Convergence in the Practice of Legal Aid to Improve Access to Justice

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Saurabh Sood¹

Abstract

This essay locates legal aid as an opportunity to realize the need to improve access to justice in India by converging state and non-state practices of legal aid. Its relevance is argued through the socialisminspired welfare mandate of the Indian state and well-established constitutional prescription to promote equality of opportunity. In doing so, it asks whether increase in access to justice for the marginalized sections in the society can be achieved through the convergence of the legal service authorities, law schools and non-governmental organizations (NGOs) wherein convergence has been defined as the joint effort of the above-mentioned actors to conduct an event/programme or any activity that falls under the purview of legal aid. To generate evidence on the same, I employ the text analysis technique on data obtained from the quarterly publication of National Legal Services Authority (NALSA) called *Nyayadeep*. Results show that such convergence is a possibility within the current policy framework. The geographical spread of converging activities is highly concentrated, with a reported increase in collaborative engagement in 2016 from 2015. Public legal education is found to be the most frequently occurring theme on which convergence occurs. This exploratory work addresses the critical gap of literature on the nature of interaction between policy actors in the domain of practice of legal aid and highlights research needs that may inform further work on the topic.

Introduction

Several reasons have been cited to make the case for legal aid in India. These can be divided into two sets of views which suggest prevalence of unequal access to legal procedures. On one extreme lies the people with no access to courts, people who are deprived of access to justice and are therefore in need of aid that addresses the access issue. On the other extreme lies citizens who approach courts but lack adequate means to see through their cases due to the issue of resource constraints. Further, there are also people who lie somewhere in between this continuum. This differing need for aid is also sometimes referred to as pre- and post-litigation needs.

Corresponding author:

¹ Development Research and Policy Initiatives, S. M. Sehgal Foundation, Gurugram Haryana, India.

Saurabh Sood, Development Research and Policy Initiatives, S. M. Sehgal Foundation, Sector 44, Institutional Area, Gurugram 122003, Haryana, India. E-mail: s.sood@smsfoundation.org

In a country as diverse as India, there is lack of data generated on people in need of these two types of legal services. Some studies rank India among the lowest in terms of per capita use of civil courts.² At the same time, huge pendency of cases at all tiers of the courts is also something that is well acknow-ledged.³ More recent judicial initiatives to address this issue include setting up of fast-track courts, which are unfortunately reported to be dying a slow death due to lack of funds.⁴

Inaccessibility to just legal procedures has the potential to increase the ever-widening socio-economic disparity in two ways. This can happen first through unjust outcomes that are likely to arise from, during or after the legal proceedings in cases where well-deserved legal aid is not availed. Second, the absence of adequate legal information may result in removed opportunity to socio-economic welfare run through government schemes.

However, the need for improvement in social and economic conditions of the citizens through improving efficiency of welfare activities of the state is undeniable. Philosophers like John Locke, Immanuel Kant and John Rawls have provided extensive philosophical arguments favouring such improvement. While Locke and Kant took an instrumental view of the state and concluded it to play this role because it is the only institution capable of reliably judging injustice and enforcing justice, Rawls considered justice as an intrinsic function that the state plays by virtue of being a part of a system of cooperation.⁵ Christiano's reading of Rawles is also shared by Arash Abizadeh⁶ who describes Rawle's subject of justice to be of regulatory nature wherein justice plays the role of fitting together political and social institutions in a 'system of cooperation'.

Justice as an imperative of the state also exists in the Indian environment in which legal aid was conceptualized and advocated. For example, one of the earliest and influential reports on the same, the Report of the Expert Committee on Legal Aid, headed by Justice Iyer in 1973, coined the term 'juridicare' which is the proposed *strategy to end the estrangement between law and the lowly*.⁷ The promise to provide social and economic justice, the report argues, cannot be achieved in the absence of a scheme that brings the system of justice nearer to the downtrodden. It proposes that this can be achieved through a comprehensive legal aid package that would make the legal process a *surer of social justice* and fulfil the *democratic obligation*.⁸

Socialist Nature of Justice

It would be useful to draw from history, in which the meaning of justice was conceived, in order to understand the practice of legal aid. In this section, I highlight that justice and legal aid have a strong

² M. GALANTER & J.K. KRISHNAN, 'Bread for the Poor': Access to Justice and the Rights of the Needy in India 55 HAST. LAW J. 789, 834 (2004).

