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AN ANALYTICAL STUDY ON THE SOCIO-LEGAL STATUS OF UNDERTRIAL PRISONERS IN THE INDIAN CRIMINAL JUSTICE FRAMEWORK

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Abstract

The undertrial prisoner crisis in India represents one of the most glaring structural failures of its criminal justice system a system that purports to uphold the rule of law while systematically violating the constitutional rights of its most vulnerable constituents. Undertrial prisoners, defined as persons detained in judicial custody pending investigation, inquiry, or trial, constitute approximately 75.8% of India's total prison population, according to the National Crime Records Bureau's Prison Statistics India 2022. This paper undertakes a critical doctrinal and socio-legal analysis of the undertrial prisoner's status within the Indian criminal justice framework, interrogating the normative gap between constitutional guarantees and ground realities. Drawing upon landmark judicial pronouncements, empirical prison data, legislative developments including the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, and comparative international standards, the paper argues that prolonged undertrial detention is not merely an administrative failure but a structural injustice entrenched in poverty, caste discrimination, and systemic legal apathy. The paper further offers targeted reform recommendations aimed at transforming India's bail jurisprudence and custodial governance toward a rights-respecting paradigm.

Keywords: *Undertrial Prisoners[1], Criminal Justice System[2], Pretrial Detention[3], Legal Rights and Access to Justice[4], Judicial Delay in India[5].*

I. Introduction

The criminal justice system, in its ideal conception, operates as a guardian of liberty not merely as an instrument of punishment. Yet, the Indian prison system presents a paradox of profound consequence: a substantial majority of individuals behind bars have not been convicted of any offence. They are presumed innocent in law but treated as guilty in practice. This structural contradiction has been described by the Supreme Court as a "negation of the rule of law."[1] India's undertrial crisis is neither a recent phenomenon nor one borne of administrative oversight alone. It is the product of deeply embedded systemic dysfunction—an overburdened judiciary, an archaic bail regime conditioned on monetary security, a dysfunctional legal aid apparatus, and a socio-economic environment in which poverty and marginalization render constitutional rights aspirational rather than real. The problem is so acute that the Supreme Court of India, the Law Commission, and successive Parliamentary Standing Committees have each issued stern indictments of the status quo, yet the crisis persists

[1] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81, per Bhagwati J.

and, by several measures, has worsened.[2] This paper proceeds through a multi-layered analytical framework. It maps the constitutional and statutory terrain governing undertrial rights, subjects landmark judicial decisions to critical scrutiny, examines the sociological and empirical dimensions of the problem, evaluates the recent legislative response through BNSS 2023, surveys comparative models, and ultimately offers a calibrated reform agenda.

II. Concept and Definition of Undertrial Prisoners

The term "undertrial prisoner" lacks a precise statutory definition in Indian law, though it is operationally understood as a person remanded to judicial custody by a competent court during the pendency of investigation, inquiry, or trial.[3] The distinction between undertrial and convicted prisoners is legally foundational: undertrials are presumed innocent under both common law tradition and Article 21 of the Constitution, a presumption that has direct implications for their treatment, rights, and the legitimacy of their detention.[4] In administrative terms, the NCRB classifies prison inmates into three categories: undertrial prisoners, convicted prisoners, and detenues. The undertrial category consistently and overwhelmingly dominates this classification, reflecting a structural tendency within the Indian criminal justice system to resolve uncertainty through incarceration rather than liberty-preserving alternatives.[5] This tendency what scholars have termed "preventive detention through the back door"[6] inverts the foundational liberal premise that detention must be exceptional, justified, and proportionate.

