



Legal Aid Defence Counsel System: The concept and its implementation in India

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1. Introduction:

Legal services² before a court³ are provided by Legal Services Authorities⁴ in the form of legal representation, legal advice, drafting of application, notices, replies etc. The Court based legal services are provided primarily through the Lawyers empanelled⁵ with the Legal Services Authorities across the country. Across the world, three models of legal aid are in existence. These are (i) Counsel Assignment System, (ii) Public Defender System and (iii) Contract System. Under counsel assignment system, lawyers are paid on cases-to-case basis. Under the Public Defender System⁶, Lawyers are hired on monthly salaries, and they deal exclusively with legal aid cases. They cannot take private cases. Under the contract system, legal aid corporations enter into contract with the law firms to deal with legal aid cases.

Since the enforcement of the Legal Services Authorities Act, 1987⁷, counsel assignment system is being followed by the Legal Services Authorities wherein the empanelled Lawyers

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² Section 2 (c) Legal Services Authorities Act, 1987

³ Section AAA of Legal Services Authorities Act, 1987 defines ' Court' to mean Civil, Criminal, Revenue Court, Tribunal or any Authority exercising judicial or quasi-judicial function.

⁴ Established under the Legal Services Authorities Act, 1987

⁵ Regulation 8 of NALSA(Free and Competent Legal Services) Regulation, 2010 provides the procedure for empanelment of lawyers.

⁶ Israel, USA, South Africa have Public Defender System alongwith Counsel Assignment System (Model law on legal aid in Criminal Justice System with commentaries). www.unodc.org.

⁷ It came into force on 09.11.1995



are paid honorarium⁸ on case to case basis. They are not hired on monthly honorarium or salaries. They are free to take their private cases along with assigned legal aid cases to them.

In August 2019, National Legal Services Authority (NALSA) introduced on pilot basis “ Legal Aid Defense Counsel System” in 17 Districts of 17 Different States⁹ for a period of 2 years¹⁰. The said system has been introduced to deal exclusively with criminal cases triable by Sessions Courts¹¹. This is a unique introduction in the legal aid system of India as for the first time an experiment has been made to introduce a different system which is on the lines of Public Defender System. The objectives of introducing the Legal Aid Defense Counsel System are to provide quality legal services in Criminal matters to eligible persons and also to professionally manage and implement legal aid system in criminal matters¹².

Under the system, Defense Counsel Offices are to be set up by the Legal Services Authorities to handle the legal aid work in the sessions court and providing legal advice and assistance in such matters¹³. Lawyers¹⁴ are to be hired under the system to deal exclusively with the legal aid cases. They cannot take private cases.

2. Implementation Status

(a) Commencement

The data till 31.5.2020 reflects that only few identified States have implemented the Legal Aid Defense Counsel System. The following table reflects the same:

⁸ Fee per cases is revised from time to time by Legal Services Authorities. Last revision took place in the year 2016.

⁹The SLSAs selected were as follows: Andhra Pradesh, Assam, Chhattisgarh, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Meghalaya, Odisha, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal.

¹⁰ Minutes of 17th All India Meet of Legal Services Authorities held at Nagpur in August, 2019.

¹¹ Ibid

¹² Point 2 of NALSA's Concept Note on Legal Aid Defense Counsel System (www.nalsa.gov.in)

¹³ Id at point 3.

¹⁴ 1 Chief Legal Aid Defense Counsel, 2 Deputy Chief Legal Aid Counsel and 2 Asstt Legal Aid Defense Counsel apart from the staff needed to operate the office (point 4 of the Concept Note)



Table 1¹⁵

S. No.	Name of SLSA	Name of District Selected	Whether Legal Aid Defense Counsel System Commenced
1.	Andhra Pradesh	Ananthapuram	No*
2.	Assam	Kamrup- Metro	No
3.	Chhattisgarh	Bilaspur	Yes
4.	Delhi	South West DLSA, Dwarka Court	No*
5.	Gujarat	Surendranagar	Yes
6.	Jharkhand	West Singbhum at Chaibasa	Yes
7.	Karnataka	Belagavi	No
8.	Kerala	Ernakulam	Yes
9.	Maharashtra	Nashik	Yes
10.	Meghalaya	-	No
11.	Odisha	Cuttack	Yes
12.	Rajasthan	Bharatpur	Yes
13.	Tamil Nadu	Salem	No
14.	Tripura	West Tripura Distt.	No
15.	Uttar Pradesh	Banda	Yes
16.	Uttarakhand	Dehradun	Yes
17.	West Bengal	-	No

*** Andhra Pradesh and Delhi State Legal Services Authorities have completed the selection process but commencement is delayed .**

¹⁵ NALSAs report on Legal Aid Defense Counsel System.



