

218 CRA-D-40-2026, CRA-D-75-2026, CRA-D-109-2026, and MRC-1-2026,

POONAM AND ANOTHER V/S STATE OF HARYANA

Present: Mr. Komal Preet Singh, Advocate
for the appellant in CRA-D-75-2026.

Ms. Vidyotma Malik, Advocate
for the appellant(s) in CRA-D-109-2026.

Mr. Shiva Khurmi, DAG, Haryana.

Ms. Ameesha Goel, Advocate, for the complainant.

1. When this matter was listed on Apr 01, 2026, Ld. Counsel appearing for the appellant/convict Sunil Kumar informed this Court that the jail authorities did not permit them to interact with the convict through videoconference.

2. Today, the State has handed over affidavits denying such allegations, and the said affidavits are taken on in the miscellaneous portion of the file. However, Mr. Komal Preet Singh, Ld. Counsel representing the convict, Sunil Kumar, states that he could not interact and requires a proper, uninterrupted, and secured videoconference to interact with his client.

3. Given the nature of this request, we are expanding its scope and it would be relevant to analyze the requirements of soundproof and secured videoconference facilities in all prisons in the States of Punjab, Haryana, and the Union Territory of Chandigarh.

4. It shall be relevant to refer to the following Conventions, Declarations, and Statutes.

5. Section 134 of BSA¹, 2023, analogous to §129 of the Indian Evidence Act, 1872

134. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

6. The **United Nations International Covenant on Civil And Political Rights**²

General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial

[34]. The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that

¹ The Bharatiya Sakshya Adhiniyam, 2023.

<https://www.indiacode.nic.in/bitstream/123456789/20063/1/aa202347.pdf>

² General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, (Aug. 20, 2007), <https://digitallibrary.un.org/record/606075?v=pdf> [Accessed on 17-04-2026 at 12:45 Hrs]

fully respect the confidentiality of their communications.³ Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter.

7. The Basic Principles on the Role of Lawyers⁴, Office of the United Nations High Commissioner for Human Rights [OHCHR]

Access to lawyers and legal services

[8]. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Guarantees for the functioning of lawyers

[22]. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

8. Rome Statute of the International Criminal Court⁵

Article 67 Rights of the accused

[1]. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

9. The United Nations Standard Minimum Rules for the Treatment of Prisoners also known as Nelson Mandela Rules⁶ published by the United Nations Office on Drugs and Crime

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

Rule 120

2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence,

³ Communications No. 1117/2002, *Khomidova v. Tajikistan*, para. 6.4; No. 907/2000, *Siragev v. Uzbekistan*, para. 6.3; No. 770/1997, *Gridin v. Russian Federation*, para. 8.5.

⁴ *Basic Principles on the Role of Lawyers*, United Nations OHCHR (Sept. 7, 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers> [Accessed on 17-04-2026 at 12:50 Hrs]

⁵ International Criminal Court, *Rome Statute of the International Criminal Court*, (July 17, 1998), <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> [Accessed on 17-04-2026 at 12:50 Hrs]

⁶ General Assembly resolution 70/175, annex, adopted on 17 December 2015. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf [Accessed on 17-04-2026 at 12:51 Hrs]

including confidential instructions for his or her legal adviser or legal aid provider.

10. It is not only that the in-person communications between the accused and their attorneys are privileged, but even the digital communications cannot be distinguished in terms of their confidential nature from one-to-one physical interactions.

11. Dean *et alia* in *Reintroduce Legislation to Protect Private Communication Between Incarcerated People and Their Lawyers*⁷ claimed that the *Effective Assistance of Counsel in the Digital Era Act* offers a solution that would protect confidential lawyer-client emails without compromising security. Specifically, this bipartisan legislation would allow investigative and law enforcement officers to review the contents of prisoner emails with their lawyers only with a warrant and special review procedures designed to prevent the affected emails from being used against the prisoners unfairly.

