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Access to Justice: Based on the Financial Capacity and Inefficient Role of Legal Aid

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Inequality in access to justice defeats the rule of law because it restricts poor persons from securing expert legal representation due to financial incapacity, which causes prolonged trials and unfair or unjust imprisonment. With reference to multiple constitutional provisions such as Article 14, 21, 32, 226, and 39 A¹ along with the provisions of Legal Service Authority Act 1987² This research emphasizes the failures of the main objective of the constitutional mechanism by highlighting issues like fund underutilization, Inadequate Infrastructure, Corruption, and a low number of judges per million population. The main focus of this Research paper is to highlight the real challenges faced in the legal world by undertrial prisoners from marginalized groups or backward communities due to their financial incapacity to hire a high-profile advocate or to tamper with the evidence and witnesses. After analyzing the issues or problem with the constitutional provision or framework, this paper suggests required reforms and Solutions such as increasing the budget, training for legal aid Advocates, rural awareness about the right to legal aid, regular incentives or recognition for the Pro bono work, and promoting the principle that 'Bail is a Rule and Jail is an Exception' for all, irrespective of economic condition, to fill the gap between black letter law and the practice in real world.

Keywords: access to justice, legal aid, financial incapacity, Undertrial Prisoners.

¹ Constitution of India 1950, arts 14, 21, 22, 32, 39A and 226

² Legal Services Authorities Act 1987

INTRODUCTION

This article aims to draw attention to a critical issue: unequal access to justice, influenced by various factors. To address this, immediate structural and legislative reforms from parliament are needed. Even with various statutory provisions and constitutional mandates for equal access to justice for all, a gap remains between the law and practice that requires judicial and statutory reforms to bridge it.

Many who have visited a district court during internships or otherwise can easily observe that around 80% of the people who are rushing for the long trials represent the interests of sons, fathers, or brothers languishing in jail, unable to hire an expensive and talented lawyer for bail, simply because they are poor. These families already spend significantly by sacrificing daily wages, paying court fees, travel expenses, fines, and other similar costs. Do affluent people never commit offences? That cannot be true; everyone can. Affluent individuals often commit more financial scams or corporate fraud than petty crimes like theft or fights, yet they are not seen running for trial proceedings; instead, they consult famous advocates in their chambers. From there, they often secure bail without even appearing in court and continue their work. But what about those unable to hire such advocates? Do they deserve jail, or lack the right to resume work? No, they simply cannot afford good lawyers or receive untrained ones through underfunded legal aid. Moreover, even after a bail order, individuals often remain in jail due to their inability to complete legal formalities.

This paper critically analyses the difficulties poor people face in securing bail, as they cannot fabricate evidence like the rich or hire expensive advocates. It also examines the role of legal aid advocates and gaps in achieving the main objectives of the Legal Services Authorities Act 1987. Finally, it offers recommendations and solutions based on research to bridge these gaps and advance the Act's core aims.

RULE OF LAW AND ACCESS TO JUSTICE, ITS LEGAL PROVISIONS

Rule of Law: As per Aristotle, the law should govern, not a citizen; he first advocated for the rule of law. Under the rule of law, even the highest are below the law, meaning law is supreme over arbitrary action and discretionary authority, with every authority action within the law's purview.

In *State of Madhya Pradesh v Thakur Bharat Singh*, the Supreme Court held that the executive powers of the state and union governments are vested. Articles 162³ and 73⁴, The government cannot legitimize arbitrary actions by using executive power under the Constitution without any legislative authority. Hence, the court dismissed the appeal of the state, with the ratio decidendi that the rule of law prevails within the Constitution. The rule of law provides equal access to justice for all citizens, but many lack awareness that the law serves as a social tool for accessing justice, unconcerned with the justice seeker's social or economic factors.⁵

Access to Justice: According to Gary Gaugen, 'Justice is doing for others what we have done for ourselves.'⁶ No exact definition of justice exists, but access to justice stems from the Roman concept *ubi jus ibi remedium*, meaning where there is a right, there is a remedy.

