

Directorate of Prosecution

The criminal justice system in India is responsible for prosecution of offenders on behalf of victims. In 1899, the district court housed in the old building at Kashmere Gate moved to the Hindu College building, from where it functioned till 1958. A small number of criminal courts functioned at Parliament Street and Shahdara. In 1977, the criminal courts were shifted to Patiala House. The Karkardooma court complex was established in 1993 and the courts functioning at Shahdara were shifted there. Labour courts and industrial tribunals having jurisdiction all over Delhi are also housed at the Karkardooma complex. This is where the Directorate of Prosecution functions.

Directorate: A Bird's Eye View

In Delhi, the Directorate of Prosecution functions independently, managed by the Home Department and the Principal Secretary (Home). The Delhi Government heads it. The Directorate controls the prosecution of criminal cases both at Sessions as well as Metropolitan Magistrate Court levels in co-ordination with the police. Sessions courts can give any sentence permissible by the Constitution but have to take confirmation from the High Court to award a death sentence, whereas Courts of Metropolitan Magistrates can give sentences to a maximum of seven years and/ or a fine of any amount.

Delhi is divided into ten police districts. Cases pertaining to North, Northwest, West and Central districts are heard at Tis Hazari. East and Northeast district cases are at Karkardooma Courts, and Patiala House Courts deal with cases of New Delhi, South Delhi, Airport and Southwest districts. Public prosecutors appointed by the government do the criminal prosecution. They are supposed to play an impartial and neutral role and prosecute all persons who have been charge-sheeted by the police.

Organizational Structure and Responsibilities

The Directorate is classified into three sections, namely, prosecution, establishment and administration, and accompanied by the accounts section. It is headed by a Director assisted by a Public Prosecutor. There are 12 Chief Prosecutors under the Public Prosecutor, accompanied by 71 Additional Prosecutors/ Senior Prosecutors and 120 Prosecutors.

The foremost objectives of the Directorate include fair trial of the accused/ prisoners. Prosecuting officers assist law courts in disposal of cases. The Directorate aims at prompt, efficient and speedy service to the litigant/ aggrieved persons for achieving the ends of justice, ensuring judiciousness and speedy legal remedies. The main functions of the Directorate include controlling the prosecution of criminal cases both at Sessions as well as Metropolitan Magistrate Courts. Cases registered and investigated by the police are referred to the prosecution agency for scrutiny, and after their institution in the courts, the Assistant Public Prosecutors/ Additional Public Prosecutors conduct the prosecution. The major functions are:

- **Assistant Public Prosecutors** - Assistant Public Prosecutor Officers scrutinise charge sheets prepared by the investigating agency and submit discharge/ acquittal. They evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts of Metropolitan Magistrates.
- **Additional Prosecutors** - Additional Public Prosecutors conduct cases in Sessions Courts
- **Chief Prosecutors** - Chief Prosecutors supervise the work of Assistant Public Prosecutors in the Courts of Metropolitan Magistrates
- **Public Prosecutor** - Public Prosecutor is responsible for supervision of prosecution work conducted by Additional Public Prosecutors in the Sessions Courts

- **Director of Prosecution** – The Director of Prosecution is the Head of Office. The Director of Prosecution looks after the Establishment and Accounts Branches and exercises overall control over officers of the Directorate

Apart from the prosecution section, there are 10 employees in establishment and administration as well as accounts. There are 260¹ sanctioned posts in the Directorate, but only 178 employees - 82 posts are vacant. As there is an increase in instituted and pending cases, there has always been a shortage of prosecutors. However, 46 new prosecutors were hired in 2005.

Cases with the Directorate: A Status Report

The status of instituted and disposed cases in the Metropolitan and Sessions Courts is shown in Table 1. Conviction rates have been abysmally low. A number of court judgements have emphasised that the prosecutor is a 'minister of justice' who should place before the court all evidence in his/ her possession, whether in favour of or against the accused. This is seen as proper prosecution, as opposed to single-minded persecution in seeking a conviction regardless of the evidence.² However, most of the time, this motive is misinterpreted and prosecutors show no interest in winning cases in favour of their client.

Table 1: Status of Cases Instituted and Disposed

Year	Courts of Metropolitan Magistrate			Session Courts		
	Cases Filed	Cases Disposed	Conviction Rate %	Cases Filed	Cases Disposed	Conviction Rate %
2003	37,291	26,776	49	4,020	3,866	31
2004	35,535	26,663	35	4,915	3,836	35

Source: Government of NCT Delhi. 2004. Annual Report of District Courts 2004.

