

EMPIRICAL SCRUTINY OF PROFESSIONAL DEVOTION OF LEGAL AID COUNSELS AT DISTRICT COURTS

Abstract

Legal Aid Counsels are vital stakeholders in legal aid services at district courts, high courts, and the Supreme Court. The lack of commitment and devotion of legal aid Counsels have affected the quality of legal aid services. Beneficiaries are reluctant to opt for free legal aid services. This research article deals with the commitment and devotion of Legal Aid Counsels towards legal aid services provided at district courts. This paper has examined the parameters of devotion and commitments of legal aid counsels, such as the mandate to join legal aid services, availability for interaction with beneficiaries and availability for the judicial process at district courts in legal aid cases based on primary data collected during three field studies conducted by the author.

I Introduction

The legal aid services system, which complies with the Constitutional mandate, has been created at the Supreme Court, high courts, and district courts. The Legal Services Authorities Act of 1987,¹ Order XXXIII of the Code of Civil Procedure 1908², Section 304 of the Criminal Procedure Code of 1973³ (With effect from July 1st 2024 Section 431 of Bhartiya Nagarik Suraksha Sanhita 2023), the National Legal

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- 1 The Legal Services Authorities Act of 1987 (Act No 39 of 1987), modified by the 1994 amendment and enacted on Nov. 9, 1995, seeks to establish a widespread system to deliver free and inclusive legal services to the less privileged. It mandates that the State ensures equality before the law and establishes a legal framework that fosters justice with equal opportunities for all.
 - 2 Code of Civil Procedure 1908 (Act No 5 of 1908), o- XXXIII allows an impoverished individual to initiate lawsuits in a civil court without being obligated to pay the associated court fees. Additionally, if the person faces challenges in arranging legal representation for various reasons, the civil court has the authority to appoint a legal practitioner to assist the indigent person at its discretion.
 - 3 The Code of Criminal Procedure, 1973 (Act No 2 of 1974) s. 304, "Legal aid to accused at state expense in certain cases: (i) where, in a trial before the court of session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the state. (ii) the high court may, with the previous approval of the state government make rule providing for- (a) the mode of selecting pleaders for defence under sub. s. (2); (b) the facilities to be allowed to such pleaders by the courts; (c) the fee payable to such pleaders by the government, and generally, for carrying out the purposes of sub. s. (1). (3) the state government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub. s. (1) and (2) shall apply in relation to any class of trials before other courts in the state as they apply in relation to trials before the courts of session."

Services Authority (NALSA) (Free and Competent Legal Services) Regulations of 2010, and the NALSA (Legal Aid Clinics) Regulations of 2011, the NALSA Legal Aid Defence Counsel System 2022 and other rules, guidelines and regulations have been regulating Free Legal Aid Services (hereinafter FLAS) at sub-divisions, districts, regional and national levels.

Even though the right to legal aid has been considered a fundamental and statutory right by the fundamental instruments of governance of FLAS in India, the law in theory of Legal Aid Service and operations are very different in character and colour. Former Chief Justice of India and Executive Chairperson of NALSA, UU Lalit J., while delivering a speech on the quality of legal aid services and the trust deficit over legal aid services in India, remarked,” The trust deficit that still persists needs to be bridged.”⁴ This observation also reflects the existing legal aid services, which are unable to meet the requirements of beneficiaries, delivered by the Legal Aid Counsels (hereinafter LACs). Therefore, beneficiaries do not have faith in FLAS.

This paper critically analyses attributes of lack of professional commitments and devotion of LACs, including Jails Visiting Advocates (JVAs hereinafter) and Remand Advocates (RAs hereinafter) involved in FLAS at district courts based on valuable empirical inputs collected from judicial officers/judges, regulators, LACs, beneficiaries, and women beneficiaries at special courts during empirical studies on FLAS in 2017, 2019 and 2023.

II Empirical studies on professional devotion of LACs at district courts in India

The University Grants Commission Research Award Empirical Research titled- “Impact Analysis of the Legal Aid Services Provided By the Empaneled Legal Practitioners on the Legal Aid System in the City Of Delhi: 2015-2017”⁵ (hereinafter Research of 2017), the ICSSR, New Delhi sponsored empirical research titled “An Empirical Study to Examine the Impact of the Legal Aid Services Provided by the

4 News Article “Legal services institutions should bridge gap of trust deficit among asses towards them: Justice UU Lalit” *Press Trust Of India*, Aug, 2 2022.

Available at: <https://www.moneycontrol.com/news/india/legal-services-institutions-should-bridge-gap-of-trust-deficit-among-masses-towards-them-justice-uu-lalit-8951631.html> (last visited on accessed on June 22, 2025).

