



THE ROLE OF FREE LEGAL AID TO ALLEVIATING OVERCROWDING IN PENAL INSTITUTION AND FACILITATING ACCESS TO JUSTICE

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Abstract: The research sheds light on the pivotal role of free legal aid in mitigating the overcrowding of penal institutions and facilitating access to justice. While conducting the secondary qualitative approach, the study analyzes the existing literature of recent times so the intersection of human rights and legal aid can be explored within the context of the overcrowded prison system. The research analysis discusses different categories of overcrowding, including administrative, physical, staff, functional, and healthcare overcrowding. All of these present the unique and unseen challenges related to the realization of human rights protection and realization justice. The article deeply explores the legal framework while addressing the constitutional provisions, state regulations, and policies governing prisoners' treatment. The present study combines qualitative research and analytical methods to evaluate the effectiveness of legal aid programs, focusing on overcrowding dynamics and promoting fairness in the criminal justice system.

Keywords: Human Rights, Legal Aid, Overcrowding, Penal Institutions

INTRODUCTION

Overcrowding within the penal institutions is among the global issues that have become a pushing concern that poses tremendous challenges to the justice administration. The free legal aid and its provision are critical elements that address the root causes of overcrowding issues while addressing fundamental human rights.¹ This is more of a pervasive problem that influences rehabilitation, overall well-being, and living conditions. Root causes appear quite diverse, ranging from inadequate legal representation to systematic flaws in the justice system.² The concerned backdrop underscores the significance of emphasizing the contribution of free legal aid that mitigates the consequences of overcrowding.

Access to justice is generally recognized as a fundamental human right within international law. The right to a fair trial that inherently involves the legal representation right is emphasized by the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).³ Therefore, free legal aid is likely to maintain how the socioeconomic status can be ensured for individuals and how they have equal access to the justice system. An essential link exists where the free legal aid provision and the overcrowding alleviation of the penal institutions are detected. Insufficient legal representation will likely lead to some wrongful convictions and, more importantly, to a lack of procedural fairness.⁴ The individuals will likely detect themselves, eventually leading to overcrowding issues.

The vulnerable and marginalized populations often hold the brunt of the overcrowded penal institutions. Free legal aid will likely be essential in empowering individuals and ensuring the legal system hears their voices.⁵ Whether they face systemic injuries, legal challenges, or discrimination,

¹ See Macaulay, F., Prisoner capture: Welfare, lawfare, and warfare in Latin America's overcrowded prisons, in Routledge handbook of law and society in Latin America. 2019, Routledge. p. 243-258.

² Duque, M. and A. McKnight, Understanding the relationship between inequalities and poverty: mechanisms associated with crime, the legal system and punitive sanctions. 2019.

³ Peter, N.A., et al., Security Implications of Reformation, Rehabilitation and Reintegration in the Context of Overcrowding in Nigeria Correctional Centres.

⁴ Van Hout, M.-C. and R. Mhlanga-Gunda, Prison health situation and health rights of young people incarcerated in sub-Saharan African prisons and detention centres: a scoping review of extant literature. BMC international health and human rights, 2019. 19: p. 1-16.

⁵ Limoncelli, K.E., J. Mellow, and C. Na, Determinants of intercountry prison incarceration rates and overcrowding in Latin America and the Caribbean. International Criminal Justice Review, 2020. 30(1): p. 10-29.

individuals with access to competent legal representation can navigate the justice system's complications. Not only are the rights of these members safeguarded, but a contribution towards an inclusive and just society is also provided.⁶ The relationship found within the alleviation of overcrowding, free legal aid, and the facilitation of justice are all integral for protecting basic human rights.

LITERATURE REVIEW

Legal Aid

A critical nexus is formed through the intersection of human rights and free legal aid, where the ongoing discourse surrounds the penal institution and justice systems. The fundamental right to legal representation is a human rights cornerstone. These can be globally recognized as elements that ensure equitable access and fairness towards justice.⁷ The overcrowding within the penal institutions has been accepted as a pervasive problem where human rights and their violations are exacerbated. Free legal aid and its provision is a vital solution addressing the disparities of legal representation. Legal aid is a mechanism that is used for socio-legal support, and this has been highlighted for the potential that it holds in terms of bridging the gap.⁸ These studies identify the positive influence of legal aid that mitigates the challenges overcrowded penal institutions pose.

