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An Analysis on Undertrials, the Contributing Factors and the Parallel Indian Victim Protection Schemes

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ABSTRACT

In India, the issue of undertrials and the availability of legal aid has emerged as a critical aspect of the judicial system. Undertrials refer to individuals who are incarcerated while awaiting trial, often for extended periods, due to delays in the judicial process. This situation highlights a grave concern regarding the right to a fair and timely trial, a cornerstone of justice. According to the Indian Constitution and various Supreme Court rulings, every person is presumed innocent until proven guilty, yet undertrials often endure prolonged detention, violating their fundamental rights.

The lack of adequate legal aid exacerbates this issue, as many undertrials are unable to afford proper legal representation. While India's legal framework provides for free legal aid under Article 39A of the Constitution and the Legal Services Authorities Act, 1987, its implementation remains inconsistent, especially for marginalized communities. This gap in legal access perpetuates inequalities, further hindering the delivery of justice.

In recent years, there has been growing concern that justice has become commodified in India. The increasing privatization of legal services, alongside the rising cost of litigation, has created an environment where the wealthy have greater access to legal remedies, while the poor remain trapped in a system that often disregards their rights. This trend undermines the foundational principle of equal justice for all, with legal representation increasingly seen as a product that requires financial resources rather than a fundamental right. Consequently, marginalized individuals, particularly

undertrials, face systemic challenges in accessing justice, contributing to the growing divide between the affluent and disadvantaged in India's legal system.

KEYWORDS

Legal Aid, Commodification, Discrimination, Humanitarian Laws, Fair Trial.

INTRODUCTION

The very concept of legal representation or assistance in simplistic terms is the of ultimate use of Advocates to present facts and argue pointers of law. The very question of legal assistance in itself is a complicated area of exploration. In India we certainly have an 'adversarial system of adjudication' where the opposing sides are vested with representation so therefore, there is a mandated procedure of legal assistance. But the question is whether this representation is inclusive of all?

An Advocate can help in assorting issues, ascertain facts, present the case in an ordered manner before the judiciary to enable a fair trial. But in India this very forum of legal representation goes inaccessible to a particular sect of people, who are further pushed to a grey area of law. The monetary costs of these institutions are certainly on the rise, which is exactly why we have institutions which would avail these aiding services. The fact remains that unless some kind of legal aid is provided by the agency itself, the denial of Legal Representation, to use the words of Prof. Allen, would be a 'Mistaken Kindness' to the poor people. ¹

"Good quality aid must be ensured. Legal aid to the poor does not mean poor legal aid. There has to be better standard, better quality and better level of legal aid offered through legal services authorities" ², said Justice Uday U. Lalit, Supreme Court Judge and the Executive Chairman of National Legal Services Authority.

Drawing parallels with the above quote made by the Justice, we can see that there certainly is a lack of awareness amongst the masses of their vested rights itself. This awareness has further led to a classification amongst the people where one sect is vested with quality representation and on the contrary the other sect is not. Any sect of people who aren't vested with legal assistance is

¹ LEGAL SERVICES INDIA, <https://www.legalservicesindia.com/article/2552/Right-to-legal-representation.html> (last visited March. 25th, 2024).

² THE HINDU, <https://www.thehindu.com/news/national/karnataka/legal-aid-to-the-poor-does-not-mean-poor-legal-aid-justice-lalit/article37148448.ece> (last visited March. 25th, 2024).

certainly a 'victim in the eyes of law'. This paper deems to trace the route of the causes of inaccessibility and why undertrials are a grey area in the eyes of law.

UNDERSTANDING THE ULTIMATE NEED FOR REPRESENTATION - A DIVE INTO THE LEGAL SYSTEM OF ADJUDICATION

Way back in the 19th century in England, the concept of representation was largely based on the ability to afford one as opposed to the current concept of vested rights. So, if an individual was able to afford such representation, he went assisted and on the contrary if an individual was not able to afford representation, he went unassisted. This case of trial is certainly not a fair procedure. In India, legal assistance from an advocate was rather considered to be a pre-requisite which has to be satisfied in order to conduct a fair trial. The Apex Court also holds the perspective that if a person is not vested with legal aid, his deprivation is 'void and unconstitutional'.

