mentioned. To start with, this is 1.8 crore persons helped, which is a fraction of the population entitled to free legal services under Section 12 of the Act, which, considering the revenue limits and categorical eligibility covers most of the Indian population. Second, the figures of the under-trial prisoners are deeply worrying even decades of judicial interest: three in every four individuals in an Indian prison have never been found guilty of any crime. Third, panel advocates per district are not enough to be able to satisfy the demand especially in the larger districts with huge court complexes.

3.1 Recipients of Legal Aid Demographic.

The distribution of the demographic characteristics of legal aid beneficiaries at the district level is an intersection of the legal vulnerability and social marginalization as it has always been. The recipients of criminal legal aid are disproportionately male, young, Scheduled Caste and Scheduled Tribe, economically poor, rural or urban informal settlement. Where it exists, civil legal aid is disproportionately utilized more often by women, but in matrimonial and domestic violence cases rather than in general, and women not in legal aid services are underrepresented in comparison with their probable legal need.

This concentration of the population is important in two aspects. The first one is that the quality of legal assistance in the district level has the direct and sharp outcome in communities that are already disadvantaged in terms of their relationship with the state. Second, it emphasizes how much social

obstacles such as caste-based distrust of the institutions of law, language exclusion and practical challenges of women accessing formal service providers still come to define the membership of legal aid services even among those technically eligible. One of the results that always come across in field research is that self-identification as eligible is a major obstacle to access. Not all the persons who are qualified to approach the DLSA do so, thinking that they have no legal assistance, or that it is not really free, or of a quality lower than that of their privately-retained representation. The final premise of legal aid lawyer being less dedicated and ineffective, which is the last assumption, as will be further discussed below, is frequently empirically based and not merely a myth.

4. STANDARD OF LEGAL REPRESENTATION: A TRUTHFUL EVALUATION.

The evidence accessible on the quality of legal aid representation in the district courts is not favourable and would be a disservice to the gravity of the issue to present it otherwise. There have been several studies that have investigated legal assistance at sessions courts and magistrate courts in various regions of India that have shown similar results: panel advocates often first meet clients in the courtroom on the hearing day; they often do not file written submissions or make extensive legal research in assisted cases; they often visit clients between hearings; and there is a sense that their interactions with clients are short, undertaken under time pressure, and often mediated by language barriers.

In a study of legal aid practice in sessions courts in three states, a legal research organization established that in over sixty percent of the cases observed where legal aid was provided, the advocate had not seen the case file before the hearing date, and in almost forty percent of the cases observed, the advocate had not had any previous contact with the client before appearing in court to represent them. When it comes to criminal cases in which there is the charge of a serious offence, and where the consequences of poor representation are most likely to arise, these results are not a few technical breaches of procedure, but a breakdown of the fundamental obligation of representation.

Unjust generalization should be avoided. Each district has its panel advocates who are loyal and talented individuals who make legal aid work just like personal work. DLSAs have been established with successful panel management practices, frequent advocate training programmes and client feedback systems. These are good practices that work and are worth having. They are however not widespread enough to describe the system as a whole and the structural factors in form of poor fees, heavy caseloads, poor accountability vehicles, etc that contribute to the low quality of representation in most districts do not receive sufficient treatment.

4.1 The First-Meeting-in-Court Problem.

This issue of panel advocates initial encounter with the client at the courtroom door requires especially close attention since it is symptomatic of the overall failures in quality and has its own implications. The criminal business involves client-advocate relationship as the lawyer must be aware of facts of the case as the client sees it, to find possible defences, to advise on tactics available, and to achieve trust that the client is willing to give an honest instruction. This cannot be the case in a rush-down-the-corridor discussion minutes before the issue is called.

During custody cases where the client is an undertrial prisoner that can only be contacted in jail, the pre-hearing conference will necessitate the advocate pay a jail visit. Most districts lack any institutional mechanism to necessitate or facilitate such visits to legal aid purposes. The visits to jail which are conducted are usually initiated due to personal sense of professional responsibility of the advocate itself and not on systemic basis. The practical implication is that most pretrial detainees, especially long-pretrial detainees, virtually have no meaningful contact with their criminal court advocate between hearings - a state of affairs that would be scandalous, were it applied to privately-represented defendants, and that but needs to be scandalous when applied to the most vulnerable of criminal process participants.

