

ROLE OF LEGAL AID IN SAFEGUARDING THE PRISONERS' RIGHTS IN INDIA

by

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ABSTRACT

The idea of legal aid in India is rooted in the principle of ensuring equal access to justice for everyone, regardless of their financial or social position. This becomes especially important in the context of prisoners, whose basic rights are often at risk within the criminal justice system. A significant share of India's prison population consists of undertrial prisoners who remain behind bars for long periods, largely due to poverty, lack of education, limited awareness of their rights, and inadequate legal support.

Legal aid, recognised under Article 39A of the Constitution and given statutory backing through the Legal Services Authorities Act, 1987, plays a crucial role in protecting key rights of prisoners. These include the right to a fair and speedy trial, access to bail, the ability to file appeals, and the right to be treated with dignity. The Supreme Court, through decisions such as *Hussainara Khatoon v. State of Bihar*, *Sheela Barse v. State of Maharashtra*, and *Legal Aid Committee v. Union of India*, has firmly established that access to legal aid is an essential part of the right to life and personal liberty under Article 21.

However, despite these strong legal foundations, the actual delivery of legal aid continues to face several challenges. There is a shortage of adequately trained lawyers, monitoring mechanisms are weak, many prisoners are unaware of their rights, and administrative delays further slow down the process. Addressing these gaps requires practical steps such as strengthening legal aid clinics within prisons, making use of technology for remote legal consultations, and conducting regular awareness programmes for inmates. When effectively implemented, legal aid not only protects the rights of prisoners but also supports the broader goal of reform and rehabilitation, helping to build a more just and humane criminal justice system in India.

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I. INTRODUCTION

The relationship between law and incarceration reveals a democratic civilisation's moral seriousness. In India, the prison as an institution has always occupied an ambiguous position: apparently a space of corrective justice, yet in practice, a initiation of deprivation, vulnerability, and the systematic negation of legal personhood. When an individual crosses the threshold of a prison gate, they do not surrender their constitutional identity. And yet, the empirical reality of Indian incarceration characterised by mass undertrial detention, overcrowded facilities, custodial violence, and near-absolute informational asymmetry routinely produces precisely such a constitutional erasure.²

Legal aid, is considered as the organised machinery of the state to provide free legal assistance to persons incapable of securing it by reason of poverty, illiteracy, or vulnerability, serves as the most critical instrument for bridging the catastrophic gap between formal constitutional guarantees and substantive justice for prisoners. The Constitution of India, through Articles 14, 21, and 22, alongside the directive principle embedded in Article 39A, has crafted a rights-enabling framework that was ultimately transformed into enforceable statutory architecture by the Legal Services Authorities Act, 1987.³ The National Legal Services Authority, constituted together with State and District Legal Services Authorities, represents the institutional sinew of India's legal aid framework.

Yet, as the late Justice V.R. Krishna Iyer presciently observed, law in books and law in action are separated in India by a chasm of immense social depth.⁴ The prisoner frequently illiterate, indigent, socially marginalised, and bereft of family support inhabits the most precarious position within this chasm. It is this position that the present paper interrogates: the normative promise and practical inadequacy of legal aid as a mechanism for protecting prisoners' rights in India, together with a set of reformatory prescriptions for a more constitutionally consonant

² Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House, New Delhi, 1982) pp. 17–23.

³ The Constitution of India, Arts. 14, 21, 22, 39A; Legal Services Authorities Act, 1987 (Act 39 of 1987).

⁴ V.R. Krishna Iyer, *Law and Life* (Universal Law Publishing, Delhi, 1979) p. 142.

future. The paper proceeds through four substantive sections the constitutional and statutory foundations of prisoners' rights and legal aid, the contemporary crisis of undertrial detention, the structural impediments in legal aid delivery, followed by suggestive guidelines for transformative reform, and a conclusion that synthesises the foregoing analysis into a coherent normative framework.

II. CONSTITUTIONAL AND STATUTORY FOUNDATIONS: THE ARCHITECTURE OF PRISONERS' RIGHTS AND LEGAL AID

A. The Constitutional Mandate: Articles 14, 21, and 22

The constitutional edifice upon which prisoners' rights rest in India was not constructed in a day, nor through explicit textual provision, but through a series of interpretive revolutions wrought by the Supreme Court across several decades of progressive jurisprudence. Article 21 of the Constitution of India guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The landmark shift of this constitutional provision from merely ensuring fair legal procedures to becoming a comprehensive source of essential human rights was realized in *Maneka Gandhi v. Union of India*, where the Supreme Court held that the procedure prescribed by law must be fair, just, and reasonable.⁵ This interpretive revolution had penetrating implications for prisoners: detention that was technically lawful but it could still violate Article 21 if the conditions of imprisonment were inhuman or degrading.

