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UNDERTRIAL DETENTION AS A HUMAN RIGHTS CRISIS: INDIA'S UNDERTRIAL PRISONERS IN THE LIGHT OF INTERNATIONAL STANDARDS ON LIBERTY, DIGNITY, AND FAIR TRIAL

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ABSTRACT

India's criminal justice system has a dirty secret - more than 75% of the people sitting in our prisons haven't been convicted of anything. They're waiting. Waiting for a trial that might never come, or might come years too late. This paper takes a hard look at undertrial prisoners in India: who they are, why they're stuck, and what it's costing them. We dig into the constitutional guarantees of Articles 14, 19, 20, 21, and 22, the criminal procedure framework under the Code of Criminal Procedure, 1973 replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023, and the landmark judgments from Hussainara Khatoon to Arnesh Kumar. But this paper doesn't stop at diagnosis. It introduces something that existing scholarship has largely missed – a Tri-Dimensional Reform Framework (TDRF) that addresses pretrial detention through simultaneous legislative, technological, and rehabilitative action. The TDRF proposes a first-of-its-kind Undertrial Digital Dashboard (UDD), an automated bail review mechanism, and a dedicated Undertrial Legal Aid Corps. The findings make a compelling case that undertrial detention isn't just a legal failure - it's a structural, moral, and constitutional emergency.

Keywords: Undertrial prisoners, pretrial detention, Article 21, bail reform, BNSS 2023, Tri-Dimensional Reform Framework, legal aid, criminal justice reform, India.

I. INTRODUCTION

Let's start with a number: **4,34,302**.¹ That's how many people were lodged in Indian prisons as of 2022, according to the National Crime Records Bureau (NCRB). Of them, roughly 3,28,357- over 75%-were undertrials.² People who had not been found guilty of anything. People who were legally innocent. And yet there they were, behind bars.

¹National Crime Records Bureau, Prison Statistics India 2022, at 3 (2023)

²Id. at 5 (noting that 3,28,357 of 4,34,302 total prisoners were undertrials).

“Undertrial incarceration isn’t a side effect of a functioning criminal justice system-at these numbers, it’s become the system itself”. “Indian courts handle over 4.5 crore pending cases as of early 2025”.³ The average undertrial in a district jail has been waiting for their case to be decided for over two years. Many wait five. Some wait a decade. And here’s the real gut-punch: a significant number of them are accused of offences that carry a maximum sentence of less than what they’ve already spent inside.

The existing literature has focused on individual dimensions of this problem. The Law Commission of India has issued multiple reports-Report No. 78 (1979), Report No. 268 (2017)-recommending reforms.⁴ None of it has moved the needle enough. This paper argues that the reason reform has stalled isn’t a lack of good ideas. It’s a lack of integrated action.

The Tri-Dimensional Reform Framework (TDRF), a coordinated, concurrent intervention across the legislative, technological, and rehabilitative axes, is presented in this paper. The constitutional and statutory foundation is reviewed in Section II. The true identities of undertrial inmates are given in Section III. The systemic causes are diagnosed in Section IV. The loopholes are mapped in Section V. The TDRF is introduced in Section VI, and implementation, comparative analysis, and conclusions are covered in Sections VII–XIII.

II. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. The Constitutional Spine

India’s Constitution provides a set of interlocking fundamental rights that, when read together, create a comprehensive protection regime. The tragedy is that this regime exists mostly on paper.

Article 14 - Equality Before Law

The right to equality encompasses substantive equality. When a wealthy accused gets bail within hours and a destitute accused sits in jail for three years facing the same charge, that’s an Article 14 violation. The Supreme Court in *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1979) 3 SCC 532,⁵ recognised that poverty-driven pretrial detention is a denial of equal justice.

³National Judicial Data Grid, Pendency Statistics (Jan. 2025)

⁴Law Commission of India, Report No. 78: Congestion in Jails (1979); Law Commission of India, Report No. 268:

⁵*Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532, 535.

Article 19 - Freedom of Movement and Personal Liberty

Article 19(1)(d) guarantees the right to move freely throughout the territory of India. Pretrial incarceration is a complete suspension of this right, imposed without any adjudication of guilt. The courts have held that restrictions on personal liberty must be proportionate, necessary, and subject to review. Long-term undertrial detention fails all three tests.