³ Inference drawn from the data available at https://osf.io/preprints/lawarxiv/xryj7/download; https://www.prsindia.org/policy/ vital-stats/pendency-cases-judiciary

⁴ S. RUKMINI, *As Funds Dry Up, Fast-track Courts Close Down*, THE HINDU (August 17, 2014), available at https://www.thehindu. com/news/national/as-funds-dry-up-fasttrack-courts-close-down/article6324428.ece

⁵ T. CHRISTIANO, Secession, Democracy and Distributive Justice 37 ARIZ. L. REV. 8, 23 (1995).

⁶ A. Abizadeh, '*Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice.* 35(4) Phil. Pub. Aff. 318, 358. (2007). available at http://www.jstor.org/stable/4623799

⁷ Report of the expert committee on legal aid Processual justice to the people, Department of Legal Affairs at 9 (1973). available at http://reports.mca.gov.in/Reports/15-Iyer%20committee%20report%20of%20the%20expert%20committee%20in%20 legal%20aid,%201973.pdf

constitutional justification. This constitutional prescription has historic roots that can be closely linked to socialist nature of the Indian state.

The terms 'justice' and 'socialism', to begin with, are mentioned in the Preamble of the Indian Constitution itself. In addition to social, economic and political justice that the Preamble refers to, equal justice through equality before law is guaranteed as a fundamental right under Article 14. The Directive Principles of State Policy as outlined in the Constitution of India further support state action through running welfare programme to create a social order that is just (Article 38A).

Legal aid specifically has been put forward as a welfare initiative that provides justice based on 'equal opportunity' under Article 39A. This gives rises to the question as to what 'equal opportunity' is meant in the context of justice that the state shall embody. The answer partly lies in the indication by Mrs Indira Gandhi (the Indian Prime Minster who proposed the 42nd Constitutional Amendment that included the word 'socialist' in the Preamble) who described inclusion of socialism as a means to offer 'equal opportunities' through socio-economic reform.⁹

Socialism although not defined explicitly is recognized to be enshrined in the Directive Principles. In relation to Article 39, Dr B. R. Ambedkar, Chairman of the Drafting Committee, stated that *if these Directive Principles...are not Socialistic in their direction and in their content, I fail to understand what more Socialism can be.*¹⁰ Multiple judgements of the Supreme Court also point to an agreement of the same in terms of judicial interpretation.¹¹ The intention to bring out the socialist history of justice is to reemphasize on the critical role of state in the practice of legal aid and to ensure access to justice for its citizens.

Scope of Legal Aid

Legal aid as officially defined by National Legal Services Authority (NALSA) on its website includes both pre- and post-litigation services. According to NALSA:

Free legal services entail the provision of free legal aid in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority.

Free Legal Services also include provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the Central Government or the State Government and to ensure access to justice in any other manner.¹²

With this widely worded definition of legal services which include initiatives meant to ensure access to justice in *any other manner*; the scope of NALSA can be understood to include a wide spectrum of services. While the state through its multiple institutions is present in essentially every aspect of the social, economic and political lives of the people, the extensive coverage of justice and legal aid cannot arguably be the onus of the state alone and necessitates convergence of efforts at various levels.

⁹ D. D. BASU, CONSTITUTIONAL LAW OF INDIA 2-3 (Prentice-Hall of India, 1991). available at http://legislative.gov.in/ constitution-forty-second-amendment-act-1976

¹⁰ A.M. BHATTACHARJEE, *The Constitutional Dilemma—Liberal or Socialist Economy*? THE HINDU BUSINESS LINE (January 22, 2005), available at https://www.thehindubusinessline.com/2002/01/25/stories/2002012500160900.htm

¹¹ Srinivasa v. State of Karnataka, AIR 1987 SC 1518 (1987); Dharwad Employees Union v. State 2 SCC 396 (1990); Sanjeeva Coke Manufacturing Co. v. Bharat Coking Coal Ltd, AIR 1983 SC 239 (1982); Akadasi Padhan v. State of Orissa, AIR 1963 SC 1047 (1963).