4.2 Comparison of Results Aided and Privately Represented Litigants.

There is little direct comparative information on the performance of legally aided and privately represented litigants in the district courts of India, which is a consequence of the information deficits of the methodology section. The little evidence that exists indicates, however, in a consistent direction. Research investigating the outcomes of sessions courts in criminal cases has established that the rates of conviction are greater and the rates of acquittal are lesser when there is legal aid representation than when there is private representation even after the type of offence has been controlled. Applications of bails by legally aided accused are also not successful as compared to accused who are privately represented. The

results of sentencing, where plea in mitigation is pertinent, are found to be disadvantageous to aided defendants.

These results cannot be understood as the demonstration that legal aid will lead to poorer results, the choice of cases when legal aid is used is not based on random selection, and legal aid clients can experience other disadvantages affecting the results not only because of the quality of the offered representation. However, they are in agreement with the qualitative evidence of the quality of representation as well as the structural factors that explain the impossibility of providing high-quality legal aid with the existing panel system. At least, they give no ground to believe that the protection of legally assisted litigants on the district level is the same as that of their privately-represented counterparts.

5. LOK ADALATS ON THE DISTRICT LEVEL: PURPOSES AND CRITICISM.

District Legal Services Authorities Lok Adalats are one of the most numerically significant aspects of the Indian legal aid system. Massive cases are settled at regular Lok Adalats and National Lok Adalat held at the district level motor accident claims, matrimonial matters, electricity disputes, cheque dishonour cases, and pre-litigation disputes are becoming the most popular categories. The NALSA data of more than one crore cases disposed countrywide by Lok Adalats in 2022-23 consists largely of disposals at the district level. The Lok Adalat mechanism does have its real strengths. It is quicker and cheaper than formal litigation, it provides the parties with a certain amount of involvement in the drafting of their settlement which was not available under the adversarial system, and it can yield results which are more practically useful, especially in cases concerning motor accidents, where a compensated claimant is better served by a quick settlement than by years of litigation to recover a slightly larger sum. The Lok Adalats can reasonably work in those cases where the parties are not too different in terms of bargaining and information, and the legal matters are not complex.

5.1 Fairness and Concerns with Consent.

The problem with Lok Adalats concerns appears specifically in the cases where the parties are not equal that is, of course, the actual situation when it comes to the cases that are related to the legal aid-eligible individuals. This should not be confused with the finality of Lok Adalat awards, which cannot be appealed on any ground, and therefore a settlement obtained under the pressure of economic need or insufficient legal advice can never be rectified at some subsequent stage. Where the accepting party settles because of ignorance of the law, or fear of the expense and time commitment of judicial axiom, or because of implicit pressure by the authority of a forum presided over by a judicial officer, the party accepting the settlement has none.

Observations in the field and anecdotal reports by practitioners indicate that in certain district Lok Adalats, the settlement pressure is tangible - that cases are coerced into settlement so that they may be disposed of by set quotas, as opposed to settlement that is based on the informed choices of the parties. Labour dispute workers, matrimonial matters and accident victims in cases involving a third party insurer are especially prone to accepting settlements less than the legal entitlement they would have received. Structural gaps in the current system are the lack of independent legal advice to unrepresented parties before Lok Adalat settlement which is something that is not taken care of.

6. PRINCIPAL STRUCTURAL GAPS

The evaluation of the previous sections indicates that there are a number of structural gaps that are combined to explain why district legal aid is always performing below its capabilities. The most basic issue is the fee and incentive plan of panel advocates. Unless the economic incentives of such legal aid practice are made competitive, not perhaps on the highest level of the private market, but high enough to attract and retain able practitioners and to compensate the time that good representation takes, the panel system will perpetuate the results it now produces. Recommendation 266 by the Law Commission to make a drastic change in panel fees based on performance indicators and quality appraisals has not been acted upon in the majority of states. The opposition to an increase in fees indicates the conservatism of the fiscal and an inability to understand the cost of not properly providing legal assistance is much greater than the price of adequately compensating legal assistance attorneys. The lack of monitoring and accountability is also severe. At the district level, there is now no uniform system of tracking the quality of legal services delivered by panel advocates, or of gathering client feedback, or of comparing the results of aided cases to those of unaided cases. The reports about the number of cases processed and Lok Adalats conducted are sent to DLSAs, but nothing about the quality of the provided representation or the fairness