Overcrowding in Penal Institution

The ideology of overcrowding within the penal institutions identifies a pervasive and rather complicated challenge around the criminal justice system. The multifaceted issue has to be characterized in terms of an imbalance found in the housed candidates, correctional facilities' capacity, and the detrimental consequences for a wider society.⁹ Overcrowding is likely to intensify the safety and health risks as these compromise the provision of adequate living conditions. However, this poses a substantial barrier to human rights realization as multiple individuals are likely to experience heightened vulnerability to the abuse.¹⁰ To detect the root causes of overcrowding, a comprehensive approach encompassing social, systemic, and legal reforms is required.

Human Rights for Prisoners

Providing human rights to prisoners displays a basic pillar for a humane and just society and recognizes that individuals deprived of liberty retain rights. These enshrine as per international conventions and agreements, as these rights confirm the dignity of every individual regardless of his legal status.¹¹ These prisoners hold the right to be treated with the respect they deserve, and all sorts of degrading treatments must be avoided. Access to proper healthcare, fair legal procedures, and education are essential to such rights. Furthermore, the prisoners hold the right where they demand communication with the world outside the prison cells.¹² Safeguarding prisoners' rights can extend beyond the punitive measures, where the emphasis is placed on reintegration and rehabilitation.

Legal Framework

While examining the context of prisoners and their basic human rights, the legal framework provides different levels of governance, constitutional provisions, state regulations, and specific legal implications policies.

⁶ Cikins, W.I., Partial Privatization of Prison Operations: Let's Give It a Chance, in *Privatizing correctional institutions*. 2023, Routledge. p. 13-18.

⁷ Preloznjak, B., *The Future of Free Legal Aid: Open Questions and Perspectives of Further Development*. Harmonius: J. Legal & Soc. Stud. Se. Eur., 2019: p. 515.

⁸ Petro, B., *FREE LEGAL AID AS A FUNDAMENTAL RIGHT OF A PERSON*. VISEGRAD: p. 6.

⁹ Dey Ravena, A.M., *The Implications of Overcrowding for Fostering Prisoners in Prison: Management and Systems Problems*. *Journal of Southwest Jiaotong University*, 2019. 54(5).

¹⁰ Rizki, D., I.G.A.K.R. Handayan, and H. Hartiwiningsih. *The Urgency of Penal Reconstruction as an Overcrowded Effort in the Correctional Institutions Based on Criminal Law*. in *International Conference On Law, Economic & Good Governance (IC-LAW 2023)*. 2024. Atlantis Press.

¹¹ Gann, S.M. and J.W. Palmer, *Constitutional rights of prisoners*. 2021: Routledge.

¹² Chimatilo, C.C., *The protection of prisoners' rights in international law*. 2022: University of Johannesburg (South Africa).

Constitutional Provisions

The constitutional guarantees design a bedrock for the human rights protection granted to prisoners. These provisions ensure due procedures, protection against unusual and cruel punishments, and the right to fair treatment as per fundamental law. As per the constitution of the majority of the countries, unusual and cruel punishments are prohibited.¹³ The essential safeguarding must be conducted against the inhumane treatment within the boundaries of penal institutions.

Implying Mandela Rules like Rules 53 and 61 within the constitutional provisions is likely to strengthen the prisoners' rights and their protection while addressing overcrowding issues within prisons. Rule 53 emphasizes the significance of handing prisoners access to legal aid and its assistance. Rule 61, on the other side, highlights the requirement of the legal procedures and timely access that can reinforce the constitutional guarantees. While these principles are integrated with constitutional provisions, the states can build up strong foundations to uphold prisoners' rights.¹⁴ The adherence to international standards is ensured through these and the promotion of a fair and equitable justice system that is relatively transparent and humane.

State Regulations

The state regulations complement the constitutional provisions, and the protocols for prisoner treatment and specific standards are delineated. Such regulations will likely address aspects based on disciplinary procedures, rehabilitation programs, and prison conditions. [13]. The state statutes are likely to outline the minimum standards that can be used for healthcare, inmate housing, and legal representation access.

