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# *Between Custody and Constitution:*

## Field Lessons in Delivering Fair Trial Rights

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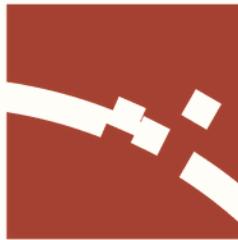
**Justice Vikram Nath**  
Judge, Supreme Court of India



**KEYNOTE ADDRESS FOR THE LAUNCH OF  
LEGAL AID FOR UNDERTRIAL PRISONERS: REPORT OF THE  
FAIR TRIAL PROGRAMME IN PUNE AND NAGPUR (2019-  
2024)**

7<sup>TH</sup> NOVEMBER, 2025 | AMBEDKAR INTERNATIONAL CENTRE | NEW DELHI





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Greetings.

Dr. Ambedkar, while delivering his last speech in the Constituent Assembly said something which holds equal importance today as it did then. He said and I quote,

***“We must begin by acknowledging the fact that there is complete absence of two things in Indian society. ... How long shall we continue to live this life of contradictions? ... If we continue to deny it for long, we will do so only by putting our political democracy in peril.”***

The contradiction that we are here to discuss today is that between the constitutional promises and lived reality of lakhs of undertrial prisoners, which unfortunately comprises of over 70% of the total prison population. It is a golden rule of our criminal jurisprudence that one is innocent until proven guilty. Yet for these undertrials, this is far from reality.

You know it is often said that what we refuse to see, we cannot heal. I would like to take a moment to congratulate the Square Circle Clinic for the commendable work and research that they have been doing in bringing out the lived reality of lakhs of people. I have come to know that the Fair Trial Programme which the Clinic runs, since its inception, has aided the release of around 1700 inmates, making legal aid accessible in the truest sense.

Their work reminds us that justice does not end at the courtroom door - it continues in the lived experience of those who depend upon it. This report, which traces the journey from 2019 to 2024, stands as both a mirror and a map- reflecting the gaps that continue, and showing the path that lies ahead. I congratulate them for this vital initiative, and thank them for their commitment to upholding the values of liberty, fairness and dignity.

Given the comprehensive nature of this report and the constraints of time, I will confine my remarks to certain key aspects and reflections that particularly stuck with me.

As we go ahead, we must begin with a fundamental acknowledgment: the challenges facing our criminal justice system, particularly in the realm of undertrial detention and legal aid, have long existed. They are not new, and if we are to be honest with ourselves, they won't disappear entirely in the foreseeable future.

As much as we may aspire for it, a state of perfection in any human institution is beyond our reach.

However, if we are to err, let us err on the side of liberty and dignity. For, as Justice Khanna reminded us, “Without liberty, the law loses its soul and justice loses its meaning.” The right to life and preservation of liberty enshrined in our Constitution are not hollow promises. They embody the values and aspirations born of our freedom struggle - the anguish of a people once enslaved by a tyrannical state, and the solemn pledge of our Constitution makers that never again shall any citizen of this nation live at the mercy of an unjust system.

And yet, when we look beyond the text of our Constitution into the lived realities within our prisons, we find that this promise remains unfulfilled. Statistics tell a sobering story - more than 70 % of our prison population consists of those who have not yet been found guilty.

And what is more concerning is that, in most cases, they don't even know that they have a right to legal aid.

**Out of the 74% of undertrials, only 7.91% have utilized legal aid available to them. Even in cases where they do know, they often refrain from seeking it due to distrust stemming from past experiences. They rather go ahead with engaging some private advocate believing that if they pay someone, he'll do better than the person who is getting nothing out of it.**

Bail applications are filed mechanically, without supporting documents, without sureties that the accused can actually produce. The accused cannot afford the bail amount, cannot find sureties and he is back to square one. He just waits, not because the law makes him, but because the system has failed him.

There are undertrials who have spent time in prison exceeding the maximum sentence for the very offense they are accused of. There are undertrials charged with bailable offenses who remain in custody simply because they could not furnish bail. There are undertrials who would have been acquitted or given suspended sentences had their trials concluded promptly- yet they continue to languish.