Article 22 supplements the constitutional protection by guaranteeing an arrested person the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of their choice, and the right to be produced before a magistrate within 24 hours of arrest. While Article 22 operates primarily at the pre-trial stage, its protections are constitutionally inseparable from the broader conception of fair trial rights that extend into the custodial phase. Article 14, guaranteeing equality before law and equal protection of laws, further fortifies the prisoners' rights framework by prohibiting arbitrary or discriminatory treatment within the carceral system.

Article 39A, inserted by the 42nd Amendment in 1976, constituted a transformative addition to the constitutional text, directing the State to ensure that the operation of the legal system

⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

promotes justice on the basis of equal opportunity and, in particular, to provide free legal aid by suitable legislation to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.⁶ While initially a directive principle unenforceable in courts, Article 39A acquired justiciable potency through judicial interpretation and ultimately provided the constitutional mandate for the enactment of the Legal Services Authorities Act, 1987.

B. The Supreme Court's Jurisprudential Contribution: From *Hussainara Khatoon* to *D.K. Basu*

No account of prisoners' rights and legal aid in India can proceed without detailed engagement with the pathbreaking cases that transformed constitutional text into concrete entitlement. The most significant of these indeed, one of the most consequential public interest litigations in Indian constitutional history is *Hussainara Khatoon v. State of Bihar*, decided by the Supreme Court in 1979.⁷ In a series of writ petitions filed by advocate Kapila Hingorani, the Court confronted the horrifying reality of thousands of undertrial prisoners languishing in Bihar's jails, many of whom had spent periods in custody far exceeding the maximum sentence for the offences with which they were charged. Justice P.N. Bhagwati, writing for the Court, held unequivocally that the right to speedy trial is a fundamental right implicit in the guarantee of life and personal liberty under Article 21, and that the right to free legal services is an essential ingredient of a reasonable, fair, and just procedure for a person accused of an offence.⁸

This judicial declaration was nothing short of revolutionary. For the first time, the Court established that the State was constitutionally obligated not merely empowered to provide legal aid to accused persons who could not afford legal representation, and that a trial conducted without such aid was constitutionally infirm. The Court directed the release of numerous undertrial prisoners whose detention had become constitutionally unjustifiable and issued orders requiring the State to provide legal aid machinery in all courts of Bihar.⁹ The judgment resonated far beyond the specific facts: it established legal aid as a fundamental right, judicially enforceable under Articles 32 and 226.

⁶ The Constitution (Forty-Second Amendment) Act, 1976, inserting Art. 39A.

⁷ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

⁸ *Ibid.*, at p. 1365 (per Bhagwati J.).

⁹ S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002) pp. 211–218.

Equally seminal was the Supreme Court's decision in *D.K. Basu v. State of West Bengal*, which addressed the systematic problem of custodial violence and torture in Indian prisons and police lock-ups.¹⁰ The Court laid down eleven specific requirements governing arrest and detention including the requirement that the arrested person be made aware of their right to have someone informed of the arrest and their right to consult a legal practitioner which functioned collectively as a constitutional protocol for the prevention of custodial abuse. Subsequent decisions in *Sheela Barse v. State of Maharashtra*¹¹ and *Suk Das v. Union Territory of Arunachal Pradesh*¹² further cemented the constitutional irreversibility of the right to legal aid, the latter holding that a trial held without legal aid, where the accused was unable to afford legal representation, would be vitiated by a constitutional infirmity that no subsequent remedy could entirely cure.

C. The Legal Services Authorities Act, 1987: Statutory Architecture

The Legal Services Authorities Act, 1987 gives practical effect to the constitutional vision embodied in Article 39A by creating a structured system for delivering legal aid. It sets up a multi-tier institutional framework, with the National Legal Services Authority (NALSA) at the top, followed by State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities, and Taluk Legal Services Committees. These bodies are entrusted with ensuring that individuals who qualify receive free and effective legal assistance.