The duration of time that the suspects are found to be held within the detention centers and police stations can be reduced through the functioning of the legal aid system. The prison population, overcrowding, congestion in courts, and wrongful convictions are all likely to be reduced through these. The protection and safeguarding of the witnesses and victims surrounding the criminal justice procedures are also carried out through these.¹⁵ The utilization of legal aid can be examined to contribute to crime prevention by increasing awareness.

Policies and Legal Implications

Some policies are designed through the correctional authorities, where the governmental agencies translate constitutional principles and involve the state's regulations, making them actionable guidelines.¹⁶ Such policies govern multiple aspects of prison administration where inmate rights are included, staff conduct is included, and disciplinary procedures are involved. The legal implications arise when such policies are questioned in any way and executed inconsistently through the statutory and constitutional mandates.¹⁷ These lead to judicial oversight and litigation to maintain compliance with legal standards.

METHODOLOGY

As many different research methodologies exist, three are considered the most generally accepted in academics. The three of these include the primary quantitative approach, the secondary qualitative approach, and the mixed approach.¹⁸ The concerned research, however, is implementing the secondary qualitative approach as it is a perfect fit. The secondary qualitative research includes an analysis of the existing qualitative data that some other organizations and researchers would have

¹³ Hartoyo, R. and S. Sulistyowati, The Role Of The Legal Aid Post Is In Providing Legal Assistance To Disadvantaged People In Order To Obtain Justice In The Courts Of The Holy Land. *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, 2023. 8(3): p. 1599-1611.

¹⁴ McCall-Smith, K., United Nations standard minimum rules for the treatment of prisoners (Nelson Mandela Rules). *International Legal Materials*, 2016. 55(6): p. 1180-1205.

¹⁵ Willems, A., The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A step toward global assurance of legal aid? *New Criminal Law Review*, 2014. 17(2): p. 184-219.

¹⁶ Reich, C.A., Individual rights and social welfare: the emerging legal issues, in *Welfare Law*. 2020, Routledge. p. 255-267.

¹⁷ Denvir, C., et al., *We Are Legal Aid: Findings from the 2021 Legal Aid Census*. 2022.

¹⁸ Lochmiller, C.R., Conducting thematic analysis with qualitative data. *The Qualitative Report*, 2021. 26(6): p. 2029-2044.

utilized for objectives beyond the current study. The concerned approach will likely offer valuable insights into a specific topic or phenomenon.¹⁹ As this is correlated with the analytic approach, secondary qualitative research allows the researchers to utilize the existing data and make new understandings and interpretations.

The analytic approach within secondary qualitative research involves systematically analyzing and interpreting the collected data to unveil patterns, relationships, and themes. Qualitative techniques like content analysis, thematic analysis, and grounded theory might be used here.²⁰ As the analytic lens would be applied to the secondary data, the researchers can examine the contradictions, overlooked aspects, or nuances found around the dataset. The correlation of the two approaches necessitates engagement with the existing data to question the existing assumptions while exploring alternative interpretations. The researchers can re-examine such data through multiple theoretical frameworks while challenging the existing interpretations.²¹ Combining the two approaches makes it easier for the researchers to strengthen the comprehension of the phenomenon while generating new insights.

RESULTS AND DISCUSSIONS

Case Study One

An interesting case was found in India, where prison overcrowding had become quite a persistent issue. This was a case of how the uneducated and poor prisoners could lessen the overcrowding and how the support access to justice could include the Paralegal Volunteers Program that could be executed through the Commonwealth Human Rights Initiative (CHRI)²². The concerned initiative trained some chosen prisoners who were from low-income and marginalized backgrounds. Many prisoners from India were found to be economically disadvantaged, and they lacked access to legal representation based on illiteracy and financial constraints. The overcrowding was exacerbated because some individuals remained in pre-trial detention for extended periods.²³

The justice system for these scenarios was found to need help accommodating quite a high quantity of cases. These could lead to backlogs and significant procedural delays.²⁴ The Paralegal Volunteers Program for such scenarios was likely to address challenges that could empower the prisoners to advocate within the legal systems. Even though their education was limited, such volunteers underwent comprehensive training that human rights advocates and legal experts could conduct.²⁵ The prisoners come and learn about the legal procedures, remedies, and rights that enable them to provide legal advice.