5 Jeet Singh Mann “The UGC Research Award Empirical Research- “Impact Analysis of the Legal Aid Services Provided By the Empaneled Legal Practitioners on the Legal Aid System in the City Of Delhi” 2017-Primary data collected from 702 Beneficiaries, 173 Judicial officers/Judges dealing with legal aid cases; 11 Regulators of the District Legal Services Authorities (DLSA) and Delhi High Court Legal Services Committee; 174 LACs; and 1039 Women at Special (Fast Track Courts- dealing with women issues)and family courts, who were aware of FLAS but did not opt for the LAS for their disputes, from 11 Districts Courts⁶ and High Court of Delhi in Delhi.

Legal Aid Counsels on the Quality of the Legal Aid System in India” 2017-2019⁶ (hereinafter Research of 2019); and Department of Justice, Ministry of Law and Justice, titled “Empirical Research A Field Study to Evaluate the Efficacy of Access to Justice for Under Trials in Selective Prisons in the Specific States.” 2019-2023⁷ (hereinafter Research of 2023), to critically evaluate professional commitment and devotion of LACs based on identified parameters, have been conducted by the author.

Further, the University Grants Commission, New Delhi, Ministry of Education, Government of India, Indian Council of Social Science Research, New Delhi, Ministry of Education, Govt of India and Department of Justice, Ministry of Law and Justice, Government of India, after strict scrutiny by experts, have also approved reports of these field studies.

Identified indicators for assessment of professional commitments of LAC

LACs for this research paper also include JVs and RAs involved in providing legal aid services in civil and criminal matters to designated beneficiaries on the recommendations of District Legal Services Authorities (hereinafter DLSAs) at Districts and Taluka Legal Services Committees at Talukas-Sub-Division Courts and Central and State Prisons at districts.

All three research studies, 2017, 2019, and 2023, used specified indicators such as the professional commitment of LACs to the mandate of FLAS at criminal and civil courts and tribunals, objectives of LACs in associating with FLAS, availability of LACs for arguments at district courts and interaction with the beneficiaries and other relevant factors based on feedback from LACs, beneficiaries, regulators and judges, have been considered for critically evaluating the devotion of LACs towards FLAS.

6 Jeet Singh Mann “ICSSR, New Delhi sponsored empirical research-An Empirical Study to Examine the Impact of the Legal Aid Services Provided by the Legal Aid Counsels on the Quality of the Legal Aid System in India” 2019-Primary Data from 18 States-36 Districts (2 Districts in each State) clustered in six geographical zones of India. -7798 respondents consisting of 3029 legal aid beneficiaries, 609 Judicial officers/Judges, 1007 LACs, 33 Regulators/ Secretaries, and 3120 Women respondents at fast track courts dealing with women’s issues and Family Courts, who were aware of legal aid system but opted for paid Private Legal Practitioners (hereinafter PLPs) due to lack of commitments and competency of LACs. In addition to the primary data, the research collected additional primary data from 8539 female respondents who were unaware of FLAS.

7 Jeet Singh Mann “Department of Justice, Ministry of Law and Justice, “Empirical Research A Field Study to Evaluate the Efficacy of Access to Justice for Under Trials in Selective Prisons in the Specific States. 2023” Collected inputs from 159 Judicial Officers/Judges, 29 Jail Superintendents/ Jailors, Law/ Welfare Officers, 269 LACs, 98 Jail Visiting Advocates, 47 Prison Paralegal Volunteers (PLVS), Under Trial Prisoners (Male- 816; Female- 142; Total -958) and 13 Regulators/Secretary DLSAs, from 14 district courts of 7 States in India.

Scrutiny of professional commitment and devotion of LACs

In a plethora of judgments, the Supreme Court of India has acknowledged the significance of the professional commitment of legal practitioners. The Supreme Court of India in *J.S. Jadhav v. Mustafa Haji Mohamad Yusuf*⁸ has observed the following essential indicators of a noble legal practitioner:

Advocacy is not a craft but a calling, a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and the earnestness of endeavour are the two wings that will bare aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why the legal profession is regarded to be a noble one.

It is recapitulated that the devotion of LACs towards the mandate of FLAS is the hallmark of providing quality legal aid services. Commitments of LACs are also reflected by the fact that LACs associate themselves with the FLAS to get experience or consider it an employment opportunity or a platform to get some exposure or facilitate or support social and economically weaker sections of society. The quality of commitment and devotion of LACs is directly pro rata to the quality of FLAS and the beneficiaries' trust in legal aid services.

The paper based on primary data collected during research of 2017, 2019 and 2023 from the beneficiaries of legal aid services, LACs, regulators of legal aid services, and judges/judicial officers dealing with legal aid-related cases pending or decided by the judges at district courts in India, has evaluated the devotion and commitment of LACs. This paper has taken cognisance of the specific parameters of professional commitments of LACs, such as the rationale for joining FLAS, availability for arguments/hearing on the day fixed for trial and interaction with the beneficiaries for assessment of devotion of the LACs towards legal aid services for scrutiny of the LACs devotion.