The Directorate reduced pending cases by 0.31% cases during 2004. Table 2 enumerates the number of pending cases in Sessions and Metropolitan Courts as on June 2005.

Table 2: Pending Cases with Sessions and Metropolitan Courts

Nature of Suits/Appeal	No. Of Suits/Appeal			
	Tis Hazari Courts	Patiala House Courts	Karkardooma Courts	Total
Under Section 302 I.P.C.	597	288	267	1,152
Sessions Trials other than Murder Cases	2,336	1,423	1,150	4,909
Criminal Appeals	167	604	118	889
Criminal Revisions	523	574	195	1,292
Narcotic Drugs and Psychotropic Substances	629	340	215	1,184
TADA	3	3	-	6

Essential Commodities	-	8	7	15
Corruption Cases	894	197	15	1,106
Motor Accident Claims Tribunal	-	87	-	87
Miscellaneous	80	36	1,590	1,926
Total	5,229	3,560	3,767	12,566
Pending Cases with the Metropolitan Magistrate				
Police Challans	94,174	12,688	26,139	1,33,001
Complaint Cases	49,929	1,11,538	47,250	2,08,717
Other Act.	8,925	9,829	4,589	23,343
Total	1,53,028	1,34,055	77,978	3, 65, 061

Source: Government of NCT Delhi. 2004. Annual Reports of District Courts 2004

Financial Allocations

Budget estimates and actual expenditure of the Directorate for the past five years has been consistent throughout the period. Table 3 depicts estimates and expenditure of the Directorate in the Tenth Five Year Plan (2002-07).

Table 3: Budget Estimates and Expenditure (Rs in lac)

Year	Budget Estimate		Revised Budget Estimate		Actual Expenditure	
	Plan	Non-Plan	Plan	Non-Plan	Plan	Non-Plan
2000-01	10	394	5	313	-----	312
2001-02	10	405	5	312	-----	308
2002-03	10	335	10	314	8	310
2003-04	30	440	23	315	23	310
2004-05	30	360	30	331		
2005-06	40	403				
Total		2,467		1,658		1,271

Source: Government of NCT Delhi. Data abstracted from the Detailed Demand for Grants for the years of 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06.

Analysing budgets in the light of cases instituted, disposed and pending reveals interesting facts. If we consider that there are no pending cases, The Directorate spent Rs 806.50 per case in 2003. Out of 41,311 instituted cases in the Courts that year, 30,642 were disposed of, therefore 10,669 were left pending for the next year. A total of 40,450 cases were filed in 2004, but the total number of cases in Courts became $40,450 + 10,669 = 51,119$. Thus money spent on each case was Rs 705.50, which should have been Rs 891.60 if there were no pending cases. Money spent in each case out of 10,669 cases pending from 2003 is $Rs\ 806.50 + Rs.705.50 = Rs\ 1,512$. If Rs 1,512 is spent on a case that goes on for 2 years, then the money spent on that case will increase to Rs 4,536 if the case goes on for 6 years, which is the average time for a court case in India. If

we extrapolate the situation to all the cases, we can only imagine the drain of resources. Table 4 illustrates annual approved plan outlay and expenditure of the Directorate over the years.

Table 4: Approved Plan Outlay and Expenditure (Rs in lac)

Year	Approved Outlay	Revised Outlay	Expenditure Till February	% w.r.t BE
2002-03	10	10	3.99	39.90
2003-04	30	22.95	22.93	76.43
2004-05	30	30	23.15	--
2005-06	40	--	14.06 (August'05)	35.15

Source: Government of NCT Delhi. Data abstracted from the Annual Plans: Plan Outlay and Expenditure for the years of 2002-03, 2003-04, 2004-05, 2005-06.

Problems and Suggestions

The Directorate's problems are manifold. There are only 120 sanctioned posts of Assistant Public Prosecutors. They are required to conduct cases in Metropolitan Magistrate Courts. In 2003, there were 37,291 cases instituted in these courts by the investigating agencies, therefore there were 311 cases per sanctioned post, excluding the pending cases that are an additional burden. To make matters worse, there are around 30 vacant posts. The number of cases per sanctioned post during 2004 dropped to 296, but this was only due to fall in the number of cases instituted. Similar is the case with Additional Public Prosecutors who conduct cases in Sessions courts. Every post has a larger number of previously pending cases. It is evident that the distribution of cases is not only skewed but also creates problems of corruption, injustice and delay in provision of justice. As they say, justice delayed is justice denied.

The appointment of prosecutors is also a grey area; politicians, bureaucrats and big lawyers heavily influence the recruitment process. Even though there are many regulations regarding the appointment process, these are often overridden by the Executive, which would much rather have its preferred choices as ad hoc appointees. Prosecutors should be insulated from political pressure and an incentives-based performance approach should be emphasised. Internal audit mechanism to evaluate the standards on which the case was fought should also play a significant role in increasing the overall quality of prosecution.

