OPERATIONALIZING LEGAL AID AT PRE-ARREST SCENARIO: SUGGESTIONS AND ITS FEASIBILITY

Avinash Kumar Paswan[*]

Abstract

This paper explores the operationalization of legal aid at the pre-arrest stage in India, with a focus on the economic and social implications of undertrials in the criminal justice system. With 75.8% of prison inmates being undertrials, primarily from socio-economically disadvantaged backgrounds, the study highlights the inadequacies in current legal frameworks, particularly the Criminal Procedure Code (CrPC), (now the Bhartiya Nagrik Suraksha Adhiniyam, 2023, the BNSS) and the Legal Services Authority Act, 1987. It argues for the necessity of legal aid during the pre-arrest stage, emphasizing the potential for such aid to reduce unnecessary arrests, safeguard individual rights, and alleviate the economic burden on the state. Proposed amendments to Sections 41D and 41 of the CrPC are presented to ensure legal aid is accessible at the earliest stages of criminal proceedings, thereby promoting a more equitable and just legal system.

Keywords: *Legal aid, pre-arrest, Legal Services Authority Act, socio-economic disadvantage, legal reforms, NALSA, criminal justice system, India.*

I. Introduction

II. Existing Legal aid Scenario: doing a reality check

III. Proposed Amendment(s) and its need

IV. Conclusion

I. Introduction

THE PRISON Statistics India 2022 (hereinafter the data) presented by the National Crimes Record Bureau brings out that about 75.8% of all prison inmates in the country are Undertrials.[1]

---

[*] Doctoral Researcher, The Indian Law Institute, New Delhi.

[1] Government of Indian, "The Prison Statistics India 2022, National Crime Records Bureau (NCRB), (Ministry of Home Affairs, 2022) at 33. *Available at*: Microsoft Word - Chapter 1 - 2022.docx (ncrb.gov.in). (last visited on 27th August 2024).

The sanctioned budget for the year 2022-23 was ₹8,725.0 Crore[2]. The share of expenses on inmates in total annual expenditure at the National level is 32.5%.[3] Taking proportionality into consideration, Economic burden of the undertrials upon the state, in this way, counts about nearly 76% of the whole of the budget that might have been sanctioned collectively by all the concerned authorities. That brings out the huge economic liability upon the States together in general and on the Justice system in particular. The Data reveals that the undertrials are mainly coming from socially and economically weaker background[4]. Even in the case of they being granted bail, they aren't able to fulfill the stringent conditions of bail and thus, are continue to linger inside the prison and continue to burden the public exchequer.

Conventionally, there are three stages of a criminal proceeding, namely, Investigation, Trial (taking Cognizance and inquiry into it.), and then the Judgment. Considering the issue of Undertrials and their bail, which is the present paper's subject, the investigation stage becomes relevant. It is at the stage of investigation, wherein the accused person is vulnerable to being taken into custody, many a time on the ground which is not relatable to the reasons for arrest[5]. Therefore, legal assistance at this stage to the accused would be a constitutionally correct step in protecting his/her rights.

The Data reveals that as the majority of Undertrials come from the socially and economically backward classes, they aren't able to afford costly legal representation, due to which they, unfortunately, land up in jails and thus their liberty is compromised. Comparatively, an accused person, having good legal representation and other resources at his end, is able to protect his right through the same *Judicial Process*. Thus, it is resources that are making the difference.

Through the present paper, Researcher shall be looking into the existing provisions of Criminal Procedure Code or corresponding provision of the BNSS (hereinafter the Code) directly or otherwise related to proceeding prior to the trial so as to analyze the relevant provisions, in some or the other way, related to the stage of proceeding where the arrested person has scope of

---

[2] *Id.* at xxi.
[3] *Ibid.*
[4] *Id.* at page 68. Amongst the undertrials, around 68.3% are Dalits, tribals and OBCs. The sum of the first three categories—Scheduled Castes, Scheduled Tribes, and Other Backward Classes—amounts to 68.3%, with the remaining 31.7% falling under the "Others" category, which includes the General Category.
[5] The *Arnesh kumar* (2014) 8 SCC 273, *Joginder Kumar* v. *State of U.P*, 1994 AIR 1349, 1994 SCC (4) 260.

being freed from the arrest and how the judicial system can help the Accused person to protect his rights against arbitrary arrests and in a way helping in unburdening the public exchequer. Along with the Code, the relevant provisions of the Legal services Authority Act, 1987 (hereinafter the *LSA*) and its possible applicability shall also be discussed to find out possible solutions of the existing problem. Finally, Researcher shall discuss how with operationalization of the existing provisions and certain amendments, which researcher shall be proposing, State can initiate a step in the direction of protecting the rights of the vulnerable(s) and unburdening the state exchequers. Whole of the focus of the present discussion shall mainly revolve around the rules, regulations and guidelines of NALSA and suggesting for the proper execution of such provisions.

