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Introduction

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Preface

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Description

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CO-EXISTENCE OF NON-AVAILABILITY OF COUNSEL AND EDUCATED UNEMPLOYMENT: A STRUCTURAL PARADOX IN INDIA

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Abstract

There is a paradox in the system of justice in India. Multiple courts have pointed out that the lack of a lawyer has been a reason for adjournments and delays, and nearly 1.5-2 lakh law graduates every year are without jobs, or underemployed or forced to quit the profession. This paper does not consider this a numerical paradox, but a structural paradox based on the misfit of legal education with the demand for legal services in the market and the institutional design of the delivery of legal aid and representation. The paper outlines three structural fault lines, based on constitutional jurisprudence, empirical data on legal employment and recent Supreme Court directions on legal aid reform: a skills mismatch between the legal curriculum and practice, an institutional failure that focuses legal opportunity in the legal enclave, and a geographic and distributional failure that leaves rural and underserved areas without legal representation, even as the urban centres are overcrowded with underemployed legal graduates. Also covered is the impact of legal technology such as e-courts, online dispute resolution and tools to assist in research and drafting systems on the nature of legal demand and supply. It ends with a reform program that includes clinical legal education, expansion of the public defender system, regional incentive systems and better information on the labour market, and contends that the paradox must be addressed in order to achieve the constitutional promise of access to justice.

Keywords: *access to justice, legal education, educated unemployment, legal aid, Article 21, legal technology.*

I. Introduction

Even in the Indian judiciary, the number of pending cases continues to mount and is at an extraordinary rate of tens of millions in the subordinate judiciary, High Courts and the Supreme Court of India.¹ One of the most common reasons given for adjournments and delays in trials is the lack of counsel – either because the public prosecutor is not available or the legal aid attorney has not yet been appointed or the private advocate has a conflicting listing and is too busy. At first glance this rationale implies that there is a lack of legal talent to be called on to represent clients in court at the appropriate time and place.

Meanwhile, India is graduating as much as one of the biggest classes of lawyers in the world. In the last twenty years hundreds of new law schools, along with traditional University law departments, have sprung up, graduating together more than a hundred thousand persons annually. But labour market surveys and journalistic investigations regularly show that a minority of these graduates find stable employment in litigation chambers, in law firms or in corporate legal departments and that the employment which they find is not particularly well-paid. Many of them don't get jobs, or get different jobs, or work in unpaid or token-stipend internships for years before they're able to build up a foothold in a field.

At first glance, this juxtaposition – courts stating there was no counsel while law schools graduate too many – seems to be a contradiction. This paper claims that it is not. The conflict can be seen as being resolved once the legal profession is conceptualized not as a homogenous labour market but as a complex array of markets segmented by geographical location, institutional affiliation, area of specialization, and the ability of the clients to afford fees. The scarcity of counsel in courts is found in certain types of court panels (legal aid panels, rural and semi-urban courts, and certain high-volume criminal panels) while the overabundance of graduates is found in urban courts in a practice area (corporate and elite litigation) that does not have enough work to absorb them.

¹ National Judicial Data Grid (NJDG), pending cases statistics (accessed June 2026)

II. Constitutional Framework: Access to Justice and the Right to Counsel

In India, the constitutional basis for the right to legal aid is mainly in Article 21 of the Constitution, in conjunction with Article 39A² which mandates the State to ensure that the working of the legal system promotes justice on the basis of equal opportunity and to provide free legal aid where economic or other disabilities exist which would otherwise prevent the access to justice.

In *Hussainara Khatoon v. State of Bihar*³ (1979), Supreme Court observed that the right to free legal aid is an important part of the reasonable, fair and just procedure, thus, it is an implicit part of the guarantee of Article 21. The Court was reacting to the problem of under trials who had been languishing in jails for several years without being provided with a lawyer, and it had ruled that the State could not leave the right to a lawyer to be given at the discretion of the State.

This was extended in *Khatri (II) v. State of Bihar*⁴ (1981) when the Court held that the need for legal aid starts not only at the time of trial, but as soon as accused persons are first produced before the Magistrate, and that the Magistrate, being the initial forum before whom an accused appears, is also duty bound to inform the accused of this right. The Court did not accept the State's excuse, that financial or administrative considerations could be invoked.