Article 21 of the COI⁷ Includes the right to access justice through courts. While some equate winning a case with access to justice, reality demands that the real culprit receive punishment via fine or imprisonment, and the victim obtains adequate relief through compensation or other means.

Moreover, Article 39A⁸ has been inserted in the COI to make access to justice and legal aid a fundamental right, Access to Courts and Tribunals and Speedy justice.

- Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court, or where appropriate, another independent and impartial tribunal or forum.
- The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunal or other forum, and the state shall take all reasonable steps to achieve the said objectives.

³ Constitution of India 1950, art 162

⁴ *Ibid*

⁵ NR Madhava Menon, 'Serving the justice needs of poor' *The Hindu* (03 December 2013) <<https://www.thehindu.com/opinion/lead/serving-the-justice-needs-of-the-poor/article5415018.ece>> accessed 11 October 2025

⁶ Dr Justice B S Chauhan, 'Access to Justice and Rule of Law' (National Judicial Academy, 14 September 2018) <https://nja.gov.in/Concluded_Programmes/2018-19/P-1110_PPTs/4.Access%20to%20Justice.pdf> accessed 11 October 2025

⁷ Constitution of India 1950, art 21

⁸ *Ibid* art 39A

Under Articles 14, 20, 21, and 22⁹, everyone enjoys equal access to justice and protection against any discrimination or arbitrary state action, irrespective of their financial status. Articles 32 and 22¹⁰ also, recognize the objective of access to justice, where any party is not satisfied with the judgment of any lower court, can appeal from lower court judgments to the high court or the supreme court. If the parties remain dissatisfied with the decision of the Supreme Court, they can file a review petition, which is one of the basic structures of the constitution, immune to amendment.

To strengthen access to justice, the central government came up with the scheme named 'Designing Innovative Solutions for Holistic Access to Justice in India (DISHA).' This scheme includes the tele-law (reaching the unreached), Nyaya Bandhu (pro-bono legal services), Nyaya Mitra, and legal literacy and legal awareness programmes.

This Division also deals with matters related to the National Legal Services Authority (NALSA), including:

- Release of grant-in-aid to NALSA;
- Laying of Annual Accounts of National Legal Aid Fund, Audit Report of the C&AG, and Annual Report of NALSA and Legal Services Authorities of UT; and
- Representations/grievances received from the public for legal aid.¹¹

Legal Aid: Article 39A under DPSP was inserted in the constitution in 1976 in the 42nd Constitutional Amendment¹² to meet the social, economic, and political objective of justice of the preamble of the constitution. Article 39A mentioned that it is the obligation of the state governments to provide free legal aid, especially to those who are poor and cannot afford to hire good advocates. To govern the concept of legal aid in India, the parliament enacted the Legal Services Authorities Act 1987,¹³ and it is monitored by the National Legal Service Authority (hereinafter, NALSA). It also takes necessary steps related to litigation for social action of important concern associated with the weaker or marginalized section of society.

⁹ *Ibid* arts 14, 20-22

¹⁰ *Ibid* arts 32 and 226

¹¹ 'Access to Justice' (Department of Justice) <<https://doj.gov.in/division/access-to-justice/>> accessed 09 October 2025

¹² Constitution (Forty-Second Amendment) Act 1976

¹³ Legal Services Authorities Act 1987

The objective behind these provisions is that the right of access to justice is not to be curtailed due to financial or other impediments.

Section 12 of the Act¹⁴ includes the provision related to providing free legal service in both civil and criminal matters to a person belonging to the weaker section of society.¹⁵

If we see the various legal provisions and constitutional provisions related to the regulation of getting justice, all provision sounds very good, but in reality, are these provisions meeting the real objective of the constitution of providing equal opportunity of justice to everyone?

