

**LEGAL AID AND THE RIGHT OF AN ACCUSED TO BE
DEFENDED UNDER THE BNSS: JUSTICE SHOULD NOT DEPEND
ON MONEY**

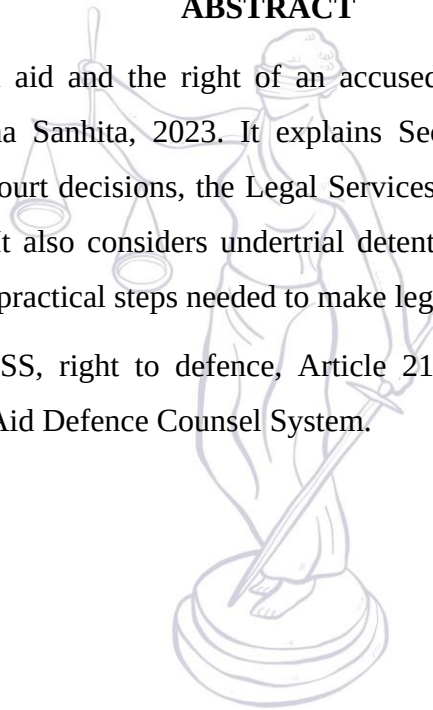
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ABSTRACT

This article examines legal aid and the right of an accused person to be defended under the Bharatiya Nagarik Suraksha Sanhita, 2023. It explains Sections 340 and 341, constitutional safeguards, key Supreme Court decisions, the Legal Services Authorities Act and the Legal Aid Defence Counsel System. It also considers undertrial detention, access to lawyers, preparation time, language barriers and practical steps needed to make legal aid effective.

Keywords: Legal aid, BNSS, right to defence, Article 21, Article 39A, free legal services, undertrial prisoners, Legal Aid Defence Counsel System.



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INTRODUCTION

A person standing inside a criminal court may be frightened, confused and unsure about what will happen next. The police may have filed a charge sheet, witnesses may be ready to give evidence, and the prosecutor may have years of experience in criminal law. The accused person, however, may not even understand the charges against them. If that person cannot afford a lawyer, the difference between the two sides becomes serious. A trial may follow all the required steps on paper, but can it really be fair when one side has no proper legal help?

This is why legal aid is an important part of criminal justice in India. The right to a lawyer is not meant only for people who can pay high fees. An accused person must have a fair chance to explain their side, question the prosecution's evidence and present a defence. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024, contains provisions dealing with the right to be defended by an advocate and the appointment of a lawyer at state expense.¹

Sections 340 and 341 are especially important. Section 340 recognises the right of an accused person to be defended by an advocate of their choice. Section 341 provides for the court to assign a lawyer at the state's expense when an accused person is not represented and does not have sufficient means to engage an advocate. These provisions continue important protections that existed under the earlier Code of Criminal Procedure, 1973.²

The real question is not simply whether India has a legal aid system. It is whether a person who needs help can receive it in time, understand the advice given and get a lawyer who is prepared to defend the case properly.

SECTION 340: THE RIGHT TO CHOOSE A DEFENCE LAWYER

Section 340 of the BNSS states that any person accused of an offence before a criminal court, or against whom proceedings are instituted under the Sanhita, may be defended by an advocate of their choice. The provision recognises that an accused person should not be forced to face criminal proceedings without legal representation merely because the case has been filed against them.³

¹ Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 340–341; brought into force on 1 July 2024.

² Constitution of India, arts. 21, 22(1) and 39A.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 340; Code of Criminal Procedure, 1973, s. 303.

A defence lawyer helps the accused understand the charge, study the evidence and decide how to answer the prosecution's case. The lawyer may question witnesses, challenge unreliable evidence, raise legal objections and explain why the prosecution has not proved the charge beyond reasonable doubt.

Consider a person accused of cheating in a business transaction. The police may rely on bank records, written agreements and statements from several people. The accused may believe that the dispute is civil in nature or that the documents have been misunderstood. Without legal advice, the person may not know which facts matter or how to raise the correct legal arguments. A lawyer can examine the records and help the court understand the defence.

The right to choose a lawyer does not mean that the state must pay for any advocate the accused selects privately. It means that an accused person has the right to legal representation of their choice, subject to the ordinary legal rules governing representation.⁴ Where the person cannot afford a lawyer, the separate legal aid system becomes important.

Section 340 carries forward the main principle of Section 303 of the old CrPC. Although the wording of the criminal procedure law has changed, the basic idea remains the same: a criminal trial should not prevent an accused person from obtaining legal assistance.