Right to counsel is also an interpreted right under the Constitution which is observed under Article. 22³, mandating that no person who is arrested shall be detained custody without being informed, not providing the grounds of arrest and shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Therefore, the right to counsel is rather considered to be a basic ingredient which forms any trial. This perspective was also observed in the case of R. M. Wasawa vs. State of Gujarat ⁴, where the Supreme court affirmed that 'indigence should never be a ground for denying fair trial or equal justice'. The ultimate need for representation lies on the prospect to conduct a fair trial with the aim of restoring justice to the victims. Representation is rather an important ingredient under the purview of fundamental rights as it vests an individual to avail justice quicker and at ease. Our Indian legal system follows an adversarial system of justice adjudication since our history is deep entrenched with discrimination and social stratification on the basis of religion, race, caste, sex and etc. Therefore, the ultimate need for representation itself is a mechanism to maintain equality and inclusivity.

THE ACTUALITY OF JUSTICE – REPRESENTATION AS A PRIVILEGE

The institution of representation was established to make sure

³ INDIAN CONSTITUTION, art.22 (Protection against arrest and detention in certain cases).

⁴ Ranchod Mathur Wasawa vs State of Gujarat, AIR (1974) SUPREME COURT (1143).

that each and every single individual is vested with a conducive environment which would keep discrimination and inequality at an abeyance. But moving forward the institution itself became rather discriminating by making the accessibility completely monetary i.e., individuals with better economic resources can access quality assistance whereas individuals who are indigent battle with accessibility itself. Therefore, on the ground reality 'representation itself has become a privilege'. This privilege now acts as a base of discrimination where the accused who hails from an economically well-off family is set free but the victim from a depressed society is heinous crime is rather bestowed with incompetent legal assistance by the State. Justice J. B. Pardiwala has remarked on this by stating that, 'though the offence is gruesome and revolts the human conscience, an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused'⁵.

The very statement indicates that there has to be the establishment of 'proof beyond reasonable doubt' and to ensue this there has to be quality legal assistance. Drawing parallels with reality we can certainly deem that legal representation itself has become a monetary privilege.

INTERPRETING THE VERY CONCEPT OF JUSTICE

There is no rather static definition of justice, since the very concept is extremely subjected to social engineering i.e., law changing with the alongside with social trends. As opposed to definitions, our arena is filled with numerous cases of interpretation. Plato interpreted the term 'Justice' as something internal that exists within individuals and the State. He opined that the ultimate rationale of justice is to ensure social constructiveness and harmonious co-existence. The major reason as to why his interpretation gained more momentum is because he emphasized on 'functional specialization', implying that even the ruler has no exception. This specific aspect postulates ultimate equality. The very need to interpret justice is rather to have a clear notion on what it actually stands on. The ultimate base of justice is 'inclusive equality' which completely eliminates discrimination on all fronts.

UNDERSTANDING THE INDIAN ADJUDICATION MECHANISM – AN ADVERSARIAL SYSTEM OF ADJUDICATION AND

⁵ TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/supreme-court-faults-poor-legal-aid-to-murder-accused-while-setting-him-free/articleshow/94870543.cms>, (last visited March. 25th, 2024).

COMMON LAW COUNTRIES

Our Indian system of adjudication follows an adversarial mechanism where there is representation for both the sides. Now the major reason as to why our Indian society is entrenched with such representation is because of our age-old discriminatory practises on the basis of religion, race, caste and sex which led to the establishment of a horizontally stratified society where the upper sect is always vested with benefits as opposed to the lower sect. To combat all these discriminatory practises an adversarial system was brought where both sides are vested with equal resources and there is no discrimination but only the conduction of a fair trial which abides the procedures established by law. Mostly, Common Law countries follow the adversarial type of justice adjudication where an important emphasises is given to the Judge who is completely free from the shackles of bias. The key feature is that the Judge takes a neutral position and only observes. In case of Civil Law countries, the Judge rather probes into the facts and takes on an investigative role as opposed to a neutral stand. This is observed in areas of Continental Europe and etc.