Article 20(3) - Protection Against Self-Incrimination

No person accused of an offence shall be compelled to be a witness against themselves. This provision sits in tension with the reality of interrogation-driven detentions. Studies by the Commonwealth Human Rights Initiative (CHRI) have documented this pattern extensively.⁶

Article 21 - The Cornerstone

Since *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248,⁷ Article 21 has been read expansively. The procedure must be fair, just, and reasonable-not arbitrary. Indefinite pretrial detention is a direct breach of Article 21 in its modern, substantive form.

The Supreme Court made this explicit in *Hussainara Khatoon*.⁸ “The right to speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21.”

Article 22 - Safeguards Against Arbitrary Arrest

Article 22 provides that every person arrested shall be informed of the grounds of arrest, shall be entitled to consult a legal practitioner, and shall be produced before a magistrate within 24 hours. These procedural safeguards are routinely bypassed-not by explicit breach, but by the silent workings of institutional nondifference.

B. The Statutory Framework

The Code of Criminal Procedure, 1973 (CrPC)

The CrPC provides the primary procedural architecture for bail and detention.⁹ Section 436A mandates that an undertrial who has served half the maximum sentence shall be released on bail.¹⁰ Section 167 limits police custody to 15 days and judicial custody to 60 or 90 days, after which the accused is entitled to ‘default bail.’¹¹ Section 437 gives magistrates broad discretionary power to grant bail in non-bailable offences.¹²

⁶Commonwealth Human Rights Initiative, *Rights in the Lockup: An India Primer on Police Custody* 22–27 (2015)

⁷*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 284.

⁸*Hussainara Khatoon (I)*, (1979) 3 SCC at 536

⁹The Code of Criminal Procedure, 1973, SS 436–440 (India)

¹⁰CrPC S 436A.

¹¹CrPC S 167.

¹²CrPC S 437.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

The BNSS, which replaced the CrPC with effect from July 1, 2024, retains most bail provisions but makes notable additions. Section 479 now explicitly includes first-time offenders, who are to be released on bail after serving one-third (rather than half) the maximum sentence.¹³

The Legal Services Authorities Act, 1987

Section 12 of the Legal Services Authorities Act mandates free legal aid to persons in custody.¹⁴ On paper, this should mean every undertrial has a lawyer. In practice, quality and consistency of legal aid vary dramatically.

III. WHO ARE INDIA'S UNDERTRIAL PRISONERS?

A. The Demographics of Detention

Undertrial prisoners aren't a random cross-section of Indian society. The NCRB Prison Statistics India 2022¹⁵ tells a clear story. Of the total undertrial population, approximately 68% belong to lower castes like Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Nearly 56% are illiterate or have education below the 8th standard. Around 76% are daily wage labourers, small farmers, or unskilled workers.

B. The Bail-as-Poverty-Trap Problem

This is how the trap works. An arrested rural Rajasthan daily wage labourer for alleged theft. The magistrate granted bail with a surety of Rs 20,000. The accused does not have Rs. 20,000. His family doesn't have that and he stays in jail, months go by and his family is left without its breadwinner the childrens leave school.

Justice Krishna Iyer recognised this in *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47¹⁶ "The bail system, as administered, makes jails a punishment of the poor while it leaves the rich at liberty." That was 1978. Not much has changed.

C. Women Undertrials - The Hidden Crisis

Women constitute around 4.5% of the total undertrial population, but their specific vulnerabilities are disproportionate. The Supreme Court in *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1,¹⁷ emphasised the reproductive rights of women in custody.

¹³The Bharatiya Nagarik Suraksha Sanhita, 2023, S 479 (India)

¹⁴The Legal Services Authorities Act, 1987, S 12 (India).

¹⁵NCRB 2022, supra note 1, at 48.

¹⁶*Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47, 51

¹⁷*Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, 17–19.

But these principles haven't been systematically applied to undertrial women.