III. Constitutional and Legal Framework

The constitutional architecture governing undertrial rights is robust in text if precarious in practice. Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted expansively to include the right to a speedy trial,[7] the right to bail in appropriate cases[8], and the right to humane treatment in custody[9]. Article 22 provides procedural safeguards the right to be informed of grounds of arrest, the right to consult a legal practitioner of choice, and the right to be produced before a magistrate within twenty-four hours.[10] Article 14 overlays principles of equality and non-arbitrariness upon all state action, including decisions to detain.[11] At the statutory level, Section 436A of the Code of Criminal Procedure, 1973, introduced through the 2005 amendment, mandated release on bail upon completion of half the maximum sentence period as undertrial, subject to exceptions.[12] This provision, re-enacted as Section 479 of the BNSS 2023 with a notable expansion reducing the qualifying threshold for first-time offenders to one-third of the maximum sentence period[13] represents the legislature's most direct engagement with undertrial detention. The Legal Services Authorities Act, 1987, operationalises the constitutional mandate of free legal aid under Article 39A, requiring legal

[2] Law Commission of India, *268th Report: Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (2017) 5–7.
[3] Madhava Menon N.R., *A Code of Criminal Procedure* (Eastern Law House, 2008) 412.
[4] *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, paras 56–58
[5] NCRB, *Prison Statistics India 2022* (n 1) 18 (Table 2.1)
[6] Suresh Bada Math, Channaveerachari R. Murthy & Sydney Moirangthem, 'Undertrial Prisoners in India: Special Vulnerabilities and Legal Safeguards' (2015) 57(1) *Indian Journal of Psychiatry* 18, 20.
[7] *Hussainara Khatoon v. State of Bihar* (n 2)
[8] *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, per Krishna Iyer J.
[9] *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494
[10] Constitution of India, art 22(1)(2).
[11] Constitution of India, art 14; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[12] Code of Criminal Procedure (Amendment) Act 2005, inserting s 436A CrPC.
[13] Bharatiya Nagarik Suraksha Sanhita 2023, s 479

services authorities at national, state, district, and taluka levels to ensure representation for persons who cannot afford counsel.[14]

IV. Judicial Interpretation: Landmark Case Laws

The judicial corpus on undertrial rights is extensive and reveals a Supreme Court that has, across decades, repeatedly been compelled to intervene in a crisis that executive and legislative actors have failed to resolve. In *Hussainara Khatoon v. State of Bihar*[15], the Court was confronted with a writ petition filed on the basis of newspaper reports revealing that thousands of undertrial prisoners in Bihar had been detained for periods exceeding the maximum sentence for the offences charged. Justice P.N. Bhagwati, delivering the judgment, held that the right to a speedy trial is a fundamental right under Article 21, and that prolonged pretrial detention violates this right. The case resulted in the release of over 40,000 undertrial prisoners a number that itself spoke to the scale of the crisis. *Moti Ram v. State of Madhya Pradesh*[16] challenged the bail system's discriminatory architecture, wherein courts routinely imposed excessive surety conditions effectively inaccessible to indigent accused. The Court held that bail conditions must be reasonable and calibrated to individual circumstances, and that poverty cannot be treated as a disqualification from liberty. This judgment, though formally significant, has been honored more in breach than in observance. *Gudikanti Narasimhulu v. Public Prosecutor*[17] advanced a nuanced jurisprudence of bail, emphasising that bail is not a punitive instrument but a mechanism to secure the accused's attendance at trial. Justice V.R. Krishna Iyer articulated a rights-sensitive approach to bail discretion, stressing that liberty ought to be the rule and detention the exception. *Sunil Batra v. Delhi Administration*[18] extended constitutional scrutiny into prison conditions, holding that Article 21's protections do not cease at the prison gate. The Court asserted jurisdiction to investigate and remedy custodial violations, recognising prisoners convicted and undertrial alike as rights-bearing persons entitled to dignity, health, and protection from arbitrary treatment. In the contemporary context, *Arnab Manoranjan Goswami v. State of Maharashtra*[19] reaffirmed that personal liberty is foundational to constitutional democracy and that courts must be vigilant against detention used as an instrument of harassment. While the case attracted political controversy, its doctrinal contribution the Court's reiteration that bail applications must be decided expeditiously and that procedural delays cannot justify continued incarceration has broader significance for undertrial jurisprudence. More recently, *Satender Kumar Antil v. Central Bureau of Investigation*[20] issued comprehensive guidelines for expediting bail decisions, directing courts to decide bail applications within specified time frames and mandating that trial courts suo motu consider release under Section 436A upon the accused completing the requisite period of detention. *In Re: Inhuman Conditions in 1382 Prisons*[21] constitutes an ongoing suo motu proceeding in which the Supreme Court has been monitoring prison conditions nationally, issuing successive directions on overcrowding, legal aid, and undertrial review.