II. Existing Legal aid Scenario: doing a reality check

The criminal proceedings before arrest in India represent the initial and often critical stage in the journey through the criminal justice system. This stage is where the foundations of a case are laid, and the rights of an individual are most vulnerable to being compromised. It all begins with the filing of a First Information Report (FIR) or a complaint, both of which serve as pivotal points that trigger the investigative process. These documents are not just formalities; they are the keys that unlock the entire mechanism of law enforcement, and their significance cannot be overstated.

When a person witnesses or is a victim of a crime, they often go to the police station to report the incident. This act of reporting is formalized through the FIR, which is governed by Section 154 of the Criminal Procedure Code (CrPC) or section 173, BNSS The FIR is more than just a piece of paper; it is the official document that records the details of the alleged offense, providing the police with the legal authority to investigate. Imagine a situation where a shop owner catches a thief red-handed stealing from their store. The owner immediately contacts the police, and an FIR is lodged. This FIR then becomes the cornerstone of the police investigation, detailing the crime, the suspect's description, and any evidence that was immediately available, such as CCTV footage. The FIR is the document that justifies the police's actions moving forward, whether it be conducting raids, interrogating suspects, or making arrests.

In cases where direct action by the police might be delayed or where the aggrieved party feels the need for immediate judicial intervention, a complaint can be filed under Section 2(d) (section 2h, BNSS) read with Section 200 of the CrPC (section 223, BNSS). This route allows the complainant to approach a magistrate directly, bypassing the police. For example, consider a scenario where a tenant is being harassed and illegally evicted by their landlord. If the tenant feels that the police are not acting swiftly enough, they might choose to file a complaint directly with a magistrate. The magistrate, after reviewing the complaint, might instruct the police to take specific actions, such as investigating the eviction or protecting the tenant's rights. This legal provision ensures that justice is not delayed due to procedural bottlenecks, and it allows the judiciary to play an active role in the early stages of a dispute.

After the FIR or complaint is filed, the next significant step involves the issuance of a notice under Section 41A of the CrPC (Section 35, BNSS). This notice is a relatively recent reform aimed at reducing unnecessary arrests and safeguarding the rights of the accused. The notice requires the accused to appear before a police officer at a specified time and place for questioning. This process is crucial because it allows the investigation to proceed without immediately stripping the accused of their liberty. Imagine an employee at a company is accused of embezzling funds. Rather than arresting the employee on the spot, the police issue a Section 41A notice, asking them to come to the police station for questioning. This allows the employee to gather any documents or evidence that might prove their innocence before attending the interview. For instance, the employee might bring bank statements or emails that show the transactions in question were authorized and legitimate. The presence of these documents during the questioning could significantly alter the course of the investigation, potentially preventing an unnecessary arrest.

The issuance of a Section 41A notice is designed to strike a balance between the needs of law enforcement and the rights of individuals. It reflects a more humane approach to criminal justice, one that recognizes the potential harm caused by premature arrests, particularly when the allegations may not yet be fully substantiated. By allowing the accused to present themselves voluntarily, the law ensures that their dignity is maintained and that their cooperation with the investigation is on more equal footing.

Once the accused has been notified, the police are empowered to examine any person, including the accused, during the pre-arrest stage. This examination, conducted under Section 161(1) of the CrPC (Section 180, BNSS), is a critical component of the investigation. It allows the police to gather statements, interrogate the accused, and collect evidence that might either confirm or refute the allegations made in the FIR. For example, in a high-profile corruption case, several government officials might be summoned for questioning. Each official is asked to explain their involvement in certain transactions that are under scrutiny. The police might question them about the origin of large sums of money that were deposited into their accounts. If one official can provide a legitimate explanation, such as a loan from a relative, this might clear their name. On the other hand, if another official fails to provide a satisfactory explanation, the investigation might focus more heavily on them.

However, the pre-arrest examination is fraught with risks, especially for the accused. Without access to legal representation, the accused may not fully understand the legal implications of their statements or the rights they possess during interrogation. This vulnerability can lead to self-incrimination, even when the accused might be innocent. The landmark case of *Nandini Satpathy* v. *P.L. Dani*[6] underscores these risks. In this case, Nandini Satpathy, a former Chief Minister of Odisha, was summoned by the police for questioning in a corruption case. The police presented her with a long list of questions, some of which could have implicated her in illegal activities. Satpathy refused to answer these questions, invoking her right against self-incrimination under Article 20(3) of the Indian Constitution. The case went to the Supreme Court, which upheld her right to remain silent, emphasizing that no one can be compelled to provide evidence against themselves. This ruling reinforced the importance of constitutional protections during the interrogation process, especially for individuals who might be facing complex legal accusations.