12. A publication by the United Nations General Assembly (Apr 9, 2021), *Report of the Special Rapporteur on the independence of judges and lawyers by Diego García-Sayán, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*⁸

III. Elements necessary for the proper functioning of justice systems during and after the pandemic

B. Right to a fair trial and to due process

[51]. The technical limitations of certain digital tools used for online meetings in the context of judicial proceedings or tax investigations can sometimes make it difficult to maintain confidentiality during consultations between legal representatives and their clients. Testimonies or expert statements given online are more likely to be given under pressure and persons giving testimony or statements online may even receive instructions unnoticed. In addition, viewing on a screen can make it difficult to recognize objects and individuals,⁹ which may have implications for the right to examine evidence¹⁰. Privacy for meetings between clients and their lawyers must be strictly guaranteed, which is not the case with the digital tools currently in widespread use.¹¹

13. In *Sunil Batra v. Delhi Administration* [1979] 1 SCR 392; 1978-INSC-147, decided on Aug 30, 1978, the Constitutional Bench of five Judges of the Hon'ble Supreme Court holds,

[pg413-414] [G-C] Mr., Justice Douglas stressed this aspect in *Wolff v. McDonnell*: [41 L. Ed. 2d. 935 at p. 976)]

"Prisoners often have their privilege revoked, are denied the right of access to counsel, sit in solitary or maximum security or less accrued 'good time' on the basis of a single, unreviewed report of a guard. When the Courts

⁷ <https://dean.house.gov/2024/12/dean-jeffries-lee-bacon-reintroduce-legislation-to-protect-private-communication-between-incarcerated-people-and-their-lawyers> [Accessed on 17-04-2026 at 12:52 Hrs]

⁸ <https://docs.un.org/en/A/HRC/47/35> [Accessed on 17-04-2026 at 12:52 Hrs]

⁹ International Legal Aid Consortium, "Justice in the Time of COVID-19. Challenges to the Judiciary in Latin America and the Caribbean", December 2020, p. 38.

¹⁰ Form submitted by the Cyrus R. Vance Center for International Justice.

¹¹ Several excellent studies have been published on Latin America and the interplay between COVID-19 and justice. See, for example, ACIJ et al., "Acceso a la justicia en Latinoamérica"; México Evalúa, "Guide to good practices in the use of new technologies to impart justice", 2020; and, most recently, International Legal Aid Consortium, "Justice in the Time of COVID-19. Challenges to the Judiciary in Latin America and the Caribbean", December 2020.

defer to administrative discretion, it is this guard to whom they delegate the final word on reasonable Prison Practices. This is the central evil in prison... the, unreviewed discretion granted to the poorly trained personnel who deal directly with prisoners."

If wars are too important to be left to the generals, surely prisoners' rights are too precious to be left to the jailors. We must add a caveat.

[pg490] [D-F] 10. Legal aid shall be given to prisoners to seek justice from prison authorities, and, if need be, to challenge the decision in court-in cases where they are too poor to secure on their own. If lawyer's services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase. By and large, prisoners are poor, lacking legal literacy, under the trembling control of the jailor, at his mercy as it were, and unable to meet relations or friends to take legal action. Where a remedy is all but dead the right lives only in print. Art. 39A is relevant in the context. Art. 19 will be violated in such a case as the process will be unreasonable. Art. 21 will be infringed since the procedure is unfair and is arbitrary. In Maneka Gandhi the rule has been stated beyond mistake.

[pg495] [C-E] It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed (see *Procurier v. Martinex*).[40 L. Ed. 2] However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for crime does not reduce the person into a nonperson whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards (see *Wolff v. McDonnell*).[41 L. Ed. 2d. 935 a, 973].

14. Chapter VIII "CONTACT WITH OUTSIDE WORLD" of the Model Prison Manual 2016¹²

Reasonable facilities to be allowed for interviews and letters

[8.01]. *Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his/her family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his/her property and family affairs. He/she shall be allowed to have interviews with his/her family members, relatives, friends and legal advisers once in a fortnight.*¹³ xxx

Place of Interview

[8.16]. *Every interview shall take place in a special part of the prison appointed for this purpose. If possible such a place should be at or near the main gate to ensure the safety and security of prisoners. The interview room will*

¹² The Ministry of Home Affairs had prepared a Model Prison Manual, 2016 with the objective of ensuring uniformity in the basic principles governing prisons and had shared it with all States/ UTs for adopting it in their respective jurisdictions; https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms [Accessed on 17-04-2026 at 12:54 Hrs]

¹³ Sunil Batra v. Delhi Administration (1980) 3 SCC: "Visits to prisoners by family and friends are a solace in insulation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity".