Delhi Legal Service Authority

Article 39A of the Constitution of India ensures that the state will secure the operation of legal system and promote justice on the basis of equal opportunity, providing free legal aid by suitable legislation or schemes. This will ensure that opportunities for justice are not denied to any citizen by reason of economic or other disability. Legal aid strives to ensure that equal justice is made available to the poor, downtrodden and weaker sections of society.

Many times, due to below par economic reasons, one cannot afford to pay the cost associated with the prosecution of a case. In such circumstances, one is entitled to receive legal aid support. The support may be in the form of exemption of court fees and having the court appoint and pay the advocate's charges. Aid could be in the form of reimbursements or grants before the prosecution of the case, depending on the arrangements of the State.

To achieve this objective, the Delhi Legal Service Authority (DLSA) was established under the Legal Service Authority Act 1987. The main motto of this Authority is "Access to Justice for all." The goal is to secure justice for the weaker sections of society, particularly the poor, downtrodden, socially backward, women, children, and handicapped.

Acts and Laws

In 1987, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced in November 1995 after certain amendments therein by the Amendment Act of 1994. The Act was enacted to effectuate the constitutional mandate enshrined under Articles 14 and 39A of the Constitution of India. The apex body National Legal Services Authority (NALSA) was constituted in December 1995. A nationwide network has been envisaged under the Act for providing legal aid and assistance. It was responsible for disbursing funds and grants to state legal service authorities and NGOs for implementing legal aid schemes and programmes.

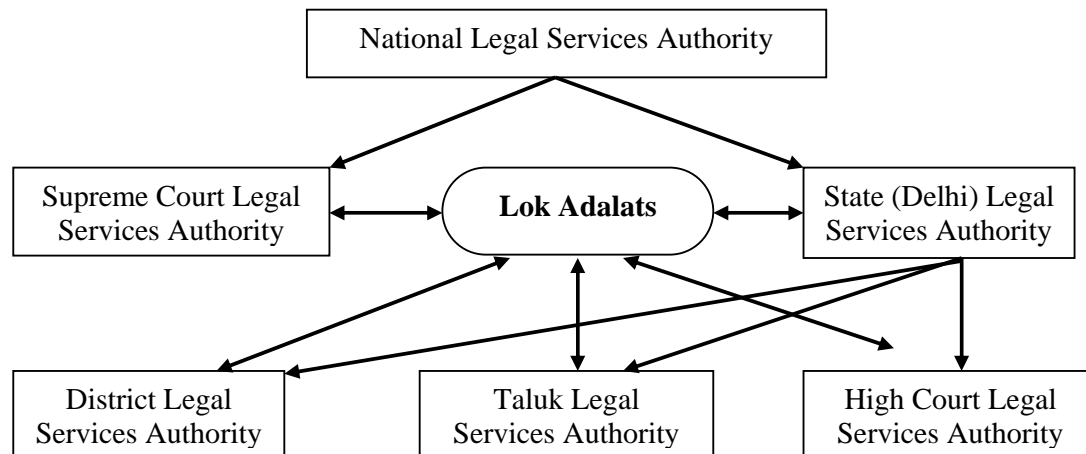
In every state, a State Legal Services Authority is constituted to give effect to the policies and directions of the central authority (NALSA) and to give legal services to the people by conducting Lok Adalats in the states. The Chief Justice of the State High Court, also its Patron-in-Chief, heads the State Legal Services Authority. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

Functions and Responsibilities

The main functions of the Delhi Legal Service Authority are to give effect to the policy and directions of the National Legal Services Authority. It is responsible to provide legal service to persons who satisfy criteria laid down under this Act, conduct Lok Adalats for High Court cases as well as undertake preventive and strategic legal aid programmes.

Figure 1 depicts the working of legal services authority in India.

Figure 1: Working of Legal Service Authority in India



The Authority constitutes of a Chief Justice of High Court, a serving or retired High Court Judge to be nominated by the Governor, and other members possessing such experience and qualifications as prescribed by the state government. It should consist of a member secretary and other members including administrative employees. The Authority also includes ex-officio members, nominated and co-opted members.

Programmes and Services

The DLSA provides legal services through two main processes, namely, legal aid activities conducted by the Authority and through Lok Adalats.