Despite the clear risks associated with pre-arrest interrogations, the current legal framework in India does not provide adequate safeguards for individuals at this stage. Article 22(1) of the Indian Constitution guarantees that no person who is arrested shall be detained without being informed of the grounds for their arrest and ensures that they have the right to consult a legal practitioner. For example, if someone is arrested on suspicion of fraud, the police must

[6] AIR 1978 SC 1025.

immediately inform them of the reasons for their arrest and allow them to contact a lawyer. This provision is designed to prevent unlawful detention and to ensure that the accused can mount a robust defense from the very beginning.

Section 41D of the CrPC (Section 38, BNSS) further strengthens these rights by providing that an arrested person has the right to meet an advocate during interrogation. This provision is crucial in ensuring that the accused is not coerced into making incriminating statements and that their rights are protected throughout the investigative process. Imagine a journalist is summoned for questioning about their sources in an investigative report. If the police begin questioning the journalist before making an arrest, the journalist might not have immediate access to a lawyer. Without legal representation, the journalist might feel pressured to reveal confidential information, potentially violating journalistic ethics and compromising their sources. This scenario highlights the vulnerability of individuals during the pre-arrest stage and the importance of having legal safeguards in place to protect their rights.

Unfortunately, the current legal framework does not extend these protections to the pre-arrest stage, leaving individuals at a significant disadvantage. The absence of specific legal provisions for pre-arrest legal aid is a glaring oversight in the Indian legal system. Recognizing this gap, the National Legal Services Authority (NALSA) has issued guidelines emphasizing the importance of providing legal aid at the earliest stages of the criminal process, including during the pre-arrest, arrest, and remand stages. However, these guidelines are not legally binding, and without formal legal provisions, many individuals are left without the necessary support during a critical phase of the criminal process.

Consider a laborer who is falsely accused of theft. The laborer, unable to afford legal representation, is summoned for questioning by the police. During the interrogation, the laborer admits to being at the scene of the alleged crime, a fact that is misinterpreted as an admission of guilt. If the laborer had access to legal aid at the pre-arrest stage, a lawyer could have advised them on how to respond to the police's questions and how to protect their rights. The lawyer might have explained that being at the scene does not necessarily imply guilt and that the laborer should be careful in how they phrase their responses. This legal guidance could have prevented a wrongful arrest and ensured that the laborer's rights were upheld.

The discussion underscores the urgent need for legal reforms to address this gap in the provision of legal aid. By extending legal aid to the pre-arrest stage, the legal system can ensure that individuals have access to the support they need to navigate the complexities of the criminal justice process from the very beginning. Such reforms would align with international human rights standards, which emphasize the importance of legal representation at all stages of the criminal process. For instance, in many developed legal systems, suspects are entitled to free legal advice from the moment they are first questioned by the police. If a similar system were implemented in India, an accused person could have a lawyer present during any interaction with the police, starting from the first summons. This would ensure that the suspect's rights are protected and that they do not inadvertently incriminate themselves.

Moreover, providing legal aid at the pre-arrest stage would help prevent unnecessary arrests and reduce the burden on the criminal justice system. Imagine a business owner who is accused of tax evasion due to a clerical error in their accounting records. Without legal representation, the business owner might struggle to explain the situation to the police during the pre-arrest stage, leading to a potential arrest. However, with legal aid, a lawyer could quickly identify the error, present the correct documents to the police, and prevent an unnecessary legal ordeal. This not only protects the rights of the accused but also saves valuable time and resources for both the police and the judiciary.

The discussion highlights the critical need for a comprehensive approach to legal aid in India, one that includes the pre-arrest stage as an integral part of the criminal justice process. By ensuring that legal aid is available at all stages, the legal system can better protect the rights of individuals, prevent abuses of power, and uphold the principles of fairness and justice that are the cornerstone of any democratic society. Imagine a scenario where a young woman is accused of being involved in a cybercrime. She receives a notice to appear for questioning but is unaware of her legal rights and the complexities of cyber laws. With pre-arrest legal aid, she could consult a lawyer who would guide her on how to handle the questioning, what documents to bring, and how to protect her rights. This early intervention could prevent her from making errors that could lead to severe consequences, thereby upholding the integrity of the justice process.

By extending the provision of legal aid to the pre-arrest stage, India can move closer to a legal system that is just, equitable, and protective of the rights of all individuals, regardless of their

socio-economic status. This would represent a significant step forward in the ongoing effort to create a more just and equitable legal system in India, one that truly serves the needs of all its citizens and upholds the rule of law.

It would be pertinent to discuss and analyze the existing legal framework of legal aid in India. Article 21 of the Indian Constitution is widely interpreted article of all in chapter III of the constitution. The apex court in *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra* observed that [7]

> 21. Provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service is State responsibilities under Art. 21.