As engagement is conducted in peer-to-peer support, the volunteers then play a rather critical role in disseminating the legal knowledge and empowering fellow prisoners so the complexities of the justice system are navigated.²⁶ The legal procedures are expedited through these as the case backlogs are reduced, and the inmates are provided access to legal assistance. Moreover, such programs reduced overcrowding by expediting the legal proceedings and promoted a culture of empowerment and legal awareness among the prisoners.²⁷ As the potential of the uneducated and

¹⁹ Roller, M.R. A quality approach to qualitative content analysis: Similarities and differences compared to other qualitative methods. in *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research*. 2019.

²⁰ Tracy, S.J., *Qualitative research methods: Collecting evidence, crafting analysis, communicating impact*. 2019: John Wiley & Sons.

²¹ Gale, R.C., et al., Comparison of rapid vs in-depth qualitative analytic methods from a process evaluation of academic detailing in the Veterans Health Administration. *Implementation Science*, 2019. 14: p. 1-12.

²² McQuoid-Mason, D., Access to justice and the need for a holistic approach to the delivery of legal aid services in developing countries: Lessons from South Africa. *Jindal Global Law Review*, 2020. 11(2): p. 309-337.

²³ Akter, F., The standard of assistance from legal aid lawyers: an Indian perspective. *Indian Law Review*, 2021. 5(2): p. 189-209.

²⁴ Rook, W. and D. Heerdt, *The Routledge Handbook of Mega-Sporting Events and Human Rights*. 2023: Taylor & Francis.

²⁵ Shukla, A., Access to Justice for Marginalized People in India. *MyLawman Socio Legal Review*, 2020. 1(1).

²⁶ Mann, J.S., *Comparative Legal Aid Systems and India*. 2022: Routledge India.

²⁷ Asadullah, M., et al., Community and restorative justice practices in India, Nepal, and Bangladesh: A comparative overview. *Comparative restorative justice*, 2021: p. 223-244.

poor prisoners is harnessed in terms of paralegal volunteers, the initiative comes to address the immediate challenges that are found within the penal system.

Case Study Two

An interesting practical world case illustrates how foreign prisoners could alleviate prison overcrowding and support access to justice that might involve a Prisoner Transfer Agreement (PTA) between Jamaica and the United Kingdom.²⁸ Over several years, the United Kingdom faced multiple challenges related to overcrowding within the prison system. These were exacerbated through the incarceration of foreign nationals, which included several Jamaican citizens. Such individuals are likely to face some barriers regarding having access to legal representation and navigating the complexities within the British justice system.²⁹ These can lead to prolonged detentions and might contribute to the enhancement of overcrowding.

As a response to such challenges, Jamaica and the UK were found to have negotiated a PTA that was aimed towards the facilitation of the Jamaican prisoners' transfers to their original home countries and served the remainder of their sentences there.³⁰ In 2007, this was implemented as the agreement allowed prisoners with specific criteria of having a minimum period to be transferred to Jamaica. The initiative had plenty of benefits, as it mitigated prison overcrowding and supported access to justice. Initially, this alleviated pressure on the UK prison system by deporting foreign nationals to their home countries.³¹ This enabled the prisoners from foreign countries to serve sentences that would be somewhat closer to the support networks and families. Such assessments promoted essential rehabilitation along with reintegrating into society through release.

The PTA was found to facilitate access to justice for foreign prisoners by making sure that these members can be considered subjects to their home country's penal and legal systems. [23]. All the potential barriers that justice foreign nationals will likely face in the entire scenario will likely be reduced, and relatively equitable distribution of all the legal resources will be promoted. This Prisoner Transfer Agreement between the UK and Jamaica is among the most practically applicable examples of how mutual agreements and international cooperation are likely to address prison overcrowding issues.³² Moreover, promoting access to justice and contributing towards a humane and effective criminal justice system is also promoted here.