In MH Hosket's case, where Justice Krishna Iyer declared, 'If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal (to the Supreme Court) for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39A¹⁶, power to assign counsel for such imprisoned individual, for doing complete justice.'¹⁷

In India, despite various platforms and facilities, people from rural and tribal areas are not aware of any such right of access to justice or of the provision of Legal Aid. Many people have a traditional mindset that getting justice is unattainable, and there are various hurdles in the court proceedings.¹⁸ Thus, most of the poor and uneducated people often agree with very unreasonable settlements even if they are not at fault because of impediments in the smooth functioning of justice.

Reasons for Challenges Faced by the Legal Aid System in India: One of the most crucial reasons behind inefficiency is a lack of funds and improper utilization of funds allotted to the legal aid. Thus, very little remuneration is provided to advocates appointed by the legal service authority, due to which lawyers show more interest in their private matters than in public matters. Also, many times lawyers are not capable of defending the case properly due

¹⁴ Legal Services Authorities Act 1987, s 12

¹⁵ 'Legal Aid' (National Legal Services Authority (NALSA)) <<https://nalsa.gov.in/legal-aid/>> accessed 11 October 2025

¹⁶ Constitution of India 1950, arts 21 and 39A

¹⁷ *Madhav Hayawadanrao Hoskot v State of Maharashtra* (1978) 3 SCC 544

¹⁸ Komal Audichya and Nikita Audichya, 'EXPANDING ACCESS TO JUSTICE TO REACH THE POOR AND THE MARGINALIZED COMMUNITIES' (2016) Bharati Law Review 206

<<http://docs.manupatra.in/newsline/articles/Upload/33CD95C5-634D-4A61-9FF2-78B325C8D041.pdf>> accessed 11 October 2025

to a lack of expertise in the matter, resulting in unnecessary imprisonment suffered by the defendant.

As per the report published by the India Justice Report 2022, in 2021-22, NALSA allocated 183 crores for legal aid, but Rs.138 crore remained unutilized. So, if there is no utilization of the fund, the increment is of no use. Underutilization of funds is the main reason for the poor infrastructure of legal aid clinics and untrained lawyers, etc.

Apart from this, the report also claimed that the number of legal aids has drastically decreased from 14159 to 4723 in 2022. Also, a statistical report has been published from 2024-25 (up to May 2024), and there are 11574 legal aid clinics.¹⁹ We need to have proper functional prison legal aid clinics along with expert para-legal volunteers. So that undertrial prisoners can approach for help whenever they are required.

Lastly, one of the important problem or challenges are related to a lack of awareness about the right to access to justice. As per 2021 data, the survey notes that approximately. 65% of the population belongs to rural areas of India.²⁰ It is a widely accepted fact that 70% of rural people are illiterate, due to which they do not have legal knowledge, and awareness of access to justice is limited; many people are unaware of the concept of legal aid clinics. Thus, many times, poor people get exploited, remain deprived of their rights and advantages.

How Financial Constraints Impact the Access to Justice: As I have discussed in the introduction part also, nowadays, access to justice is highly dependent upon the financial status of the person. Initially, lawyers did not get social education along with legal education; this can be one of the various reasons why expert lawyers generally do not choose to go through pro bono cases and avoid taking legal aid cases. In one report, one law firm openly confessed that 'we no longer do pro bono matters because we are too busy trying to survive.'²¹

¹⁹ 'Regular Legal Awareness Programmes are being organised under the aegis of National Legal Services Authority at Taluk, District, State and National Level' (Press Information Bureau, 26 July 2024)

<<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2037346>> accessed 10 October 2025

²⁰ 'ECONOMIC SURVEY HIGHLIGHTS THRUST ON RURAL DEVELOPMENT' (Press Information Bureau, 31 January 2023) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1894901>> accessed 11 October 2025

²¹ Akarshita Singh, 'Legal Aid in India: current scenario and future challenges' (Manupatra, 11 December 2023) <<https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges>> accessed 11 October 2025

We understand very well that access to justice has never been a problem for those who have access to resources and financial stability because mechanisms are available to get justice in front of the court, for instance, hiring a good defense lawyer, court fees, expenses related to documents and stamp duty, payments related to witness and expert fees and other procedural costs. Those who can afford these costs there is higher chance of getting justice than those who cannot afford these costs.