Importantly, the Act specifically includes individuals in custody within its scope under Section 12, acknowledging their heightened vulnerability. Section 13 strengthens this protection by making it clear that anyone who is detained or imprisoned has a right to free legal aid, regardless of their financial condition.¹³ This categorical entitlement exempting persons in custody from the income-based eligibility threshold that applies to other beneficiary categories represents the legislature's acknowledgement that incarceration in itself, irrespective of financial status, creates a condition of legal vulnerability that the state must affirmatively address. NALSA, in fulfilment of its statutory mandate, has issued several scheme guidelines specifically addressing prisoners' rights, including the NALSA (Legal Aid to the Mentally Ill

¹⁰ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

¹¹ *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

¹² *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991.

¹³ Legal Services Authorities Act, 1987, Ss. 3–10.

and Other Disabled Persons) Scheme, 2015, and periodic directives to DLSAs regarding prison visits and legal aid camps within correctional facilities.¹⁴

III. THE CRISIS OF UNDERTRIAL DETENTION: A CONSTITUTIONAL EMERGENCY WITHIN PRISON WALLS

A. Scale, Statistics, and Constitutional Tragedy

If any single feature of the Indian prison system most starkly exposes the failure of legal aid as a functional safeguard of prisoners' rights, it is the crisis of undertrial detention. India's prisons are currently occupied, to the extent of approximately seventy-six percent of their total capacity, by undertrial prisoners persons who have not been convicted of any offence but are incarcerated pending the conclusion of their trial.¹⁵ According to Prison Statistics India 2022 published by the National Crime Records Bureau, the total number of undertrial prisoners in Indian jails was approximately 4,34,302 persons out of a total prison population of 5,73,220.¹⁶ This means that nearly three out of every four prisoners in India have not been found guilty of any crime.

The demographic profile of India's undertrial population gives this crisis a sharper constitutional dimension. According to the National Crime Records Bureau's Prison Statistics India 2022, approximately two in three undertrial prisoners belong to Scheduled Caste, Scheduled Tribe, or Other Backward Class communities, with SC prisoners constituting approximately 21 per cent, ST prisoners approximately 9 per cent, and OBC prisoners approximately 35 per cent of all undertrials. Muslim prisoners constituted approximately 19.3 per cent of the undertrial population in 2022, a proportion significantly higher than their 14.2 per cent share of the national population. A dominant share of undertrials had not studied

¹⁴ *Ibid.*, S. 12(h) and S. 13.

¹⁵ NALSA, Annual Report 2022–2023 (NALSA, New Delhi, 2023) pp. 34–38.

¹⁶ National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, New Delhi, 2023) p.1.

beyond Class X, and more than a quarter were wholly illiterate, rendering meaningful engagement with the legal system nearly impossible without active institutional support.¹⁷

The situation reflected in these figures reveals a serious constitutional concern. The principle that an accused person is presumed innocent—flowing from Article 21 and affirmed by the Supreme Court in “*Narendra Singh v. State of Madhya Pradesh*” loses its meaning when individuals are kept in jail for long periods before their guilt is even determined. In practice, such prolonged detention begins to resemble punishment, despite the absence of a conviction. A significant number of undertrial prisoners come from historically disadvantaged groups, including Dalits, Adivasis, religious minorities, migrant workers, and individuals with mental health conditions. These are precisely the communities the legal aid system was meant to support, yet it often does not reach them effectively.

The shortcomings of legal aid in addressing undertrial detention can be understood at different levels. To begin with, there is a clear issue of access. Many arrested individuals are unaware that they have a right to free legal assistance, and although safeguards like the D.K. Basu guidelines require authorities to inform them, compliance is inconsistent. Research spanning the four-year period between 2016 and 2019 has revealed that despite this constitutional entitlement, only 7.91 per cent of undertrial prisoners admitted to Indian prisons actually utilised legal aid services, a figure that quantifies the magnitude of the access failure with uncomfortable precision.¹⁸ Beyond access, there is also a problem of quality. Even when legal aid lawyers are assigned, they are often handling excessive caseloads, receive limited remuneration, and may lack adequate training. As a result, the standard of representation they are able to provide frequently falls short of what constitutional guarantees require. At the third level, there is the bail crisis: the excessive resort to judicial remand and prohibitively high bail amounts effectively criminalise poverty.

B. Judicial Interventions and Their Limitations

The Supreme Court has repeatedly expressed anguish at this state of affairs. In *Re: Inhuman Conditions in 1382 Prisons*,¹⁹ the Court took suo motu cognizance of appalling prison

¹⁷ IndiaSpend, #DataViz: Prison Occupancy Rose In 2022, Despite Campaign to Release Undertrials (IndiaSpend, 18 December 2023) <<https://www.indiaspend.com/data-viz/dataviz-prison-occupancy-rose-in-2022-despite-campaign-to-release-undertrials-884179>>; accessed 16 September 2026.