D. Foreign Nationals and Stateless Persons

A frequently neglected category is that of foreign nationals and stateless persons who are lodged as under-trials. Some have been locked up for years beyond the end of their original sentence because no country will accept them. India does not have comprehensive legislation on deportation and stateless persons, which creates a legal black hole from which there is virtually no escape.

E. Juveniles Misclassified as Adults

Despite the Juvenile Justice (Care and Protection of Children) Act, 2015,¹⁸ there are documented cases of young persons being lodged in adult jails as undertrials. Bone ossification tests have significant error margins, and the consequences of false classification are catastrophic.

IV. ROOT CAUSES OF PROLONGED UNDERTRIAL DETENTION

A. Judicial Backlog - The Structural Bottleneck

India has approximately 21 judges per million population, against the Law Commission's recommended ratio of 50 per million.¹⁹ The pending caseload as of January 2025 stands at approximately 4.5 crore cases. The problem compounds itself: backlogs postpone hearings, which extend detention, which overwhelms jails, creating more administrative chaos.

B. The Bail Jurisprudence Problem

In *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273,²⁰ the Supreme Court directed that arrests in cases punishable with imprisonment of up to seven years should not be made automatically. But *Arnesh Kumar* hasn't been uniformly followed. The incentive structure for police officers doesn't reward restraint.

C. The Surety System - Colonial Relic

The surety-based bail system is a direct inheritance from the colonial era, modelled on English common law practices of the 19th century. For urban migrants, gig economy workers, and the

¹⁸The Juvenile Justice (Care and Protection of Children) Act, 2015, SS 2(12), 15 (India).

¹⁹Law Commission of India, Report No. 245: Arrears and Backlog 8 (2014).

²⁰*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, 278–80.

homeless, finding a ‘local surety’ is practically impossible. The system doesn’t just disadvantage the poor-it structurally excludes them from bail.

D. Inadequate Legal Representation

A legal aid lawyer at a district legal services authority may handle 200 to 500 cases simultaneously.²¹ The result is perfunctory representation that provides the formal appearance of due process without its substance.

E. Prison Overcrowding and Its Feedback Effect

India’s prisons are operating at an average occupancy rate of 130.2% (NCRB 2022),²² with several states far worse. Tihar Jail in Delhi houses nearly three times its sanctioned capacity. Overcrowding makes prison administration a full-time crisis-management exercise.

F. Lack of Digitisation and Record-Keeping

A shocking number of undertrial prisoners-particularly in rural jails-have no updated records of their cases. People remain in jail because no one has told them their bail was granted. The Patna High Court in *Hussainara Khatoon*²³ documented cases from the 1970s where prisoners had served time beyond their potential sentence simply because the paperwork hadn’t caught up. Decades later, digitisation has improved things but not solved them.

V. CRITICAL LOOPHOLES IN THE EXISTING FRAMEWORK

A. The “Gravity of Offence” Illusion in Bail Decisions

Section 437 CrPC (and its BNSS equivalent, Section 480)²⁴ gives courts discretion to deny bail in non-bailable offences. In practice, this discretion has been stretched far beyond its intended scope. The Supreme Court attempted to address this in *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240,²⁵ when Justice Krishna Iyer set out factors for bail consideration. But these remain guidelines, not binding checklists.

B. Section 436A - Enacted But Unenforced

Section 436A CrPC (Section 479 BNSS)²⁶ entitles an undertrial who has served half the

²²NCRB 2022, supra note 1, at 12.

²³See generally *Hussainara Khatoon (I)–(VIII)*, (1979–1980) SCC.

²⁴BNSS S 480; CrPC S 437.

²⁵*Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, 245 (Krishna Iyer, J.).

²⁶CrPC S 436A; BNSS S 479.

maximum sentence to mandatory release on bail. But three loopholes make it practically ineffective: (1) it doesn't apply to offences punishable with death; (2) there's no automatic tracking mechanism; and (3) courts have sometimes declined relief on vague 'special reasons' grounds.

C. The Magistrate Production Loophole

Section 167 CrPC²⁷ requires that an accused be produced before a magistrate every 15 days. In busy district courts, these productions often become pro forma exercises-the accused is brought to court, remanded back to custody, and returned to jail, all within minutes, without any substantive review.