UNDERSTANDING THE ROOTS OF JUSTICE – INTERPRETATION ON PRINCIPLES OF NATURAL JUSTICE

“The universal and absolute law is that natural justice which cannot be written down, but which appeals to the hearts of all.” – Victor Cousin ⁶.

Natural Justice in simplistic terms is the reiteration of what is right and what is wrong. The ultimate rationale is to mandate righteousness. This was specifically observed in the case of Mohinder Singh Gill & Anr vs. The Chief Election Commissioner ⁷. The root of justice is the practise of natural justice, where each and every single procedural complexity is free from bias. The ultimate aim of this principle is to conduct a ‘free and fair’ trial. This principle includes three rules. They are as follows:

- ✓ **‘NEMO JUDEX IN CAUSA SUA’**, meaning ‘no one should be a judge of their own case’ as it leads to bias and unfair activities either consciously or unconsciously.

⁶ Tanya Terkiwal & Shilpa, The Conundrum between Principle of Natural Justice and Section 7 of IBC 2016, IBC LAWS (March 25th, 2024, 9:06 PM), <https://ibclaw.in/the-conundrum-between-principle-of-natural-justice-and-section-7-of-ibc-2016-by-tanya-tekriwal-and-shilpi/>.

⁷ Mohinder Singh Gill & Anr vs. The Chief Election Commissioner, AIR (1978) SUPREME COURT (851).

- ✓ **'AUDI ALTERAM PARTEM'**, meaning 'listen to the other side' which reiterates the concept of fair hearing and that no voices should go unheard.
- ✓ **'REASONED DECISION'**, indicating the 'rationale behind the decision' which makes the parties to the suit informed about their situation of conflict.

It is ultimately through these principles that a 'free and fair hearing' is ensued. In the case of A. K. Roy, Etc vs. Union of India and Anr⁸, it was observed that during the process of enquiry every party has the right to avail a legal representative which is also an important ingredient to be maintained in a fair hearing.

PRIVILEGE VS. INHERENT RIGHT – WHETHER THE VERY CONCEPT OF JUSTICE IS MARGINALIZED AND CAPITALIZED?

There certainly is no doubt that the institution of justice redressal mechanism is fast growing and has become approachable to an extent when compared to the previous years. But we certainly cannot turn a blind eye to the fact that the cost of justice has become expensive leaving behind a particular sect of people to suffer. Access to justice is rather an inherent right of an individual, it was through various judicial interpretations that this access has become a fundamental right as well. Drawing parallels, with the current scenario we are rather able to observe justice transitioning from an inherent right to that of a privileged one. The stipulated costs, the procedural complexities are now status symbols which can only be availed by those who are economically well-off. Therefore, we can certainly say that justice has now become a commodity of sale. It's indeed commendable that various provisions and initiatives exist in India to ensure access to justice for indigent individuals. The exemptions provided under the Code of Civil Procedure (CPC) and the free legal aid program administered by the Legal Services Authority are significant steps towards achieving this goal. Additionally, the enabling provisions in the Court Fees Act of many states, including Odisha, which exempts certain categories of people such as women, contribute to enhancing access to justice. However, as highlighted by the Kerala Law Reform Commission, there may be scope to widen the scope and extent of such exemptions. Recommendations such as providing exemptions for persons below the poverty line, prisoners, and those suffering from mental illness and other grave diseases are crucial in ensuring that access to justice is truly equitable.

⁸ A. K. Roy, Etc vs. Union of India and Anr, AIR (1982) SUPREME COURT (710).