¹⁸ Anup Surendranath and Gale Andrew, *State Legal Aid and Undertrials: Are There No Takers?* (2022) 6(3) *Indian Law Review* 303.

¹⁹ *Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

conditions across the country and directed the constitution of Under Trial Review Committees (UTRCs) in every district, mandated to periodically review the cases of undertrial prisoners who had served more than half the maximum sentence for the alleged offence and recommend their release under Section 479 of the Bharatiya Nagarik Suraksha Sanhita. The UTRCs represented a significant institutional innovation, yet their implementation has been characterised by wide variation across states, and in many districts, they remain largely dysfunctional.²⁰ Court directions by themselves are not enough to bring about meaningful reform; without clear statutory support and mechanisms to ensure accountability, their impact remains limited.

The limited reach of judicial directions is further brought into relief by operational data. A nationwide NALSA campaign conducted between July and August 2022, specifically aimed at identifying undertrial prisoners eligible for release through Under Trial Review Committees, resulted in 47,618 prisoners being recommended for release nationally. Of these, however, only 24,789 were actually released during the campaign period, a conversion rate of under 53 per cent. In percentage terms, the campaign led to the release of approximately 5.8 per cent of the total undertrial population nationally, resulting in a reduction of the overall prison occupancy rate by only 5.7 percentage points. This data starkly illustrates that even when judicial and institutional machinery is actively directed at the problem, structural obstacles in the implementation chain severely curtail the scale of relief actually delivered.²¹

The problem of prolonged undertrial detention is made even more serious by the widespread incidence of custodial violence. Reports by the National Campaign Against Torture indicate that hundreds of people die in custody each year in India, highlighting a grave failure to safeguard basic rights. These incidents take place in environments where the state exercises complete physical control over individuals, leaving detainees in an especially vulnerable position. In such circumstances, access to legal representation should serve as a crucial safeguard against abuse. However, this protection often proves ineffective—not only because of weaknesses in the legal aid system but also due to the stark imbalance of information and power between the detainee and the authorities.

²⁰ Ammini Surendranath, *Pre-Trial Detention in India: A Diagnosis and Reform Blueprint* (CHRI, New Delhi, 2020) pp. 72–84.

²¹ India Justice Report, *Legal Aid Backgrounder* (India Justice Report 2022, Tata Trusts) <https://indiajusticereport.org/files/IJR_2022_Legal_Aid_Backgrounder.pdf> accessed 16 September 2026.

IV. STRUCTURAL IMPEDIMENTS AND INSTITUTIONAL DEFICIENCIES IN LEGAL AID DELIVERY FOR PRISONERS

A. Quality of Legal Representation: The Panel Lawyer Problem

One of the most serious yet often overlooked issues in India's legal aid system is the standard of representation available to prisoners through the panel lawyer mechanism. While the Legal Services Authorities Act authorises legal services bodies to appoint advocates to provide free assistance, the way this system functions in reality has drawn consistent criticism. Many empanelled lawyers are either at a very early stage in their careers, lack sufficient motivation, or are burdened with an excessive number of cases. This situation is aggravated by the extremely low honoraria offered, which fall far below the prevailing rates for competent legal services. The 2015 report of the National Expert Committee on Legal Aid highlighted this concern, noting that such minimal remuneration tends to attract only junior or inexperienced practitioners.

The structural deficiency in representation quality is inseparable from the systemic underinvestment in legal aid delivery that independent research has consistently documented. The India Justice Report 2022 calculated that the combined spending of NALSA and all State Legal Services Authorities on legal aid amounted to only Rs. 4.57 per person per year in 2020-21, with many states consistently failing to utilise even their allocated legal aid budgets. Panel lawyer honoraria under the NALSA (Free and Competent Legal Services) Regulations, 2010, remain so low as to make sustained case preparation, regular prison visits, and repeated court appearances financially unviable for practitioners who might otherwise be capable of delivering the quality of representation that the constitutional standard demands.²²

Poor quality representation has consequences that go well beyond the individual prisoner. It gradually weakens confidence in the legal aid system as a whole, reducing it from a meaningful constitutional safeguard to a formality that fails to deliver real justice. When a prisoner observes that their legal aid lawyer is unprepared, uninformed about the facts of their case or