Understanding the need of a free legal aid framework in the country, the 42nd Constitutional Amendment inserted article 39A in chapter IV, Directive principle of state policies, which provides that the *State shall 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* (emphasis added).

Post insertion of article 39A in the Constitution, in *Sheela Barse* v. *State of Maharashtra* AIR 1983 SC 378, the Hon'ble Supreme Court of India directed that;

> (IV) whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance.

Understanding the need for legal assistant to the majority of the population and to bridge the gap between the rich and the impoverished accused persons in the matter of accessing the judicial machinery, the state has legislative various provision, few of which can also be found in the

[7] AIR 1978 SC 1548, 1979 SCR (1) 192.

code[8] but the major enactment for the legal aid has been, brought in to fulfill the mandates of article 39A of the Constitution, *The Legal services Authority Act, 1987* (hereinafter the LSA). The Act has provided for the eligibility criteria for the beneficiaries[9], to whom the state provides the legal aid at its own expense.

But before we delve into relevant provisions of LSA and analyze it, Researcher would like to discuss the existing provisions of the Code dealing with the legal aid scenario. Section 304 of the Code provides for the legal aid to accused at state expense in certain cases. Researcher finds that the provision is insufficient in its scope. The legislature presumes that legal aid is needed only at the stage of *trial*. Even in that case, it is limited to session's court. The legal battle in a proceeding starts from the very point when the information is given or a complaint is made against the accused. Need for legal assistance is highly desirable when the accused is taken into custody for the first time in a case. If the accused person gets the proper legal representation here, he might not end up being behind the bars. In absence of a legal representation, the accused is alone standing without a help and the investigating agency might not exercise its power in a due manner. Though the Code provides for the limited legal representation at the time of interrogation[10] but the provision has not been operationalized to its fullest potential[11] and therefore it does not come to aid of the Accused as by this time he might already has been in the custody[12]. Thus, providing legal aid to arrestee right at the time when he/she is arrested before interrogation, would do due justice to the procedure of the law and to the arrestee as well.

At this stage of discourse, let us now begin the discussion from section 2(c) of the LSA. It reads as "*Legal Service includes* the rendering of any service in the conduct any case or other legal proceeding before any court or other Authority or tribunal *and the giving of advice on any legal matter*". *Reading* the above clause, it can be very well interpreted that *any legal matter* includes stages of *pre-arrest, arrest enquiry, trial and appeal*[13]. Currently, the legal aid services,

---

[8] Such as The Code of Criminal Procedure, s.304.
[9] The Legal Services Authorities Act, 1987, s.2.
[10] *Supra* note 7; Code of Criminal Procedure, s.41D.
[11] We see limited access of legal representation during interrogation.
[12] Here researcher is considering cases wherein the accused is already in the custody and he/she is being interrogated therein.
[13] *Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*, National Legal Services Authority, provides for the guidelines for providing legal aid to the beneficiaries at all the said stages in a legal proceeding. *available at:* Early Access to Justice at Pre-Arrest, Arrest and Remand Stage - National Legal Services Authority! (nalsa.gov.in) (Last visited on April 16th, 2023).

carried out by the National Legal Services Authority (hereinafter NALSA), constituted[14] under the LSA, visually, are limited to the court cases and other similar matters directly or indirectly related to the judicial or quasi-judicial proceedings only[15]. Though a judicial officer is prohibited to carry out a criminal investigation and is a pure domain of the Investigating agency, which is an executive body in a state, but Investigation perse is a legal proceeding by the virtue of fact that it has been defined in a statute and its procedure has been laid out there. So, it would be a good interpretation to include the legal aid at the stage of investigation in the basket of legal services of NALSA. Thus, LSA has scope of providing the aid at the stage of investigation as well. A legislative amendment in the relevant provision, which researcher is proposing, would do a great deal to the objectives of the LSA[16]. Understanding the above stated concerns, NALSA provided for the guidelines[17] which mandates the legal assistance at the *pre-arrest, during custody and during trial* stages.

III. Proposed Amendment(s) and its need

In the light of the potential interpretations of Section2(c) of the LSA, Researcher sets the discussion by *proposing amendments* in Section 41D and Section 41. Researcher shall discuss the need and mandates of such amendments.

Amendment to Section 41D (Section 38, BNSS) of the Code

[14] *Supra* note 8, s.3.
[15] *Available at:* Legal Services - National Legal Services Authority! (nalsa.gov.in) (Last Visited on April 16th, 2023).
[16]*Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*, National Legal Services Authority, Para 4.1, p.8 , *available at:* Early Access to Justice at Pre-Arrest, Arrest and Remand Stage - National Legal Services Authority! (nalsa.gov.in) (Last visited on April 16th, 2023).