Is the nature of LACs' empanelment pro rata to their nature of commitments?

There is a direct causal connection between the ad-hoc empanelment of LACs for FLAS and the lack of devotion of LACs to providing FLAS. The *ad-hoc* nature of the empanelment of LACs coupled with low and irregular payment of honorarium is also compared with a better quantum of honorarium involved in the private practice. In other words, LACs are paid mostly in stages as per the allotted legal aid cases, and the existing arrangement of FLAS dissuades LACs from committing a larger share of their time to the legal aid beneficiaries.

The correlation is visible from the valuable inputs recorded from LACs during Research in 2017, where 29.3% (51/174) of LACs were accessible for the FLAS part-time

basis. Further, 28.2% (49/174) of the LACs in the same research had ad-hoc commitments towards FLAS. In both categories, more than 57.5% (100/174) of the LACs had no full-time availability and commitments towards FLAS.⁹ The same trend is also evident from the other two field studies of 2019 and 2023. Approximately 63% (634/1007) LACs in 2019 and 51% (136/269) LACs in 2023¹⁰ were available for these services on a part-time and ad-hoc basis.

The judicial officers and regulators have also acknowledged the part-time and lack of devotion of LACs towards FLAS. As per the assessment of 75.1% (130/173) judicial officers in 2017¹¹ and the rating of the devotion of LACs 55% (332/609) in 2019,¹² the LACs are partly committed or have ad-hoc devotion to the causes of legal aid services. Further, 5% (52/609) of judicial officers/judges in 2019 considered that LACs were not at all devoted to the mandate of FLAS.¹³

Due to the nature of the *ad-hoc* assignments of FLAS, most of the LACs are very causal and hardly interact with the beneficiaries. Most of the LACs, as evident from the observations of the judges, regulators, and beneficiaries, want to attain the final disposition of the cases under FLAS as early as possible to claim suitable and timely honorarium. The outcomes and consequences of the cases under FLAS do not matter to the LACs for claiming benefits, including honorarium arising from the closure of a case allotted to LACs. LACs treat FLAS as an opportunity for exposure and employment. Therefore, the *ad-hoc* nature of the assignment, where there is uncertainty of allotment of FLAS cases at regular intervals to LACs, has been attributed to the low commitment and devotion of LACs, resulting in a trust deficit over FLAS.

Do LACs join the FLAS for social causes or get experience or employment opportunities?

The question of the motives of the LACs to join legal aid services is pertinent to reflect upon the commitment of such professionals. Therefore, it is crucial to explore and explain the rationale for LACs to join FLAS, whether they join the FLAS to facilitate the beneficiaries and the regulators or get some exposure or an employment opportunity to earn and learn professional skills. This research paper has examined inputs from judges, regulations, beneficiaries, and LACs to evaluate the rationale behind LACs joining FLAS.

As per the feedback from the LACs, most associate themselves with FLAS to serve the beneficiaries and legal aid system. About 59.2% (103/174) LACs in 2017 and, 81% (820/1007) LACs in 2019,¹⁴ and 57% (152/269) LACs in 2023 joined the legal

9 *Supra* note 5 at 264.

10 *Supra* note 7 at 74.

11 *Supra* note 5 at 136.

12 *Supra* note 6 at 231.

13 *Ibid.*

aid services to provide service to the poor/vulnerable/marginalised or poor people.¹⁵ Whereas 19% (33/174) LACs in 2017 firmly believed they joined the legal aid services for a good experience and exposure to court practices. The data of 2017 is also corroborated by the Research of 2023, where 22% (59/269) of the LACs who were straightforward revealed that getting experience was the primary motive for joining FLAS, and another 12% (32/269) per cent of LACs considered getting employment opportunity are the primary motive for joining LSA.¹⁶

However, the feedback recorded from other stakeholders, such as judges and regulators, has questioned the rationale of LACs for associating themselves to serve the FLAS. According to Research of 2017, 36.4% (4/11) of regulators considered that LACs join legal aid services to gain experience in courts, and the moment the LACs get some exposure and become confident in practice in courts, they depart from the legal aid institution.¹⁷

Further, approximately 36% (10/33) of regulators in 2019 believed LACs join the legal aid services to get some experience in courts, and another 36% (10/33) of Regulators in 2019 opined that getting employment in the form of an empanelled lawyer is the motive behind the LACs to join legal aid services.¹⁸ Therefore, any corrosion in the dedication of the LACs leads to the erosion of people's trust in legal aid services.

Judicial officers also support the observations of the regulators in Research of 2017. According to valuable inputs from 75.1% (130/173) judicial officers/judges' the LACs are partly committed/devoted to the causes of legal aid services and use the legal aid system as a transit and platform to gain experience and develop contacts, as a means of experimentation and survival benefits at the cost of the beneficiaries of legal aid services.¹⁹

The majority of the LACs depart FLAS after completing two tenures.