Apart from this, there is no doubt that corruption has become a part of our system, due to which we have to pay multiple unofficial costs to court staff, police, or other intermediaries from registering the case to the finality of the case, to get faster hearings. Even CJI BR Gavai himself talks about the problem of corruption in a roundtable conference in the Supreme Court of the UK on 'maintaining Judicial Legitimacy and Public Confidence.' He stated that no matter how robust the system is, there is always a possibility of professional misconduct and corruption. He also discussed the negative impact on the public trust and declining faith in the integrity of the system as a whole. The statement of the CJI was made after the allegation of corruption framed against Allahabad High Court's J. Yashwant Varma.²²

Moreover, multiple statistical analysis about undertrial prisoners shows that approximately 75% of the undertrial prisoners belong to the marginalised or financially incapable section of society; therefore, they have little or no access to justice.²³ Also, there are many instances where evidences are fabricated either through false representation of evidence or by covering up wrongdoings by paying a heavy amount of money to public officials or to any other intermediaries, causing unjust judgment and public distrust, which is against the principle of the rule of law. The most important consequences of the fabrication of evidence lead to the violation of due process and the right to a fair trial.²⁴

Delay in Court Proceedings: A Hurdle to Access to Justice: There is very popular principle that 'Justice Delayed is Justice Denied' hence there is dire need for the parliament and

²² 'Instances of corruption, misconduct within judiciary impact public confidence: CJI Gavai' *The Hindu* (04 June 2025) <<https://www.thehindu.com/news/national/instances-of-corruption-misconduct-within-judiciary-impact-public-confidence-cji-gavai/article69655749.ece>> accessed 11 October 2025

²³ Neeraj Teewari, 'Barriers to Access to Justice' in Dr Ranbir Singh (ed), *Access to Justice* (INFLIBNET Centre 2019)

²⁴ M Abinaya and S P Aadharsh Sreevathsan, 'A CRITICAL ANALYSIS ON FABRICATION OF EVIDENCE' (2023) 8(7) International Journal of Novel Research and Development <<https://ijnrd.org/papers/IJNRD2307112.pdf>> accessed 11 October 2025

government to pass more efficient laws and policies, bring desired amendment for the protection of those people who are facing unnecessary imprisonment due to delay in proceedings who have committed petty crimes or Many times, they have to spend the long time in jail for the offence which they have never committed because of improper investigation, untrained Lawyers provided by Legal Aid and long-term judicial trial. In the very recent case HC of Rajasthan has acquitted a person who was in jail for 29 years. One of the convicted persons died in 2015. HC observed that conviction was primarily based on testimonial evidence that the accused and victim were last seen together, and punishment of life imprisonment was given by the Alwar district Court. Also, the court observes the improper investigation, especially in the recovery process and the post-mortem report.²⁵

The Supreme Court held in the case of **Hussainara Khatoon** that a speedy trial is one of the fundamental rights of every citizen under Article 21, and it is necessary to secure justice. This case discussed the actual problem faced by undertrial prisoners. Sometimes it also happened that the person spent half of their life in jail or more than the period prescribed for their offence during trial, and later that person was acquitted because their guilt could not be proved. In that case court has released some of the undertrial prisoners of minor offences, who are in jail for approximately 10 years, and they are not able to hire an advocate because of their poverty. Hon'ble court also provided a direction to the state that undertrial prisoners need to be produced before the magistrate on the remand date, and also state with their own expenses hire an advocate to make a bail application on behalf of those undertrial prisoners. Also asked the state and high court regarding the location of subordinate courts, along with the pendency of cases and the rationale for the pendency of cases. It is the obligation of the state to provide advocates at its own cost and free legal aid to those who are not able to afford the expenses because access to justice is a fundamental right of every citizen, irrespective of their financial status.²⁶