> In view of the fact that the pre-arrest stage has settings of custody, there is no reason why the above mandate to the police to notify the Legal Aid Committee (Now, the DLSA) should not be applicable at this stage also. The framework for providing legal assistance at this stage would therefore be as follows: 4.1.1Notifying the suspect of the right to a lawyer: - In view of the *Satapathy case*, and section 41 D Cr.P.C, the police is to notify the suspect of his right to have legal assistance during interrogation. Moreover, the mandate of Sheela Barse will remain ineffective unless the suspect is appraised of this right. The police has ,therefore, to inform the suspect that free legal assistance can be availed from the Legal Services Authorities. It is essential to inform the suspect called for interrogation of the following rights which can be given in the form of leaflet of rights by the police so that the suspect can make informed decision of his right to avail legal assistance.

[17] It shall be discussed as we proceed.

Section 41D/ Section 38, BNSS: Right of arrested person to meet an advocate of his choice during interrogation ……

[“*Such arrest shall be communicated, by the Investigating Officer, to the such Legal Service Clinic under whose jurisdiction the place of arrest of is falling and, upon such communication, such Legal Services shall be extended by the Legal Service Clinic to the beneficiary arrestee(s) as may be required during the interrogation.*

Explanation 1- Legal Service Clinic is established under regulation 2(1)(C) of National Legal Services Authority (Legal Services Clinics) Regulations, 2011.

Explanation 2- Beneficiary includes the beneficiaries falling under section 12 of the Legal services Authority Act, 1987.][18]

Need for the Amendment

Success of a law cannot be ascertained only by the fact that the State has enacted/legislated it. A law needs to be empirically audited to understand the extent it has fulfilled the object of its enactment. The *Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*, as brought out by the NALSA has mandates for Deputing a lawyer to the police station[19]. According to *National Legal Services Authority Statistical Snapshot 2021*[20] 9,652 persons were given legal assistance at pre-arrest stage at police stations out of which 1,976 were not arrested by police. [21] Arithmetically, 20.47% of such persons could legally escape the arrest, which might have been arrested if such legal assistance would not have been provided, adding to the burden on the jail and indirectly on the public exchequer. Total number of FIR registered in 2021 was 6096310.[22] Thus only 0.15% of the accused person got legal assistance as the part of the NALSA guidelines. Researcher is willing to examine the reasons for the same. Keeping in mind the constraint of

[18] Proposed Amendment.
The amendment shall give a statutory position to the legal assistance provided by NALSA at the pre-arrest stage as mandated in *Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*, National Legal Services Authority, Para 4.1, p.8, *available at:* Early Access to Justice at Pre-Arrest, Arrest and Remand Stage - National Legal Services Authority! (nalsa.gov.in) (Last visited on April 16th, 2023).

[19] *Supra* note 16.

[20] *Available at:* Statistical Snapshot 2021 - National Legal Services Authority! (nalsa.gov.in) (Last visited on April 16th, 2023).

[21] *Id.,* at snap 37.

[22] *Supra* note 1.

time, researcher shall be a scheme of *Delhi District Legal Services Authority project of Legal Aid in the Police Stations in Delhi* as it is based on the guidelines of NALSA[23].

Delhi District Legal Services Authority project of Legal Aid in the Police Stations in Delhi

The Delhi *District Legal Services Authority* (hereinafter DLSA) runs a project[24] to provide free legal aid to the beneficiary *victim/complainant/accused/witness* (the beneficiary particulars) in Police Stations. The project mandates that one legal aid counsel would be nominated for five police stations to provide 'on call Basis' service to the beneficiary particulars. As the scope of the present paper is limited to the legal assistance to the *accused person,* researcher shall restrict to the subject. The project mandates that Officer in charge of every police station shall ensure that the investigating officer shall inform about the arrest of every accused to the nominated advocate on telephone and arrange interaction of accused with the nominated advocate on telephone for sufficient time. The Nominated advocate can also visit the police station is he/she of opinion that it is so required in furtherance of such assistance. The nominated advocate shall send a weekly report to the central office, DSLSA as well as the concerned DLSA about such service provided. The project also mandates that SHOs would also send a report to the concerned DLSA about the number of persons arrested in the respective police stations in a week, number od interactions done by the nominated advocated on phone or in person with the arrested persons.

Amendment to Section 41 of the Code

Addition of sub section 3 to Section 41[25] of the Code as follow:

[23] *Supra* note 10.

[24] Researcher got this information from a Metropolitan Magistrate, in Delhi. The Identity was requested to be kept opaque.

[25] (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person--

[(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely: --

"*(3) Such arrest shall be communicated, by the Investigating Officer, to the such Legal Service Clinic under whose jurisdiction the place of arrest of is falling and, upon such communication, such Legal Services shall be extended by the Legal Service Clinic to the beneficiary arrestee(s) as may be required during the statutory period of 24 hours*[26].