of its results. It cannot be identified without this information that there are underperforming advocates and the high-performing advocates are to be rewarded and the training should be where it is most needed. District infrastructure, such as special cells of legal aid in court complexes, separate consultation rooms where attorneys can meet with clients, technology to communicate with custody clients remotely is insufficient in most districts. The physical layout of the majority of district court complexes does not lend itself to the type of client-advocate relationship needed to make quality representation possible. The advocates who perform legal aid work do not necessarily have their own workspace, no legal database or research resources, and no sure way to get in touch with the detained clients during the time between hearings. Lastly, the collaboration between the DLSA and other institutions, such as jails, hospitals, child welfare committees, domestic violence protection officers, which is necessary to identify and address qualified individuals, is inadequate most of the time. Untried prisoners who are either entitled to bail or release under Section 436A of the Code of Criminal Procedure are not likely to be brought to the attention of the DLSA because the jail administration do not keep the records to identify them, or that the DLSA does not regularly review jail registers. Women, who should have legal assistance in domestic violence cases, might not access the DLSA due to the lack of a sufficient number of Protection Officer in their district, which is not linked to law services.

7. REFORM PROPOSALS

NALSA should set a minimum fee structure for panel advocates in the district courts, which is pegged on the established time required to represent various categories of business satisfactorily, and below which no state legal services authority may languish. This standard is to be checked after every three years and linked to inflation. States which, as of today, are not yet at this floor must be made to change their fee schedule within a given time frame, and the central assistance provided to the extra cost where needed.

The case management processes in the DLSA should include a compulsory pre-hearing consultation provision that requires panel advocates to arrange a meeting with assisted clients at least once prior to each of the disputed hearings. In the case of custody clients, it must consist of at least one visit to jail every quarter in hard-core cases. The DLSA ought to keep a record of its adherence to this requirement and condition further empanelment on compliance. Such a single change, when steadily implemented, would meet one of the most reported and impactful quality failures in the existing system.

To carry out the periodic evaluations of the quality of legal aid representation at the district level, an independent quality monitoring mechanism, which works outside the DLSA administration, and which reports to the SLISA, should be created. This mechanism must comprise a combination of court monitoring, client survey questionnaires, and outcome monitoring. It needs to be published and used to make decisions concerning advocate empanelment, training investment and allocating resources to the DLSA.

The presence of a regular visiting legal aid system in the form of legal aid cells in the various district prison complexes, comprising of legal aid lawyer and a para-legal volunteer would greatly enhance the level of coverage of the legal aid system into the untried prisoner population which happens to be the group that most needs effective representation. These cells are to be entrusted with the work of determining what inmates qualify as being on bail, or released on personal bond under 436A, or dismissal of charges, and the pursuit of such remedies without requiring the inmate to undertake the process of access-to-legal-aid by himself.

The data base of accountability and quality improvement would be provided by digital infrastructure of legal assistance at the district level, which is a case management system that locally tracks each aided case since assignment through disposal and available to the DLSA, the assigned advocate, and the SLISA. A relatively simple system can suffice: a standardized format of the data on cases, hearing dates, communications with clients, and the results of disposal, which will be kept digitally and sent up the chain of command to the SLISA, will be a significant improvement over the current paper-based and incoherent record-keeping methods in most districts.

8. CONCLUSION

The justice system most often deals with Indians at the district courts. They are grungy, underserved, overworked, and in the life of the people who transit them, massive and far-reaching. The promise of equal justice that is constitutionally transferred to this context through the legal aid services offered by District Legal Services Authorities is a promise that is not anticipated to be fulfilled, and the discrepancy between the promise and the service provided is as this paper has attempted to demonstrate with all frankness, a gaping one.