SECTION 341: WHEN THE STATE MUST PROVIDE A LAWYER

The right to choose a lawyer is of limited use to someone who has no money to pay legal fees. Section 341 of the BNSS addresses this problem.

Under Section 341(1), when an accused person is not represented by an advocate in a trial or appeal before a court, and the court finds that the person does not have sufficient means to engage an advocate, the court shall assign a lawyer for the defence at the state's expense.⁵

The word “shall” is important. Once the conditions set out in the provision are met, assigning a lawyer is not simply a matter of the court's kindness. It is a legal duty.

Section 341(2) allows the High Court, with the previous approval of the state government, to make rules about the selection of defence lawyers, the facilities provided to them and the fees payable by the government. Section 341(3) allows a state government to extend these arrangements to specified classes of trials before other courts in the state.

⁴ Constitution of India, art. 22(1).

⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 341(1)–(3).

These provisions provide a legal basis for state-funded defence. However, the actual quality of legal aid depends on how the system works. A lawyer who receives a case only a short time before a hearing may not have enough opportunity to examine the papers, meet the accused or prepare questions for witnesses.

The appointment itself is only the beginning. The accused must receive meaningful legal assistance, not merely the name of a lawyer written in the court record.

THE CONSTITUTION MAKES LEGAL AID MORE THAN A SCHEME

Legal aid is supported by the Constitution as well as the BNSS. Article 21 protects life and personal liberty and requires that a person be deprived of liberty only through a procedure established by law. The Supreme Court has interpreted this protection to require a fair, just and reasonable procedure.⁶

Article 22(1) states that a person arrested and detained in custody must be informed of the grounds of arrest and must not be denied the right to consult and be defended by a legal practitioner of their choice. This protection is especially important when a person is taken into custody and may not understand the legal steps that follow.

Article 39A directs the state to promote equal justice and provide free legal aid so that economic or other disadvantages do not prevent people from securing justice. Article 39A is a Directive Principle of State Policy rather than an independent fundamental right. However, the Supreme Court has connected the need for free legal assistance with the right to fair procedure under Article 21.⁷

The importance of these provisions becomes clear when a person faces imprisonment. A wealthy accused may hire an experienced lawyer, obtain copies of records and seek expert advice. A poor accused may struggle to arrange even basic travel to court or contact family members. Without legal aid, financial hardship can affect the ability to defend a criminal case.

The Constitution does not promise that every accused person will win their case. It requires that the process used to decide guilt should be fair. Legal aid helps make that promise real.

⁶ Constitution of India, arts. 21, 22(1) and 39A.

⁷ Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 98; see also AIR 1979 SC 1360.

HUSSAINARA KHATOON: JUSTICE CANNOT WAIT FOR WEALTH

One of the important decisions on legal aid and criminal justice is *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979). The case exposed the condition of undertrial prisoners in Bihar who had remained in jail for long periods while their cases were delayed. Some had spent years in custody awaiting trial.⁸

The Supreme Court recognised that speedy trial was part of the protection guaranteed by Article 21.⁹ It also stressed the importance of free legal services for accused persons who could not afford lawyers. The Court made clear that justice could not be delivered properly if poor people were left without the legal help needed to defend themselves.

The case remains relevant because delays and poverty often affect the same people. An accused person who does not understand the procedure may find it difficult to apply for bail, challenge continued detention or ask the court to consider a legal issue. A lawyer can help bring these matters before the court.

However, legal aid and speedy trial are connected but separate concerns. Providing a lawyer does not automatically remove delays caused by vacant judicial posts, large caseloads, missing witnesses or slow investigations. Legal aid is one necessary part of a fair system, not a complete solution to every problem.

The judgment also reminds the state that a person's liberty cannot be treated as unimportant simply because they lack money. The legal system must be accessible to those who need its protection most.

KHATRI AND SUK DAS: THE COURT MUST TAKE THE FIRST STEP

In *Khatri v. State of Bihar* (1981), commonly known as the Bhagalpur blinding case, the Supreme Court discussed the state's duty to provide free legal services to accused persons who could not afford a lawyer. The Court explained that legal aid must be available when it is needed to ensure a fair process. The state cannot avoid this duty merely by claiming that the accused did not ask for a lawyer.¹⁰

⁸ *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.

⁹ Constitution of India, art. 21.

¹⁰ *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

The Court's reasoning is practical. A person in custody may be poor, frightened, illiterate or unaware of their rights. They may not know that a lawyer can be provided at public expense. If the system waits for every such person to make a proper legal application, the right may exist only on paper.