D. The Legal Aid Quality Gap - Structural Negligence

The right to free legal aid established in *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627,²⁸ and the right to effective legal aid are very different things. There's no system for monitoring quality, no minimum standard for case preparation time, and no accountability mechanism for inadequate representation.

E. The "Proclaimed Offender" Trap

Sections 82 and 83 CrPC²⁹ allow a court to declare an accused a proclaimed offender if they can't be found. This mechanism has been used against persons who were genuinely unaware of proceedings against them.

F. The Absence of a Sunset Clause for Remand

There's no statutory limit on how long a person can remain as an undertrial.³⁰ No other major democracy allows indefinite pretrial detention without procedural safeguards. India's framework has a floor but no ceiling on pretrial detention, which is a fundamental structural defect.

VI. THE TRI-DIMENSIONAL REFORM FRAMEWORK (TDRF)

"You can't drain a bathtub by unplugging only one drain while two are still clogged."

The TDRF proceeds from a single important insight: every previous reform attempt has been

²⁷CrPC S 167; see also *Hussainara Khatoon (I)*, (1979) 3 SCC at 538.

²⁸*Khatri (II) v. State of Bihar*, (1981) 1 SCC 627, 631–32.

²⁹CrPC SS 82–83.

³⁰See *Hussainara Khatoon (I)*, (1979) 3 SCC at 534.

one-dimensional. It has targeted either the law, or the technology, or the rehabilitation of prisoners-but never all three simultaneously and in a coordinated fashion.

Pillar One: Legislative Intervention

1.1 The Undertrial Protection and Liberation Act (UPLA)

This paper proposes a dedicated, standalone legislation: the Undertrial Protection and Liberation Act. Existing provisions are scattered across the CrPC/BNSS, the Prisons Act, 1894, the Model Prison Manual, and the Legal Services Authorities Act.³¹ The draft UPLA would include:

- (a) A Detention Cap: No undertrial shall be detained for more than one-third of the maximum punishment for the offence alleged. Such period may be extended by six months by a reasoned order to be passed by a Sessions Court in writing and only once.
- (b) A Mandatory Bail Review: Magistrate to review each undertrial every 30 days for custody, with magistrate recording specific reasons for continued remand addressing risk of absconding, witness tampering and repetition of offence.
- (c) A Presumption of Bail to First Offenders. – A person accused of a crime punishable with imprisonment of not exceeding seven years shall be entitled to statutory presumption in favor of bail if he has no previous criminal record
- (d) Surety Alternatives: Recognised alternatives are: personal bond, electronic monitoring (ankle bracelet), periodic reporting to a police station, and surrender of passport.

1.2 Amendment to the Advocates Act, 1961

The paper proposes inserting a new section mandating that no legal aid lawyer shall be assigned more than 50 active cases simultaneously.³² The financial implications can be addressed through a Legal Aid Infrastructure Fund created from court fees and fines.

1.3 A Mandatory Sentencing Commission

India lacks a sentencing commission with authority to set guidelines for sentencing the convicted. The absence of such guidelines means that similarly situated offenders receive wildly different sentences based on which judge they appear before. A sentencing commission would also recommend which categories of offences should be bailable, based on empirical data.

³¹The Prisons Act, 1894 (India); Ministry of Home Affairs, Model Prison Manual (2016).

³²The Legal Services Authorities Act, 1987, S 12 (India).

Pillar Two: Technological Intervention

2.1 The Undertrial Digital Dashboard (UDD)

The UDD is the flagship technological proposal of the TDRF—a real-time, centralised digital platform that: (i) tracks every undertrial's case status in real time; (ii) automatically computes Section 479 BNSS eligibility; and (iii) creates a public-facing, privacy-compliant transparency portal.

2.2 AI-Assisted Bail Risk Assessment (BRAS) - With Safeguards

A non-binding risk score would be produced by the proposed Bail Risk Assessment System based on objective, experimentally proven parameters, including prior convictions, the type of charge, geographic proximity, job status, and confirmed residence address. Religion, caste, community, and neighborhood crime rates are factors that are specifically not included. The exclusions cannot be merely administrative; they must be legislated.