The aforesaid table indicates that the Legal Aid Defense Counsel System has been commenced by 09 SLSAs namely, Chhattisgarh, Gujarat, Jharkhand, Kerala, Maharashtra, Odisha, Rajasthan, Uttar Pradesh and Uttarakhand. It has not been commenced in the remaining 08 SLSAs namely, Andhra Pradesh, Assam, Delhi, Karnataka, Meghalaya, Tamil Nadu, Tripura and West Bengal. West Bengal and Meghalaya have not selected even the districts where the same is to be implemented.

(b) Cases handled and pending

Regarding the number of cases handled by Legal Aid Defense Counsel Offices, the research revealed that since the inception till 31.5.2020, as on 31.05.2020, 638 no. of cases were received by the Legal Aid Defense Counsels in the SLSAs where it has commenced, out of which 61 cases were disposed. In Rajasthan, the office of Legal Defense counsel additionally dealt 265 matters relating to remand, bail, release of vehicles etc. Among the SLSAs where legal aid defense counsel had commenced the highest no. of cases were disposed in Jharkhand SLSA (23).

(c) Human Resources and Infrastructure

It also emerged during research¹⁶ that as far as human resources are concerned, only 10 SLSAs namely Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Jharkhand, Kerala, Maharashtra, Odisha, Uttar Pradesh and Uttarakhand have engaged Chief Legal Aid Defense Counsel while the remaining 07 SLSAs namely Assam, Karnataka, Meghalaya, Rajasthan, Tamil Nadu, Tripura and West Bengal have not engaged Chief Legal Aid Defense Counsel. 05 SLSAs namely Andhra Pradesh, Delhi, Kerala, Maharashtra and Odisha have engaged 02 Deputy Chief Legal Aid Defense Counsels , 04 SLSAs namely Gujarat, Jharkhand, Rajasthan and Uttar Pradesh have engaged 01 Deputy Chief Legal Defense Counsel each while the remaining 08 SLSAs namely Assam, Chhattisgarh, Karnataka, Meghalaya, Tamil Nadu,

¹⁶ Data collected from NALSA and also from interaction with Member Secretaries of State Legal Services Authorities.



Tripura, Uttarakhand and West Bengal have not engaged Deputy Chief Legal Aid Defense Counsel. 06 SLSAs namely Andhra Pradesh, Chhattisgarh, Delhi, Kerala, Odisha and Rajasthan have engaged 02 Assistant Legal Aid Defense Counsels each, 04 SLSAs namely Gujarat, Jharkhand, Maharashtra and Uttar Pradesh have engaged 01 each while the remaining 07 SLSAs namely Assam, Karnataka, Meghalaya, Tamil Nadu, Tripura, Uttarakhand and West Bengal have not engaged any Assistant Legal Aid Defense Counsel.

As far as infrastructure¹⁷ is concerned, 8 SLSAs namely Chhattisgarh, Delhi, Gujarat, Jharkhand, Kerala, Maharashtra, Odisha & Rajasthan have their own infrastructure for Legal Aid Defence Counsel. 3 SLSAs namely Tamil Nadu, Tripura and Uttar Pradesh have temporary office situated in the District Court. 10 SLSAs namely Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Jharkhand, Kerala, Maharashtra, Odisha, Rajasthan and Uttarakhand have office room for Legal Aid Defence Counsel. 09 SLSAs namely Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Jharkhand, Kerala, Maharashtra, Odisha & Rajasthan have a room for ministerial staff, reception and waiting area.