¹² Nature of Free Legal Services, NATIONAL LEGAL SERVICES AUTHORITY, available at https://nalsa.gov.in/content/nature-free-legal-services

'Convergence' in my work has been defined as joint efforts of NALSA with either non-governmental organizations (NGOs) or departments of law schools to conduct events/programmes or any other activities that fall under the purview of legal aid. For example, Indian Institute of Legal Studies (IILS), a law School in West Bengal, jointly conducted a Lok Adalat with West Bengal Legal Services Authority for tea estate workers that led to improved access to legal procedures.

Legal Education—Core of Rule of Law and Access to Justice

Access to justice is closely linked to adherence to the rule of law, that is, procedural principles that should be followed and upheld. India has an extensive legal system, with executive and judiciary working closely to uphold the established codes of conduct. However, effective rule of law should not be confused with other ideals of justice, human rights, democracy or equality.¹³

Rule of law plays an important function of supporting effective institutional mechanisms, so as to ensure that citizens are able to exercise their rights¹⁴ and participate sufficiently to effect good governance.¹⁵ In the Indian constitutional system, every person is entitled to equality before law and equal protection under the law.¹⁶ However, wide disparity in sociopolitical conditions of the citizens leaves sections of the society marginalized. Access to justice provisioned by rule of law and legal education then becomes critical for these marginalized citizens to not only exercise their rights but also gain access to welfare schemes run by the government. In many cases, such legal entitlements of welfare schemes become opportunities to be part of the mainstream socio-economic life.

It is these aspects of law in the society that are reiterated in the theoretical commitment of the Indian state to provide access to justice. Legal education becomes an important aspect of this commitment as it develops skilled lawyers and judges on whom the liability to apply just legal procedures falls on.

A report published by Government of India and United Nations Development Programme in 2011 highlighted the expected role of legal educators in transforming the constitutional ideology of access to justice into reality.¹⁷ Such a transformation calls for competent and affordable legal services to the vast population of the country. There is also recognition on the part of the Bar Council itself that the legal education sector is a significant contributory towards the meaningful existence of law and justice in civil society.¹⁸

Approximately 1,300 law colleges exist in India which impart formal legal education to lawyers. The Legal Services Authorities Act, 1987 (1987 Act), and the Regulations issued under it mandate these law schools to extend legal services to common citizens in an effort to include marginalized sections into the legal system through multiple modes. A recent review of law colleges on their legal aid initiatives has found out that 82 per cent of the sampled colleges have designated faculty to conduct legal aid activity.¹⁹

¹³ R. SUDARSHAN, Law and Democracy in India, 49(152) INT. Soc. Sci. J. 271, 278 (1997).

¹⁸ Supreme Court of India, Final Report of the Three-Member Committee on Reform of Legal Education (Supreme Court of India, 2009).

¹⁹ UNDP INDIA, *supra* note 15.

¹⁴ A. DAYAL, *The Role of Citizens in Democratic Governance* (Department of Administrative Reforms and Public Grievances, 2011).

¹⁵ United Nations Economic and Social Commission for Asia and the Pacific, *What Is Good Governance?*, available at https://www.unescap.org/sites/default/files/good-governance.pdf

¹⁶ Constitution of India, Article 14; B.P. SINGH, *The Challenge of Good Governance in India: Need for Innovative Approaches*, YOJANA (March, 2013), available at http://iasscore.in/pdf/yojna/1.%20The%20Challenge%20of%20Good%20Governance%20in. pdf

¹⁷ United Nations Development Programme India, A STUDY OF LAW SCHOOL BASED LEGAL SERVICES CLINICS (United Nations Development Programme India, 2011).

However, in the area of collaborations, their performance is not satisfactory. Only a few colleges were found to collaborate with NGOs or the local authorities like the panchayats and municipalities.

Rule of law along with legal education forms a crucial component to access justice. Law schools have the potential to extend legal education through collaborative efforts. Along with law schools, civil society organizations can also play a significant role in improving access to justice among the deprived masses.

Convergence Between State and Non-state Actors

The discussion so far points to the following important propositions that form the background of this study. First, legal aid as a tool to achieve access to justice for marginalized sections is significant not only in achieving welfare but also in its own right. Second, access to justice, as originally conceived by the Constitution makers and as its later trajectory within the judiciary system shows, is a comprehensive idea and its realization in the truest sense requires engagement from all possible relevant stakeholders. The state with its socialist responsibility ought to be at the centre of this engagement and make serious efforts towards garnering support in every possible way.