Widening the scope of exemptions aligns with the constitutional ideal of equal justice and can contribute to a more inclusive and accessible legal system. By continuously reviewing and expanding such provisions, policymakers can strive towards creating a justice system that is fair and accessible to all, regardless of socio-economic status or other circumstances ⁹.

AGE OLD DISCRIMINATION AND SUPPRESSION – ESTABLISHING NEXUS BETWEEN SOCIAL DISCRIMINATION AND ECONOMIC MARGINALIZATION

Discrimination is certainly not an alien concept to the Indian society. Discrimination on the basis of religion, race, caste, sex and etc have been going on and on since time immemorial. There always existed a stratification within which the entire society seemed to thrive upon. According to these principles of stratification, the ones who form the lower part of the scale are invariably associated or tied with occupations yielding low income and the ones who form the upper part of the stratification scale are invariably tied with occupation yielding higher income. Rag picking can be an example for the former perspective and agricultural land owners could be an example for the latter perspective. Taking a perspective from the above-mentioned example, the former would always be in a situation where they can never access resources and are rather forced to make their ends meet with the little income they make. Whereas, the latter are highly vested with monetary funds and would rather find it easy to access social resources. Therefore, the dominant caste ¹⁰ are the only ones benefitting out of this system. Therefore, we can easily deem that there exists a nexus between discriminated groups of people and economic marginalization based on occupation.

COMMUNITIE’S AFFECTED BY THIS PHENOMENON - DRAWING PARALLEL’S

Owing to this age-old discrimination there are only specific communities which are affected. This impact can be observed from their lack of accessibility to social resources primarily involving their inability to avail legal assistance due to depleted monetary prospects. These communities predominantly include

⁹ Bhavya Sudhir, Beyond Revenue – Reimagining Court Fee as a Policy Tool for Judicial Administration, (March 27th, 2024, 9:47 PM),

<https://www.dakshindia.org/beyond-revenue-court-fee-policy-tool/> .

¹⁰ DOMINANT CASTE: “A caste may be said to be dominant when it preponderates numerically over other castes and when it also wields preponderant economic and political power. A large and powerful caste group can be more easily dominant if its position in the local caste hierarchy is not too low.”

scheduled castes, scheduled tribes, women, Muslim's, Christians, transgenders and etc. Therefore, there is an established cycle where the discrepancy between the paradoxical groups only expands leading to concentration of wealth among a specific sect of people.

AMBIT OF 'JUSTICE DELAYED IS JUSTICE DENIED' – A BLACK AREA OF UNDERTRIAL'S

The very phrase of 'Justice delayed is Justice denied', was firstly coined by William Edward Gladstone (the former PM of England). The ultimate rationale behind this statement is that if a victim is not able to access quick and immediate resolve, whether the resolve proposed years later still has the same impact?

This phrase ultimately implies that, 'if justice is not carried out at right time, then even if it is carried out later it is not real justice, because when there was demand of justice there was lack of justice'¹¹. Moving forward we are specifically going to take the category of 'undertrials' to elaborate more on this arena.

UNDERSTANDING THE VERY TERM OF UNDERTRIAL PRISONERS: WHO ARE THEY?

In simplistic terms, undertrial prisoners are those who are awaiting their hearing for a charge insinuated on them before the court of law. They are individuals who are accused of a crime but are waiting for years in 'Judicial custody'¹² to hear their case. In simple terms, trial prisoners are people who are put in jail while the authorities are investigating or going through the legal process to determine if they are guilty of the crime they've been accused of. They're essentially awaiting their trial or court case to happen while behind bars.

The Model Prison Manual 2016 defined Under-trial prisoner as a person who has been committed to judicial custody pending investigation and trial by a competent authority¹³. It is also important to note that there exists a clear distinction between undertrials and convicted prisoners. Although, they are accommodated within the same premise there exists zero contact between them. The administration of each group also differs. This

¹¹ Samridhi Amrita Mishra, Justice Delayed is Justice Denied, LEGAL SERVICE INDIA (March 28th, 2024, 11:43 AM), <https://www.legalserviceindia.com/legal/article-3313-justice-delayed-is-justice-denied.html>.