Legal Aid Activities

The Authority provides legal aid and services to people who cannot afford it. Every person who has to file or defend a case shall be entitled to legal services under the Act if that person is:

- A member of a scheduled caste or scheduled tribe
- A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution

- A woman or a child
- A mentally ill or otherwise disabled person
- A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster
- An industrial workman
- In custody, including custody in a protective home, or in a juvenile home, or in a psychiatric hospital or psychiatric nursing home
- A person whose annual income is less than Rs 50,000 or such other higher amount as may be prescribed by the State Government.

When a person fulfils all the above criteria then he/ she is allowed to file an application that is scrutinised. Once the application is found valid, the applicant is provided with an advocate and other court fees. The authority provides various legal services to underprivileged sections as discussed hereunder:

- Legal aid counsel scheme in 80 Courts of Metropolitan Magistrates where special executive magistrates and remand advocates have been appointed to take up and defend the cases of arrested persons. The Authority has a panel of 276 advocates
- 17 jail-visiting advocates who visit different jails regularly on fixed days of the week to help poor and unrepresented inmates to give aid and advice, file any bail/ parole application and appeal(s) etc
- Registered NGOs that work in cooperation with the Authority and bring legal services to people who need it the most
- 28 legal aid centres in different parts of Delhi to educate the general public about their rights and procedure to get free legal aid
- Marriage and family counselling centres being run by the Authority have become extremely popular. It attempts to persuade parties to sort out their disputes and differences without recourse to litigation

Lok Adalats

Lok Adalats evolved as a part of the strategy to reduce the heavy burden on the courts and give litigants some relief. By the Legal Services Authorities (Amendment) Act 1994 effective from November 1995, Lok Adalat settlement is no longer a voluntary concept but has gained statutory and recognised character. A Lok Adalat has jurisdiction to deal with all matters. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by Lok Adalats and attempts to decongest the courts.

According to the Act, the central, state, district and *taluka* legal services authority are responsible for organising Lok Adalats at particular intervals and places. The conciliators are retired judicial officers and other persons prescribed in consultation with the state government. The award given by the Lok Adalat is deemed as a decree of the Civil Court and shall be final and binding on all parties to the dispute.

If the Lok adalats are temporary, then DLSA sets the date of hearing of the cases. Advocates are hired from a panel selected by the High Court Committee consisting of 276 advocates. Any advocate with a minimum three years of experience can apply for these jobs and their application, once scrutinised by the High Court, is selected for fighting cases. The list of advocates is then sent to DLSA. The payment that these lawyers get are quite low. A DLSA lawyer gets Rs 300-600 per hearing for a criminal case and Rs 1,000-9,000 per case.

Types of Lok Adalats and Performance

There are various types of Lok Adalats in the judicial system. The DLSA has set-up permanent and continuous Lok Adalats in government departments and statutory bodies in Delhi. The insurance companies have provided space and infrastructure to the Authority for setting up

permanent and continuous Lok Adalats to handle Motor Accident Claim Tribunal (MACT) cases. In all, 7 MACT permanent Lok Adalats have been functioning regularly and 1,112 cases have been settled in these Lok Adalats. Amounts to the tune of Rs 23 crore have been awarded to victims of accident and/ or their families. The state government has already established nine Lok Adalats and proposes to constitute four more in Delhi. They play an important role in minimising huge backlog of cases in the courts, saving time and resources.

The number of cases settled by Lok Adalats increased from 4,027 in 1999-2000 to 6,852 in 2001-02.³ However this number is not much of a consolation when we compare cases pending with High Courts – it is indicative of poor and inefficient functioning of Lok Adalats in the city. Courts of Metropolitan Magistrate and Sessions Court combined have more than 3.5 lac cases pending. This highlights major inadequacies and inability of Lok Adalats in addressing the problem of delay in provision of justice to all, irrespective of their economic and social class.

The other major drawback in the existing scheme of organisation of Lok Adalats is that it is mainly based on compromise or settlement between parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the courts or parties are advised to seek remedy in the courts. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given the power to decide cases on merits in case parties fail to compromise or settle, this problem will be tackled to a great extent.

Finances

The Delhi Legal Services Authority gets grants from the National Legal Service Authority (NALSA) and its income also constitutes all the fines and penalties on individuals for breaking rules and regulations and committing other crimes. Apart from grants from NALSA, the Authority demands funds from the Delhi Government as well. Budget estimates and actual expenditure of the Authority are enumerated in Table 5.

Table 5: Budget Estimates and Actual Expenditure (Rs in lac)

Year	Budget Estimates	Revised Budget Estimates	Actual Expenditure
2000-01	78	53	52
2001-02	66	58	65
2002-03	65	67	66
2003-04	54	60	58
2004-05	54	67	
2005-06	86	--	

Source: Government of NCT Delhi. Data abstracted from the Detailed Demand for grants for the years of 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06.