Research Questions and Methodology

The larger research question addressed through my work is whether convergence between state and nonstate actors increases access to justice for marginalized sections in the society. This involves treatment of two sub-questions: first, the question of whether the mandated assignments of relevant actors of legal aid allow for convergence and second, the query as to what evidence exists to support that increased access to justice through convergence.

Two such major non-state actors—law schools and civil society organizations—have been included in this research. Other bodies who engage with legal aid activities include lawyers' associations or networks that practise *pro bono* lawyering or provide resources dedicated to public legal education.

The method adopted to answer the first sub-question is the review of existing literature while that of answering the second sub-question is text mining and analysis of a rich corpus of documents. The aim of this exercise was to record reported instances of convergent activities among any of the three relevant actors namely legal service authorities (at any tier), law schools, or any department of law school and any civil society organization.

The corpus of documents utilized includes the official journal published quarterly by NALSA called *Nyayadeep*, available on their website.²⁰ Eight issues of this journal, published between April 2015 and April 2016, were used to develop the corpus. The section titled 'News from States', which reports achievements of the state legal service authorities in a particular quarter, was specifically focused. Within this section, the following specific keywords were mined: N.G.O., NGO, NGOs, NGO's, Civil Society Organization, Law Schools, Post Graduate Law Students, Legal Aid Clinic and Law University.

The portions of the text in which these keywords appeared were then analysed to interpret the context of its usage. This analysis was used to create an interactional matrix with following data points:

- Identifiers (Issue Number, Year)
- Organizing stakeholder
- State/district
- Activity type/topic/intended for
- · Key stakeholder involved/nature of involvement/other stakeholders involved

Data Limitations

In the analysis of the portions in which the keywords appeared, limitations of interpretation and inclusion were faced. The former refers to the limitation of the researcher in accurately interpreting the context of involvement of two actors which could be either overstated or understated. The latter refers to the entries that were omitted to avoid double counting of activities (refer Table 1).

Results: Does Policy Permit Convergence?

In order to comment on the utility of convergence between practitioners of legal aid in India, it would be useful to look at their institutional mandates and find out if convergence is encouraged or even supported. In this section, I describe the same for each actor by turn.

The primary state authority in charge of practising legal aid is NALSA. NALSA heads its counterparts at the state, district and *taluka* (sub-division) levels. This network of institutions draws its legal status from Legal Services Authorities Act, 1987. It performs multiple functions that include coordinating fund allocations, overseeing State Legal Service Authorities (SLSAs) and issuing schemes on multiple themes that fall in its jurisdiction.

The proposed beneficiaries of these schemes range from disaster victims, victims of trafficking and sexual exploitation to workers in the unorganized sector and senior citizens. Each scheme acts as a guideline for state authorities to implement programmes to meet the differing needs of the beneficiaries. These schemes have been given the name of preventive strategic legal services schemes.²¹

Interpretation Limitation	Omission Limitation
Programmes/camps have been interpreted to be of the same nature and called awareness generation activities	Vague information like 'different district authorities were involved' was not included
Programmes held 'at' law schools have been interpreted as co-hosted	Any visits/meeting/launch events/inauguration events have been omitted
Multiple topics/actions included in an activity has been interpreted as 'multiple' and not differentiated	Project activities reported as a follow-up in later issues have been entered once
Activities with NGOs/law schools when occurring in different paragraphs have been interpreted as separate activities and entered twice	The keyword 'NGO' when occurred in the title was considered to be a casual reference and not included until it occurred in the body of the paragraph with some details

Table I. Data Limitations

Source: The author.

²¹ available at https://nalsa.gov.in/content/preventive-strategic-legal-services-schemes

Section 4(k) of the 1987 Act encourages convergence with the legal aid clinics set up in each law school in India. It directs for the development of programmes for clinical legal education in consultation with the Bar Council of India. Section 4(l) and Section 4(m) of the Act mandate the Authority to take appropriate measures for spreading legal awareness among people by converging its activities with NGOs and enlisting the support of voluntary social welfare institutions working at grass-roots level particularly among Scheduled Castes, Scheduled Tribes and women.