This principle was reinforced in *Suk Das v. Union Territory of Arunachal Pradesh* (1986). The accused in that case had not received legal representation because he could not afford a lawyer. The trial court had not properly informed him about his entitlement to free legal assistance. The Supreme Court held that the failure to provide legal aid violated the right to a fair procedure under Article 21. The conviction was set aside.¹¹

The Court made an important observation: it would make a mockery of legal aid if an accused person had to know the law and specifically ask for help before receiving a right that the system was supposed to protect.

These decisions remain important when courts apply Sections 340 and 341 of the BNSS. The court should not treat the absence of a legal aid application as the end of the matter where the accused appears unrepresented and may be unable to pay for a lawyer. The person's situation must be examined, and their entitlement should be explained in language they can understand.

FREE LEGAL AID MUST BE GOOD LEGAL AID

There is a difference between appointing a lawyer and providing an effective defence. An advocate may be formally present in court but still be unable to help the accused if they have not studied the case papers or spoken to the person they represent.

This problem was considered by the Supreme Court in *Anokhilal v. State of Madhya Pradesh* (2019). The case involved a death sentence, and the Court examined whether the accused had received meaningful legal assistance. A lawyer had been appointed shortly before important stages of the trial. The Court found that the defence had not been given a fair opportunity to prepare.¹²

The Supreme Court laid down safeguards for cases where a death sentence or life sentence may be imposed. It said that advocates with at least ten years of practice should be considered for appointment in cases involving the possibility of a life sentence or death sentence. It also stated

¹¹ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

¹² *Anokhilal v. State of Madhya Pradesh*, (2019) 20 SCC 196.

that a lawyer appointed to assist the accused should normally receive reasonable time to prepare. A period of at least seven days may ordinarily be appropriate, although the exact time depends on the circumstances. The lawyer should also normally be allowed to meet and discuss the case with the accused.

The case shows why legal aid must be judged by its quality, not just its availability. A lawyer needs time to read the charge sheet, examine witness statements, understand the relevant law and identify possible defences. The accused must also be able to speak freely with the lawyer.

This is especially important in serious cases, where a conviction may lead to life imprisonment or death. But the basic need for preparation exists in ordinary criminal trials as well. Even a less serious case can result in imprisonment, financial loss or long-term damage to a person's reputation.

THE LEGAL SERVICES AUTHORITIES ACT OPENS ANOTHER DOOR

The BNSS is not the only law dealing with legal aid. The Legal Services Authorities Act, 1987, creates the wider system through which free legal services are provided in India.

Section 12 of the Act identifies categories of people entitled to legal services. These include members of Scheduled Castes and Scheduled Tribes, women and children, victims of human trafficking, persons with disabilities, industrial workmen, people affected by mass disasters or caste violence, and people in custody. The Act also covers persons who fall below the applicable income limit.¹³

A person who is accused of a criminal offence and is in custody may therefore qualify for legal aid under the Act. Eligibility is not limited to people who are completely without income. It depends on the statutory categories and the relevant rules.

Section 13 provides that people who meet the eligibility criteria are entitled to legal services if the relevant authority is satisfied that there is a prima facie case to prosecute or defend. The provision also allows the authority to rely on an affidavit concerning income, subject to the law's requirements.

The National Legal Services Authority (NALSA) coordinates legal services across the country. State Legal Services Authorities operate at the state level, while District Legal Services

¹³ Legal Services Authorities Act, 1987, ss. 12–13; National Legal Services Authority, official legal-aid information.

Authorities work at the district level. Legal services committees also function at the Supreme Court and High Courts.

A person seeking assistance can approach the District Legal Services Authority, the relevant legal services committee or a legal aid clinic. NALSA also provides information about eligibility and available services through its official website.

The system is meant to reduce the gap between a legal right and the ability to use it. However, people need to know that the service exists and how to reach it.

LEGAL AID DEFENCE COUNSELS: A MORE FOCUSED APPROACH

India has also developed the Legal Aid Defence Counsel System (LADCS) to improve legal representation in criminal cases. Under this system, dedicated defence lawyers and supporting staff work through legal services institutions at the district level. Unlike a system that depends entirely on assigning individual cases to lawyers who also maintain private practices, LADCS provides a more focused structure for criminal legal aid.

