
BEYOND THE OLD SCHOOL TIE: CLASS INEQUITY IN INDIA'S CRIMINAL JUSTICE SYSTEM AND COMPARATIVE LESSONS FOR REFORM

Devendra Kumar Dedha, LLM Student at Penn State Dickinson Law,
Served as Additional Secretary of the New Delhi Bar Association, and
Addl Sect. Gen of Coordination Committee of All district Bar Association of Delhi.

ABSTRACT

Article 14 of the Indian Constitution proclaims equality before the law and equal protection within the territory of India. Yet, the operation of India's criminal justice system reveals a profound gap between this constitutional promise and lived reality. The poor languish in pretrial detention for minor offenses because they cannot afford bail or competent counsel, while the wealthy, even when accused of massive financial frauds, deploy resources and elite legal teams to secure early release. Legal aid, though mandated by Article 39A, is underfunded and ineffective, leaving indigent defendants poorly represented. Within the profession itself, first-generation lawyers from rural or backward backgrounds encounter entrenched nepotism and elitism, where pedigree, English fluency, and family legacy outweigh legal merit. This article situates these inequities in the broader framework of class stratification, examines their impact on the credibility of Article 14, and draws comparative lessons from the United States and United Kingdom. Ultimately, it argues that India's justice system has evolved into a two-tier structure—justice for the privileged, delay and denial for the poor—and proposes reforms to re-anchor criminal justice in constitutional equality.

I. Introduction

Article 14 of the Constitution of India declares with clarity and conviction: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Yet, in my nineteen years as a practicing lawyer—and as a first-generation advocate from a rural background—I have seen how far this constitutional ideal is from reality. What should have been the cornerstone of equality before the law has instead become a fragile promise, often honoured only in rhetoric.

The contrast is grotesque. Accused in multi-million-dollar scams, armed with financial resources and a battery of elite lawyers, secure bail even when anticipatory relief is unavailable. They manipulate procedure, exploit loopholes, and transform liberty into a purchasable commodity. The poor, by contrast, remain caged for years in overcrowded prisons for petty thefts or minor infractions, unable to furnish sureties or access competent counsel. For them, justice is not delayed but indefinitely deferred often across generations.

This inequity is compounded by structural flaws in India’s legal aid system and by entrenched elitism within the Bar and Bench. Experienced lawyers avoid legal aid due to meagre remuneration, leaving indigent defendants with underprepared counsel. Meanwhile, first-generation lawyers brilliant yet invisible find their voices suppressed in courtrooms dominated by dynastic advocates and linguistic elitism. When reform is attempted, as in the case of Mr. Khosla and the judicial enforcement of the “One Bar, One Vote” rule, entrenched elites close ranks, weaponizing law to protect privilege.

This article argues that the two-tiered reality of India’s justice system fundamentally betrays Article 14. By situating the problem within comparative frameworks from the United States and United Kingdom, it seeks not only to critique but to chart pathways toward reform—where justice is not the privilege of class but a universal right.

II. Bail or Jail: Undertrial Injustice and Class

The inequity of India’s bail system has long been recognized. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court condemned the “highly unsatisfactory bail system” that “continually denies justice to the poor by keeping them for long years in pretrial detention.”¹ The Court emphasized that a property-oriented approach produces “glaring inequality”: “the

rich man can secure his release by furnishing bail, while the poor man...has to remain in jail.”²

More than four decades later, the picture has barely changed. According to the National Crime Records Bureau (NCRB), over 75% of India’s prison population consists of undertrials—individuals not convicted of any crime.³ By 2021, this figure had risen to 77.1%, or 427,165 undertrials out of 554,034 total inmates.⁴ The composition of this group underscores its class character: 67.5% of prisoners belong to Scheduled Castes, Scheduled Tribes, or Other Backward Classes, and roughly 70% of undertrials are illiterate or semi-literate.⁵