2.3 Video Conferencing Infrastructure for Bail Hearings

The BNSS explicitly permits appearance through video conferencing under Section 530.³³ This should be made the default for bail hearings, not the exception.

Pillar Three: Rehabilitative Intervention

3.1 The Undertrial Legal Aid Corps (ULAC)

The ULAC is a proposed full-time, devoted group of public defenders who are stationed in jails to visit with clients, review files, and submit applications—not panel attorneys with 300 other cases. They would be evaluated based on customer outcomes rather than case numbers.

3.2 Undertrial Skill Development and Reintegration Programme

For most undertrials, their time in prison is currently completely useless because they don't engage in any useful activities. Instead of rehabilitating offenders, this study proposes an Undertrial Skill Development Program that provides digital literacy and hands-on training to assist citizens who have been temporarily robbed of their freedom.

3.3 Family Liaison and Mental Health Support

The Nelson Mandela Rules (2015) recognise the importance of family contact. The TDRF proposes a Family Liaison Officer at each district jail—a trained social worker whose job is to

³³BNSS S 530.

facilitate contact between undertrials and their families and provide basic mental health first aid.

VII. LANDMARK JUDICIAL DEVELOPMENTS AND THEIR LIMITS

A. The Hussainara Khatoon Series

Hussainara Khatoon (I through VIII) (1979–1980) is the foundational case in Indian undertrial jurisprudence. Justice P.N. Bhagwati held that the right to speedy trial was embedded in Article 21 and directed the immediate release of undertrials who had served periods exceeding the maximum sentence.³⁴ The significance of *Hussainara Khatoon* can't be overstated, but its orders were largely prisoner-specific and state-specific. They didn't create durable institutional mechanisms.

B. Arnesh Kumar - The Arrest Reform Case

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273,³⁵ addressed the routine of automatic arrests. Justice Chandramauli Kumar Prasad issued detailed directions requiring police officers to satisfy themselves that conditions under Section 41 CrPC were met before making an arrest, with a compliance checklist. A decade on, the evidence of impact is mixed.

C. Re: Inhuman Conditions in 1382 Prisons

The Supreme Court has been hearing a suo motu case on prison conditions since 2013.³⁶ The Court appointed the Justice Amitava Roy Committee, which submitted a detailed report in 2018 with recommendations on bail reform, legal aid, and prison administration. Many of these recommendations remain on paper.

D. Satender Kumar Antil v. CBI

Satender Kumar Antil v. CBI, (2022) 10 SCC 51,³⁷ categorised offences into four categories and laid down specific bail considerations for each category. Most significantly, the Court directed the government to consider bail legislation³⁸-a direction that remains unimplemented as of 2025. This paper's proposed UPLA is a direct response to that judicial nudge.

³⁴Id.

³⁵Arnesh Kumar, (2014) 8 SCC at 279–80.

³⁶Re: Inhuman Conditions in 1382 Prisons, W.P. (Civ.) No. 406 of 2013 (India S. Ct.) (pending).

³⁷Satender Kumar Antil v. CBI, (2022) 10 SCC 51, 78–85 (Kaul, J.).

³⁸Id. at 90.

E. The Limits of Judicial Activism in Systemic Reform

A common problem in these cases is the disparity between the court's vision and the real situation on the ground, which is a major setback for the system. Judicial orders are an efficient way to explain principles. They are less skilled at the tiresome, unglamorous work associated with institutional transformation, like creating monitoring systems, training officials, and modifying incentive programs. The purpose of the TDRF is to bridge this gap.

VIII. COMPARATIVE ANALYSIS - WHAT CAN INDIA LEARN?

A. The United States - Problem and Partial Solution

About 70% of the 10 million jail admissions that occur in the US each year are pretrial, creating a pretrial detention crisis of its own. In 2017, a risk-assessment-based system took the place of monetary bail in New Jersey. Without a commensurate rise in crime or failure-to-appear rates, the pretrial detention rate dramatically decreased within two years. The lesson for India is to see that doing away with cash bail doesn't have the disastrous effects that its opponents have predicted, rather than necessarily adopting the New Jersey model in its entirety.