I come across such cases on a day to day basis, where for even minor offences, people have been in custody for so long, with not even a chargesheet is filed,

let alone the trial begun, and it pains me to witness this. Of course, the Courts do as much as they can. From the judgment in Hussainara Khatoon which led to the release of over 40,000 undertrial prisoners to the one in Sukanya Shantha, challenging the caste-based discrimination in Indian prisons, the Court has upheld the constitutional promise of liberty and dignity. But the faith of people in the justice system will not be restored by monumental judgments alone. It will be restored by the everyday decency of those who serve within it. When legal aid becomes meaningful, justice becomes visible. And when that happens, our democracy breathes a little easier.

The Clinic has done an impeccable job in identifying the systemic problems that we face today. I'll briefly go over that.

It showed how legal aid today works in separate boxes- in courts, prisons, legal services authorities, with no real connection between them. This results in a difficulty faced by the poor and the unrepresented in finding their way through multiple institutions. A much better way to do this would be to bring these pieces together- by creating one clear line of responsibility from the first contact to the final representation. When an accused person appears before a Magistrate, the system should already know if they have a lawyer, if that lawyer has met them, and if the representation will continue. It is also important to realise that it is not enough to just provide a lawyer; we must ensure that the representation is effective. To ensure that the concerned authorities are performing their part, it is essential to maintain a system of checks and supervision. There is a need for checking performance, building skills regularly, and creating mentorship within the Legal Services Authorities.

The report calls for change in how we teach law. Every law school must treat legal aid clinics as places where justice comes alive, not as extra work to be checked off a list. If a young lawyer's first real experience of law comes from meeting an undertrial- from seeing his fear and hope- rather than from reading it in a book, we will have already begun to reshape our profession. Along with having functioning legal aid cells, paralegal volunteers etc. in college, it is required that we imbibe the spirit of service within them, the true meaning of what it means to be a student of law.

It has often been said that prisons are a microcosm of our society, and there is truth in that. Certain groups, both within and outside those walls, remain disproportionately targeted and disadvantaged. While the situation is difficult for all undertrial prisoners, it is far worse for women, for individuals with mental health

concerns, and for those from marginalised communities. When it comes to these groups, we must move beyond uniformity and adopt a differentiated, compassionate approach that recognises their particular vulnerabilities and provides the support they require.

***The data we presently rely upon to address these issues is, unfortunately, insufficient in both scope and quality. For instance, the Prison Statistics of India report does not even account for the health status of prisoners. Equally disheartening is the continued neglect of the provisions of the Mental Healthcare Act, 2017 and the guidelines laid down by the courts in several cases- a concern that this report highlights with clarity. As long as these institutional barriers remain unaddressed, no real or lasting reform can take root.***

For women, the prison becomes an extension of the same social control, moral scrutiny, and gender policing that governs their lives outside. The report points to a glaring deficiency that even the data we produce tends to invisibilise women and also, transgender persons. Their experiences remain undocumented, their voices unheard. When the intersection of gender with caste, poverty, and limited education is added to this, the degree of vulnerability becomes almost unimaginable. The statistics presented by the report are, in that sense, not merely numbers - they are a reflection of our collective failure to see and to respond.

It is here that we must consciously adopt the lens of substantive equality. True equality demands that we account for the distinct burdens carried by women and other vulnerable groups, and shape our laws, policies, and institutions in a manner that enables them to stand on equal footing, whether it is through effective legal aid, access to healthcare, safe spaces, or institutional sensitivity. Only when these differences are accounted for can the right to a fair trial be meaningful.