In the legal education sector, the Bar Council of India is the supreme regulating body that oversees the functioning of law schools.²² Each law school, in order to gain recognition from the Council, needs to adhere to its rules and is subject to evaluation. Schedule III of the Bar Council of India Rules directs institutions of legal education in India to establish and run legal aid clinic under the supervision of a senior faculty member which is to be conducted by the final year students in cooperation with Legal Services Authorities ('LSAs')-enlisted NGOs.

In addition to this, the Rules also apply to lawyers who, as per Rule 5, are obligated to render legal assistance to indigent and oppressed clients even when they cannot pay for it. This rule turns the practice of pro bono lawyering into a duty of each lawyer.

The third significant actors of legal aid practice are civil society organizations. These organizations do not have a regulating authority as such; however, they operate via global or regional networks. For instance, Namati (https://namati.org/) is a global network of such grass-roots organizations that engage in legal empowerment activities by supporting para-legal work in multiple countries.

A brief discussion on the policy mandates of the actors of legal aid in India reveals that adequate policy prescriptions exist to support convergence among them.

Evidence of Convergence

In this section, I present the results of the text analysis conducted in order to generate evidence of convergence between the practitioners.

Figure 1 depicts the frequency of convergent activities as reported in the corpus of documents. It indicates that two union territories (Delhi: 26% and Chandigarh: 10%) report more than three-quarters of the activities. On the other hand, a majority of the states reported between 3 and 6 per cent of the total convergent activities across the country.

Figure 2 is a word cloud that showcases the most frequently occurring districts/cities in the compilation of convergent activities by district/city. Jaipur, falling under the Rajasthan State LSA, and Kohima, falling under the Nagaland State LSA, come out as distinctive cities where the most number of convergent activities was reported.

Figure 3 shows the type of engagement between the actors in the reported convergent activities. For example, in 2015, LSAs and NGOs were involved in 23 activities together (wherein they co-hosted 11 activities and attended 12 activities/events conducted by the other). In 2016, the two actors reported a sharp increase in convergent activities when on 27 occasions events were co-hosted and on 21 occasions, co-attendance was reported. It is important to note that in these instances, the text was interpreted to

²² The Bar Council of India visits and inspects Universities/Law colleges in the country as part of its statutory function of promoting legal education and laying down standards in consultation with the Universities in India and the State Bar Councils. available at http://www.barcouncilofindia.org/about/legal-education/



Figure 1. State-wise Reported Convergence Initiatives

Source: The author.



Figure 2. Districts/Cities Reporting Most Convergence Source: The author.



Figure 3. Nature of Involvement Between Legal Aid Actors Source: The author.



Figure 4. Themes Addressed Through Convergence **Source:** The author.

deduce that these activities were initiated by LSA and attended by NGOs.²³ On the other hand, there were limited occasions when LSAs co-hosted or attended events that were initiated by either NGOs or law schools (five cases in 2015 and six cases in 2016).

Table A1 in the annexure is a list of convergent activities for each actor that has been tabulated across a) the type of reported activity and b) the actor that was engaged with for conducting the activity.

Figure 4 depicts the themes that were addressed through convergence among the actors. Public legal education comes up as a prominent theme and includes the following sub-themes: fundamental duties, farmer suicides, justice delivery and legal aid, victim compensation scheme, anti-human trafficking, domestic violence, drug abuse, labour laws and rights, environmental law and transgender issues. Activities on themes, such as, livelihood trainings, anti-tobacco drive, self-defence training, counselling for alcoholics and drug addicts, holding medical camps and awareness on polythene use, when reported, were categorized under public education (other). Legal awareness on child rights and conduct of paralegal training are the next most frequently reported convergent activities.

Discussion

Throughout the essay, I have tried to locate legal aid as an opportunity to improve access to justice for marginalized sections of the society. In doing so, I have advocated the need for convergence because of two primary reasons. First, the just society that the Constitution and the architects of the Indian legal system envisaged involves the state playing a central role in providing legal aid. However, it is argued that in this Herculean endeavour, the state could potentially utilize the services of other actors including civil society organizations and law schools to effectively realize this vision. Second, the policy environment, as described in the course of the paper, encourages collaboration with non-state actors. The research sets out to treat this need of convergence among the legal aid practitioners in India as crucial to the achievement of constitutional and legal mandates. This exploratory work, I believe, is unique since it addresses this lesser discussed opportunity of interaction between different entities operating in the domain of legal aid.