Also, Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, AIR 1981 SC 746: "Personal liberty would include the right to socialize with members of the family and friends subject, of course, to any valid prison regulations and under Art. 14 and 21 such prison regulations must be reasonable and non arbitrary".

have fiber glass partition with intercom facilities, so that the prisoners can have a peaceful interview. The interview room shall be divided into cubicles and should have sound-proofing materials covering its walls and ceiling. However, the Superintendents of Prisons may allow well-behaved prisoners to have face-to-face interviews after giving due consideration to security and other related aspects.

[8.36.2]. Every interview between an under-trial prisoner and his legal adviser shall take place within sight, but out of hearing, of a prison official. A similar concession shall be allowed by the Superintendent in the case of an interview with any near relative of an undertrial.”

15. As laid down in **CHAPTER 13 APPEALS, REVISIONS, PETITIONS, INTERVIEWS, AND COMMUNICATIONS** of Haryana Prison Rules, 2022¹⁴

191. Interview for purpose of appeal or revision.- Every prisoner shall be allowed reasonable opportunities to personally interview his legal counsel, for preparation of his appeal or revision:

Provided that every such interview shall be held within sight, but out of the hearing, of the prison official in whose charge the prisoner is placed for such interview.

225. Interview With legal counsel.- Every interview between a prisoner and his legal counsel shall take place within sight, but out of hearing, of a staff member. A record shall be kept of every such visit.

248. General provisions of high security enclosure.- (3) Interviews in high security enclosure prisoners shall, as far as practicable, be held through electronic means in high security enclosure itself; in exceptional circumstances, if physical interview is allowed, it shall be held in the interview room constructed in the high security enclosure in the presence and within hearing of a staff member, except where the communication falls in the category of privileged communication. Interviews shall be limited to members of the family after police verification and authorized legal counsels only.

16. In **CHAPTER 13 APPEALS/REVISIONS, PETITIONS, INTERVIEWS AND COMMUNICATIONS** of Punjab Prison Rules, 2022¹⁵

(D) Special rules relating to interview of prisoners with legal counsel

3.04. Interview for purpose of appeal/revision.-Every prisoner shall be allowed reasonable opportunities of interviewing his relatives, family members and legal counsel, for the purpose of preparing his appeal/revision:

Provided that, every such interview shall be held within sight, but out of the hearing, of the prison official in whose charge the prisoner is placed for the purpose of such interview.

13.51. Interview of prisoners with legal counsel.- Every interview between a prisoner and his legal counsel shall take place within sight, but out of hearing, of a prison official.

13.53. Application from legal counsel for interview of prisoners.-When any person desires an interview with a prisoner in the capacity of the prisoner's legal counsel he shall apply, in writing, giving his name, address and registration number, stating whether he is empaneled under free legal aid

¹⁴ Vide notification no. S.O.89/C.A.9/1894/S.59/2022.

¹⁵ Vide notification no. G.S.R. 34/C.A.9/1894/S.59/2022.

or is a private lawyer, and he must satisfy the officer in charge of prison that he is the bona fide legal counsel of the prisoner with whom he seeks an interview and that he has legitimate business with him.

NOTE: Interview of prisoners with legal counsel, as far as practicable, may be arranged in a specific designated room. It may be limited to once per week at the discretion of the officer in charge of prison. Such interviews shall be allowed between 4 pm and 5pm on any working day for a duration of thirty minutes. Such interview shall be limited to legal counsel only.

17. In France, the Ministry of Justice has published a Declaration of rights provided to persons placed in custody which provides for Legal assistance and response time assuring that the lawyer may meet with an inmate for 30 minutes under conditions that guarantee the confidentiality of the interview¹⁶.