Case Study Three

Another case of detention was reported when a domestic worker, Diana, from Uganda, arrived in Jordan and was looking forward to a job opportunity. All the while she was working under her employer, a theft report was filed against her, which was held by the employer's wife. Dianna, therefore, was apprehended and eventually moved for further investigation by the public prosecutor. After these deliberations, the prosecutor decided to detain the pending trial along with the transfer of the case. All of these activities created a lag in the time duration, which caused Diana's detention time to be expanded [33]. This detention was not easy for Diana, and her extended stay eventually became uncomfortable.

The competent court, however, reviewed the case in detail, and considering all of the factors, the decision to finally release Diana was issued. But regardless of the court's decision to release Diana, she remained in detention. She had to wait for the administrative processes and their finalization and for assistance in securing her return tickets to her home country.³³ The case will likely exemplify the challenges migrant workers face when navigating the legal system in foreign countries.

²⁸ Okudzeto, S. and S. Hazarika, Commonwealth Human Rights Initiative. 2022.

²⁹ Ghosh, A., et al., *Lost Identity: Transgender Persons Inside Indian Prisons*. 2020: Commonwealth Human Rights Initiative.

³⁰ Kushwaha, A., *Effects of Economic Distress on Legal Aid Services Amid Covid-19 Pandemic in India*. *LexForti Legal J.*, 2019. 1: p. 63.

³¹ Paul, A., *Beyond Access: Legal Aid for Child Refugees in India*, in *Human Rights and Legal Services for Children and Youth: Global Perspectives*. 2023, Springer. p. 211-239.

³² Nowrojee, S. and K. Shebi, *Working Together for Girls' and Women's Safety in Public Spaces: Lessons from India*. 3D Program, 2019.

³³ Marsden, S., *Migrant workers, rights, and the rule of law: responding to the justice gap*. *Dalhousie LJ*, 2019. 42: p. 153.

Comparative Analysis

As the initiatives of the two countries can be analyzed, some similarities need to be identified. The objective in the two cases appeared to be the same: to address overcrowding issues in prisons. The Paralegal Volunteers Program of India and the PTA between Jamaica and the UK empowered prisoners to navigate the legal system effectively. Moreover, the two cases focused on improving the access to justice that must be provided to the prisoners. Providing legal aid and assistance to fellow prisoners can enhance their ability to comprehend and practice the rights found in that legal system. Likewise, the PTA enabled foreign prisoners to serve their sentences where they were found to be rather closer to their families. This was preferable primarily because the access to legal assistance and resources was enhanced.

On the contrary, plenty of differences are reported regarding how the amendments can be made. The nature of the two interventions was found to be significantly different as they involved training selected prisoners in India's case, and the cases of the UK and Jamaica focused on the transfer of foreign prisoners to their home countries. India's legal framework is found to be implemented through the Commonwealth Human Rights Initiative, and in the case of Jamaica and the UK, PTA is involved in conducting the bilateral agreement among the sovereign nations. The scopes of impact in both cases were found to be different, as in the case of Indian Prisons, individual cases were being improved, and legal awareness was also heading towards betterment. In the case of Jamaican prison systems, the transfer of prisoners was spreading awareness in terms of new methods.

Considering the last case, the challenges faced by the migrant workers were in the operations that were carried out within the criminal justice system. The systemic issues like prolonged legal procedures, arbitrary detention, and inadequate access to legal assistance were all highlighted. These eventually led to hindering access to justice or deportation. In Diana's case, she was also found to experience a prolonged detention even though the court clearly announced her acquittal. Systemic delays and inefficiencies were found to occur in the legal system. The case clearly emphasized the workers' vulnerability regarding rights violations.

CONCLUSION

The research article focuses on the significance of free legal aid and how it can mitigate prison overcrowding. Two initiatives were aimed at addressing prison overcrowding and enhancing access to justice. The Prisoner Transfer Agreement of Jamaica and the UK, along with the Paralegal Volunteers Program of India, were kept for discussion. A comparative analysis of the two cases highlighted similarities and, likewise, the differences. Even though the two cases had a rather divergent approach, the two initiatives' goals were quite the same. Future researchers are recommended to conduct research through a rather different approach, which can be primarily quantitative. The potential biases that can be reported in any way should be avoided by all means, and these must be worked upon accurately to reduce errors.