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured

and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

[(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]

[26] The proposed amendment may be tracked from *Sheela Barse* v. *State of Maharashtra* AIR 1983 SC 378, the Hon'ble Supreme Court of India directed that;

Explanation 1- Legal Service Clinic is established under regulation 2(1)(C) of National Legal Services Authority (Legal Services Clinics) Regulations, 2011.

Explanation 2- Beneficiary includes the beneficiaries falling under section 12 of the Legal services Authority Act, 1987.

Explanation 3- 'Statutory period of 24 hours' is the period contemplated in section 57 of the Code.

Feasibility of the proposed Amendments

Under the present subhead, researcher shall be analyzing the executability of the proposed amendment (hereinafter the amendment). Researcher is trying to prove the hypothesis that implementation of the present amendment would cost no extra finance. As per the Expenditure Report of all SLSAs from April, 2017 to March, 2018, total unutilized NALSA fund was rupees

> "(IV) whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance."

Also, the right to be defended by a legal practitioner, at the time of arrest, is a fundamental right u/a 22(1) of the Indian Constitution. As the NALSA has been created to provide legal assistance to the beneficiaries, who are generally that section of population which is, for various reason, unable to engage a good legal representation for himself/herself.

Also see, *Supra* note 16 at 10, Para 4.1.2.

> Deputing a lawyer to the police station: Upon receiving the intimation of the request of the suspect to have free legal assistance during interrogation, the legal services authorities as per the duty roaster prepared with regard to various police stations, shall inform the deputed lawyer. Since, duty roasters are expected to be given in advance to the police stations so that 11 police authorities may be able to directly intimate the lawyer. Upon intimation, the lawyer shall go to the concerned police station for providing legal assistance.

Also see, Supra note 16 at 11-12, Para 4.1.3.

> 4.1.3: Role of the lawyer: The work of a lawyer in advising and assisting the suspect in the police station can often be difficult and demanding. A lawyer has the following role to play at the police station at pre arrest stage: a) The lawyer shall apprise himself of the allegations against the person called for interrogation. b) He shall explain the alleged offence and the matter for which the person has been called for interrogation. c) He shall provide legal advice and assistance as sought and required in the situation. d) He shall not interrupt or obstruct interrogation. e) He shall appropriately advice the police, if it proceeds to arrest the suspect unnecessarily and without any basis. In this regard, he shall put the position of law before police officials keeping in view the circumstance of the case. f) In case the suspect is a foreigner, the duty lawyer shall inform the police to intimate the concerned High Commission, Embassy/Consulate. 12 g) In case, the suspect does not understand the language then arrangement be made for an interpreter, the expenses of which may be borne by the DLSA from Grants in Aid. h) He shall ensure that women are not called to the police station or to any place other than their place of residence for questioning. i) In case a child has been called to the Police Station, the lawyer shall take necessary steps to safeguard his rights as provided under Juvenile Justice (Care and Protection Act) 2015.

77,94,61,670 and unutilized amount of State Fund was rupees 34,91,49,110[27]. Even if we fully utilize the allocated funds, the Legal Aid Service scenario, the mandate of article 39A of the Constitution, shall be millennium dream coming true. The budgetary allocation to the NLSA in the form of grants[28] are placed into the National Legal Aid Fund[29]. The National Fund makes allocations to the State Legal Aid Fund[30] which sponsors all expenditures made in the state in the lieu of providing the legal service.

National Legal Services Authority (Legal Services Clinics) Regulations, 2011 (hereinafter Regulation, 2011 or the Regulation) provides for mandatory constitution of Legal Service Clinic[31] (hereinafter the clinic) within the available resources. Venue of such Clinics shall be in "all villages, or for a cluster of villages, depending on the size of such villages, which shall be called the *Village Legal Care and Support Centre*"[32]. Every clinic shall consist of at least two *para-legal volunteers*[33] available during the working hours of the clinics[34]. The volunteers are paid Honorarium[35] from the state fund to function as the working unit of the Clinic. If there arises a situation, wherein the service of a lawyer[36] is needed, the Legal service Institution[37], upon such intimation of the volunteer, shall make available such lawyer. It is prudent that the institution would provide the service of the panel Lawyer[38] or the Retainer Lawyer[39]. The Panel Lawyers are paid honorarium[40] as according to their number of service days. The Retainer Lawyers are named amongst the panel Lawyers[41] and are paid honorarium[42] as fixed by the Regulation, 2010.