²² India Justice Report, *Legal Aid Backgrounder* (India Justice Report 2022, Tata Trusts) <https://indiajusticereport.org/files/IJR_2022_Legal_Aid_Backgrounder.pdf>; accessed 16 September 2026.

entirely absent at critical hearings, the entire constitutional edifice of the right to a fair trial collapses into a simulacrum of justice.²³ The Supreme Court, in *State of Maharashtra v. Manubhai Pragaji Vashi*, held that legal aid that is merely nominal or illusory does not satisfy the constitutional requirement and that the State is duty bound to ensure that legal aid translates into effective representation, not merely the formal appointment of a lawyer.²⁴ This judicial direction, however emphatic, has not been translated into mandatory quality standards or accountability mechanisms for panel lawyers under the existing institutional framework.

The situation has a clear gender dimension that often goes underexamined. Although women make up only about four percent of India's prison population, their difficulties in accessing legal aid are distinct and often more complex. These challenges are shaped not only by institutional limitations but also by deep-rooted patriarchal attitudes within both prison systems and the legal profession. A significant number of women prisoners are incarcerated under the Narcotic Drugs and Psychotropic Substances Act. Cases under this law are particularly demanding because of strict minimum sentencing provisions, which limit the courts' ability to grant bail, and the technical nature of the statute, which requires a higher level of legal skill and understanding. In many instances, panel lawyers assigned to such cases are not adequately equipped to handle these complexities. Although initiatives like NALSA's scheme for women in custody provide a formal framework to address these concerns, they have not yet led to the kind of systemic change needed to improve the actual delivery of legal aid for women prisoners.

B. Prison Visits, Legal Aid Clinics, and Systemic Outreach: Promise Versus Reality

Over time, NALSA and the State Legal Services Authorities have put in place several measures to reach prisoners more effectively. These include holding legal aid camps inside prisons, assigning para-legal volunteers to counsel inmates, and setting up Prison Legal Aid Committees to address their legal needs in a more organised manner. These mechanisms represent commendable institutional innovations and have, in specific districts and states, produced measurably beneficial outcomes for prisoners who would otherwise have had no access to legal advice whatsoever.²⁵ Studies conducted by the Commonwealth Human Rights Initiative have documented meaningful improvements in undertrial review and legal aid access

²³ N.R. Madhava Menon (ed.), *Access to Justice: Human Rights Perspective* (Indian Society of Criminology and NHRC, New Delhi, 2000) p. 62.

²⁴ *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730.

²⁵ Prison Reform Programme, *Legal Aid in Prisons: A Study of the Karnataka Model* (CHRI, New Delhi, 2019) pp. 31–45.

in states such as Karnataka and Maharashtra, where proactive SLISA interventions have been combined with civil society engagement.

The limitations of the clinic-based model have been documented by NALSA itself. A comprehensive inspection survey covering 893 Prison Legal Aid Clinics, published by NALSA in October 2024, found that only 72 per cent of Jail Visiting Lawyers assigned to these clinics had received the mandatory induction training stipulated by the NALSA Standard Operating Procedures, 2022. The report further observed that staffing levels in clinics frequently fell short of the population-proportionate requirements mandated by the SOP, and that the volume of legal aid applications forwarded upward to High Court Legal Services Committees and the Supreme Court Legal Services Committee was disproportionately small relative to the scale of the inmate population being served. These findings confirm that physical presence in prisons has not automatically translated into substantive access to legal assistance.²⁶

Yet the aggregate picture across Indian states is one of stark unevenness and systemic under-reach. In numerous states particularly those with large, geographically remote correctional facilities DLISA prison visits are infrequent, inadequately documented, and fail to result in the filing of bail applications or the review of pending cases in any systematic manner.²⁷ The para-legal volunteer programme, which holds significant promise as a mechanism for prisoner outreach, is hampered by inadequate training, high attrition, and the institutional reluctance of prison administrations to facilitate genuine prisoner-lawyer interaction. Prisons by their very architecture and administrative culture are resistant to the kind of open, client-centred legal consultation that effective representation demands.

The digital divide presents an additional contemporary impediment. The COVID-19 pandemic accelerated the adoption of video-conferencing technology for court hearings, but this transition simultaneously deepened the exclusion of prisoners many of whom are held in facilities with no functional digital infrastructure from meaningful participation in their own legal proceedings.²⁸ The experience of the pandemic period produced a cascading crisis of postponed hearings, delayed trials, and accumulated undertrial populations that has not been

²⁶ National Legal Services Authority, *Functioning of the Prison Legal Aid Clinics: October 2024 Report* (NALSA, New Delhi, 2024) <<https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504081076667595.pdf>>; accessed 16 September 2026.