There are various reasons for the delay of court proceedings. The most significant reason is the increasing pendency of the cases, which is an average load of 2200 cases per judge. In the MP and Allahabad High court, there is 15000 of case load in each judge, and the ratio of

²⁵ 'HC acquits man of murder 29 years after conviction' *The Times of India* (31 August 2025) <<https://timesofindia.indiatimes.com/city/jaipur/hc-acquits-man-of-murder-29-years-after-conviction/articleshow/123607877.cms>> accessed 08 October 2025

²⁶ *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1980) 1 SCC 98

judges to population is very low. As per the Indian Justice report, there are only 15 judges per million population in the country, which is very low from the recommendation of the 1987 Law Commission, which is 50 judges per million population. One of the reasons for pendency is vacancy in the district court and the high court. Apart from this, the report said that no state spends more than one per cent of its total annual expenditure on judicial infrastructure.²⁷ Thus, most of the time delay in court proceedings led to the loss of evidence and witnesses, which causes injustice to the actual victim.

FINDINGS AND SUGGESTIONS

- There should be an increase in the budget allocation and mandatory provision related to the maintenance of the audit of utilization of allocated funds to ensure proper required expenditure.
- There has to be an annual training programme for panel lawyers and paralegal volunteers of legal aid.
- There has to be a legal knowledge awareness campaign and outreach programme along with digital legal literacy (e-court and tele-Law) all over India, especially in rural areas, and awareness related to the government. A platform or scheme through which an individual can get justice easily at a minimum cost.
- There should be at least one legal aid clinic among ten villages and legal aid clinics everywhere, whether it is in prison, villages, or university, everywhere has to be functional with an expert panel lawyer.
- There should be tax or other incentives and more recognition for advocates who provide pro bono services.
- Every legal aid panel and paralegal volunteer must be provided with all the required infrastructure and facilities to make the litigation process easy.
- There has to be adequate income criteria for the legal aid panel, along with incentive criteria for providing legal assistance to socially and economically backward people, and strict accountability on the part of the advocate should be there.

²⁷ 'Only 15 judges per million population in the country: 2025 India Justice Report' *The Economic Times* (15 April 2025) <<https://economictimes.indiatimes.com/news/india/only-15-judges-per-million-population-in-the-country-2025-india-justice-report/articleshow/120309565.cms>> accessed 09 October 2025

- The government should make a scheme related to as many cases from the social and economic backward section to the legal aid clinics, where you will get the payout for that, along with the income.
- The court should follow the principle of 'Bail is a Rule and Jail is an Exception.' So, judges should act judiciously and in accordance with section 479 of BNSS while sending jail to undertrial prisoners, not on a technical ground.
- Also, the Supreme Court passed strict directions for regular judicial visits to check the condition of the prison and proper access to legal counsel.
- There have to be fast-track bail hearings and the facility of video conference to reduce the unnecessary undertrial imprisonment.

CONCLUSION

As has been analyzed in brief, the current status of access to justice for a common person shows that multiple structural and procedural reforms are needed in criminal laws as well as in the Legal Services Authority Act to control the pendency of the case and to achieve the end of justice. Reform is essential to fulfil the main objective of Article 39A of the Constitution by transforming inefficient legal aid into a robust pillar of access to justice. If the authority implements the suggested measures, they would enhance funding accountability, enable widespread legal literacy drives, and ensure proper functional Legal Aid clinics along with the expert staff in prisons and villages. Moreover, by following proper procedure and conducting just and fair investigations before arresting someone, this would reduce the number of undertrial prisoners, prevent economic inequality in litigation, and help in maintaining the public faith in the judiciary and the Indian legal system. In conclusion, the main aim of this paper is to align the justice delivery system of India with the main objective of the constitutional principle, ensuring that no citizen is denied justice due to their poverty.