The result is that jail in India is not simply a site of punishment but a marker of poverty. Minor thefts, disputes, or even preventive detentions translate into years of incarceration for those unable to afford bail. This reality violates not only Article 14 but also Article 21’s guarantee of personal liberty. The Supreme Court in *Hussainara Khatoon* warned that procedures which keep people “behind bars for long without trial cannot possibly be regarded as reasonable, just or fair.”⁶

Recent judicial efforts have attempted to mitigate the crisis. In *Satender Kumar Antil v. CBI*, the Court reiterated that “bail is the rule, jail is the exception” and issued detailed guidelines requiring timely disposal of bail applications, application of Section 436A CrPC (release after half of maximum sentence served), and discouragement of routine arrests.⁷ Yet implementation remains inconsistent, with trial courts often defaulting to incarceration out of caution or pressure. As a result, liberty in India remains contingent not on the presumption of innocence but on the accused’s financial capacity.

III. The Legal Aid Gap: Justice Only for the Affluent?

While Article 39A of the Constitution directs the State to ensure equal justice and free legal aid, its implementation remains deeply flawed. The Supreme Court in *Khatris v. State of Bihar* (the Bhagalpur Blinding case) declared that legal aid is the State’s constitutional obligation “not only at the trial but also when the accused is first produced before the magistrate and at every stage thereafter.”⁸ Similarly, in *Suk Das v. Union Territory of Arunachal Pradesh*, the Court held that the absence of free counsel to an indigent defendant vitiates the trial.⁹

Despite these strong pronouncements, legal aid in India remains underfunded and ineffective. Lawyers appointed by legal services authorities are poorly compensated, deterring experienced

advocates from taking cases. A 2017 Law Commission report observed that most undertrials remain without representation during the crucial initial stages of arrest and bail, since legal aid is often provided only after charge-sheets are filed.¹⁰ Amnesty International's study of Indian prisons revealed that many undertrial prisoners never met their legal aid lawyers or had only cursory interactions.¹¹ In effect, the poor accused often face the State without meaningful representation, while the wealthy employ senior counsel to shape outcomes from the very first hearing. The contrast erodes faith in the system and makes a mockery of Article 14's guarantee of equal protection.

IV. Elites in Robes: First-Generation Lawyers and the Professional Barrier

Inequality within India's justice system extends beyond litigants to the lawyers themselves. The legal profession has long been dominated by dynastic families, where sons and daughters of judges, politicians, and senior advocates inherit opportunities denied to first-generation practitioners.

For first-generation lawyers, especially those from rural or backward backgrounds, access to elite chambers is nearly impossible. Resumes without influential surnames are often ignored, while candidates with family connections are accepted regardless of competence. The colonial hangover of English further deepens the divide: polished fluency in elite English is too often mistaken for legal acumen, while lawyers who argue in vernacular languages are treated as inferior, regardless of their substantive knowledge.

This elitism is not abstract—it affects outcomes in court. Cases argued by lesser-known lawyers are sometimes dismissed perfunctorily, while identical arguments advanced by a “face-value” lawyer receive careful hearing. The hierarchy of counsel thus translates directly into inequality for clients, further entrenching class disparity.

As one first-generation lawyer myself, I have witnessed this bias firsthand: the invisibility of those without pedigree, the quiet condescension of colleagues, and the systemic barriers that reward surname over skill. This professional elitism ensures that both poor litigants and their first-generation advocates remain doubly disadvantaged.

V. Nepotism and Retaliation: The Case of Mr. Khosla and “One Bar, One Vote”

Nepotism is most entrenched when it is challenged. A striking example lies in the selective

enforcement of the “One Bar, One Vote” rule in Delhi. Though framed as a neutral principle of internal democracy, the rule was strategically invoked and judicially enforced to exclude Mr. Khosla an outspoken leader who had consistently raised his voice for first-generation lawyers and ordinary practitioners from contesting Bar elections.