V. Socio-Economic Dimensions

The undertrial crisis is inseparable from India's structural inequalities. Empirical research consistently demonstrates that undertrial detainees are disproportionately drawn from Scheduled Castes, Scheduled Tribes,

[14] Legal Services Authorities Act 1987, ss 12–13; Constitution of India, art 39A
[15] *Hussainara Khatoon v. State of Bihar* (n 2); also (1980) 1 SCC 93 (Part II).
[16] *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47
[17] *Gudikanti Narasimhulu v. Public Prosecutor* (n 9) 243–244.
[18] *Sunil Batra v. Delhi Administration* (n 10) 527–530.
[19] *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427, paras 36–42.
[20] *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
[21] In Re: Inhuman Conditions in 1382 Prisons, Suo Motu Writ Petition (Civil) No 406 of 2013 (Supreme Court of India).

Other Backward Classes, religious minorities, and economically marginalised communities.[22] According to NCRB Prison Statistics 2022, SC/ST prisoners collectively constitute approximately 20.9% of total undertrial prisoners, a figure significantly disproportionate to their share of the general accused population relative to their population proportion in states with high incarceration rates.[23] The bail system's structural bias against the poor is perhaps its most damning feature. The conventional money-bail framework premised on the accused or a surety furnishing a monetary bond operates as an effective mechanism of differential incarceration: identical offences result in pre-trial detention for the poor and liberty for the wealthy. The accused who cannot arrange ₹5,000 in surety remains in custody for months or years, not because any court has determined that detention is necessary, but because poverty forecloses the exercise of a legal right.[24] Legal aid, theoretically the constitutional corrective for this inequality, remains functionally inadequate. The Law Commission's 268th Report on Bail Reforms[25] and the 277th Report on Wrongful Prosecution[26] jointly documented that legal aid lawyers are often under-resourced, insufficiently trained, overburdened with caseloads, and structurally incentivised to minimise engagement rather than zealously advocate. The result is that the constitutional promise of Article 39A functions, in practice, as a formal gesture rather than a substantive guarantee.

VI. Statistical Analysis

The NCRB's Prison Statistics India 2022 provides the most recent comprehensive empirical data on India's prison population. The total prison population stood at 5,73,220 as of December 31, 2022, against a sanctioned capacity of 4,36,266 an occupancy rate of 131.4%, indicative of severe structural overcrowding.[27] Of this population, 4,34,302 persons approximately 75.8% were undertrials.[28] State-level analysis reveals acute disparities. States including Uttar Pradesh, Bihar, Maharashtra, West Bengal, and Madhya Pradesh record the highest absolute numbers of undertrial prisoners.[29] Uttar Pradesh alone accounted for over 1,11,231 undertrial prisoners in 2022, reflecting both its population size and the particular dysfunction of its criminal justice machinery.[30] The data on the duration of undertrial detention is particularly disturbing. A significant proportion of undertrial prisoners have been in custody for periods exceeding one year, with many detained for two to five years or longer.[31] Juveniles and young adults persons between the ages of 18 and 30 constitute a disproportionately large segment of this population, raising grave concerns about the developmental, psychological, and rehabilitative consequences of prolonged pretrial detention on youth.[32]