²³ This interpretation is based on the order in which the names have occurred. For example, when the text said LSA in association with NGO organized..., it is read as initiated by the LSA.

In order to inform the nature of interaction between actors at the local level, who help in the promotion and dissemination of legal awareness, a primary search of literature was conducted. This primary search was focused on official publications and research papers by scholars and lawyers who comment on the interaction between LSAs, lawyers, law schools and civil society organizations. An online search of government law websites, academic work listed on Google Scholar and sources such as JSTOR, Taylor and Francis was also conducted. A list of key phrases that describe the interaction of the said actors was used to find the desired information.

It would not be an understatement to state that there was little-to-no evidence with regard to the interaction between the key actors mentioned above as per the search results. Most of the search results explained themes relating to interaction but hardly discussed about the interaction itself. There is evidently a dearth of academic or empirical research in this domain. This study was conceptualized to provide an alternative understanding of this interaction.

The results from the study are encouraging enough to state that convergence among the practitioners, however limited, does exist. This exploratory work opens doors for interesting research questions that could possibly achieve two objectives. First, to detail the nature of interaction of convergent activities beyond counting their numbers that could relate to how convergence came into being, what were the barriers that had to be overcome? Needless to say, the issue of success of such efforts itself needs a lot of discussions. On a parallel note, we need to develop a conceptual framework through which these interactions could be studied and then related with the concept of access to justice. A second set of questions relate more to policy prescriptions to scale up the NALSA Legal Services Clinics in Universities, Law Colleges and Other Institutions Scheme, 2013. This particular scheme aims at promoting convergent activities were initiated by non-state actors. It also reveals that the reported convergent activities have more passive involvement of non-state actors than that of state actors. The frequently occurring themes of child rights and para-legal trainings in the convergent activities list highlight an area of strength that can be further studied.

Conclusion

This research asked whether increase in access to justice for marginalized sections in the society can be achieved through convergence of activities between legal service authorities, law schools and NGOs. To generate evidence on the same, text analysis technique on data obtained from the quarterly publication of NALSA called *Nyayadeep* was conducted. Results show that the mandates of the relevant legal aid practitioners allow for convergence when backed by a favourable policy environment. The geographical spread of converging activities is highly concentrated, with a reported increase in collaborative engagement in 2016 compared to 2015. Public legal education is the most frequently occurring theme on which convergence of efforts in the domain of legal aid occurs.

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The author declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

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Annexure

Table A1. List of Convergent Activities with Frequencies
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-	-		
Law school	3	Law students	2
Lecture	I	Round table	I
LSA	I	NGO	I
Workshop	I	Stakeholder meeting	I
LSA	I	NGO	I
Lok Adalat	I	Setting up special units	I
LSA	I	Law students	I
LSA	129	Art exhibition	1
Awareness generation	42	NGO	1
Law students	13	Consultation	1
NGO	29	NGO	1
National Day Celebration	16	Essay competition	1
Law students	7	Law students	I
NGO	9	Legal awareness and health camp	
Training	14	NGO	
Law faculty		Film screening	, I
Law students	5	NGO	, I
NGO	8	Sports meet	
Interaction session	7	NGO	
Law faculty	,	Orientation programme	
Law students	3	NGO	1
NGO	3	Street play competition	1
Exposure visit	6	NGO	1
Law students	5	Symposium	1
NGO	J	NGO	1
Seminar	5	Photo exhibition	1
	•		
Law students	4	NGO	1
NGO	I	Para legal training	1
Workshop	5	NGO	1
Law faculty	I	Lok Adalat	1
Law students	l	NGO	1
NGO	3	Mass rally	1
Lecture	4	NGO	1
Law faculty	I	NGO	8
Law students	3	Awareness generation	4
Colloquium	4	LSA	4
Law students	I	Training	1
NGO	3	LSA	I
Awareness generation and surveys	3	Consultation	1
Law students	3	LSA Audio CD volcored	1
Nukkad Natak	3	Audio CD released	1
Law students	3	LSA	1
Joint project	2	Conclave	1
NGO	2	LSA	I
Internship	2	Grand total	I 40