As already observed by the Judges dealing with legal aid cases and Regulators of FLAS, the majority of the LACs treat FLAS as employment and an opportunity to gain experience. It is also noticed from the primary data of Research of 2017, 2019, and 2023 that the majority of the LACs depart after gaining experience of two tenures (one tenure- three years) with the FLAS and starting an independent private practice.

14 *Id.* at 284.

15 *Supra* note 5 at 157.

16 *Supra* note 7 at. 73-74.

17 *Supra* note 5 at. 96.

18 *Supra* note 6 at. 159 .

19 *Supra* note 5 at. 136.

It is very significant that more than 83% (First Tenure 67.2%, 117/174 and Second Tenure 16.1% 28/174) LACs in 2017²⁰, 67% (First Tenure 40.9% 412/1007 and Second Tenure 26.4% 266/1007) LACs in 2019²¹ and 66% (First Tenure 113/269 42% and Second Tenure 64/269 23.8%) LACs in 2023²² of the LACs, were associated to FLAS for just two tenures of the empanelment.

It is also pertinent that a small number of LACs, 18% -an average of three research, continue to serve the FLAS after completing two tenure of empanelment. Therefore, more than 50% (an average of three field research) after the first tenure and 70% of LACs after completion of two tenures detach themselves from the FLAS after getting good exposure and training at FLAS. The data reiterates the observations of judges and regulators on LACs that most LACs often use FLAS as a transitioning platform for their careers in the legal profession. This also reflects a tendency among LACs to leave the program after a short period of one or two tenures. This negatively affects the quality of legal aid given to the applicants, as the more experienced LACs tend to drift away from the program.²³

Low quality of professional devotion by LACs.

The Research of 2017, 2019, and 2023 has also recorded valuable inputs from judges, beneficiaries, and regulators to assess the level of commitment and devotion of LACs towards the FLAS. As per the assessment of devotion of LACs by 75.1% (130/173) Judicial officers/judges in 2017²⁴ and the Devotion rating of LACs by 55% (332/609) Judicial Officers/Judges in 2019²⁵, most of the LACs were partly committed or have ad-hoc devotion to the causes of legal aid services.

The perspective of beneficiaries on the degree of devotion of LACs is hardly different from that of judges. Around 424/702 (60%) beneficiaries in the Research of 2017 found that LACs are not devoted to the causes of legal aid services.²⁶ Further, in the same research, while rating the commitment of LACs, 262/702 (37%) beneficiaries rated LACs as 'not devoted', 96/702 (14%) as a very hostile category, and 130/702 (18%) not at all committed category. A combination of partial devotion, non-commitment, and hostility towards the clients of legal aid services represents 130+262+96=488/702, 69% of the beneficiaries.²⁷

20 *Supra* note 6 at 162.

21 *Id.* at 257.

22 *Supra* note 7 at. 72.

23 *Supra* note 5 at. 258.

24 *Id.* at 136

25 *Supra* note 6 at. 231.

26 *Supra* note 5 at. 66.

27 *Id.* at 69

Based on primary data from Research of 2019, around 487/3029 beneficiaries (16%) considered the LACs not devoted. Around 5% of beneficiaries (136 out of 3029) even claimed that the LACs are hostile towards the primary objectives of the legal aid system.²⁸ The trend of lack of devotion also continues in research for 2023. While determining the standards of commitment of LACs for Research of 2023, approx. 39% (373/958) of male and female beneficiaries have rated the commitment and devotion of the LACs below standards and approx. 22% (210 /958) as far below standards.²⁹

It is also evident from the additional primary data on difficulties faced by beneficiaries, while availing FLAS, during Research of 2019, collected from six zones, that 374/3029 (12%) of beneficiaries have claimed that the lack of commitment of their LACs is the most critical issue they face.³⁰ Around 186/609 (31%) judicial officers in the research of 2019 also faced problems due to the lack of commitment of LACs.³¹

Now, this paper examines the availability of LACs for arguments/trials on the scheduled day and time and the interaction of LACs with the beneficiaries to assess the level of commitment of LACs towards FLAS.

III LACs unavailable for arguments and trial in FLAS cases

The availability of LACs for a court hearing regularly and interactions with the beneficiaries are very important attributes of the quality of commitment of LACs towards the fundamental objectives of FLAS. The recorded data of Research of 2017, 2019 and 2023 infers that most LACs are unavailable for hearing and arguments, and the regular interactions between beneficiaries and LACs are missing.

As per the considerate opinions of 51% (44/86) of Judges in the Research of 2017, the majority of LACs were unavailable for arguments in FLAS cases.³² Another 31% (186/609) of judges in the same research also felt that LACs lack fundamental commitments to the FLAS.³³ Around 54% (6/11) of Regulators in Research of 2017 concluded that LACs were not prepared for the arguments, and 36.9% (4/11) regulators also acknowledged the irregularities regarding late attending court proceedings by LACs.³⁴

Low commitment quality can also be observed from the nature of complaints received by regulators and judicial officers against LACs from the legal aid beneficiaries and

28 *Supra* note 6 at. 368.