¹² JUDICIAL CUSTODY: an accused is in the custody of the concerned Magistrate.

¹³ NHRC,

<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf>, (March 28th, 2024, 12:07 PM).

is in accordance with the Prisons Manual.

**DIVING INTO THE CASE OF HUSSAINARA KHATOON VS.
HOME SECRETARY, STATE OF BIHAR & Ors ¹⁴ – AN
ANALYSIS**

The very concept of undertrials came into picture after the infamous case of Hussainara Khatoon which revolutionized the entire legal landscape in India. This case brought in the concepts of recognition and protection of undertrials, prison reformation, public interest litigations, insertion of Article.39A via the 42nd Amendment of 1976, State legal services authority, free legal aid and etc. Therefore, it is extremely important to completely analyse this case.

✓ ***THE PUBLICATION WHICH LED TO THIS MOMENTUM OF
'UNDERTRIAL PRISONERS' – A REPORT ON PRISON
REFORMATION:***

- Towards the end of 1978, R.F. Rustamji a member of the National Police Commission made a visit to the District Jail at Patna and the Central Jail in Muzaffarpur, both situated in Bihar. He wrote an article by giving instances of 19 prisoners, some who had been in jail awaiting trial for periods that were longer than the time they might have spent had they been charged, tried, convicted and given the maximum punishment for the offence. On the 8th and 9th of January 1979, a national daily newspaper (The Indian Express), published two articles of Rustamji on prison conditions. According to this article the Patna jail had 137 convicts and 945 undertrials and the Muzaffarpur jail had 1037 inmates out of whom 722 were undertrials.

✓ ***THE APPEARANCE AND CASE OF THE 'HINGORANIS':***

- Nirmal Hingorani and Kapila Hingorani had been practising Advocates before the Supreme Court of India for many years. On the morning of 9th January, 1979, Nirmal Hingorani read this published article and passed it onto his wife Kapila Hingorani, who after reading it felt choked and immediately telephoned the organizers of the 'National Legal Aid Conference' which was held in December 1970. Some suggested Kapila Hingorani to write to the then Chief Justice of the Patna High Court to direct his attention

¹⁴ Hussainara Khatoon v. Home Secretary, State of Bihar and Ors, (1979) AIR 1369, 1979 SCR (3) 532.

to the articles published in the newspaper, another suggested that a Jail Reform Committee might be formed. On the contrary Nirmal Hingorani suggested to file a Habeous Corpus petition. Two days later, on January 11th, 1979, Kapila Hingorani filed a Habeous Corpus petition before the Supreme Court of India under Article. 32 of the Indian Constitution which spells the protection of fundamental rights on behalf of the 19 undertrial prisoners mentioned in the two articles by R.F. Rustamji.

✓ **THE FILING OF THE HABEOUS CORPUS PETITION – EXPANDING THE SCOPE OF REPRESENTATION FOR AGGRIEVED PARTIE’S:**

- Normally a Habeous Corpus petition could not be filed without the power of an Attorney or an affidavit, typically from a close relation or the next friend of the prisoner. Contrary to this practise, Kapila Hingorani did not attempt to contact any of the prisoners named in Rustamji’s article nor to locate their relatives before taking action. Instead, she simply filed the petition herself. Kapila Hingorani made it clear that she was filing the petition as a public-spirited person, rather than as an Advocate. She further reiterated this point by personally appearing before the Supreme Court without the official robe of an Advocate.