In *Suk Das v. Union Territory of Arunachal Pradesh*⁵ (1986), the Court went a step further, quashing a conviction for failure to inform the accused of his right to free legal aid, a right which is not necessarily required to be invoked by the accused. The three rulings, as a whole, make clear that the right to competent counsel is not just “administrative convenience,” but rather a predicate of the legality of the trial process itself.

In more recent decisions, it is noted that the state of affairs as discerned in the earlier decisions still remains.

² Constitution of India 1950, art 39A

³ *Hussainara Khatoon (IV) v State of Bihar* (1980) 1 SCC 98

⁴ *Khatri (II) v State of Bihar* (1981) 1 SCC 627

⁵ *Suk Das v Union Territory of Arunachal Pradesh* (1986) 2 SCC 401

Noting the "inordinate" delay in filing appeals and special leave petitions in legal aid cases, the Supreme Court (under Justice Sanjay Karol) issued in its directions on legal aid reform binding timelines and structural directions for the State Legal Services Authorities on timely access to justice, following the issuance of earlier directions in 2021, which had called for digitisation and electronic transmission of records to address such delays.⁶

Likewise, the Supreme Court has given detailed instructions to the National Legal Services Authority and State Legal Services Authorities regarding providing free legal aid to prisoners and has pointed out that a system of Legal Aid Defence Counsel has been in place since 2021–22 and has been expanded to cover the majority of districts in the country.⁷ The Court has also reiterated its previous decision in *Suhas Chakma v. Union of India*⁸ (2024) that the notion of 'legal aid' is connected with the constitutional commitment to 'social, economic and political justice' enshrined in the Preamble.

Before the decision in the present case, in *M.H. Hoskot v. State of Maharashtra*⁹ (1978), the Court had already ruled that free legal aid at State expense to an accused who cannot afford to pay is a part of fair, free and reasonable procedure which is implicit in Article 21 and is an obligation of the State and not an act of charity. Together with the more recent instructions on the Legal Aid Defence Counsel System, and on appellate delay, these cases show that the formal right to counsel has long been recognised but the practical implementation has been hampered by institutional capacity – which on the supply side is not a problem of a shortage of trained legal counsel but rather a lack of mechanisms to get available legal talent into those roles.

The point of the paradox lies here: the constitutional and statutory framework assumes that competent and available counsel are available to provide services in legal aid, rural and high-volume settings, and there is certainly available counsel in numbers. What is missing is the

⁶ Supreme Court of India, order concerning delay in filing appeals in legal aid matters, discussed in SCC Online Blog (2026)

⁷ National Legal Services Authority (NALSA), *Standard Operating Procedure for Legal Aid Defence Counsel System* (2022)

⁸⁸⁸ *Suhas Chakma v Union of India* (2024) 16 SCC 1

⁹ *M H Hoskot v State of Maharashtra* (1978) 3 SCC 544

institutional plumbing that would be necessary to get that supply and the demand the Court has in view.

III. The Employability Crisis in the Legal Sector

3.1 Scale and Structure of Legal Education

Since the first National Law Universities in the country were established, Indian legal education has witnessed a tremendous growth in numbers. Today, more than a thousand law schools, from National Law Universities to the numerous private institutions, some far better than others, are recognised by the Bar Council of India and churn out a large class of graduates, far more than there are jobs in the formal legal profession.¹⁰

But there hasn't been a proportional increase in absorption capacity. Only a small fraction of students, mostly from a few National Law Universities and top private law schools, are hired by large firms or corporate law departments or placed in clerkships, even via a structured placement process, according to reports. The rest fall into a market that lacks any comparable placement process, a standard starting salary and frequently lacks any formal employment relationship.¹¹

Another issue is the longstanding lack of consistent and detailed information on legal sector jobs. The Bar Council does not report systematic placement outcome data and the bar enrolment data only reflects formal registration and not necessarily working in practice, remuneration or retention over time. As a result of this data vacuum, policy responses to legal unemployment are necessarily rather speculative.¹²