VII. Issues and Challenges

The undertrial crisis is sustained by a constellation of interlocking systemic failures. First, judicial delay India's courts carry a pendency of over 5 crore cases as of 2024, with criminal trial pendency being a primary

[22] Rao Abhimanyu, 'Caste, Crime and Incarceration: An Empirical Analysis of Undertrial Detention in India' (2021) 56(2) *Economic and Political Weekly* 44, 46.
[23] NCRB, *Prison Statistics India 2022* (n 1) 68 (Table 4.14).
[24] Law Commission of India, *268th Report* (n 3) 22–25.
[25] ibid 30–34.
[26] Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018) 14.
[27] NCRB, *Prison Statistics India 2022* (n 1) 1 (Key Statistics).
[28] ibid 18.
[29] ibid 21 (Table 2.3).
[30] ibid 21.
[31] ibid 33 (Table 2.8: Duration of Detention).
[32] ibid 55 (Table 4.3).

contributor to undertrial detention.[33] The average time taken to complete a criminal trial in India frequently exceeds three to five years at the sessions court level, with complex matters extending considerably longer. Second, the bail system's structural architecture, discussed above, functions as a wealth filter rather than a risk assessment tool. Bail decisions in India rarely engage with empirical risk-assessment instruments or structured decision-making frameworks; they remain largely judicial discretion-dependent, subject to inconsistency, implicit bias, and procedural backlog.[34] Third, prison administration suffers from chronic underfunding, staff shortages, and infrastructural decay. The NCRB data reveals that the national vacancy rate for prison staff stood at approximately 33.5% in 2022,[35] directly compromising the state's capacity to manage undertrial populations, conduct review proceedings, or maintain humane custodial conditions. Fourth, the presumption of innocence though formally enshrined is operationally undermined by investigative practices, media trials, and a prosecutorial culture that conflates remand applications with guilt determination. Magistrates routinely grant remand mechanically, without applying judicial mind to the necessity and proportionality of continued detention.[36]

VIII. Critical Evaluation of Recent Legal Developments: BNSS 2023

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, as a wholesale replacement for the CrPC, has been presented by the government as a transformative modernisation of India's criminal procedure. Section 479 BNSS, corresponding to Section 436A CrPC, makes a meaningful incremental advance by reducing the threshold for mandatory bail consideration from one-half to one-third of the maximum sentence for first-time offenders.[37] However, the reform's scope is constrained in several critical respects. The provision continues to exclude offences attracting the death penalty, and its practical operationalisation depends entirely on prison administration accurately maintaining and proactively filing undertrial detention records before courts a practice that remains inconsistent.[38] More broadly, BNSS 2023 does not introduce structural reforms to bail decision-making it preserves the discretionary, surety-based system that has perpetuated wealth-based differential incarceration. The absence of provisions for non-monetary bail alternatives, structured risk assessment, or mandatory review mechanisms represents a significant missed opportunity.[39]

IX. Comparative Perspective

Comparative analysis illuminates reform pathways. The United Kingdom abolished the money bail system in 1967 and employs a structured risk-assessment framework under the Bail Act, 1976, premised on the principle that detention must be justified by demonstrable grounds flight risk, risk of reoffending, or risk of interference with witnesses.[40] The United States, despite widespread critique of its money bail system, has seen significant reform movements in states like New Jersey and California, where risk-assessment instruments have been

[33] National Judicial Data Grid, *Pending Cases Dashboard* (Government of India, 2024) <njdg.gov.in> accessed 1 April 2025
[34] Mihir Desai, *Bail and the Indian Legal System* (Socio-Legal Information Centre, 2nd edn, 2020) 88–95.
[35] NCRB, *Prison Statistics India 2022* (n 1) 109 (Table 7.1).
[36] Reeta Devi, 'Mechanical Remand and the Erosion of Judicial Oversight' (2022) 64(3) *Journal of the Indian Law Institute* 301, 308.
[37] Bharatiya Nagarik Suraksha Sanhita 2023, s 479 (proviso for first-time offenders).
[38] Standing Committee on Home Affairs, *Report on the Bharatiya Nagarik Suraksha Sanhita 2023* (Rajya Sabha, 2023) 47–49.
[39] Vrinda Grover, 'BNSS 2023: Reform or Repackaging?' (2024) 59(1) *Economic and Political Weekly* 12, 15.
[40] Bail Act 1976 (UK), ss 3–4; Hucklesby Anthea, 'Remand Decision Making' (1997) 36(3) *Criminologist* 269.