The whole idea of the above discussion is that providing legal aid to the beneficiary arrestee would not cost anything extra than what is already kept for the very purpose. It is just

[27] *Available at:* Activity-wise Annual Expenditure by the SLSAs (including DLSA, HCLSCs, TLSCs) DURING 2017-18 - National Legal Services Authority! (nalsa.gov.in) (Last visited on April 16th, 2023).
[28] *Supra* note 8, s.14.
[29] *Id.,* s.15.
[30] *Id.,* s.16.
[31] The National Legal Services Authority (Legal Services Clinics) Regulation 2011, r.3.
[32] *Id.,* r.3(a).
[33] *Id.,* r.2(1)(f).
[34] *Id.,* r.5(1).
[35] *Id.,* r.17.
[36] *Id.,* r.10(3).
[37] *Id.,* r.2(1)(d).
[38] *Id.,* r.2(1)(e).
[39] *Id.,* r.2(1)(g).
[40] *Supra* note 25.
[41] The National Legal Services Authority (Free and Competent Legal Service) Regulation 2010, r.8(9).
[42] *Id., at* r.8(12).

that extending the service of the clinic to the arrested beneficiary would operationalize the aims and objectives of the LSA. Utilizing the available human resource may suffice the purpose to a great extent. The same is also mandated by NALSA through Guidelines on Early Access to Justice at Pre-Arrest, Arrest and Remand Stage, National Legal Services Authority.

Typology Legal Services in the present context

As the present discussion is confined to the legal Aid to the beneficiaries at the stage of investigation and probable arrest, the legal assistance in such circumstances should be associated with the ascertaining the legality of the commission of the offence, as mandated by section 154 of the Code[43] on behalf of the accused. The phrase "*Commission of the offence*" provides that the act(s) of the accused person(s) should *prima-facie* constitute an offence. If the act is committed by more than one person, it puts extra burden of ascertaining the application of section 34, IPC. Thus, as per researcher, at the stage of information being recorded, legal assistance shall be provided for the two purposes as abovementioned.

Ascertaining the "Commission of Offence"

Researcher is proposing an amendment to section 154 of the Code by adding an Explanation to the provision. It shall read as;

[154. Information in cognizable cases. — (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station,…….. the police station in relation to that offence.]

Explanation: A cognizable offence is said to have been committed if the truthness of the information can be corroborated by some evidence(s) that prima facie reveals either the mens rea or preparation or attempt or actus reas or other ingredients as required by the provision for the alleged offence upon investigation.

[43] (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf…..]

The word 'Commission' used in the present context is a noun form of transitive verb 'commit[44]'. Offence has been defined in section 40[45], IPC. The emphasis of section 40 is on "the word "offence" denotes *a thing[46] made punishable* by this Code" or any special law. Thing include Act as well. Thus, as per the requirement of section 154 of the Code (section 173, BNSS) , the information shall be revealing a transaction(s) which has led to the commission of offence by the Accused person(s).

Let us primarily focus on the offences provided by IPC. Scheme of IPC, relating to offence and punishment, provides for three kinds of provisions. One, provisions providing for definition of an offence.[47] Two, provisions providing for the punishment for an offence.[48] Three, provisions providing the definition as well as punishment.[49] Every offence has been defined very precisely. The phrase 'information relating to Commission of offence' requires that the information about the commission of an offence should *prima-facie* reveals that the criteria as provided by the definition of that particular offence. At this stage, lighter meaning of burden of proof is applicable[50]. The information shall be corroborated with some kind of evidences, either

---

[44] As per merriam-webster.com, Commit mean 'to carry into action deliberately'. (Last visited on April 16th, 2023).

[45] Except in the 2 [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, 3 [Chapter VA] and in the following sections, namely, sections 4 [64, 65, 66, 5 [67], 71], 109, 110, 112, 114, 115, 116, 117,6 [118, 119 and 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224,225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined. And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

[46] As per merriam-webster.com, thing is a particular state of affair (Last visited on April 16th, 2023).

[47] For example, Indian Penal Code, s.300 provides for definition of offence of Murder.

[48] For example, *Id.,* s.302 provides for punishment for Murder.

[49] For example, *Id.,* s.304A.

[50] Georg Nils Herlitz, "The Meaning of the Term Prima Facie", 55 *Louisiana Law Review*, 391-408 (1994).

As per the literature, there could be three meanings of primafacie case, namely, *the lighter meaning, the heavier meaning* and *the less common meaning*. Before discussing about these three meanings, it is important to discuss the concept of the *Burden of proof,* as the literature connects the burden of proof in connection with the establishment of the primafacie case. Burden of proof has two components, a) burden of producing the evidence and b) burden of persuasion. The prosecution shall first satisfy the court with the relevant evidences and thereafter the court shall be persuaded with the help of the placed evidence. With this background, the three meanings can be discussed now.

Lighter meaning

As per the *lighter* meaning, a party is said to have established a prima facie case when he/she has satisfied his burden of producing evidence. A party is said to have established a prima facie case when he/she has satisfied his burden of producing evidence. Once the party has satisfied the He is thus entitled to have the decide whether he has satisfied his burden of persuasion.