²⁷ Jayna Kothari, "Legal Aid to Prisoners: A Critical Assessment" (2012) 47(18) *Economic and Political Weekly* 63.

²⁸ Aparna Chandra, "COVID-19 and the Indian Prison System: Constitutional Crisis and Digital Exclusion" (2021) 4 *Indian Law Review* 205.

adequately addressed in the post-pandemic period. The lessons of this crisis have not been systematically incorporated into the reform of legal aid delivery mechanisms.

C. Special Vulnerability Categories: Death Row, Mental Illness, and Juvenile Prisoners

Within the already-marginalised population of prisoners, there exist sub-categories whose legal aid needs are particularly acute and whose systemic neglect constitutes a particular constitutional delinquency. Around 539 inmates on death row across India need a far more specialised form of legal assistance. Their cases go beyond routine appeals in criminal courts and often involve drafting mercy petitions as well as pursuing constitutional remedies to challenge the execution of their sentences.²⁹ In *Shatrughan Chauhan v. Union of India*, the Supreme Court held that an excessive and unjustified delay in deciding mercy petitions can be a valid ground for commuting a death sentence. However, putting this principle into practice has not been consistent, and its application has often been the subject of dispute.³⁰

Among all groups in prisons, those with mental illness are often the least visible from a constitutional standpoint. Research indicates that many individuals serving long sentences, including those on death row, have identifiable psychiatric conditions. Despite this, prison systems are not equipped to offer proper mental health care, nor do they consistently ensure that an inmate's mental condition is adequately considered during legal proceedings that affect their rights and fate.³¹ The NALSA scheme for mentally ill persons, read with the Mental Healthcare Act, 2017, provides a normative framework for the recognition of the legal rights of persons with mental illness, but the translation of this framework into effective legal aid representation within the criminal justice system remains largely aspirational. The right to be treated as a legal person recognised by Section 3 of the Mental Healthcare Act is systematically violated when a mentally ill prisoner is subjected to criminal proceedings without comprehending their nature or consequences.

²⁹ Project 39A, *Death Penalty India Report 2023* (National Law University Delhi, New Delhi, 2023) p. 12.

³⁰ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³¹ Project 39A, *Mental Illness and the Death Penalty in India* (National Law University Delhi, New Delhi, 2021) pp. 7–19.

V. SUGGESTIVE GUIDELINES AND A FRAMEWORK FOR TRANSFORMATIVE REFORM

A. Reconstituting the Panel Lawyer System: Quality, Accountability, and Remuneration

The reform of the panel lawyer system must be treated as the single most urgent priority in the structural overhaul of India's prisoner legal aid framework. The existing honorarium structure, which in most states ranges between rupees seven hundred and fifty to three thousand per appearance, is constitutionally scandalous in a legal market where competent private legal representation commands fees that are orders of magnitude higher.³² NALSA must urgently convene a statutory expert committee to recommend a revised, market-proximate fee structure for panel lawyers, differentiated by the complexity and stage of proceedings, and coupled with a mandatory minimum qualification standard that ensures panel lawyers appearing in Sessions Court and above possess the experience necessary for competent representation in serious criminal matters.

Quality assurance must be institutionalised through a mandatory system of periodic peer review and client feedback within the legal services authority framework. Legal aid lawyers representing prisoners must be required to file case management reports with the DLSA documenting the status of proceedings, steps taken, and planned future advocacy, and these reports must be subject to review by a Prisoners' Legal Aid Oversight Committee constituted in every district.³³ The Supreme Court's direction in *State of Haryana v. Darshana Devi* that legal aid must be effective and not nominal should be converted into measurable institutional standards that apply across all legal services authorities. At the very least, the legal aid system should require the establishment of dedicated legal aid clinics in every Central Jail, District Jail, and Women's Prison. These clinics need to be staffed by experienced lawyers who can serve on a full-time or significantly engaged part-time basis, ensuring that prisoners have consistent access to competent legal assistance.