29 *Supra* note 7 at. 58.

30 *Ibid.*

31 *Supra* note 6 at 248.

32 *Id.* at 217.

33 *Id.* at. 248.

34 *Supra* note 5 at 106

regulators from judges. A vast majority of complaints can be classified in terms of LACs not attending the court on time, LACs not interacting with their client/beneficiaries, LACs being absent from the court at the time of the hearing or deputing a junior to argue, and simply not prepared to argue.

Judges receiving complaints from beneficiaries.

Around 25% (15/60) of judges/ judicial officers in Research of 2019 also referred beneficiaries who complained about LACs not being available for arguments in court. In addition, 20% (12/60) judges/ judicial officers also reported that beneficiaries often complained about their respective LACs not raising good arguments.³⁵

Regulators receiving complaints from beneficiaries and judges

About 28.6% (2/7) of regulators in the Research of 2017 have also acknowledged complaints from judicial officers against the LACs regarding not being prepared for arguments. Another 42.9% (3/7), of regulators, also received complaints from the beneficiaries for late appearance in courts on the specified date and time. Further, 14.3% (1/7) regulators for seeking many adjournments and 14.3% (1/7) regulators for not interacting with clients, received complaints from beneficiaries of legal aid services.³⁶

About 30.8% (10/ 33) of regulators in Research of 2019 received complaints from the beneficiaries due to a lack of communication between beneficiaries and LACs. It is important to note that many beneficiaries during the course of this research believed that LACs do not interact with beneficiaries. Another set of complaints on late for court hearings from beneficiaries was received by 26.9% (8/33) of regulators in 2019.³⁷ Further, 42.9% 3/7 regulators in the Research of 2023 also received complaints regarding the low quality of arguments,³⁸ Being unprepared for arguments (18% 2/7), being late for court hearings (18% 2/7) and seeking frequent adjournments (18% 2/7) from the judges/judicial officers at district courts.³⁹ While responding to the issue of difficulties faced by the judges, and regulators while dealing with LACs, 27% (9/33) Regulators consider lack of commitment creates hindrances in the operations of FLAS,⁴⁰ and 53% (23/43) judges⁴¹ faced problems due to the absence of LACs during the trial process.

IV Low degree of interaction with the beneficiaries

A steady and regular interface between LACs and beneficiaries to discuss cases or disputes not only bridges the trust deficit but also promotes the mandate of the legal

35 *Supra* note 6 at. 220.

36 *Supra* note 5 at 103

37 *Supra* note 6 at 184

38 *Id.* at 172.

39 *Ibid.*

40 *Supra* note 6 at 208.

aid system in India. It is seen that LACs are hardly available for any briefing with their respective clients/beneficiaries on other days beyond the listing of cases at courts⁴².

The problem is not confined to a lack of interaction but is also related to the low duration of meetings between LACs and beneficiaries. According to the Research of 2017, 336/702, 47.9⁴³ per cent of beneficiaries complained that LACs did not explain the case status and the prospect of litigation. Further, 237/702, 34% of beneficiaries complained against LACs for not being keen to interact with beneficiaries. Further, 42%, 291/702 beneficiaries also reported no interaction with the LACs.⁴⁴

Further, while responding to the problems faced by the beneficiaries in the Research of 2023, 196/958 20% of beneficiaries blamed LACs for no interaction and 452/958, 47%⁴⁵ pointed out the unwillingness of the LACs as the major problems faced by them while dealing with FLAS.

The arguments of the beneficiaries are also corroborated by the jail authorities. Around 7/27 (25.7%) jail officers based on complaints received from beneficiaries in the Research of 2023, declared that LACs were not ready for argument, and another 6/27 (23%) of the jail officers also blamed LACs for lack of punctuality in attending FLAS cases.⁴⁶

Low duration of meeting with the beneficiaries

About 33% 316/958 of the beneficiaries in the Research of 2023 claimed to have met LACs for less than five minutes, and 13% 124/958 were able to meet their LAC for about 5-10 minutes. About 30% 285/958 of the beneficiaries in the research of 2023 mentioned that their LACs did not meet them or provide for any meeting time.⁴⁷

Therefore, it is observed that LACs, due to preoccupation with private practice and the nature of empanelment of LACs, do not interact with LACs regularly, and the interaction duration is just minimal. Non-availability of LACs on the scheduled day of trial, raising low-quality arguments, and lack of preparedness of LACs to make arguments before the designated courts are the major impediments to the restoration of trust of beneficiaries over the commitment and competency of LACs.

41 *Supra* note 5, at 128.