IX. THE BNSS - REFORM OR REPACKAGING?

For all its reforms, the BNSS doesn't create the structural changes the undertrial crisis demands. There's still no hard detention ceiling. The surety requirement remains essentially unchanged. The legal aid quality gap isn't addressed. Section 187(5) permits detention for up to 60 or 90 days without charge³⁹-longer than the CrPC's periods in some cases. The BNSS is procedural reform, not structural reform.

Some provisions of the BNSS have been challenged in the Supreme Court on constitutional grounds. The TDRF, particularly the UPLA proposal, is designed to be constitutionally strong. The hard detention is itself a constitutional right derived from Article 21 and *Hussainara Khatoon*-the UPLA simply makes it statutory and enforceable.

X. A PROPOSED MODEL FOR THE UNDERTRIAL DIGITAL DASHBOARD

A. Architecture Overview

The UDD integrates three existing national digital infrastructure components: the National

³⁹BNSS S 187(5).

Judicial Data Grid (NJDG); the Prison Management Information System (PMIS); and the Crime and Criminal Tracking Network and Systems (CCTNS). The UDD's value-add is threefold: integration across the three siloed systems, automated computation of eligibility criteria, and a real-time alert mechanism.

B. Key Functional Modules

Module 1: Prisoner-Case Linkage

Every undertrial prisoner is linked to their specific case in the NJDG via a unique Prisoner Identification Number (PIN), assigned at the time of first court production and following the prisoner across any transfers or charge additions.

Module 2: Automated Eligibility Computation

The system daily computes each prisoner's custody duration against the maximum sentence for their offences. When a prisoner crosses the one-third or one-half threshold, the system generates automatic alerts to the jail superintendent, the district legal services authority, and the court with its jurisdiction.

Module 3: Hearing Tracker and Outcome Monitor

Every scheduled hearing is tracked. When a hearing is postponed, the system records the reason and generates a report. Courts with unusual postponement rates get flagged for administrative attention.

Module 4: The Public Transparency Portal

An anonymised, aggregated, privacy-compliant public portal shows state-wise and district-wise statistics on undertrial populations, average detention durations, and bail grant/denial rates, updated weekly.

C. Data Protection Framework

The UDD would operate under the Digital Personal Data Protection Act, 2023.⁴⁰ Privacy by Design principles would be built into the system architecture from the outset, not added as an afterthought.

D. Pilot Programme - A Phased Rollout

The UDD should be piloted in three states: Maharashtra (high undertrial numbers, urban concentration), Bihar (high undertrial numbers, rural distribution), and Kerala (relatively

⁴⁰The Digital Personal Data Protection Act, 2023 (India) [hereinafter DPDP Act].

efficient criminal justice administration as a baseline). A two-year pilot, followed by a year of evaluation, followed by national rollout-a realistic five-year implementation timeline.

XI. SPECIAL CATEGORIES DESERVING ENHANCED PROTECTION

A. Undertrial Persons with Mental Illness

Section 357 BNSS (formerly Section 328 CrPC)⁴¹ provides for inquiry when an accused is of unsound mind. In practice, this provision is rarely invoked proactively. The TDRF proposes mandatory mental health screening for all persons at the point of first court production.

B. Senior Citizens as Undertrials

The TDRF proposes a statutory presumption in favour of bail for accused persons over 65 years of age, with rebuttable grounds for continued detention limited to flight risk supported by specific evidence.⁴²

C. Pregnant and Nursing Women

The UN Bangkok Rules (2010)⁴³ explicitly provide that imprisonment should never be imposed on a pregnant woman where a non-custodial alternative is available. In *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424,⁴⁴ the court emphasised the need for sensitivity in custodial treatment of women. A clear statutory presumption in favour of bail for pregnant and nursing women would be cleaner and more consistent with international standards.

D. Undertrial Children - The JJ Act Gap

Children accused of 'heinous offences' may, after assessment by a Juvenile Justice Board, be tried as adults.⁴⁵ The quality of Observation Homes varies enormously across states. The TDRF proposes mandatory annual inspection by a mixed team of District Child Protection Unit officers and civil society representatives.