Problems and Drawbacks

The basic problem faced by people is access and then delay in the provision of justice. The number of pending cases is a testament to that. Grants are given to all the state legal service authorities by NALSA. It is seen that grants to the state authority have varied over the year, suggesting that they were either inappropriately used or not utilised. It is believed by NALSA that the state authority is not sharing its vision of increased access of justice to people and provision of free legal aid. Even existing data on the number of beneficiaries of legal aid may be inflated and unreliable. Therefore, assumption that there has been a shift away from the beneficiary of legal services to the institution dispensing legal services appears valid.

A sizable portion of the budget of the authorities is spent on staff salaries and maintenance of the establishment. One of the major problems with the authority is its bureaucratic attitude. A person has to run from pillar to post to get legal aid from the organisation.⁴ People also face a lot of harassment due to rampant corruption, where DLSA lawyers are bribed for losing the case

against richer parties, and there exists no mechanism to monitor such situations or to even regulate the panel of advocates.

Recommendations

To make prosecution more reliable and credible, it is necessary that an internal evaluation be done of the parameters on which cases are fought. As Authority deals with underprivileged sections, it is important that cases are defended in such a way that the guilty party is convicted. Oversight committees for evaluating cases that were lost will check the quality of prosecution.

Unspent funds could be used to meet the hidden costs of litigation. While legal aid programmes may be used to pay court fees and meet the costs of legal representation of obtaining certified copies etc., it usually does not take into account bribes that are paid to the court staff, extra fees paid to the legal aid lawyer, cost of transport to the court, bribes to be paid to policemen for obtaining copies of depositions and the like, or to prison officials for small favours. As a result, legal aid beneficiaries do not get services for free after all.

There is a need for better regulation by the National Legal Service Authority. Better incentives based on performance can actually increase the speedy provision of justice. There is no monitoring of the capabilities of lawyers hired by the Authority. This is important as these advocates are fighting cases for people who cannot afford legal services. Thus if they are denied justice, it would defeat the purpose of forming legal service authority. To meet this challenge, the Authority should encourage pro-bono work by more renowned and successful lawyers. The Authority should act as a facilitator in making the cases of the poor reach lawyers who are beyond their reach. This can be done by giving incentives like award prizes and chambers for pro-bono lawyers.

One of the major problems indicated by Justice B.A. Khan, Delhi High Court Acting Chief Justice and Executive Chairman of DLSA, is lack of infrastructure at DLSA. It is a major bottleneck in the optimum utilisation of the institution.⁵ Also, lack of funds can be a hindrance in the smooth and efficient functioning of the Authority. This can be resolved by persuading some of the State's Members of Parliament to release some amount from their MP Local Area Development Fund for providing infrastructure and staff to the Authority. Every state authority should also have a conciliation centre for better and faster settlement of cases.

--With Inputs from Maxwell Nagpal

Notes

¹ Government of NCT Delhi. 2005. *Census of Employees of Government of Delhi & Autonomous Bodies 2004*. Directorate of Economics and Statistics.

² Batra, Bikram Jeet. 2005. *Public Prosecution – in Need of Reform*. India Together. Available at <http://www.indiatogether.org/2005/jul/gov-prosecute.htm#continue>. Accessed on 10 October 2005.

³ Website of Law, Justice and Legislative Affairs <http://law.delhigovt.nic.in/>

⁴ *The Hindu*. 2003. *Senior Citizen's Long Wait for Justice*. 20 February

⁵ *The Hindu*. 2005. *Reach out to the Poor, and get them justice*. 26 August

References

Government of NCT Delhi. 2004. *Annual Report of District Courts 2004*

Government of NCT Delhi. 2001. *Detailed Demand for Grants for 2001-02*

Government of NCT Delhi. 2002. *Detailed Demand for Grants for 2002-03*

Government of NCT Delhi. 2003. *Detailed Demand for Grants for 2003-04*

Government of NCT Delhi. 2004. *Detailed Demand for Grants for 2004-05*

Government of NCT Delhi. 2005. *Detailed Demand for Grants for 2005-06*

Government of NCT Delhi. 2002. *Annual Plan 2002-03: Plan Outlay and Expenditure*. Department of Planning

Government of NCT Delhi. 2003. *Annual Plan 2003-04: Plan Outlay and Expenditure*. Department of Planning

Government of NCT Delhi. 2004. *Annual Plan 2004-05: Plan Outlay and Expenditure*. Department of Planning

Government of NCT Delhi. 2005. *Annual Plan 2005-06: Plan Outlay and Expenditure*. Department of Planning