42 Meeting with at Courts premises on the date of listing of cases: 50%, 1342/2696- 2019- same in other research of 2017 and 2023.

43 *Supra* note 5 at 43.

44 *Supra* note 5 at 43.

45 *Id.* at 66.

46 *Supra* note 7 at. 202.

47 *Id.* at 50.

V preference to private practices over FLAS.

Considering the valuable inputs from judicial officers, regulators, and beneficiaries during the 2017 and 2019 research, it is recapitulated that the nature of the empanelment, incentives, and honorarium provided for FLAS, drive the LACs to private practice. The regulators of FLAS also consider that LACs prefer private practice over FLAS due to the financial benefits and quantum of returns involved in private practice. One out of eleven regulators in 2017 frankly accepted that LACs are preoccupied with their private practices and hardly have time for cases under legal aid services. According to the 2019 research, around 51.7% of the 17/33 regulators from the six zones blamed LACs for being occupied with their private practice matters and unable to interact with the legal aid beneficiaries.⁴⁸

According to the Research of 2017, 55.2% (387/702) of beneficiaries, when responding to a question on difficulties faced by them while interacting with the LACs, were of the view that the LACs are not so keen to interact with them and preoccupied with their private practices.⁴⁹

The observations of the beneficiaries and regulators by the Research of 2017 and 2019 are also corroborated by 48% (83/173) of judicial officers in 2017 and 28% (170/609)⁵⁰ in 2019 of judicial officers. According to feedback from judicial officers, LACs are preoccupied with their private practices and have hardly any time left for legal aid services. LACs are very casual in handling legal aid cases compared to their private cases, and legal aid cases often become their secondary objectives.

Further, while evaluating/rating the commitments of LAC based on part-time or full-time commitments, around 75% (130/173) judicial officers in 2017⁵¹ and 55% (332/609) judicial officers in 2019,⁵² were of the view that the majority of the LACs have part-time involvement in FLAS due to private practice of LACs and LACs also treat FLAS as a transit and platform to gain experience and develop contacts, as a means of experimentation and survival benefits at the cost of the beneficiaries of legal aid services.⁵³

Therefore, based on the valuable inputs from the stakeholders, it is logically concluded that most LACs consider access to the FLAs a short-term plan to gain experience and exposure and depart after one or two tenures. The preference of LACs for private practice is also due to the nature of ad-hoc empanelment, where there is no certainty

48 *Ibid.*

49 *Id.* at 190.

50 *Id.* at 222.

51 *Supra* note 5 at .136.

52 *Ibid.*

53 *Supra* note 5 at. 205.

of getting FLAS cases regularly to the LACs. Furthermore, the returns in the form of honorarium paid in stages have also contributed to the approach of LACs to prefer private practice for better returns in the long term.

VI LACs demand money from the beneficiaries to provide legal aid services

The services provided under the legal aid system are free of cost nationwide. FLAS are funded by NALSA and SLAS of their respective State. LACs get paid prescribed honorariums at various stages of proceedings to defend the interests of the beneficiaries. Beneficiaries are not supposed to remunerate LACs for their services under the legal aid system. Regulation 8 (16) of the NALSA Regulations 2010, amended 2018, clearly restricts the payment of any consideration to LACs by the beneficiaries for availing of FLAS.

Demanding illicit money from the beneficiaries is unlawful and goes against the mandate and spirit of the legal aid system in India. According to the three field studies, the beneficiaries were compelled to compensate their LACs before the commencement of trial or suits, application submission, or other litigation stages.

Feedback from beneficiaries

According to the findings of the 2017 Research, for 260/702, 37%⁵⁴ of the beneficiaries, the LACs demanded money to provide legal aid services. Around 16% of the beneficiaries (112/702) also filed formal complaints against demanding money by LACs.⁵⁵ During Research of 2019, approximately 16.30% of beneficiaries (493 out of 3029) responded that their LACs often demand money before or after every court hearing.⁵⁶ This lower percentage of beneficiaries responding to the issue of LACs demanding money can be attributed to the insecurity or fear that their LACs might desert their cases or be withdrawn from the cases, after filing complaints for having demanded money, by legal aid Authorities.

The Research of 2023 is also not different from the other two field studies. A majority (43% +10+28), 81%, 90/111-beneficiaries claimed that LACs demanded money for filing bail applications and procuring documents and other services.⁵⁷

54 *Id.* at 46.

55 *Id.* at 56.

56 Responses recorded in the East Zone show that 28% of beneficiaries affirmed that their respective LACs demanded money from them to attend the court. In a similar trend, 21% of beneficiaries in the Central Zone, 19% in the West Zone and 15% in the North Zone responded affirmatively to the point that their LACs demanded money for conducting their case or attending the court proceedings on their behalf. The menace of corruption in the form of LACs illegitimately demanding money from their beneficiaries has thus been reported by the beneficiaries from all six zones.