3.2 Skills Mismatch and Curriculum Deficiencies

One major factor that contributes to the phenomenon of legal unemployability is the disconnect between what is taught in law schools and job requirements in the legal profession. The basic structure of the five-year integrated law course and three-year LL.B. course is still doctrinal, revolving around lectures on substantive law, examinations for which reward mere memorisation and reproduction of cases, rather than their application.¹³

¹⁰ Bar Council of India, List of Approved Centres of Legal Education (latest available edition)

¹¹ LiveMint, 'India's legal sector is booming—so why are most law graduates left out?' (2025)

¹² Bar Council of India, enrolment statistics (latest available reports)

¹³ Bar Council of India Legal Education Rules 2008

It's common for a graduate to come out of this system without any real legal drafting skills, whether in drafting pleadings, client documents, or notices; without experience in the courtroom beyond some rudimentary, often rote, moot court drills; without any formal training in client interviewing, negotiation, or alternative dispute resolution; and without any exposure to the kinds of legal technology tools – case management software, e-filing portals, legal research databases, and an ever-expanding array of AI-assisted drafting tools – that are standard even in some smaller practices.

As the labour market has come to be more based on skills than qualifications alone, the LL.B. degree on its own has become less important. Employers, especially in litigation, complain that new graduates need lots of on-the-job training before they can do even basic things without the help of others, which inhibits smaller chambers and smaller firms -- the ones most likely to need additional counsel -- from hiring at all. The net effect is a vicious circle: The people who are most likely to recruit new people are least likely to be able to train them, and the institutions that are best able to train new entrants train only a small, well-prepared group of them.

3.3 Institutional Disconnect and Elite Concentration

There are strong institutional lines of concentration in employment in India. Most big corporate law firms and multinational companies offer overwhelmingly to a select few of the National Law Universities, mostly through pre-placement offers, which are made in the penultimate year of study. Most Law schools (including reasonably good ones) don't have any such placement cell, employer relationship or career counselling set-up.

These formal recruitment mechanisms aside, informal mechanisms remain pivotal, with the vast majority of access to litigation practice being through informal connections—either through personal contact with senior advocates, family connections through the Bar or through opportunistic encounters during internships.¹⁴ Those graduates who don't have such networks – including first generation lawyers, non-metropolitan graduates, and graduates from disadvantaged economic backgrounds – have a much tougher road to a practice, irrespective of their academic prowess.

The cumulative impact is a two-tier profession. A small proportion of graduates have high levels

¹⁴ LiveMint (n 10)

of mobility, clear career paths and acceptable pay. A far bigger portion is stuck in years-long apprenticeships, on token wages and in very uncertain income, on the slow road of financial viability enveloped by network. But this concentration is not just an equity one, it is also a disproportion to human resources one because many of the second tier graduates also have the capacity to function in the very areas which the courts are saying they are short of: legal aid panels, public prosecution and rural litigation.

IV. Judicial Delays and the Illusion of Scarcity

If court says it's because of lack of counsel, it's a good question to ask what does that mean? In most cases, it does not reflect an absolute shortage in the relevant jurisdiction, but rather a mix of various phenomena: an inefficient allocation of the number of existing legal professionals to the number of cases; the number of cases a legal aid lawyer or public prosecutor has is often so high that a single lawyer is unable to manage them, and the number of cases in certain lawyers' courts is very low while the number of cases in other lawyers' courts is very high, especially when the Legal Aid Defence Counsel System has been expanded; the legal professionals are concentrated in urban centres and state capitals, while courts in rural or semi-urban areas have only a small number of legal professionals per capita; and the procedural practice, as often the cases were adjourned for a long time, the cases were listed several times, and there were no firm case-management timelines to finish the work.