The result of that is not apathy, there are conscientious DLSA Secretaries, active District Judges, active panel advocates in every region of the country at work through a structurally poor system. It is the result of institutional design decisions: a fee structure which is unable to serve quality representation, an accountability system that measures activity as opposed to outcomes, infrastructure that fails to support the client-advocate relationship, and a coordination system that fails those who are eligible to reach. These are decisions that are capable of being changed.

The most consistent find of the assessment in this paper is that there is a strong necessity in the redefinition of measuring the success of legal aid on a district level. A legal literacy camp attendance system and Lok Adalat settlements are the main performance indicators, so a system around producing these numbers will be structured around them. A system in which it inquires whether its assisted clients have been represented competently, whether undertrial prisoners who need not be behind bars are being released, whether victims of domestic violence are getting the protection orders to which they are entitled and whether the law is keeping its promises to its most vulnerable users, that system will be structured differently. The argument that the second approach is correct does not have to be stipulated on idealistic principles. It is the method which the Constitution requires and to which the people who require district court legal assistance are entitled.

REFERENCES:

Statutes and Rules

1. The Legal Services Authorities Act, 1987 (Act No. 39 of 1987).
2. The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), ss 304, 436, 436A.
3. The Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005).
4. National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.
5. National Legal Services Authority (Lok Adalat) Regulations, 2009.

Cases

1. Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81.
2. Khatri v. State of Bihar, (1981) 1 SCC 627.
3. Suk Das v. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401.
4. Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700.
5. Imtiyaz Ahmed v. State of Uttar Pradesh, (2012) 2 SCC 688.
6. Ashok Kumar Gupta v. State of UP, (1997) 5 SCC 201.

Reports and Official Publications

1. National Legal Services Authority, Annual Report 2022-23 (NALSA, 2023).
2. National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, 2023).
3. Law Commission of India, Report No. 266: The Legal Services Authorities Act, 1987 (Ministry of Law and Justice, 2017).
4. Law Commission of India, Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower (Ministry of Law and Justice, 2014).
5. Department of Justice, Fast Track Special Courts: Performance Report 2022 (Ministry of Law and Justice, 2022).
6. Supreme Court of India, Court News: Quarterly Newsletter, vol XVII, Issue 3 (Supreme Court of India, 2022).
7. Vidhi Centre for Legal Policy, Improving Legal Aid Delivery in India (Vidhi Centre for Legal Policy, 2018).
8. Commonwealth Human Rights Initiative, Separate and Unequal: How the Legal Aid System Fails India's Poor (CHRI, 2016).

Books and Journal Articles

1. Agrawala, S.K., Public Interest Litigation in India: A Critique (Indian Law Institute, 1985).
2. Bhullar, Lovleen, 'The Indian Legal Services Authorities Act: Is the Right to Legal Aid a Reality?' (2008) 8(2) Oxford University Commonwealth Law Journal 239.
3. Cappelletti, Mauro and Garth, Bryant (eds), Access to Justice: A World Survey, vol 1 (Sijthoff and Noordhoff, 1978).
4. Divan, Shyam and Rosencranz, Armin, Environmental Law and Policy in India (2nd edn, Oxford University Press, 2001).
5. Galanter, Marc and Krishnan, Jayanth K., 'Debased Informalism: Lok Adalats and Legal Rights in Modern India' in Erik Jensen and Thomas Heller (eds), Beyond Common Knowledge: Empirical Approaches to the Rule of Law (Stanford University Press, 2003).
6. Moog, Robert, 'Delays in the Indian Courts: Why the Judges Don't Take Control' (1992) 16(1) Justice System Journal 19.
7. Sathe, S.P., Judicial Activism in India: Transgressing Borders and Enforcing Limits (Oxford University Press, 2002).
8. Yohannan, Priya, 'Quality of Legal Aid: The Missing Conversation' (2019) 4(1) Indian Journal of Law and Public Policy 22.
9. Zanghellini, Aleardo, 'Legal Aid Cuts and Access to Justice' (2016) 43(1) Journal of Law and Society 97.