57 *Supra* note 7 at 56.

Feedback from judges, jail administration and regulators

Further, judicial officers and regulators had also received complaints from beneficiaries, and judicial officers have also complained to regulators for having demanded money by the LACs. Around 31.6%, 25 out of 79⁵⁸ judges in 2017 and 33%, 20/60⁵⁹ of judicial officers reported receiving complaints from beneficiaries. It was also noticed that 9 out of 43 (20.9%) judicial officers complained to the regulators for taking necessary actions against LACs.⁶⁰

Regulators around 90.9% (10/11) in 2017, 39% 13/33⁶¹ across the six zones in 2019 and 69% 6/13⁶² in 2023 have acknowledged having received complaints from the beneficiaries regarding LACs demanding money for defending the beneficiaries’.

Additional information from 9/16 (84.2%) jail officers in Research of 2023 also reported grievances related to the demand for money by LACs from beneficiaries. About two-thirds (65.5%) of the jail officers also reported such grievances to the regulators of FLAS to take necessary actions against LACs and such unfair practices.⁶³

According to the perception of LACs, the nature of empanelment and the existing payment of the honorarium system are also responsible for such a situation. Some of the LACs, off the records, during all field studies, while justifying the demand for money from the beneficiaries, accepted that they demanded money from the beneficiaries for the services rendered. As per LACs, an LAC is required to make initial payments for the relevant documents and charges, and the DLSAs make no advance payments when allocating cases to the LACs. After completion of a case, bills and forms are submitted to the DLSAs for claiming honorarium. Delayed honorarium payment is also considered another rationale for demanding money from beneficiaries.

It is also observed that the LACs’ demand for money from the beneficiaries is a rampant problem. The NALSA Regulations impose restrictions on demanding money, but the problem of demand for unlawful consideration from the beneficiaries is perpetuated. The issue of money demand has also been acknowledged by all FLAS stakeholders, such as beneficiaries, LACs, regulators, and judges. Money demanded is serious misconduct on the part of LACs; therefore, any justifications for delayed payment and ad-hoc empanelment cannot justify the extortion of money from beneficiaries of FLAS at any stage of the litigation process.

58 *Supra* note 5 at. 130.

59 *Supra* note 6 at. 220.

60 *Supra* note 5 at. 129.

61 *Supra* note 6 at. 173.

62 *Supra* note 7 at. 184.

63 *Id.* at 162 .

VII Remand advocates not available at the time of production of beneficiaries before the magistrate

According to the Policy of NALSA Regulations 2010 and NALSA Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage 2019, RAs, which are also part of legal aid services at the district level, are required to be present and take care of accused persons at the time arrest by police and first-time production before Magistrates/Session Judges for remand.

Based on primary data from the Research of 2023, around 78% (747/958)⁶⁴ of the beneficiaries claimed that remand lawyers were absent during their first appearance/production before a magistrate or session court for remand. Only 13% of respondents were the lawyers present before the magistrate. This observation is also a matter of concern, as RAs are hardly seen at the appropriate criminal courts or sessions courts at the time of production of an accused person's first time for remand.

VIII No proper records of complaints for the dearth of commitments against LACs

During all three field studies of 2017, 2019 and 2023, while examining the records of complaints for demanding money, lack of availability of LACs for interaction with beneficiaries, lack of availability of LACs for arguments at courts, *etc.*, filed against LACs by the beneficiaries and judges, it is observed records of complaints against LACs is hardly appropriately maintained. It has also been noticed that complaints are confined to the general correspondence of allocation of cases to LACs. No specific file or records of formal and informal complaints filed against LACs by beneficiaries, judges or other persons are seen to be maintained at the District Legal Services Authorities.

Therefore, it becomes complicated to determine the number of complaints filed against each LAC by the beneficiaries and judges and the action taken by the regulators of legal aid services against LACs to assess the degree of devotion of an LAC. Further, most judges and beneficiaries were not informed of the details of actions taken against the LACs by regulators or other agencies regulating legal aid services.

Monitoring the professional commitments of LACs in the form of availability for the assignments of FLAS is one of the hallmarks of ensuring accountability for low-quality commitment and devotion of LACs towards legal aid services and enhancing the quality of legal aid services regularly. Regulators of the legal aid services system are expected to maintain proper records of cases allotted to the LACs, the performance of LACs and the commitments of LACs to evaluate the commitments and devotion of LACs and suitability of LACs for empanelment of legal aid services in future.

64 *Id.* at 42.

IX Final Thoughts: Findings and recommendations

On the Recommendations of Research of 2017, the NALSA Legal Aid Défense Counsel System 2022, empanelling LACs on a tenure basis with a fixed monthly honorarium on a trial basis in criminal matters only, has been implemented in selective districts. The Scheme has restricted private practice for such defence counsels. The Scheme of 2022 has not been introduced in civil matters at civil courts, family courts and other courts.