A concrete institutional step in the direction of quality-based reform is the NALSA Legal Aid Defence Counsel System (LADCS), launched in 2022 as a public-defender-modelled alternative to the traditional panel lawyer arrangement. Under the LADCS, a cadre of full-time salaried lawyers, barred from maintaining private practices, are deployed to provide continuous

³² National Legal Services Authority, *Honorarium Structure for Panel Lawyers: State-Wise Data* (NALSA, New Delhi, 2022).

³³ Law Commission of India, *185th Report on Review of the Legal Services Authorities Act, 1987* (Government of India, New Delhi, 2003) para. 3.12.

legal representation from the pre-arrest and remand stages through to trial and appeal. The scheme has been rolled out across thirteen states and has processed over one million cases in its initial years of operation. However, independent reporting has found that LADCS lawyers continue to face unsustainable caseloads, funding uncertainties, and inadequate staffing, raising concerns about whether the scheme, in its current form, can deliver the continuity and quality of defence that it was designed to provide.³⁴

The approach followed by the United Kingdom's Legal Aid Agency provides a useful point of reference. It combines a system of fixed fees based on the seriousness of the offence with periodic quality assessments tied to the outcomes of cases, offering a more structured and accountable model for delivering legal aid.³⁶ Legal aid institutions in India need to rethink their current approach, which tends to prioritise handling a large number of cases and fulfilling procedural requirements rather than ensuring meaningful representation. The focus should instead shift toward recognising and rewarding genuine effectiveness measured through concrete results such as securing bail, facilitating case reviews, or achieving sentence reductions. This is not merely an administrative reform but a constitutional necessity aimed at making the right to legal aid truly meaningful.

B. Technology, Access, and the Digital Transformation of Legal Aid

The digital transformation of the Indian judiciary, accelerated by the post-pandemic period, offers both opportunities and risks for prisoner legal aid that must be proactively managed. The deployment of video-conferencing technology for prison interviews allowing prisoners to consult their legal aid lawyers without the administrative burden of physical transfer has genuine potential to increase the frequency and regularity of lawyer-client interaction, provided that adequate privacy and confidentiality protocols are built into the technological infrastructure.³⁵ NALSA must develop mandatory technical standards for legal consultation via video-conferencing, requiring that such consultations occur in conditions that guarantee attorney-client privilege and that prisoners are not observed or recorded by prison staff during the consultation.

³⁴ Aaratrika Bhaumik, *Inside India's Public Defender Experiment: The Lawyers Fighting for Those Who Can't Afford One* (*The Print*, 10 June 2026) <<https://theprint.in/judiciary/inside-indias-public-defender-experiment-the-lawyers-fighting-for-those-who-cant-afford-one/2955433/>>; accessed 16 September 2026.

³⁵ Legal Aid Agency (UK), *Crime Lower: Standard Crime Contract 2017* (Her Majesty's Stationery Office, London, 2017).

The development of an integrated, national Prisoner Legal Aid Management System an online platform that tracks the legal aid entitlement, representation status, and case progression of every prisoner in India in real time would represent a transformative technological intervention.³⁶ Such a system would allow DLSAs to proactively identify prisoners who lack legal representation, automate the triggering of bail review processes under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and generate district-level accountability data on legal aid delivery that can be subject to judicial monitoring and civil society scrutiny. The model of the E-Courts Mission Mode Project, which has achieved significant advances in case management, should be extended into the prisoner legal aid domain with appropriate privacy protections.³⁷

C. Structural Reforms in Criminal Procedure, Bail Law, and International Standards

Legal aid reforms cannot, in isolation, resolve the structural drivers of India's undertrial detention crisis without corresponding reforms in criminal procedure and bail law. A standalone Bail Act as recommended by the Law Commission of India in its 268th Report which establishes a statutory presumption in favour of bail for non-serious offences, limits the grounds of detention to constitutionally justified considerations, and expressly prohibits bail conditions beyond the financial means of the accused, must be enacted as a matter of constitutional urgency.³⁸ The Under Trial Review Committees must be given statutory backing, and DLSAs must be given an active advocacy role within UTRC proceedings.

India's obligations under international human rights law provide an important normative anchor for the reform of prisoner legal aid. The United Nations Standard Minimum Rules for the Treatment of Prisoners the Mandela Rules, adopted in 2015 establish comprehensive standards that have direct implications for legal aid delivery, including the right of prisoners to communicate freely with their legal advisers under conditions of full confidentiality.³⁹ India, as a signatory to the International Covenant on Civil and Political Rights, is bound by Article 14(3)(d), which guarantees every person charged with a criminal offence the right to have legal

³⁶ E-Committee, Supreme Court of India, *Model Rules for Video-Conferencing for Courts* (Supreme Court of India, New Delhi, 2020).

