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EDITORIAL ANALYSIS

Analysing India's Budgets for Justice

THE HINDU

21 May 2026

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The Hindu

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INTERVIEW ANGLE

"Article 39A guarantees free legal aid, yet legal aid receives less than 1% of India's justice budget. Is this a failure of constitutional morality or of fiscal federalism — and how would you fix it?"

EDITORIAL SUMMARY:

The Hindu argues that India's justice budgets are structurally distorted — policing absorbs over 80% of expenditure across Centre and States, while the judiciary, prisons and legal aid together receive less than 20%. This distortion fuels the pendency crisis, prison overcrowding and unequal access to justice, hollowing out the Article 39A guarantee of free legal aid. A rebalancing toward courts, prisons and legal aid — tied to outcomes rather than expenditure — is overdue.

THE NUMBERS BEHIND THE DISTORTION

The **India Justice Report (IJR)** — published periodically by Tata Trusts in collaboration with the Centre for Social Justice, Common Cause, the Commonwealth Human Rights Initiative, DAKSH, TISS-Prayas and the Vidhi Centre for Legal Policy — provides the most comprehensive empirical picture of justice-system spending and outcomes across Indian states.

The shape of the justice budget, aggregated across Centre and States, is striking:

PILLAR OF JUSTICE	APPROXIMATE SHARE OF TOTAL SPENDING
Police	80%+
Judiciary (courts)	10-12%
Prisons	4-6%
Legal Aid	<1%

The **asymmetry** is not a fact of administrative convenience; it is the budgetary embodiment of a particular view of justice — one in which the state’s coercive arm receives the lion’s share and the constitutional architecture of fair trial, dignified incarceration and equal access receives the remainder.

THE CONSTITUTIONAL ARCHITECTURE THAT IS UNDERFUNDED

India’s constitutional commitment to equal justice is layered and explicit.

The Foundational Articles

- **Article 14:** Equality before the law and equal protection of the laws
- **Article 21:** Right to life and personal liberty — interpreted to include speedy trial (*Hussainara Khatoon v. State of Bihar*, 1979) and the right to legal representation (*M.H. Hoskot v. State of Maharashtra*, 1978)
- **Article 22(1):** The right of an arrested person to be defended by a legal practitioner of choice
- **Article 39A:** Inserted by the 42nd Constitutional Amendment Act 1976, this Directive Principle directs the State to secure equal justice and to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Statutory and Institutional Layer

- **Legal Services Authorities Act 1987** established the **National Legal Services Authority (NALSA)** — with the **Chief Justice of India** (currently Justice Surya Kant, 53rd CJI) as **Patron-in-Chief** — and a corresponding structure of **State Legal Services Authorities (SLSAs)** and **District Legal Services Authorities (DLSAs)** with **Taluk Legal Services Committees** at the grassroots.
- **National Judicial Data Grid (NJDG):** The publicly accessible portal that tracks pendency, disposal and case-life-cycle indicators across courts.

This architecture is robust on paper. Its operational reality is constrained by the budgetary share that legal aid actually receives.

THE PENDENCY CRISIS

The case backlog is the most visible failure of the justice system.

INDICATOR	APPROXIMATE MAGNITUDE
Pending cases — all courts	~5 crore
Pending cases — Supreme Court	~85,000
Pending cases — High Courts	~60 lakh
Pending cases — district judiciary	~4.3 crore
High Court judge vacancies	~30% of sanctioned strength

The pendency is not evenly distributed. The **district judiciary** — which handles over 70% of original litigation — carries the bulk of the backlog. High Court vacancies remain stubborn despite the **Memorandum of Procedure** for appointments having been in operation for over a decade and the **National Judicial Appointments Commission (NJAC)** struck down in 2015 (*Supreme Court Advocates-on-Record Association v. Union of India*).

The fiscal consequence: courts are simultaneously expected to clear a five-crore backlog and to manage new filings, with limited additional infrastructure and chronic vacancies.

THE PRISON CRISIS

Prison statistics, drawn from National Crime Records Bureau publications, indicate that:

- **National average occupancy** is around **131%** of sanctioned capacity
- Several states report occupancy **above 175%**
- **Undertrials** constitute approximately **75%** of the total prison population

A prison overcrowded with undertrials is not a prison-management problem; it is a **court-throughput problem manifesting as a prison crisis**. The structural fix lies in faster trials — which requires judges, courtrooms, prosecutors, defence counsel and digital case management — not in building more prisons.

THE LEGAL AID GAP

Article 39A’s promise of free legal aid is operationalised through NALSA, the SLSAs, DLSAs and Taluk committees, supplemented by paralegal volunteers and panel advocates. The system has expanded — *Lok Adalats*, permanent and continuous *Lok Adalats*, mobile legal aid camps, jail-based legal aid clinics, and digital case-tracking applications now extend the reach.