The episode revealed how entrenched elites within the judiciary and Bar can align to silence reformist voices. Rather than using the rule to expand participation, it was weaponized to suppress dissent. What should have been a measure to ensure fairness instead became a tool to reinforce hierarchy.

For first-generation lawyers, the message was unmistakable: challenge the establishment, and the system will close ranks against you. This collusion between dynastic advocates and segments of the judiciary illustrates how legal reforms are resisted when they threaten entrenched privilege.

VI. Comparative Perspectives: Lessons from the U.S. and U.K.

India is not alone in grappling with class-based inequities in justice. Comparative experience underscores both the universality of the problem and possible pathways for reform.

In the United States, the landmark case *Gideon v. Wainwright* established the right to counsel for indigent defendants in felony cases under the Sixth Amendment.¹² Yet even after *Gideon*, disparities persist: public defenders are notoriously underfunded and overburdened, with some handling hundreds of cases simultaneously.¹³ Studies have shown that pretrial detention in the U.S. disproportionately affects poor and minority defendants, perpetuating cycles of poverty and incarceration.¹⁴

In the United Kingdom, similar concerns have arisen over cuts to legal aid. The *Legal Aid, Sentencing and Punishment of Offenders Act* (LASPO) of 2012 drastically reduced eligibility, leading to what critics call “advice deserts” where poor defendants cannot access legal counsel.¹⁵ At the same time, elite barristers command extraordinary fees, reinforcing the divide between the well-represented and the invisible.

These parallels demonstrate that inequality in access to justice is not a uniquely Indian phenomenon but a global one. Yet they also show that reform is possible: U.S. jurisdictions experimenting with bail reform (such as eliminating cash bail for low-level offenses) and U.K.

efforts to restore legal aid funding offer instructive models. For India, these comparative lessons emphasize the urgency of reimagining both bail and legal aid as genuine instruments of equality rather than symbols of privilege.

VII. Conclusion: Toward Equality Before the Law

The Indian Constitution promised that equality before law would be the bedrock of the Republic. Yet today, liberty is effectively for sale: the wealthy deploy influence and elite lawyers to avoid prison, while the poor languish behind bars for want of surety or counsel. The structural inequities of legal aid, the professional barriers facing first-generation lawyers, and the retaliation against reformist voices like Mr. Khosla expose the fragility of Article 14 in practice.

If this continues unchecked, the legitimacy of India's justice system itself will erode. Equality cannot be rhetorical; it must be lived. Bail must become a true safeguard of liberty, not a privilege of class. Legal aid must be funded and professionalized to ensure competent representation at every stage. And the legal profession must dismantle its dynastic hierarchies so that first-generation lawyers—rural, backward, yet brilliant—are not condemned to invisibility.

The lessons from the U.S. and U.K. reinforce that while inequality is a global challenge, reform is achievable. For India, the path forward lies in re-anchoring criminal justice to the constitutional promise of Article 14 where justice is not for the few but for all.

Footnotes

1. *Hussainara Khatoon v. State of Bihar*, (1979) 3 S.C.C. 532.
2. Id.
3. National Crime Records Bureau, *Prison Statistics India 2020* (2021).
4. Id.
5. Id.
6. *Hussainara Khatoon*, (1979) 3 S.C.C. 532.
7. *Satender Kumar Antil v. CBI*, (2022) 10 S.C.C. 51.
8. *Khatri v. State of Bihar*, (1981) 1 S.C.C. 627.
9. *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 S.C.C. 401.
10. Law Commission of India, Report No. 268, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (2017).
11. Amnesty Int'l, *Justice Under Trial: A Study of Pre-Trial Detention in India* (2017).
12. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
13. Nat'l Legal Aid & Defender Ass'n, *Gideon at 50: A Three-Part Examination of Indigent Defense in America*(2013).
14. Megan Stevenson & Sandra G. Mayson, *The Bail Reform Movement in the United States*, 104 Minn. L. Rev. 949 (2019).
15. The Law Society, *Access Denied? LASPO Four Years On* (2017).