

Legal Aid Defense Counsel System

A PILOT PROJECT FOR PROVIDING LEGAL AID IN CRIMINAL MATTERS IN
SESSIONS COURTS

National Legal Services Authority
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1. Introduction

Legal Services Authorities provide legal services to accused/convicts, who are in custody or otherwise coming within the eligibility criteria spelt out in Section 12 of the Legal Services Authorities Act, 1987. In 2016, about 48 lakh crime incidents were reported, out of which 4.29 lakh were violent crimes¹. During the same period about 37 lac persons were arrested in IPC crimes and 23 lac persons under Special laws². Normally, variation in crime incidents is around 3% from year to year.

About 2 crore criminal cases are pending in the courts at the District level across the country³. Legal Services are being provided at remand, trial and appellate stages in criminal matters. Legal representation, at trial stage, is being provided by the Legal Services Authorities in around 96000⁴ criminal cases at the district level. In the year 2018, around 99,223 arrestees were provided legal aid at the remand stage.

At present, Assigned Counsel System of delivery of Legal Aid is being followed in India. Under the said system, cases are assigned to panel lawyers by Legal Services Institutions. Panel lawyers to whom cases are assigned by the Legal Services Authorities have private practices, and hence, they do not exclusively devote their time to the legal aided cases. Many times their accessibility and availability remains an issue for timely client consultation and updating legal aid seekers about the progress of their cases. It also comes in the way of effective monitoring of legal aided cases.

¹ Crime statistics, 2016 released by NCRB

² *Ibid*

³ National Data Judicial Grid (njdg.ecourts.gov.in , visited on 11.03.2019)

⁴ legal aided cases (criminal matters) as on 31.12.2018

Court based legal services need to be strengthened for providing effective and efficient legal services to weaker and marginalised sections of society. To achieve the same, several steps have been taken such as capacity building of lawyers, enhancing the structure and functioning of monitoring and mentoring committees, upgradation of Front Offices etc.

In the said process of strengthening and making legal services more professional, NALSA has envisaged a legal aid delivery based model i.e. *Legal aid Defense Counsel System*⁵ for providing legal aid in criminal matters (in Sessions Courts, at the first instance) on the lines of public defender system. It is pertinent to mention that in most of the countries, Legal Aid Delivery Models are combination of the Public Defender System, Assigned Counsel System and Contract Services System. Examples of diverse legal aid delivery systems can be found, among other countries, in Israel, the Republic of Moldova, Sierra Leone, South Africa and the United States of America. A number of jurisdictions have adopted a public defender scheme with offices throughout the country, including Argentina Chile, Georgia, Mexico, Paraguay, Peru, the Philippines, the Republic of Moldova and South Africa⁵.

As envisaged, Legal Aid Defense Counsel System will involve salaried lawyers with Assistants. The said unit would be dealing exclusively with the legal aid work in criminal matters. Lawyers engaged for it shall not be taking any private cases. It will create institutional capacity to effectively provide legal aid to needy in criminal justice system. Some of the perceived advantages of Legal aid Defense Counsel System vis-à-vis assigned counsel system may be mentioned as follows:

- Availability and accessibility of Legal Aid Defense counsel
- Effective and efficient representation by seasoned lawyers
- Timely and effective Client Consultations

⁵ *Model Law on Legal Aid in Criminal Justice Systems with Commentaries* (www.unodc.org)

- Effective monitoring of legal aided cases
- Professional management of legal aid work in criminal matters
- Enhanced responsiveness leading to updating of legal aid seekers about the progress of their cases
- Adequate time to commit to legal aided cases.
- Ensuring accountability on the part of the legal aid providers.

At the first instance, Legal Aid Defense Counsel System is conceived to be implemented on pilot basis for providing legal aid in criminal matters in Sessions Courts in few districts before expanding it in a consolidated and improved manner to other districts..

2. Objectives:

- To provide quality legal services in criminal matters to eligible persons.
- To professionally manage and implement legal aid system in criminal matters.

3. Scope of Work:

Legal Aid Defense Counsel Office shall be dealing exclusively with legal aided matters in criminal matters, and at the first instance, in Sessions Courts. It shall not be dealing with civil matters. Primarily, the following legal services shall be provided through the Legal Aid Defense Counsel Office to accused/convicts:

- Legal Advice and Assistance
- Conducting trial and appeals in Sessions Courts.
- Handling Bail applications in Sessions Courts
- Any other legal aided work related to Sessions Courts

4. Infrastructure and Human Resource required in each Project district

- **Infrastructure:**

- A spacious office room(s) for Legal Aid Defense Counsel with separate cabin for consultation.
- A room for ministerial staff, reception and waiting area.
- Computers and printers, internet connection, telephone.
- Furniture consisting of tables , chairs and almirahs.