UNDERSTANDING THE ISSUE’S RAISED BEFORE THE COURT OF LAW:

- *Whether free legal service is an inalienable element of a ‘reasonable, fair and just’ procedure as guaranteed in Article.21?*
- *Whether Article 39A should be read into Article.21?*
- *Whether the establishment of legal aid service programmes is part of the free legal aid given to undertrials?*

UNDERSTANDING THE ARGUMENTS PLACED BEFORE THE COURT OF LAW – A REPRESENTATION FOR THE OPPRESSED

Drawing parallels with issue one dealing with ‘Whether free legal service is an inalienable element of a ‘reasonable, fair and just’ procedure as guaranteed in Article.21’:

Our Constitution has provided for many prospects especially under Part III, which completely deals with fundamental rights. Part IV of the Constitution deals with Directive Principles of State Policy which are rather goals to be achieved over a period of time. The former is enforceable before the court of law and the latter

isn't as observed under Art.37 which states that 'the provisions contained in this part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws'. Among the Directive Principles of State Policy, under Part IV, Article. 39A that provides for free legal aid has to be discussed with special importance. Unlike in the Inquisitorial system of adjudication, where the Judge is involved in fact findings for the case before him, we follow an Adversarial system of adjudication in India where the Judge is rather neutral. Here the Judge is involved only in determining the right or wrong and not in finding the truth. In such a system if a person who is in dispute with the State is not represented before a Court of law, it will be contrary to the Constitutional scheme of dispute resolution as envisaged.

Article. 39A ¹⁵ was added by the 42nd Amendment in 1976 and reads as 'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Few years after the insertion of Article.39A into the Constitution, the Supreme court dealt with the issue of free legal aid in the case of Hussainara Khatoon. In the words of Justice P.N. Bhagwati, "Legal Aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement... the poor and illiterate should be able to approach the courts, and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid." ¹⁶

He further emphasized that free legal service is an inalienable element under a 'reasonable, fair and just' procedure, for without which a person suffering from economic disabilities would be deprived of the opportunity to secure justice.

Drawing parallels with issue two dealing with 'Whether Article 39A should be read into Article.21':

Article. 39A of the Constitution provides that it is ultimately the

¹⁵ INDIAN CONSTITUTION. Art. 39A, 42nd Amendment (1976), Equal justice and free legal aid.

¹⁶ IPLEADERS, <https://blog.ipleaders.in/article-39a/> (last visited March 29th, 2024).

duty of the State to secure a legal justice system where there exists equal opportunity and that which provides free legal aid in accordance with suitable legislations. Article. 21 of the Constitution provides that 'no person shall be deprived of right to life and personal liberty, except according to procedure established by law'. The procedure which is mentioned here must be 'reasonable, fair and just'. Now a procedure which does not make legal services available to the accused or to the victim who is characterized with economical disabilities cannot be rendered as a reasonable procedure. Therefore, the right to free legal service is an essential ingredient of a 'reasonable, fair and just' procedure and should be read within the ambit of Art.21 of the Constitution.

Drawing parallels with issue three dealing with 'Whether the establishment of legal aid service programmes is part of the free legal aid given to undertrials':

By taking a view from the case of Hussainara Khatoon vs. State of Bihar, the Government had an immediate necessity to introduce a dynamic, comprehensive legal service programme with the ultimate rationale of reaching 'justice to the common'. In this case, Justice P.N. Bhagwati held that the poor are always on the wrong side of law and also stated that they have always come across '*law for the poor*' and not '*law of the poor*'. It was also held that equal justice into legality can only be inserted through the dynamic and activist scheme of legal services, thereby making legal services programme as part of free legal aid.

It was also held that the Government of India and the State Government must strongly recommend a comprehensive legal service programme and also mentioned that 'it is not only a mandate for equal justice implicit of Article.14 and right to life conferred by Article.21, but also the compulsion of the Constitutional directive embodied in Article.39A', making all the three provisions an interdependent entity.

UNDERSTANDING THE JUDGEMENT GIVEN IN THE CASE OF HUSSAINARA KHATOON VS. STATE OF BIHAR

Free legal services to the poor and the needy was proven to be an essential element to constitute a 'reasonable, fair and just' procedure. The Apex Court held that a prisoner who is to seek liberation through the courts process should have the legal services made available to him. The judgement highlighted various other important prospects as well, they are as follows:

- ✓ *Constitutional Right to Legal Services:* The court emphasized that access to legal services is not just a matter of convenience but is integral to ensuring a fair and

reasonable legal procedure, as guaranteed by Article 21 of the Indian Constitution, which protects the right to life and personal liberty.