As on 31.5.2020, Rajasthan has 218 cases which includes 124 Sessions cases and 94 other criminal cases. It also indicates that in Rajasthan the functioning of Legal Aid Defense Counsel Office has been extended to the other criminal matters apart from the Sessions Cases. In Jharkhand also LADCS Office has 164 case.

3. Conclusion & Suggestions

(a) Conclusion

The analysis of the implementation of Legal Aid Defence Counsel system in the selected States reflects that only nine States have so far commenced the same. Out of these, adequate work with the Legal Aid Defence Counsel Offices is in the States of Rajasthan and Jharkhand. In other States, where the project has commenced, the cases have not increased the way the same were expected to increase. This may primarily be due to the lockdown and the on-going pandemic.

¹⁷ ibid



However, the fact remains that work in the Legal Aid Defence Counsel Offices need to be appropriately enhanced.

(b) Suggestions

To make meaningful use of the Legal Aid Defence Counsel Offices and the human resources engaged therein, the following suggestions are made:

A. Expanding the Scope of Work

1. Pre-arrest, arrest and remand stages:- Legal Aid Defence Counsel Office may be engaged in providing services at the early stages of criminal proceedings as per NALSA's protocol for providing legal assistance at pre-arrest, arrest and remand stages¹⁸. In the State of Rajasthan, the office of Legal Aid Defence Counsel during the lockdown period rendered such services to the arrested persons requiring legal aid.
2. Bail Applications: - The office of Legal Aid Defence Counsel may be instructed to file bail applications of persons in custody¹⁹ in appropriate cases where legal aid is sought. Such legal services may be rendered in Magisterial Courts also apart from Sessions Courts.
3. Preparing files to be sent to High Court Legal Services Committee: - Services of Legal Aid Defence Counsel Office may also be taken for preparing the files to be sent to the High Court Legal Services Committee and Supreme Court Legal Services Committee for filing regular second appeals/SLPs, bail application, etc., as the case may be. In this regard, checklist spelling out the documents required for filing appeals/SLPs, bail applications in the Supreme Court/High Court may be provided to the Legal Aid Defence Counsel Office.
4. Magisterial Trials: The legal aided cases of magisterial trials may also be assigned to the office of Legal Aid Defence Counsel System, and accordingly the panel of lawyers may be reduced accordingly.
5. Assistance in Front Office²⁰: Services of Deputy and Assigned Counsel may be taken for Front Offices in the matters relating to criminal law. In the financially constrained environment, this will result in engagement of less retainers advocates in the Front Offices.

¹⁸ NALSA's Protocol for Early Access to Justice was adopted in July, 2019 by NALSA(Minutes of meeting of Central Authority on 20th July, 2019.

¹⁹ Overcrowding in prison is 118.5%(Prisons Statics2019 2019) National Crime Records Bureau (<https://ncrb.gov.in/>)

²⁰ Regulation 4 of NALSA's(Free and Competent Legal Services) Regulation,2010 provides for establishment of Front Offices



B. Spreading Awareness

1. Awareness through socio-media tools/local electronic means: Masses should be made aware of the availability of legal services through the Legal Aid Defence Counsel System.
2. Information in Police Stations: Adequate information in the form of pamphlets and hoardings may be provided in the Police Stations of the selected districts where Defence Counsel Office is operational so that the suspects and the arrestees may be made aware about the availability of free legal assistance at the Police Stations. The contact number and addresses of the Legal Aid Defence Counsel be also mentioned in the said pamphlets and the hoardings. The name and the contact number of the counsel deputed from the office of the Legal Aid Defence Counsel be periodically provided to the Police Stations.

(c) Quality assurance framework:-

The entire concept note on Legal Aid Defense Counsel System does not reflect framework relating to performance standard with monitoring indicators to effectively monitor the performance of the Legal Aid Defense Counsel System for ensuring delivery of quality legal services²¹ to the legal aid seekers. Performance standards, keeping in view the different stages of the sessions trial, may be framed as outcome of the case cannot be the sole criteria for judging the performance of a counsel.

²¹In *Mohd Hussain vs The State(Govt. of NCT) Delhi* AIR 2012 SC 750, it was held that lack of quality legal aid is violation of the right to legal aid. On similar aspect was *Anokhi Lal Vs State of Madhya Pradesh* AIR 2020 SC 232 .