In that sense, the lack of counsel is a symptom of mis-distribution, under-remuneration where needed and case-management inefficiency – an issue of allocation, incentive design, not supply – and it's not in conflict with a surplus of underemployed graduates in other places.¹⁵

V. Underemployment: The Hidden Dimension

Official unemployment statistics, such as the Periodic Labour Force Survey, reflect people who are out of work and looking for a job, but are not well suited to a specific type of labour market distress that the very first years of legal practice in India exhibit: underemployment.¹⁶

¹⁵ Times of India, 'Court pendency and the lack of available lawyers' (2025)

¹⁶ Periodic Labour Force Survey 2023–24, Ministry of Statistics and Programme Implementation

For a great number of law graduates, continuing to practise law is done in a way that does not show up in traditional labour statistics as full-time working. Numerous work in internships without a formal employment contract or a guaranteed minimum wage with senior advocates for several years, doing substantive legal work – drafting, researching, and preparing cases. Others set up informal chamber practices, working, for longer periods of time, in offices with established practitioners without any clients of their own.

This is especially true of those who have no financial aid in place when they graduate. Those first-generation lawyers who do not have families that can support them during the nonprofitable early years of their careers are more likely at risk of leaving, than those who can, even if they make it to the end of the third year of law school with higher grades. Those who are not from top universities are under the same pressure. That leads to a filter on the types of individuals that stay in practice – one that has a relationship to money, not ability.¹⁷

This underemployment dimension is relevant to the main theme of this paper because it is a pool of individuals with legal training, with a nominal legal profession and who could be absorbed in the profession into structured roles (legal aid panels, public prosecution cadres, paralegal/case-management positions within courts), where they could make a viable living and have a defined career trajectory. The surplus observed in Part III is thus not just a stock of graduates that have turned away from the profession but also a significant flow of people who are precariously underemployed in the profession.

VI. Broader Context: Educated Unemployment in India

The puzzle of the legal sector is not unique, but is a characteristic of what has been dubbed as "educated unemployment," and has been noted in various parts of the Indian economy.¹⁸ One of the findings that has been consistent across all studies of the labour market is the unemployment risk faced by more formally educated people in India is even higher than those with little or no

¹⁷ Marc Galanter and Jayanth Krishnan, 'Bread for the Poor: Access to Justice and the Rights of the Needy in India' (2004) 55 *Hastings Law Journal* 789

¹⁸ Periodic Labour Force Survey 2023–24 (n 16)

formal education – an inversion of the pattern in many other developing economies where education reliably lowers the unemployment risk.¹⁹

There are a number of factors that explain this trend and are typical of the legal profession and of the graduate labour market in general. Recent decades have seen growth in capital-intensive and services industries with relatively limited employment growth per dollar of output and significant growth in higher education across a range of disciplines, including many that have seen a growth of private higher education institutions, but not a commensurate growth in the number of jobs that the formal sector absorbs. A campus placement system is in place only at a handful of universities, and has yet to be scaled up elsewhere, and most students—in the case of engineering and management, most, and in the case of law, most—face an unstructured job market with little information.

This is aggravated by regional variations in employment distribution, with opportunities, formal and informal, still being concentrated in a few metropolitan centres, leading to saturation in these centres and deficits in professional services in rural centres – a trend that is directly reflected in the geography of legal professionals discussed in Part IV. Thus, the paradox in the legal sector is not an issue peculiar to legal education, but is a manifestation of a structural issue in the Indian labour market in general.

VII. Gender Disparity and Structural Barriers

Not all the structural barriers mentioned above are gender neutral. Women are now a large and increasing percentage of law school graduates (in many law schools, nearly equal to men) but a much smaller percentage of those engaged in litigation, and even a smaller percentage of those engaged in litigation in trial courts.²⁰

There are a number of litigation-specific factors which account for this gap. The irregular hours, the often-extensive commute from one court complex to another, and the lack of basic facilities for women within courts, as evident in many districts, result in more practical barriers than in

¹⁹ India Today, 'Why highly educated Indians are applying for low-skill government jobs' (2025)

²⁰ Bar Council of India, enrolment and gender representation data (latest available reports)

corporate or in-house practice to a consistent litigation practice. The long period of unpaid work (discussed in Part V) also combines with gender norms about independence and family duties to potentially drive women to salaried jobs, to academia, or to leave the profession.

In *Vishaka v. State of Rajasthan*²¹ (1997), the Supreme Court had given guidelines on prevention of sexual harassment at the work place, which stated that for women to take part in the professional life, it was necessary that the work place must be safe. These guidelines have since been put on a statutory footing with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013²² but the implementation of these guidelines in the legal profession, especially in bar associations and chambers of individual lawyers (where there is no statutory complaints committee in place) has been uneven.