- **Human Resource:**

Human Resources for a Legal Aid Defense Counsel Office		
S.No.		No. required
1.	Chief Legal Aid Defense Counsel	01
2.	Deputy Chief Legal Aid Defense Counsel	02
3.	Assistant Legal Aid Defense Counsel	02
4.	Office Assistants	02
5.	Receptionist-cum-Data Entry Operator	01
6.	Office peon	01
	Total	09

Note : Number of Deputy and Assistant Legal aid Defense Counsel may be increased or decreased as per the requirement in individual districts. Number of Legal Aid Defense Counsel shall be proportionate to the actual requirement.

5. Selection Procedure:

Legal Aid Defence Counsel shall be engaged on contract basis in each project district initially for a period of two years with a stipulation of extension on satisfactory performance if the project continues. Selection of Chief Legal Aid Defense Counsel, Deputy Chief Legal Aid Defense Counsel, Assistant Legal Aid Defense Counsel and also of the ministerial staff will be based on merit, taking into account the knowledge, skills and experience of candidates. The selection shall be carried out by Selection

committee as envisaged in NALSA (Free and Competent Legal Services) Regulations 2010. The suggestive eligibility criteria are as follows:-

a) Qualifications for Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 10 years
- Excellent oral and written communication skills.
- Excellent understanding of criminal law.
- Thorough understanding of ethical duties of a defence counsel.
- Ability to work effectively and efficiently with others.
- Must have handled at least 30 criminal trials including appeals in Sessions Courts.

b) Qualifications for Deputy Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 7 years.
- Excellent understanding of criminal law
- Excellent oral and written communication skills.
- Skill in legal research.
- Thorough understanding of ethical duties of defence counsel.
- Ability to work effectively and efficiently with others.
- Must have handled at least 20 criminal trials including appeals in Sessions Courts

c) Qualification for Assistant Legal Aid Defense Counsel:.

- Practice in criminal law from 0 to 3 years.
- Good oral and written communication skills.
- Thorough understanding of ethical duties of defence counsel.
- Ability to work effectively and efficiently with others.
- Excellent writing and research skills

d) Qualification for Office Assistant:

- Educational Qualification: Graduation
- Basic word processing skills and the ability to operate computer
- Typing speed of 40 WPM.
- Ability to take dictation and entering data.

e) Qualification for Receptionist-cum-Data Entry Operator

- Educational Qualification: Graduation
- Excellent verbal and written communication skills
- Word processing abilities
- The ability to work telecommunication systems (telephones, fax machines, switchboards etc).

Qualifications may be reasonably relaxed in case of exceptional candidates or circumstances with the approval of the Executive Chairman SLSA.

6. Work Profiles :

a) Chief Legal Aid Defense Counsel

- Conducting Session trials and appeals and bail matters in Sessions court along with deputy chief legal Aid Defense Counsel
- Assigning duties of Deputy chief legal Aid Defense Counsel in Sessions courts.
- Assigning duties of Assistant legal Aid Defence Counsel for assisting him and Deputy Chief legal Aid Defense Counsel and for legal research.
- Ensure proper legal research, planning effective defence strategy and thorough preparation in each and every legal aided case.
- Ensure maintenance of complete files of legal aid seekers.

- Ensure proper documentation with regard to legal aid assistance provided, ensure maintaining of up to date record of legal aided cases.
- Will be overall in charge of administration the office of Legal Aid Defense Counsel Office.
- Ensure quality of legal aid.
- Any work/duty assigned by Legal Services Authority

b) Deputy Chief Legal Aid Defense Counsel.

- Conducting Session trials as assigned by Chief Legal Aid Defense Counsel.
- Filing and arguing appeals and bail applications in Sessions Courts.
- Maintaining complete case files.
- Doing legal research in legal aided cases and guiding assistant legal Aid Defense Counsel and law students attached with the office in legal research.
- Proper client interviews at various stages for quality research work and representation at remand, trial and appellate stage.
- Any work/duty assigned by Legal Services Authority.

c) Assistant Legal Aid Defense Counsel.