- ✓ *State Responsibility to Provide Legal Aid:* The court emphasized that it is the constitutional right of every accused person who cannot afford a lawyer due to reasons such as poverty or being incommunicado to have a lawyer provided by the State. This ensures that justice is not denied to individuals solely based on their financial circumstances.
- ✓ *Appointment of Advocates for Undertrial Prisoners:* The court directed magistrates to appoint lawyers, provided by the State at its own cost, for undertrial prisoners who are charged with bailable offences or have been in prison for an extended period beyond one-half of the maximum punishment they could be given. This is to facilitate their access to legal representation and potentially secure their release on bail.
- ✓ *Call for Comprehensive Legal Services Programme:* The court stressed the importance of introducing a comprehensive legal services programme to address the broader issue of ensuring access to justice for all, especially marginalized and underprivileged individuals who may lack resources to engage legal representation.

Overall, the court's directives underscore the critical importance of legal services in upholding the principles of justice and fairness, particularly for those who are economically disadvantaged or otherwise unable to navigate the legal system effectively on their own.

‘UNDERTRIAL PRISONERS’, A GREY CATEGORY OF VICTIMS? – EXPLORING MULTIPLE PROSPECTS

A person who is until and unless proven guilty shall be deemed to be innocent in the eyes of law. So according to the eyes of the law the Under-trial prisoners are neither convicts nor offenders but innocents. Indian Prisoners for a long time have been victims of overcrowding in jails. The average occupancy rate in Indian prisons is 129 percent out of which 77 percent are undertrial prisoners or in other words 3 out of 4 prisoners are deemed to be innocent in the eyes of

law. The outcomes of a pretrial detention are extremely terrible. Apart from the psychological and physical torture that they have to undergo in their jail term a pretrial detention leads to a loss of job that in turn affects the livelihood of the family. The economic burden of supporting the family comes first and the undertrial prisoners don't get financial aid to defend his case. Prisons are a

dangerous place because of the people they house. There are high chances we're the undertrial prisoners can be subjected to group violence and mishandling by the authorities. One of the worst forms of prison violence was witnessed in the case of *Khatri vs State of Bihar*¹⁷. In this case the police had blinded not one or two but 80 suspected criminals. Their eyes were punctured by needles and doused with acid.

Tortures of undertrial prisoners isn't a matter of the past. Recently five guards of the Central Jail in Sabarmati tortured a 24-year-old under trial prisoner by allegedly holding him against a tree in the prison and assaulting the undertrial prisoner with sticks till he fainted while hurling casteist slurs. In a 2019 study commissioned by the Haryana state legal services authority to ascertain the conditions of the prison in the state it was found that prisoners including under trial prisoners were subjected to torture including waterboarding, electric shocks, sleep deprivation and in some cases even threats of rape and injuries to sexual parts of the body.

Addressing the issues related to undertrial prisoners and the violation of their human rights requires systemic reforms in the legal and judicial system, including measures to expedite trials, improve access to legal aid, reduce overcrowding in prisons, and ensure that pre-trial detention is used judiciously and in accordance with human rights standards.

AFTERMATH OF THIS CASE – INVOLVING PUBLIC INTEREST LITIGATIONS, INCLUSIVE REPRESENTATION, ESTABLISHMENT OF LEGAL AID AUTHORITIES

The case of *Hussainara Khatoon vs. State of Bihar*, certainly had numerous implications. The aftermath of the case mainly involved the 'scope of locus standi being expanded'. Locus standi in simplistic terms indicates the rights of the parties and those who are connected to them to appear before the court of law. This case was the first of its type to actually have a third person appear before the court of law to confer rights.