A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

The Heavier Meaning: Establishing a Mandatory Presumption

direct or circumstantial, which would trigger the reasonable believe of the commission of the offence. It is well understood that the law does not requires the evidences to be rebutted at this stage. But the prosecution should have certain evidence which if produced, the Court allows the prosecution to go ahead to rebut or persuade the Court with the help of the produced evidences.

Prima Facie case at this stage shall reveals *the Commission, in the form of either the mens rea or preparation or attempt or actus reas or other ingredients as required by the provision of the offence.* To illustrate, let us take help from Illustrations (a) of section 300;

'A shoots Z with the intention of killing him. Z dies in consequence. A Commits murder.'

Here, firstly, the information shall reveal that either A has shot the gun by whose bullet death of Z has been caused or the gun by whose bullet death of Z has been caused has been found in the possession of A or some other fact revealing that the A has been intending to cause the death of Z. The information alone is not sufficient. It should be corroborated by producing some form of evidence so that reasonable believe could be formed as to higher probability of commission of offence by the accused person named in the information.

IV. Conclusion

Lalita Kumari[51] as, has mandated the registration of FIR in the cognizable cases, has affected the machinery in both the ways. No doubt the law laid down in *Lalita Kumari* has given a relief to the victim of the crime but at the same time, it has also led to burdening of the Police Stations

---

In the second sense, a party has established a prima facie case only when he has made such a strong showing that he is entitled to a presumption in his favor…. when "prima facie" is used in this sense, it switches the burden of proof from the party who has made the prima facie showing to his opponent. If A has established a prima facie case, then his opponent B must produce some evidence to contradict the evidence already produced by A; if he does not, then the trier of fact must find for A. One of the earliest American cases to address the meaning of "prima facie" is *State* v. *Sattley,* court held that *prima facie evidence is such that raises such a degree of probability in its favor that it must prevail unless it be rebutted, or the contrary proved*.

Less Common Meanings

The term "prima facie" has been given other meanings. McCormick says: assume that a party having the burden of producing evidence of fact A, introduces proof of fact B. The judge, using ordinary reasoning, may determine that fact A might reasonably be inferred from fact B, and therefore that the party has satisfied its burden, or as sometimes put by the courts, has made out a *prima facie* case.

[51] (2014) 2 SCC 1.

which has more or less static strength of the officers, unfortunately with already skewed Police to public ratio.

In conclusion, the operationalization of legal aid at the pre-arrest stage is vital for addressing the socio-economic disparities and inefficiencies in India's criminal justice system. The large proportion of undertrials, many of whom come from disadvantaged backgrounds and lack access to legal representation, highlights the pressing need for reforms. The current legal framework, including the Criminal Procedure Code (CrPC) and the Legal Services Authority Act (LSA) of 1987, provides limited support at early stages of criminal proceedings, leaving many vulnerable to arbitrary arrests and prolonged detention. This not only compromises individual rights but also imposes a heavy economic burden on the state.

By extending legal aid to the pre-arrest stage, India can take an important step toward ensuring that justice is accessible to all, regardless of socio-economic status. Legal aid during the pre-arrest phase would help prevent unnecessary arrests by offering individuals proper legal representation when they are most vulnerable—during interrogation and investigation. The proposed amendments to Sections 41 and 41D of the CrPC, which would require legal assistance to be available at the earliest stages of criminal proceedings, are crucial for ensuring the protection of rights from the outset. Additionally, these amendments would formalize the role of Legal Services Clinics, which would be notified upon an arrest and provide immediate legal aid to the accused.

Moreover, models like the Delhi District Legal Services Authority (DLSA) project demonstrate the feasibility of providing legal aid at the police station level. The proposed amendments would expand on these initiatives, ensuring that legal aid is available not only during trial but also at critical early stages such as investigation, arrest, and remand. Importantly, these reforms can be implemented within the existing financial and human resources allocated to legal aid services, as demonstrated by the underutilization of NALSA funds in recent years.

By operationalizing legal aid at the pre-arrest stage, the criminal justice system would become more efficient and just. The presence of legal representation would help prevent wrongful arrests, reduce the number of undertrials, and alleviate the burden on the prison system. Additionally, such reforms would protect the constitutional rights guaranteed under Articles 21 and 39A, which ensure the right to life and the right to free legal aid.

In conclusion, these proposed reforms would move India closer to a criminal justice system that upholds fairness, justice, and equality. By extending legal aid to the pre-arrest stage and preventing the arbitrary use of legal provisions like Section 34, the system would not only protect individual rights but also foster a more equitable legal process for all citizens, regardless of their socio-economic status. These amendments, theoretically, are necessary for creating a legal system that truly serves the needs of all individuals and upholds the principles of justice in a democratic society. The feasibility angle of the proposed amendments could be further assessed through more empirical data, which could not be presented in the present paper due to its limited scope.