- Conducting legal research in legal aided cases.
- Assisting Chief Legal Aid Defense Counsel and Deputy Legal Aid Defense Counsel in conduct of legal aided cases.
- Assisting in developing a defense strategy after sifting through all of the evidence collected by the prosecution and after hearing the accused's version of what happened during the alleged crime in question.

- Visiting location/area of alleged crime, having discussions with family members etc , for effective and meaningful input for defense strategy.
- Handling queries of legal aid seekers.
- Updating legal aid seekers about the progress of their cases.
- Assisting in maintaining complete files of legal aided cases.
- Handling legal queries relating to criminal matters on telephone.
- Any other work related to legal aid assigned by Chief Legal Aid Defense Counsel.
- Any work/duty assigned by Legal Services Authority.

d) Office Assistant

- Keeping updated record of legal aided cases.
- Uploading the updated record/progress of the legal aided cases on NALSA portal.
- Maintaining complete files of legal aided cases and keeping files with proper index in a systematic manner.
- Typing bail applications, petitions, etc.
- Doing ministerial work related to cases such as filing applications for copies of orders, judgement etc.
- Any other task assigned by the Chief Legal Aid Defense Counsel.
- Any work/duty assigned by Legal Services Authority.

e) Receptionist-cum-Data Entry Operator

- Greeting clients and visitors and answering visitor inquiries.
- Answering and routing incoming calls on a multi-line telephone system.
- Scheduling and routing legal aid seekers.
- Maintaining the waiting area, lobby or other office areas.

- Scanning, photocopying, faxing.
- Collecting and routing mail and hand-delivered packages.
- Answering face-to-face enquiries and providing information when required.
- Uploading, at the initial point, legal aided cases on NALSA portal and updating the information from time to time.
- Any work/duty assigned by Legal Services Authority.

f) Office peon

- Cleaning the office before the commencement of office hours.
- Ensuring that all places in the office are kept clean.
- Bringing and serving water, beverages to the visitors in the office.
- Carrying dak etc.
- Any other work assigned by Legal Services Authority.

7. Termination of Services:

Services of any staff including legal aid defense counsel engaged in the office of Legal Aid Defense Counsel can be terminated at any time, without any prior notice in the following cases:

- i. He/she substantially breaches any duty or service required in the office.
- ii. Seeks or accepts any pecuniary gains from the legal aid seekers.
- iii. Convicted for any offence.
- iv. Indulges in political activities.
- v. Found incapable of rendering professional services of the required standards.
- vi. Failure to attend training programmes without any sufficient cause.

- vii. Indulges in activities prejudicial to the working of legal aid defense counsel office.
- viii. Using his/her position in legal aid defense counsel office to secure unwarranted privileges or advantages for him/herself or others.
- ix. Acts in breach of code of ethics.
- x. Remains absent without leave.

8. Code of Ethics:

Personnel engaged in the office of Legal Aid Defense Counsel shall observe the following code of ethics:

- No personnel shall act in any matter in which he/she has a direct or indirect personal or financial interest.
- No personnel shall wilfully disclose or use, whether or not for the purpose of pecuniary gain, any information that he/she obtained, received or acquired during the fulfilment of his/her official duties and which is not available to members of the general public.
- No personnel within the office of Legal Aid Defense Counsel shall make use of his/her office or employment for the purpose of promoting or advertising any outside activity.
- No personnel within the office of Legal Aid Defense Counsel shall engage in any outside activity or act as an independent practitioner.
- No personnel within the office of Legal Aid Defense Counsel shall solicit, agree to accept or accept, whether directly or indirectly, any gift, favour, service, or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of

value was given or offered for the purpose of influencing him/her in, or rewarding him/her for, the discharge of his/her official duties.

- Legal Aid Defense Counsel shall devote his/her full time to his/her duties for the office of Legal Aid Defense Counsel and shall not engage in private practice of law during the term of employment.
- Every Personnel of the office of Legal Aid Defense Counsel shall strive to preserve the public's confidence in the office's fair and impartial execution of its duties and responsibilities.
- Legal Aid Defense Counsel shall also follow the code of ethics prescribed by Bar Council of India for lawyers.

9. Entitlement to Leave:

- Chief Legal Aid Defense Counsel and Deputy Legal Aid Defense shall be eligible for 15 days' leave in a calendar year on pro-rata basis.
- Assistant Counsel Legal Aid Defense Counsel and other staff shall be eligible for 12 days' leave in a calendar year on pro-rata basis.
- No remuneration for the period of absence in excess of the admissible leave will be paid to the human resource of Legal Aid Defense Counsel Office. Un-availed leave shall neither be carried forward to next year nor encashed.