In this context, the persistence of gender-sensitive interventions is not to be understood as redundant in the face of formal equality: It is the persistence of structural barriers, which formal equality has not eliminated. Pro- and anti-discrimination efforts designed to transform the surplus legal human capital to effective representation should also consider these barriers, as they disproportionately impact women graduates who make up much of this surplus.

VIII. Technology and the Reconfiguration of Legal Services

Legal technology may be one way to fill the gap between the geographic and structural distribution of the demand for legal services and the distribution of lawyers, but the success of its use will likely hinge heavily on who uses it and how.

8.1 Pre-Litigation Stage

Online Dispute Resolution (ODR) platforms are already expanding in use for consumer disputes, motor accident claims and some types of business conflicts, and ultimately have the potential to resolve a significant percentage of disputes without ever being litigated, which would help alleviate the caseload pressure that helps drive the impression of counsel scarcity.²³ Multilingual

²¹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

²² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

²³ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2021)

chatbots and information portals run by legal services authorities can also be helpful to potential litigants to learn about their rights and entitlements – including the right to free legal aid – at an earlier stage, thereby decreasing the information asymmetry that may otherwise doom disputes to failure or unnecessary escalation.

8.2 Litigation Stage

The spread of e-courts infrastructure and virtual hearings were greatly accelerated during and after the COVID-19 pandemic, which has taken away some of the requirement for a lawyer to physically be at a specific court complex in order to represent the client. This can help break down the geographical clustering of legal practice discussed in Part IV, so that a lawyer in a city can appear, virtually, before a country or semi-country court, or a lawyer in a country or semi-country can take instructions from his or her client in another location.²⁴

AI tools for research and drafting also show promise in overcoming the skills gap identified in Part III by saving time for a relatively inexperienced practitioner to generate a first draft of pleadings, notices and research memoranda that are competent. This might make it easier for solo practitioners and small chambers – the most likely to employ new graduates – to train new counsel to a minimum level of productive output at a lower cost.

8.3 Allocation and Accessibility

Digital platforms can most specifically relate to the paradox explored in this paper, by potentially serving as an allocative mechanism connecting litigants in need of legal counsel (including those who qualify for free legal services) with available legal counsel (including underemployed law graduates looking to establish a practice). In theory, legal services authorities can – and should – expand the digital infrastructure already established for case management and SOP implementation within legal aid systems (e.g., Legal Aid Defence Counsel System) to establish a more transparent and demand-responsive legal aid work distribution system instead of the informal and discretionary panel system.

However, don't overestimate the transformative power of technology alone. While technology can help cushion the friction in matching and communication, it doesn't, on its own, provide the

²⁴ e-Committee, Supreme Court of India, *Phase III Vision Document* (2023)

financial incentive for many to choose a legal career or for many to become lawyers in rural areas, nor does it fix the curriculum gaps that leave many graduates with varying levels of skills—even when bolstered by AI—that are needed in practice. Technology is thus best seen not as an alternative to, but as complementary to, the structural changes which are the subject of the next Part.

IX. Towards Structural Reform

9.1 Reforming Legal Education

The most obvious solution to the skills mismatch that was revealed in Part III is to revise the legal education system itself, and place more emphasis on applied skills. This involves the incorporation of clinical legal education – structured legal aid clinics run by law schools where students give real legal assistance to poor clients, and supervised and assessed as a part of the law school curriculum – as part of the curriculum instead of as an extracurricular activity.²⁵

It also comprises of structured internships and apprenticeships with learning objectives, which will be mandatory, as opposed to all the existing internships which are largely unstructured with the results being dependent on the chamber or firm to which the students are attached. Lastly, it involves the integration of skill-based assessment mechanisms – writing exercises, simulated client interviews and practical research activities – either in addition to or in place of traditional doctrinal tests, to begin certifying the competencies that employers are saying are missing.