The concept of 'Public Interest Litigations' originated here, these petitions are those cases where a third party appears before to court of law representing the victim or the accused. The ways in which this petition can be invoked also involves the use of 'Suo motu' i.e., advocates or court taking notice from newspaper articles or publishing's, like the *Hingorani's* took in the concerned case. The ultimate rationale behind these social litigations is to increase 'inclusive representation'. These petitions help in the

¹⁷ *Khatri vs State of Bihar*, 1981 SCR (2) 408, 1981 SCC (1) 627.

representation of the depressed communities. Owing to all these prospects, Advocate Kapila Hingorani was deemed to be the 'Mother of PIL'.

UNDERSTANDING THE LEGAL SERVICES AUTHORITIES ACT, 1987

Legal aid scheme was first introduced by Justice P.N. Bhagwati under the Legal Aid Committee which was formed in 1971. According to him, legal aid means 'providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement'. He also specified that 'the poor and illiterate should be able to approach the courts and their ignorance or poverty should not be an impediment in the way of obtaining justice from the courts'.

Legal aid should be available to the poor and the illiterate. Legal aid is defined in a way which deals those who find it rather difficult to access courts. Article. 39A of the Constitution validates this aspect. Article. 14 and Article. 22(1) ¹⁸ also makes it obligatory for the State to ensure equality before law and the legal system.

Section.12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to eligible categories of people which includes a member of a scheduled caste or scheduled tribe, a woman, a child, a victim of trafficking and etc.

UNDERSTANDING THE NALSA REGULATIONS UNDER THE LEGAL SERVICES AUTHORITIES ACT, 1987

The National Legal Services Authority is a statutory body constituted under the Legal Services Authorities Act, 1987, aimed at providing free legal services to the marginalized and disadvantaged sections of society in India. It includes the following prospects.

Objectives: The primary objective of NALSA is to ensure that justice is accessible to all, irrespective of their economic or social status. It works towards promoting equal access to justice and upholding the rule of law.

Functions: NALSA performs various functions to fulfil its objectives, including:

¹⁸ Article. 22(1): No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

- ✓ Providing free legal aid and assistance to the poor, marginalized, and disadvantaged sections of society.
- ✓ Organizing Lok Adalat's (people's courts) for speedy resolution of disputes through alternative dispute resolution mechanisms.
- ✓ Spreading legal awareness among the public, especially among marginalized communities, to educate them about their rights and entitlements under the law.
- ✓ Undertaking other measures to ensure effective implementation of legal aid programs and schemes.

Composition: NALSA is headed by the Chief Justice of India or a senior Supreme Court judge nominated by the Chief Justice of India. It also includes other members appointed by the Central Government, such as representatives from the judiciary, legal profession, and social activists.

State Legal Services Authorities: In addition to the National Legal Services Authority, there are State Legal Services Authorities (SLSAs) at the state level and District Legal Services Authorities (DLSAs) at the district level. These bodies work in coordination with NALSA to implement legal aid programs and schemes at the grassroots level.

Legal Aid Programs: NALSA and its affiliated bodies provide legal aid and assistance in various forms, including legal representation, advice, counselling, and mediation. They prioritize assisting vulnerable groups such as women, children, senior citizens, persons with disabilities, and members of Scheduled Castes and Scheduled Tribes.

CONCLUSION

The Apex Court of India in the case of Hussainara Khatoon & Ors vs. Home Secretary, State of Bihar on legal aid declared a nexus between Article.21 and 39A. The court declared that 'there can be no doubt that speedy trial is an integral and essential part of the fundamental right to life and liberty as enshrined in the Constitution. It was also held that it was the Constitutional right of every accused person who is unable to engage a lawyer due to economic conditions and also mandated that the State is under a Constitutional mandate to provide a free lawyer to the accused. Hussainara Khatoon's case has resulted in law taking a new facade as an instrument of justice responding to the needs and changes of the society. The changes are both structural and substantive. The remedial nature of law, the socially motivated court action, the adherence to the principle of substantive equality, the procedural flexibility and the relaxation of the rule of locus standi has resulted in the lowering of barriers between the

common man and the court making inclusive representation achievable.