But the funding share of less than 1% of the total justice budget constrains the system’s operational density. Panel advocate fees remain modest; paralegal volunteers are not full-time; legal aid uptake remains low relative to the eligible population. The system is institutionally present but operationally thin.

THE SUB-NATIONAL VARIATION

Justice outcomes vary sharply across states. The IJR’s state-level rankings have consistently shown that **Kerala, Tamil Nadu and Karnataka** score higher on most justice indicators — judicial strength, infrastructure, disposal rates, legal aid coverage — while the **BIMARU states** (Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh) and several north-eastern states lag.

The reasons are not mysterious: better-performing states invest more, recruit faster, fill vacancies promptly, and provide better physical infrastructure. The variation indicates that justice outcomes are not determined by national-level constraints alone — state-level political and fiscal choices matter materially.

REFORM EFFORTS IN MOTION

Several reform efforts are under way:

- **e-Courts Mission Mode Project Phase III**, approved in September 2023 at approximately **₹7,210 crore over four years**, supports court digitisation, virtual courts, e-filing, and the National Judicial Data Grid expansion.
- **Virtual courts** for traffic offences and certain civil categories have demonstrated that digitisation can deliver materially faster disposal.
- **Fast Track Special Courts** for crimes against women and children, supported by central grants.
- The **Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, and Bharatiya Sakshya Adhinyam 2023** replaced the colonial criminal code, procedure and evidence statutes effective July 2024 — reshaping the substantive and procedural architecture of the criminal justice system.

These reforms address the symptoms of the justice deficit. The underlying budgetary distortion remains.

WAY FORWARD

The Hindu’s prescription is structural rather than incremental:

- 1 **Rebalance the justice budget** so that policing’s share moves gradually from 80%+ to around 60% over the next decade, with the released share allocated to judicial infrastructure, prison reform and legal aid.

- 2 **Operationalise the All India Judicial Service** under Article 312, repeatedly recommended by the Law Commission, to address district-judiciary recruitment and quality.
- 3 **Implement key recommendations** of the **Justice Malimath Committee 2003** and the **Madhava Menon Committee** on criminal justice reform.
- 4 **Expand NALSA's legal aid** through digital pro bono platforms, panel advocate fee revisions, and full-time paralegal cadres.
- 5 **Outcome-linked Finance Commission grants** to states — tied to case-disposal rates, undertrial-to-convict ratio, legal aid uptake — rather than to expenditure inputs alone.

UPSC MAINS ANALYSIS

GS Paper 2 — Polity, Governance and Welfare

- Constitutional provisions: Articles 14, 21, 22(1), 39A; the 42nd Amendment 1976
- Statutory framework: Legal Services Authorities Act 1987; new criminal codes 2023
- Institutional: Supreme Court, High Courts, district judiciary, NALSA, SLSAs, DLSAs, NJDG
- Landmark jurisprudence: *Hussainara Khatoon* 1979 (speedy trial), *M.H. Hoskot* 1978 (right to counsel)

GS Paper 3 — Economy and Fiscal Federalism

- Justice budgeting: Centre-State expenditure shares
- Finance Commission devolution criteria
- Outcome-linked grants as a fiscal instrument

Keywords: India Justice Report, Article 39A, 42nd Amendment 1976, NALSA, Legal Services Authorities Act 1987, e-Courts MMP Phase III, NJDG, *Hussainara Khatoon* 1979, *M.H. Hoskot* 1978, Justice Malimath Committee 2003, Madhava Menon Committee, All India Judicial Service, Article 312, Bharatiya Nyaya Sanhita 2023.

The asymmetry between policing and the rest of the justice system is not an administrative oversight; it is a fiscal expression of how the state imagines justice — as enforcement first and adjudication second. Article 39A reverses that order on paper but not in budgets. The Hindu's deeper argument is that constitutional morality, like any other public commitment, must show up in budget documents to be real. A republic that spends less than one per cent on legal aid for the indigent has chosen its priorities. The choice can be made differently.

Source: The Hindu

● **KEY ARGUMENTS AT A GLANCE**

India's justice-system spending is structurally distorted — policing absorbs over 80% of total expenditure across Centre and States, leaving courts, prisons and legal aid chronically underfunded, which in turn fuels case backlogs, prison overcrowding and unequal access to justice, making the Article 39A guarantee of equal justice and free legal aid a constitutional promise without budgetary substance.