integrated into bail decisions.[41] South Africa's Constitution explicitly prohibits pretrial detention as a punitive measure and requires that bail be denied only where the interests of justice so demand a formulation that places the burden on the state to justify detention rather than on the accused to justify release.[42] India's framework, by contrast, implicitly treats detention as the default for certain categories of offences, requiring the accused to discharge a burden to secure liberty.

X. Suggestions and Reforms

The following reforms are recommended:

1. **Bail Law Reform:** Enact a comprehensive standalone Bail Act incorporating non-monetary bail alternatives, structured risk-assessment frameworks, and mandatory time-bound review of bail applications.
2. **Mandatory Undertrial Review Boards:** Establish statutory undertrial review committees at the district level, meeting quarterly, with the power to recommend release and comprising judicial officers, legal aid representatives, and prison administrators.[43]
3. **Legal Aid Restructuring:** Reform the legal aid delivery system through dedicated undertrial defence units staffed by full-time salaried public defenders, modelled on the American Public Defender system, replacing the ad hoc panel lawyer model.[44]
4. **Digital Case Management:** Implement integrated court-prison digital systems to automatically flag Section 479 BNSS eligibility and generate suo motu bail consideration notices, eliminating reliance on prisoners or lawyers to independently invoke the provision.
5. **Judicial Capacity:** Substantially increase judicial strength at the trial court level, addressing the vacancy crisis in the subordinate judiciary that remains the primary institutional driver of criminal trial delay.[45]
6. **Pretrial Services Agencies:** Establish court-linked pretrial services agencies to provide verified information on accused persons' community ties, employment, and flight risk, enabling evidence-based rather than intuition-based bail decisions.

XI. Conclusion

The undertrial prisoner crisis in India is, at its core, a crisis of constitutional compliance. The gap between the Supreme Court's robust rights jurisprudence and the reality of 4.34 lakh presumptively innocent persons languishing in custody is not a gap that can be attributed to interpretive ambiguity or resource scarcity alone it is a gap that reflects a systemic failure of political will, institutional accountability, and structural imagination. The BNSS 2023 represents a modest legislative acknowledgment of the problem but falls well short of the transformative intervention that decades of judicial direction, commission recommendations, and empirical evidence demand. India cannot claim fidelity to the rule of law while systematically imprisoning its poorest and most marginalised citizens not as punishment for proved offences, but as the price of poverty. A genuinely

[41] Arnold Foundation, *Pretrial Criminal Justice Research* (2013); New Jersey Criminal Justice Reform Act 2014.
[42] Constitution of the Republic of South Africa 1996, s 35(1)(f).
[43] Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Report on Prisons* (17th Lok Sabha, 2021) Recommendation 12
[44] National Legal Services Authority, *Annual Report 2022–23* (NALSA, 2023) 38–40
[45] Department of Justice, Ministry of Law and Justice, *Report of the Expert Committee on Vacancies in the Subordinate Judiciary* (Government of India, 2021) 9–11.

rights-respecting criminal justice system must treat liberty not as a privilege to be purchased but as a constitutional guarantee to be protected. The reforms outlined in this paper are neither radical nor unprecedented they are calibrated, comparative, and constitutionally mandated. Their implementation requires, above all, the institutional courage to treat the undertrial prisoner not as a statistic in an NCRB report but as a person whose fundamental rights the State has both violated and the obligation to restore.