**One other area that, I believe, demands urgent attention is the need to strengthen empirical research and data systems that can drive evidence-based reform. The Pune-Nagpur Model itself stands as a living example of the transformative impact such initiatives can have. We must move towards creating robust national and state-level databases that track undertrial prisoners longitudinally- from the moment of arrest through release or conviction.**

These databases should capture demographic profiles, nature of charges, duration of detention, quality of legal representation, reasons for delay, and final outcomes. Importantly, this data must be disaggregated by caste, religion, economic status, gender, and geography, so that we can clearly see where and how the system fails particular communities. For when we cannot measure a problem with accuracy, we cannot hope to design solutions with integrity.

For the timeline that the report covers, significant strides have been made in the right direction to make the legal aid system more effective and responsive. The report documents several encouraging developments that deserve our acknowledgment.

The positive implementation of the Legal Aid Defence Counsel (LADC) scheme by District Legal Services Authorities, the setting up of Prison Legal Aid Clinics, and the latest quarterly report of NALSA on Under Trial Review Committees shows the improved functioning of these Committees, which definitely acts as the silver lining and gives hope for the future.

The report also highlights instances where timely intervention has resulted in increased acquittals. Social work intervention, which I believe is an equally important facet, including contacting the families of the undertrials, home visits, and giving them documentation support has also shown improvement from the last time.

In making legal aid truly accessible, we move from mere sympathy to structural empathy- ensuring that representation reaches not only those who can approach the court, but also those for whom the court must reach out. That, perhaps, is the next chapter in the story of our justice system.

This reminds me of Justice Iyer, who while talking about the important role that the Courts play in preserving the rights of its people, had very correctly remarked that- “For if courts ‘cave in’ when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where, often, dissenters and minorities are caged, Bastilles will be re-enacted. When law ends, tyranny begins; and history whispers, iron has never been the answer to the rights of men. Therefore, we affirm that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen.”

As I come to a close, I want to use this platform to appeal to everybody, to the individuals who want to seek legal aid and the ones who provide it, to perform their roles diligently and faithfully. Think of effective justice as a machine, with different stakeholders as the parts and the rules, directions as the lubricant. As long as each part performs its role perfectly, there will be no roadblocks and effective justice will be served.

Yet, I must say that there rests a higher moral and legal duty upon those who provide legal aid- from legal aid clinics in law schools to legal aid counsels, prison authorities, and police officials to ensure that, firstly, undertrials have the knowledge and access to the services and secondly, the service being rendered is effective. Courts of the country on several occasions have expressed their concern about the quality of legal aid.

It needs to be understood that this is not merely a formality. It is a constitutional duty- one that can decide whether a person spends years in confinement or walks free with dignity. When legal aid is rendered in form but not in spirit, it may still comply with procedure, but it fails the Constitution. It fails the idea of justice itself.

**The Supreme Court has repeatedly emphasised that the quality of legal aid for the poor cannot itself be poor. This is an essential facet of Articles 21 and 39A- the twin pillars that ensure that justice is not denied because of poverty or ignorance. It is not an act of charity, but an act of faith - faith in the Constitution and faith in the equality of all before the law.**

Martin Luther King Jr. cautioned us- “Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity”

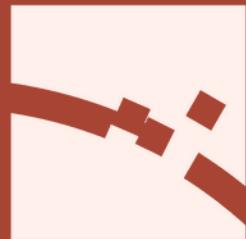
We have the knowledge, we know the stakes.

What we need to do now is act. The measure of our legal system lies not in the elegance of our jurisprudence or the efficiency of our procedures, but in how we treat the most vulnerable within it. Every undertrial languishing beyond his due, every person denied effective legal aid, is a reminder that our work is far from complete.

In the end, I am leaving with the hope that conversations begun here today will translate into meaningful action, that the contradictions that we began with will be overcome and that liberty will prevail.

Thank you!





**THE  
SQUARE  
CIRCLE  
CLINIC**

**The Square Circle Clinic**  
NALSAR University of Law  
503, Fifth Floor ABW Rectangle 1  
D4, Saket District Centre  
New Delhi-110017

<https://thesquarecircleclinic.org/>

[squarecircleclinic@nalsar.ac.in](mailto:squarecircleclinic@nalsar.ac.in)

[The Square Circle Clinic, NALSAR](#)