10. Role of State Legal Services Authority and District Legal Services Authority

- Office space planning, and providing infrastructure for office preferably inside or in proximity to court complex.
- Providing Office furniture.

- Providing Office equipment, including computer, printer, net connectivity and other n equipment.
- Purchasing office supplies.
- Engaging human resource requirement for Legal aid Counsel System Office.
- Ensuring proper functioning of Legal aid Counsel System Office.
- Ensuring effective monitoring and mentoring.
- Periodical evaluation of legal services delivered through Legal aid Counsel System Office.
- Regular trainings and refresher courses for legal aid counsel engaged in Legal aid Counsel System Office.
- Renovation of office space when necessary.
- Providing Books such as Bare Acts and Commentaries for Legal Aid Defense Counsel Office
- Providing Legal Research Software.
- Timely payment of monthly honorarium to legal aid counsel and all staff engaged for Legal aid defense counsel office
- Payment with regard to expert witnesses, if their services are taken
- Payment for expenses incidental to legal aid provided through office such as travelling expenses etc.
- Information/promotional campaigns/programmes with regard to Legal aid Defense counsel office

11. Engagement with law schools

Law schools often send their students to legal Services Institutions for internship. Moreover, Clinics of Law Colleges also collaborate with Legal Services Institutions.

Law students can be engaged with the Legal Aid Defense Counsel office as to give them meaningful exposure to practical aspects of criminal law including preparing a defense strategy and doing legal research in various factual scenarios. The law students may be so engaged in the following areas in Legal aid defense counsel office:

- Legal research in criminal cases
- Visiting scenes of crimes
- Interviewing accused and their family members and other relevant persons
- Assist in sifting through all of the evidence collected by the prosecution and providing effective input for preparing defense strategy.

The law students so engaged may also be paid stipend by the Legal Services Authorities. Stipend amount may be determined by the Executive Chairman of SLSA.

12. Monitoring and Evaluation

- Monitoring and Mentoring Committee shall monitor legal aid work of Legal Aid Defense Counsel Office.
- Monitoring shall be continuous process.

13. Implementation

This model of delivery of legal services in Criminal Matters may be implemented on pilot basis for a period of two years as that would provide sufficient period of time to effectively compare this model with the case assignment system for further decision making. The districts may be chosen on the basis of following criteria:

- Total number of criminal cases in the district
- Economically and socially disadvantaged populations
- Geographical factors such as access to rural areas

It is also imperative that in the selected districts, the size of existing panels of lawyers is reduced to make it proportionate to the actual requirement. Such panels may be reduced to 20 lawyers or less, as per the requirement, in such districts to render legal services only in magisterial courts, Front Offices, Legal Services Clinics and legal services camps.

14. Financial Outlay

Finances will primarily be required for hiring premises for Legal aid defense office, in case existing infrastructure of DLSA is insufficient to accommodate it. Finances will be required for office furniture and equipment, monthly salaries, expenses incidental to litigation and other administrative expenses such as postal, stationary etc. Estimated outlay is given below:

A. Salaries

1.	Monthly salary of a Chief Legal Aid Defense Counsel	Rs. 50,000 to 75,000/-
2.	Monthly salary of two Deputy Chief Legal Aid Defense Counsel	Rs. 30,000 to 60,000/- each
3.	Monthly salary of two Assistant Legal Aid Defense Counsel	Rs. 20,000 to 40,000/- each
4.	Monthly salary of two Office Assistants	Rs. 15000 to 25,000/- each
5.	Monthly salary of Receptionist-cum-Data Entry Operator	Rs. 15000 to 25,000/-
6.	Monthly salary of Office peon	Rs. 10,000 to 15,000/-

B. Infrastructure expenditure (If already not available)

1.	Four Computers	2,40,000/-
2.	Three Printers	1,00,000/-
3.	Furniture	2,50,000/-
4.	Rent	50,000 x24 months = 12,00,000 /-
5.	Books/ law software	2,50,000/-

C. Miscellaneous expenses per annum as per the requirement subject to the following cap

1.	Office supplies/stationary (10,000x24)	2,40,000/-
2.	Postal and other misc. expenses	2,00,000/-
3.	Misc. expenditure for one office	4,40,000/-