✓ **SUPPORTING**

- The India Justice Report, published periodically by Tata Trusts in collaboration with the Centre for Social Justice, Common Cause, the Commonwealth Human Rights Initiative, DAKSH, TISS-Prayas and the Vidhi Centre for Legal Policy, has consistently documented that policing accounts for the overwhelming share of justice spending while legal aid receives less than one per cent.
- The pendency crisis is structural — about five crore cases are pending across all courts, the Supreme Court alone carries roughly 85,000 cases, and judicial vacancies hover near 30% across High Courts, with most of the backlog concentrated in the district judiciary that handles 70%+ of original litigation.
- Prisons run at about 131% national average occupancy with several states above 175%, and undertrials constitute around three-quarters of the prison population, indicating that prison expenditure is not shortage of capacity but absence of trial throughput — a court problem manifesting as a prison crisis.
- Article 39A, introduced by the 42nd Amendment 1976, directs the State to secure equal justice and to provide free legal aid; the National Legal Services Authority (NALSA), constituted under the Legal Services Authorities Act 1987 and currently headed by the Chief Justice of India as Patron-in-Chief, operationalises this guarantee, but its funding share is too small to make legal aid a genuine entitlement.

⚠ **COUNTER**

Policing expenditure is not waste — internal security, counter-terror, cyber-crime, women's safety, traffic management and pandemic enforcement all require modern police forces; arguments to rebalance must be careful not to undermine the operational capacity of state police forces that already operate below sanctioned strength in most states.

→ **WAY FORWARD**

Rebalance justice spending so that policing's share moves gradually from 80%+ to around 60% while judiciary, prison reform and legal aid shares rise proportionately; operationalise the All India Judicial Service under Article 312; implement key recommendations of the Justice Malimath Committee 2003 and the Madhava Menon Committee on criminal justice reform; expand NALSA's legal aid through digital pro bono platforms; tie Finance Commission grants for justice infrastructure to measurable outcomes — case disposal rates, undertrial-to-convict ratio, legal aid uptake — rather than expenditure alone.

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MAINS ANSWER FRAMEWORK

QUESTION

"Over 80% of India's justice-system spending is absorbed by policing, leaving courts, prisons and legal aid chronically underfunded." Examine the structural distortion in India's justice budgets and suggest a constitutional and fiscal reform agenda to make Article 39A operational. (250 words)

INTRODUCTION

The Hindu argues that India's justice system is funded asymmetrically — policing absorbs over 80% of total justice expenditure while the judiciary, prisons and legal aid together receive less than 20%, a distortion that erodes the constitutional guarantee of equal justice under Articles 14, 21 and 39A and produces the pendency, overcrowding and access deficits that mar India's justice delivery.

BODY

The India Justice Report, published periodically by Tata Trusts in collaboration with the Centre for Social Justice, Common Cause, the Commonwealth Human Rights Initiative, DAKSH, TISS-Prayas and the Vidhi Centre for Legal Policy, provides the data backbone for this debate. Across Centre and States, policing absorbs over 80% of justice spending; the judiciary receives roughly 10-12%, prisons 4-6% and legal aid less than 1%.

The constitutional architecture of justice is robust on paper — Article 14 (equality before law), Article 21 (life and liberty as interpreted in *Hussainara Khatoon v. State of Bihar* 1979 to include speedy trial and in *M.H. Hoskot v. State of Maharashtra* 1978 to include the right to counsel), Article 22(1) (right to be

defended) and Article 39A (free legal aid, inserted by the 42nd Amendment 1976) — and operationalised through the National Legal Services Authority under the Legal Services Authorities Act 1987, with the Chief Justice of India as Patron-in-Chief and State and District Legal Services Authorities layered below. The Supreme Court, 25 High Courts and roughly 15,000 lower courts together carry about five crore pending cases, with the Supreme Court alone holding roughly 85,000; High Court vacancies hover near 30%; and the district judiciary bears the bulk of the backlog.

Prison occupancy stands at about 131% national average with several states above 175%, and undertrials constitute around three-quarters of the prison population — a court problem manifesting as a prison crisis. The e-Courts Mission Mode Project Phase III, approved in September 2023 at about ₹7,210 crore over four years, and the operationalisation of virtual courts have begun to modernise the judiciary, but unevenly across states — Kerala, Tamil Nadu and Karnataka score higher on justice delivery indicators while the BIMARU states lag.

The Justice Malimath Committee 2003 and the Madhava Menon Committee recommendations on criminal justice reform remain only partially implemented; the All India Judicial Service under Article 312, repeatedly recommended by the Law Commission, awaits political consensus.

CONCLUSION

Article 39A cannot remain a constitutional ornament. India needs a structural rebalancing of its justice budgets — policing's share rationalised, judicial and legal aid shares raised, the All India Judicial Service operationalised, outcome-linked Finance Commission grants tied to disposal rates and undertrial reduction, and NALSA's legal aid reach expanded through digital pro bono platforms — so that "justice for all" moves from constitutional promise to budgetary reality.

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