18. Every accused has a fundamental right to access legal aid/counselling/advice through a legal professional, and such a conversation acquires the status of a “privileged communication” which upholds the accused’s right against self-incrimination. Though an accused inmate is not a “free” person, they retain a reasonable right to life, which extends to a fair trial, and it is important to protect the accused against any potential breach of their right to have a fair and impartial trial. It is in pursuance of this attorney-client privilege that soundproof rooms become important to be set up.

19. In the United States, the communication between the Attorneys and inmates is governed by §540.46 [Attorney Visits¹⁷], and §551.117 refers to the Program Statement Pretrial Inmates, which provides that the Staff may not subject visits between an attorney and an inmate to auditory supervision. To the extent practicable, attorney visits, for both pretrial and sentenced inmates, are to take place in a private conference room. However, areas designated for attorney visits will be arranged so as to provide adequate unobstructed visual supervision. Where such a room is not available, the attorney visit may occur in a regular visiting room, provided the inmate and the inmate’s attorney have a degree of separation from other visitors. Occasionally, a situation may arise when a private area or conference room is not available, and the attorney does not wish to meet in a regular visiting room. When this occurs, the attorney may reschedule the visit.¹⁸ A conversation in a jail or prison is confidential if the client and the attorney use a private area in the facility to talk and do not talk loudly enough for others to hear them.¹⁹

¹⁶[Ministry of Justice Declaration of rights PROVIDED TO A PERSON PLACED IN CUSTODY COMMON LAW (ART. 63 AND 63-1 OF THE FRENCH CODE OF CRIMINAL PROCEDURE)]
https://www.justice.gouv.fr/sites/default/files/2023-06/F1-GAV-Majeur-Droit%20commun%20modifi%C3%A9%20LPJ_EN.pdf [Accessed on 17-04-2026 at 12:55 Hrs]

¹⁷ https://www.bop.gov/policy/progstat/5267_09.pdf

¹⁸ Refer to the Program Statement **Inmate Legal Activities** for additional information on processing legal visits.

¹⁹ <https://www.justia.com/criminal/working-with-a-criminal-lawyer/the-duty-of-confidentiality/>

20. Report and Recommendations Concerning Access to Counsel at the Federal Bureau of Prisons' Pretrial Facilities²⁰ pointed out that the Advisory Group found that nine of the 10 pretrial facilities were equipped with private attorney rooms to accommodate confidential attorney-client meetings. The number of private rooms in each facility ranged from four (FDC Houston) to 10 (MDC Los Angeles). Moreover, these private rooms are generally soundproof, with doors that can be closed to facilitate confidential conversations.

21. We, the humans, are witnessing unparalleled and unprecedented revolutions of Information Technology and its subsets, which have globally transformed every aspect of our lives; however, when the tech grows, not everyone benefits. Those facing trials and other proceedings while languishing in jails have become the first victims of this digital divide. There are two types of undertrial inmate accused: one who participate in their court proceedings, while on bail, and the others who face trials, appeals, and other criminal proceedings from within the four walls of the jail. Both categories, in all situations, must be represented by a defence lawyer. Those on bail have the privilege of meeting, interacting with, and giving instructions to their respective lawyers, and even during court proceedings, they can remain present in court in person and can assist their counsel at all stages, including putting relevant questions to the witnesses. Earlier, undertrial inmates would be taken before the courts in person, where they not only had the opportunity to speak to their counsel but could also freely breathe for a brief time outside the four walls of the jails. Now, with the advent of technology, where the presence of these accused is secured through video conferencing, they are not physically brought to the court, which makes it extremely difficult for such individuals to interact with their defence counsel and pass on necessary instructions without fear or duress. Whenever any prosecution witness is examined, and the accused is appearing through videoconference, then the defence lawyer is the only one present, and Counsel has no option but to cross-examine the witness just by going through the Police Report without any assistance from the accused languishing in custody. In the absence of soundproof rooms, these prisoners become real losers.

22. A publication by the Journal of Criminal Law and Criminology, *Reading the Prisoner's Letter: Attorney-Client Confidentiality in Inmate Correspondence*²¹ (2019)

[1]. The Prisoner's Need for Confidentiality in Legal Communications

[pg.568-569]. A death row inmate challenging a wrongful conviction should not be required to allow agents of the State that seeks to execute him to look over his shoulder when he writes a letter to his attorney.