After critically examining the primary data and analysing the valuable inputs from beneficiaries, judges, regulators, and LACs during the Research of 2017, 2019, and 2023, it is observed that empanelment is directly proportionate to the devotion of LACs. LACs, due to the *ad-hoc* nature of empanelment, have part-time commitments to the FLAS and consider FLAS as a platform for employment and gaining experience. LACs demand money from beneficiaries, whereas free services are supposed to be provided by the LACs. Because of high financial returns in private practice, LACs prefer private practice over FLAS.

The LACs accord FLAS as the last priority, and there they are hardly visible for supporting beneficiaries at police stations and Criminal courts for the remand of accused persons unable to engage any legal practitioners. The low quality of interaction of LACs with the beneficiaries also reflects the lack of commitment and devotion of LACs towards FLAS.

The low quality of professional commitments of LACs has contributed to the trust deficit between the beneficiaries or people entitled to FLAS and the existing legal aid system. Taking into consideration the findings and observations of the field studies, the following suggestions are recommended to ensure the accountability of the lack of devotion and commitments of LACs at district courts, and to empower the professional commitments of LACs and restore beneficiaries' trust in legal aid services with a long-term approach.

Recommendations:

- i. Empanelment of LACs on a tenure basis should also be extended to all civil courts, family courts and other tribunals. The LACs should also be barred from private practice. In order to motivate and retain talents in the long term, the legal services authorities/committees should also introduce facilitative terms and conditions of the empanelment and incentives for better performance and recognition of commitment and devotion to the services of the LACs.
- ii. Monitoring of Cause Lists of FLAS Cases involving LACs: Punctuality and commitment are essential for FLAS. To improve the effective availability of LACs for FLAS cases, the Monitoring and Mentoring Committees have been created under para 10 of the NALSA (Free and Competent Legal Services)

Regulations 2010. The Said Committee should also be empowered to monitor the daily cause list of FLAS cases and ensure accountability for failures/absentees of LACs.

The registry of district courts/ tribunals, high courts and the Supreme Court should develop a mechanism to provide some identity marks to legal aid cases/petitions/appeals/applications/*etc*, for listing before courts. The office of DLSAs, including Taluks LSC, high court legal services committees and The Supreme Court Legal Services Committees, must monitor daily cause lists involving LACs at respective courts for availability and non-availability of LACs on designated dates and times and also to record the progress in the litigation process.

Therefore, there is a need to include appropriate changes in the NALSA Regulations 2010 and other Regulations, and High Court Rules and Supreme Court Rules to provide specific identification to FLAS cases for effective monitoring and seeking accountability of failures/absentees of LACs. It is also suggested that an AI system be devised to regulate and adequately monitor the cause list for LACs.

- iii. Introduction of Feedback System: To deal with impediments in the operations of FLAS faced by the LACs, judges/judicial officers, regulators and beneficiaries, there is a need to institute an annual feedback system from LACs, beneficiaries and judicial officers/judges for the advancement of FLAS.
- iv. To control the arbitrary demand for money and other considerations from beneficiaries by the LACs, it is crucial to seek an undertaking from the LAC to ensure not to demand money from the beneficiaries, and strict action should also be taken against the defaulters. Therefore, NALSA Regulations and other rules and regulations enacted by the other agencies must include such prohibition and undertaking in respective rules and regulations at the legal aid services system at taluka, district, high courts and the Supreme Court Levels.
- v. To control the lack of commitments of LACs, it is also suggested that there should be some penalty for sub-delegation/abdication/surrendering duties of LACs to others, and appropriate changes must also be included in the NALSA Regulations 2010.
- vi. Induction of System of Video Conferencing facilities between Jails and DLSAs: Quality of interaction between LACs and Under-Trial Prisoners and other prisoners is missing by and large; therefore, in order to deal with the communication barriers between beneficiaries and other prisoners and legal aid services institutions at districts, it is recommended that a system of Video Conferencing connecting prison legal aid clinics, with the DLSAs and Taluka, must be installed.
- vii. Regular Online/Offline Interaction with Beneficiaries: The LACs must interact regularly with the jail administration and prisoners. The Member Secretary of

the DLSAs should also interact with jail administration and prisoners monthly through video conferencing facilities at jails and beneficiaries to revive the trust deficit in legal aid services and fulfil the mandate of legal aid services in India.

viii. Effective grievance redressal mechanism in legal aid services:

To rightly address the concerns of the LACs and beneficiaries, every High Court in their respective states^{*} and DLSAs must ensure a full-time grievance redressal mechanism, maybe a special/separate department or division to monitor and deal with grievances of beneficiaries and LACs. The proposed grievance redressal forum should also be composed of independent external experts from other district courts or departments. NALSA should take a lead role in formulating a scheme for grievance redressal for all the stakeholders involved in FLAS.

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