According to information published by the Department of Justice, as of 31 December 2024, Legal Aid Defence Counsel offices were functioning in 654 districts across the country. The system had engaged 5,251 staff, including 3,448 defence counsels. During 2024–25 up to December 2024, the offices had dealt with more than 3.95 lakh criminal cases.¹⁴

These figures show the scale of the programme. They also show why staffing, training and proper case management matter. A large number of cases cannot be handled well if the lawyers have too little time for each client or lack the facilities needed to prepare a defence.

The LADCS model can help provide continuity in criminal cases. Dedicated lawyers may become more familiar with local courts, police procedures, bail applications and common problems faced by people in custody. The system can also make it easier for accused persons and their families to find legal assistance.

Still, the number of offices or cases handled does not by itself prove that every accused person has received effective representation. Quality depends on the time available for each case, access to documents, communication with clients, professional supervision and the ability to challenge the prosecution's evidence.

¹⁴ Department of Justice, Government of India, Parliamentary reply on the Legal Aid Defence Counsel System, figures as of 30 December 2024.

THE UNDERTRIAL CRISIS SHOWS WHY LAWYERS MATTER

The need for legal aid is closely connected to the large number of undertrial prisoners in India. Undertrial prisoners are people who remain in custody while their criminal cases are pending and before a final conviction. Some may have been denied bail for valid reasons, but others may remain in prison because they cannot meet bail conditions, do not understand the process or face long delays.

The National Crime Records Bureau's *Prison Statistics India 2023* recorded 5,30,333 people in Indian prisons as of 31 December 2023. The prison capacity was 4,39,119, meaning that prisons were operating at about 120.8 per cent of their capacity. Undertrial prisoners made up roughly three-quarters of the prison population.¹⁵

These figures are a warning about the pressure on the criminal justice system. They do not mean that every undertrial prisoner has been wrongly detained. Some cases involve serious risks, and courts must consider the facts before granting bail. But the figures show that many people are in custody before their guilt has been finally established.

A defence lawyer can examine whether the accused is eligible for bail, whether the investigation has crossed the relevant legal limits, whether the prosecution has enough evidence and whether continued detention is justified. The lawyer can also help the court identify cases where the accused has already spent a long time in custody.

Legal aid cannot, by itself, solve prison overcrowding or trial delays. But without legal representation, a person may not know how to raise the issues that could affect their liberty.

THE RIGHT TO A LAWYER BEGINS BEFORE THE TRIAL

Legal aid should not be viewed as a service that starts only when the trial begins. Important decisions are made much earlier. A person may be arrested, questioned, produced before a Magistrate, remanded to custody or asked to respond to an application for bail. Legal advice at these stages can affect what happens next.

Section 38 of the BNSS recognises the right of an arrested person to meet an advocate of their choice during interrogation, though not throughout the interrogation. This provision does not

¹⁵ National Crime Records Bureau, *Prison Statistics India 2023*, Executive Summary and prison-capacity tables.

mean that a lawyer must be physically present during every question asked by the police. It does, however, recognise the importance of access to legal advice during the investigation stage.¹⁶

Early legal assistance can help an arrested person understand the grounds of arrest, the procedure for remand and the options available under the law. It can also help prevent confusion about statements, documents and other steps in the investigation.

The Supreme Court's decisions in *Khatri* and *Suk Das* are important here because they reject the idea that legal aid can be postponed until a later stage when the person may already have suffered serious harm.¹⁷ If a person cannot afford a lawyer, the need for assistance should be identified as early as possible.

A legal aid system that begins only after the case has reached an advanced stage may miss the very moments when advice could make the greatest difference.

LANGUAGE AND AWARENESS CAN DECIDE WHETHER HELP IS USED

India has many languages, and people who enter the criminal justice system may not understand the language used in court documents. A person from a rural area may speak only their local language and may have little experience with formal legal procedures. Even an educated person can struggle to understand a charge sheet or a technical legal argument.

For legal aid to work, lawyers must explain the case in language the accused understands. They should describe the charges, the evidence, the possible consequences and the next steps. The accused must also have a fair chance to share information and ask questions.

This is not simply a matter of courtesy. A lawyer cannot prepare a proper defence without understanding the client's account. If communication fails, important facts may remain hidden, witnesses may not be identified and useful documents may never be brought to the court's attention.

Legal awareness is equally important. People must know that free legal aid is available and understand where to apply. Police stations, prisons, courts, legal services clinics and local

¹⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 38.

¹⁷ *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627; *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

authorities can help spread this information. Clear notices in local languages can make the system easier to use.¹⁸

Legal literacy programmes can also help families understand how to contact legal aid services when someone is arrested. The earlier they receive correct information, the easier it may be to prevent unnecessary delay.