[pg.571]. A criminal defendant who is facing a death sentence for capital murder must be free to share the most intimate details of his life history, safe in the

²⁰ https://www.justice.gov/d9/2023-07/2023.07.20_atj_bop_access_to_counsel_report.pdf [Pg.19] [Accessed on 17-04-2026 at 12:56 Hrs]

²¹ Gregory Sisk, Michelle King, Joy Nissen Beitzel, Bridget Duffus, and Katherine Koehler, *Reading the Prisoner's Letter: Attorney-Client Confidentiality in Inmate Correspondence*, 109 J. CRIM. L. & CRIMINOLOGY 559 (2019). <https://scholarlycommons.law.northwestern.edu/jclc/vol109/iss3/3/> [Accessed on 17-04-2026 at 12:57 Hrs]

assurance that no one other than his lawyer will be able to peruse his statements. Counsel in a capital case are directed to “engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case.”²²

Moreover, death row prisoners—and indeed any vulnerable prisoner—must be regularly evaluated to ensure an understanding of legal proceedings and the mental health necessary to meaningfully participate in the matter.

23. For every criminal trial to be fair, every defence counsel representing the accused must have the opportunity to interact with them. As the onus of facilitating a fair trial rest heavily upon the State’s shoulders, it becomes the duty of the State to provide adequate infrastructure and facilities so that an undertrial inmate can also interact with their defence lawyer.

24. Every prison must have soundproof facilities where convicts are able to interact with their counsel via video conference and have in-person meetings with their counsel. Thus, the video conferencing rooms in jail should be remodelled in such a manner that the attorney-client privilege is protected. At all these places/jails where such infrastructure needs to be raised, the requisite steps should be taken by the jail department.

25. In the soundproof cabins, the necessary steps required to maintain the privacy of the discussion ought to be taken. In Courts, it should be ensured that headphones are made available to defence lawyers so that the public prosecutor or witnesses cannot overhear the conversation.

26. All the observations, made herein, apply uniformly to all the inmates; however, in cases where the punishment is graver like a death penalty where the sentence is irreversible, putting the life of the convict at stake, in such a situation it becomes all the more incumbent on the State to ensure the highest standards of fairness in the proceedings including securing to such inmates their fundamental rights to access legal aid with confidentiality.

27. This order and the observations contained herein shall operate only for the limited and exclusive purpose of interaction of the undertrial prisoners and the convict inmates with their legal counsel/advocate/lawyer and shall not be construed to include interaction with any relative(s) or friend(s) etc.

28. In all prisons where there are no soundproof facilities, the concerned Governments of the States of Punjab and Haryana, and the UT of Chandigarh, are directed to ensure the creation of soundproof rooms/facilities at the earliest, not later than 30.06.2026.

29. A copy of this order should be supplied to the Home Secretaries of the Governments of Punjab and Haryana, and the UT of Chandigarh, for implementation.

²² ABA Guidelines, Guideline 10.5(C), in 31 HOFSTRA L. REV. at 1005.

30. Whenever soundproof rooms/facilities have been created and wherever it already exists, the compliance report shall be supplied to the concerned Principal District and Sessions Judge.

31. It is further clarified that such videoconferencing shall be only between the accused/convict and their Counsel and interpreters, if required. The family members of the accused should not be permitted to participate in such an interaction. Further, such interaction, whether in person or through video conferencing, shall be conducted in a soundproof room so that no one else can hear the conversation between the Counsel and the accused/convict, not only to maintain privacy but also to ensure that the attorney-client privilege is not breached, directly or indirectly. Needless to say, the conversations, whether in person or through video conferencing, shall not be recorded by anyone, and, if recorded, any such recording would undoubtedly violate the fundamental right guaranteed under Article 20(3) of the Constitution of India.

32. The Superintendent of the concerned prison is directed to arrange a videoconference between the convict Sunil Kumar and his Advocate.

33. List all the appeals on 01.07.2026 for the final hearing.

34. A photocopy of this order be placed on the files of connected cases.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

17.04.2026

Anju Rani

Whether speaking/reasoned	YES
Whether reportable	YES