³⁷ NALSA, *Technology and Legal Aid: Policy Discussion Paper* (NALSA, New Delhi, 2021) p. 19.

³⁹ Law Commission of India, *268th Report on Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Government of India, New Delhi, 2017) para. 8.4.

assistance assigned to them in any case where the interests of justice so require, and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012, provide a comprehensive framework for the organisation of legal aid that is directly relevant to India's reform agenda.⁴⁰

CONCLUSION

The role of legal aid in safeguarding prisoners' rights in India is, at one and the same time, constitutionally foundational and institutionally incomplete. The Supreme Court of India through a series of landmark decisions from *Hussainara Khatoon* to the present has constructed a robust jurisprudential framework that treats legal aid as a fundamental right inseparable from the guarantee of life and liberty under Article 21, from the right to a fair trial implicit in constitutional due process, and from the state's affirmative obligation to ensure that justice is accessible to those whom poverty, illiteracy, and social marginalisation have systematically excluded from its reach. The Legal Services Authorities Act, 1987, and the institutional network of NALSA represent the statutory infrastructure designed to give operational content to this constitutional mandate.

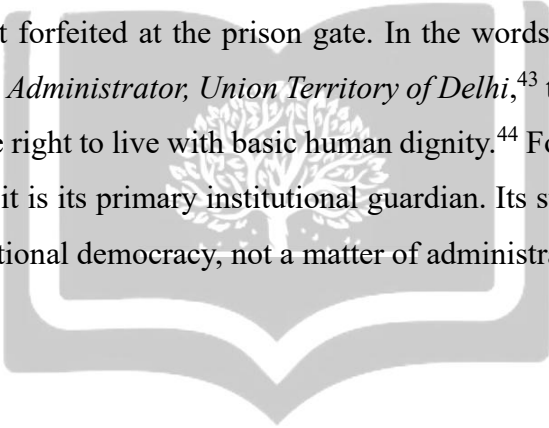
Yet the gap between constitutional promise and institutional reality a gap that Justice V.R. Krishna Iyer once called the “nightmare of non-implementation” continues to persist in a deeply troubling way. The ongoing crisis of undertrial detention, the poor quality of representation by panel lawyers, the neglect of prisoners with mental illness and those on death row, the lack of meaningful outreach inside prisons, and bail practices that disproportionately punish the poor all of these point to a broader, systemic breakdown. Occasional court interventions and gradual institutional changes have simply not been enough to deal with problems of this scale and depth.⁴¹ In India, most prisoners come from economically weaker sections and are often drawn from Dalit, Adivasi, or minority communities, with many lacking basic literacy. Despite constitutional safeguards meant to protect them, they remain largely unseen and unheard within the very system that is supposed to uphold their rights.

⁴⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), UN Doc A/RES/70/175 (17 December 2015), Rule 61.

⁴¹United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc A/RES/67/187 (20 December 2012), Principle 3; International Covenant on Civil and Political Rights, Art. 14(3)(d).

The set of reforms proposed here ranging from overhauling the panel lawyer system and modernising legal aid through technology, to embedding bail reforms in law, strengthening mechanisms for reviewing undertrial cases, and aligning policies with international human rights standards is neither unrealistic nor excessively costly. Rather, it reflects the basic level of commitment expected from a republic that takes its constitutional responsibilities seriously, especially toward those who are most vulnerable within the prison system. As the author has argued across decades of engagement with the politics of human rights in India, rights do not implement themselves they require institutional architecture, political will, and the sustained pressure of an informed citizenry.⁴²

The reform of legal aid for prisoners is, ultimately, not merely a matter of criminal justice administration it is a measure of the depth of India's democratic commitment to the proposition that human dignity is not forfeited at the prison gate. In the words of the Supreme Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,⁴³ the right to life guaranteed by Article 21 includes the right to live with basic human dignity.⁴⁴ For the prisoner, legal aid is not an adjunct to dignity it is its primary institutional guardian. Its strengthening is, therefore, an imperative of constitutional democracy, not a matter of administrative discretion.



Journal of Multi-Disciplinary
Legal Research

⁴² Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (Oxford University Press, New Delhi, 2007) p. 174.

⁴³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

⁴⁴ Upendra Baxi, *The Future of Human Rights*, 3rd edn. (Oxford University Press, New Delhi, 2012) pp. 231–240.