THE LAWYER MUST BE INDEPENDENT AND PREPARED

A defence lawyer's duty is to represent the accused within the law. The lawyer must not mislead the court or help anyone commit an offence. At the same time, the lawyer must examine the prosecution's case carefully and raise lawful arguments that may help the client.

Legal aid lawyers should receive the same respect and professional support needed for effective legal work. If they are treated as less important than privately hired advocates, the accused may not receive a fair defence. Their workload must also be managed so that each case receives enough attention.

The court has a role in checking whether the accused is represented meaningfully. If a lawyer has just been appointed and is not ready, the court should consider whether a short adjournment is necessary. This does not mean that every hearing must be delayed whenever counsel asks for more time. Courts must balance proper preparation with the need to avoid unnecessary delay.

The principle in *Anokhilal* is particularly useful here. A lawyer cannot provide a real defence without time to study the case and speak with the accused.¹⁹ The appointment must be more than a formal step.

Accountability should also exist within the legal aid system. Complaints about non-appearance, lack of communication or poor preparation should be examined fairly. At the same time, lawyers must have reasonable working conditions and access to the records and facilities needed to do their job.

TECHNOLOGY CAN HELP, BUT IT CANNOT REPLACE EVERY MEETING

Indian courts have increasingly used electronic filing, video-conferencing and digital case records. These tools can help legal aid lawyers reach clients who are held in distant prisons or

¹⁸ Legal Services Authorities Act, 1987, ss. 12–13; National Legal Services Authority, legal-aid and legal-literacy resources.

¹⁹ *Anokhilal v. State of Madhya Pradesh*, (2019) 20 SCC 196.

who cannot easily travel to court. Digital access may also reduce delays in obtaining documents and arranging meetings.²⁰

However, technology has limits. A video call may be useful for a short discussion, but it may not always be suitable for a detailed conversation about a complicated criminal case. The accused must be able to communicate privately with the lawyer without fear that the discussion is being overheard.

Digital systems can also create problems for people who lack internet access, suitable devices or knowledge of how to use online services. Legal aid must remain accessible to those who are least able to manage these barriers.

The right to a lawyer is not satisfied simply because a meeting can technically take place online. The meeting must allow the accused to explain their case, receive advice and make informed decisions.

MAKING THE PROMISE WORK IN EVERYDAY COURTS

The BNSS and the wider legal aid framework provide a strong basis for defending people who cannot afford private representation. But the success of the system depends on daily practice in police stations, courtrooms and prisons.²¹

First, courts must identify unrepresented accused persons and explain the availability of legal aid. Second, legal services authorities must appoint suitable lawyers without unnecessary delay. Third, lawyers must receive the case papers and enough time to prepare. Fourth, accused persons must be able to meet their lawyers and understand the advice given. Finally, there must be a way to raise concerns when representation is ineffective.

The government and legal services authorities should also examine the workload of defence lawyers, the number of cases assigned to each office and the time taken to appoint counsel. Data about cases handled is useful, but it should be accompanied by information about access, preparation and the experience of people receiving legal aid.

There is also a need for cooperation between police, prison officials, courts and legal services institutions. A person should not have to make repeated journeys or submit confusing

²⁰ Department of Justice, Government of India, e-Courts and digital justice programme materials.

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 340–341; Legal Services Authorities Act, 1987.

applications simply to find out whether a lawyer can be provided. Clear procedures can reduce this burden.

The aim is not to give an accused person an unfair advantage. It is to make sure that the case is decided on evidence and law rather than on the person's ability to pay.

CONCLUSION

Legal aid and the right to be defended are essential parts of a fair criminal justice system. Section 340 of the BNSS recognises the right of an accused person to an advocate of their choice, while Section 341 provides for state-funded representation when the person lacks sufficient means and is otherwise unrepresented. The Constitution, the Legal Services Authorities Act, 1987, and Supreme Court decisions add important protection to these provisions.

The cases of *Hussainara Khatoon*, *Khatri*, *Suk Das* and *Anokhilal* show that legal aid must be available when it is needed and must be effective enough to make a real difference. A lawyer's name on a court record is not enough if the accused cannot understand the case or receive proper advice.²²

India has taken steps to expand legal aid through NALSA, district legal services authorities and the Legal Aid Defence Counsel System. The challenge now is to make these services reliable, timely and meaningful for every eligible person who needs them.

A fair trial cannot depend on how much money a person has. The state may prosecute an accused person, but it must also protect the right to defend against the accusation. That is not a favour given to someone charged with an offence. It is a basic condition of justice.

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