9.2 Strengthening Institutional Frameworks

On the supply side, the development of public defendant programs (following the Legal Aid Defence Counsel System already established in most districts) provides a means to transform this underemployment of the law school graduates into salaried full-time lawyers doing exactly what the courts report as not being well supplied. Now if this was expanded even more in conjunction with pay competitive to first jobs in other industries, a two-in-one solution to the problem of a shortage on the demand side and a lack of jobs on the supply side could be achieved. This needs to be done via providing financial support for younger lawyers in their first few years of qualification, such as by paying a stipend to enable lawyers to undertake structured apprenticeship

²⁵ Bar Council of India Legal Education Rules 2008, ch VIII

programmes or pay for legal aid work through fellowships, or have a minimum remuneration standard for panel lawyers that reflects the true cost of running a practice.

9.3 Regional Redistribution

The geographic mismatch exposed in Part IV will need proactive efforts with incentives to practice in areas that are less well served. This may take the form of preferential allotment of legal aid panel seats, public prosecutor appointments and judicial clerkships to those graduates who are willing to go and serve in rural and semi-urban areas for a specific period of time (along the lines of what is done in medical education).²⁶ It also necessitates an improvement of the law enforcement mechanism, which means, a physical legal aid clinic, case management officers and a good internet connectivity in rural areas to ensure that the virtual hearing system as described in Part VIII is made possible, and not just required.

9.4 Data and Labour Market Transparency

Lack of accurate data about work in the legal profession, discussed in part III, makes it difficult for both policymakers and law schools, as well as for law students to make informed decisions. A systematic process to gather data about the job prospects of graduates (including a percentage of those who work in litigation, corporate practice, the judiciary, academia, and the non-legal sector), and retention over time, would give a much-needed empirical base to the facts.

There is a need to further build industry-academic linkages, for instance by formalizing the role of practitioners and employers in curriculum design and to ensure that educational output is in line with the documented needs of the industry, to prevent the growth of legal education from outstripping the capacity of the profession to absorb them.

9.5 Rethinking Merit and Inclusion

Finally, the discussion about the merit of our own profession will have to move beyond a focus on the institutions from which we come and our results on the tests to a focus on functional competence – the practical skills and judgment that the curriculum changes in Part 9.1 are designed to foster. In this context inclusive is not about reducing standards, it is about making sure that all

²⁶ National Medical Commission regulations concerning compulsory rural service obligations (latest applicable regulations)

students have access to opportunities to prove and build their standards, and that the institutions that students attend and the networks that graduates have access to are not based on ability.

X. Conclusion

On closer reading, however, the fact that the judges complain that counsel are not available and that there is widespread unemployment and underemployment among law graduates is a non-contradictory combination. This is a logical consequence of a law school system that generates a lot of lawyers and skill sets that don't fit with the geography and nature of demand for legal services; a legal aid and public legal services system that remains under-resourced for the constitutional purposes it was established for, despite some recent reform efforts like the Legal Aid Defence Counsel system and the (binding) judicial directions on appellate delay.

In other words, the Indian legal system is not afflicted with a shortage of lawyers, as a whole. It has a shortage of employable lawyers, with the practical skills needed for today's practice; a shortage of accessible lawyers, available where litigants – including indigent litigants entitled to free legal aid under Article 21 – need them and at a price they can afford; and a shortage of efficiently distributed lawyers, assigned where they are needed rather than who has institutional pedigree or informal access to the network.

This paradox can be solved only by integrating the profession in a coordinated manner in three ways: first, by changing the mindset of law school from “degree factory” to “skill factory”, using clinical education and skills-based examinations; second, by increasing the functional use of the already existing legal education product through expanded public defender offices, regional incentives and better labour market information; and last, by changing the mindset of the profession from “institutional islands” to “institutional webs”, in which the surplus of skills in one area of the system can compensate for the deficits in another, through the use of legal technology and new institutional pathways. It is only with such a coordinated shift that the constitutional promise of access to justice²⁷, as spelt out in decades of jurisprudence from Hussainara Khatoon to the Supreme Court's recent directions on legal aid reform, can be put from the formal realm to

²⁷ Constitution of India 1950, arts 21 and 39A

reality – and the vast and growing number of legally trained young people can be turned from an underutilised surplus into a resource for the justice system.

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