XII. MEASURING SUCCESS - A TDRF IMPACT FRAMEWORK

A. Short-Term Indicators (Year 1–2)

Concrete short-term indicators include: percentage reduction in new undertrials who remain in

⁴¹BNSS S 357; CrPC S 328.

⁴²The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (India); BNSS S 480.

⁴³United Nations, Bangkok Rules r. 64 (2010).

⁴⁴*Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424, 438–39.

⁴⁵The Juvenile Justice (Care and Protection of Children) Act, 2015, SS 15, 18 (India).

custody beyond 30 days without a substantive bail hearing; Section 479 BNSS applications filed and granted; and number of UDD alerts generated and responded to within 48 hours.

B. Medium-Term Indicators (Year 3–5)

Medium-term indicators include: reduction in the undertrial-to-total-prisoner ratio (target: below 60% within five years); average time from arrest to first bail hearing (target: under 72 hours); and prison occupancy rates (target: below 110% of sanctioned capacity).

C. Long-Term Indicators (Year 5–10)

Long-term indicators include the number of states that have passed the UPLA or similar legislation, the average length of undertrial confinement, and the recidivism rates among former undertrials who took part in skill development programs.

D. An Independent Monitoring Authority

The Independent Undertrial Monitoring Authority (IUMA), a legislative organization tasked with publishing yearly reports on TDRF progress and looking into complaints from undertrials, is proposed by the TDRF. Every year, the IUMA's reports would be presented to Parliament, establishing a public accountability system independent of government self-reporting.

E. Sunset Reviews of the UPLA

The UPLA should include a sunset clause: every five years, the law is reviewed by a Parliamentary Standing Committee. This prevents the legislation from becoming static and ensures it remains responsive to changing conditions—a new proposition in Indian criminal law.

XIII. CONCLUSION - JUSTICE CAN'T WAIT

“The issue of undertrial prisoners is a blot on our constitutional jurisprudence.”- Justice P.N. Bhagwati in the case of Hussainara Khatoon (1979), Justice Bhagwati said that in 1979.⁴⁶ It's 2025. The blot is bigger. What's changed since 1979? We have better data. We have more judgments. We have a new criminal procedure code. We have e-Courts and digitisation. We have all the institutional architecture of reform—and yet 75% of our prisoners haven't been convicted of anything.

⁴⁶Hussainara Khatoon (I), (1979) 3 SCC at 534

The Tri-Dimensional Reform Framework is a bet on simultaneity. The legislative pillar provides the rights. The technological pillar makes those rights visible and enforceable. The rehabilitative pillar catches the people who fall through the cracks. All three have to move together.

The UPLA gives undertrials the hard detention ceiling they've never had. The UDD gives the system the real-time visibility it's never had. The ULAC gives undertrials the legal representation they're entitled to but rarely receive. And the IUMA gives citizens the accountability tool to demand that these reforms actually happen.

None of this is utopian. It doesn't require constitutional amendments. It requires political will, administrative commitment, and an honest reckoning with the cost of continuing to fail 3.3 lakh people who are sitting in jail right now, waiting.

REFERENCES

A. Primary Sources

Constitutional Provisions

INDIA CONST. arts. 14, 19, 20, 21, 22.

Legislation

The Code of Criminal Procedure, 1973 (India), §§ 41, 167, 436, 436A, 437, 438, 439, 440.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (India), §§ 35, 187, 479, 480, 530.

The Legal Services Authorities Act, 1987 (India), §§ 12, 13.

The Prisons Act, 1894 (India).

The Juvenile Justice (Care and Protection of Children) Act, 2015 (India).

The Digital Personal Data Protection Act, 2023 (India).

Case Law

Hussainara Khatoon (I) v. Home Sec'y, State of Bihar, (1979) 3 SCC 532.

Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

Satender Kumar Antil v. CBI, (2022) 10 SCC 51.

Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47.

Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240.

Khatri (II) v. State of Bihar, (1981) 1 SCC 627.

Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

Re: Inhuman Conditions in 1382 Prisons, W.P. (Civ.) No. 406 of 2013 (India S. Ct.) (pending).

B. Secondary Sources

Books

Upendra Baxi, *The Crisis Of The Indian Legal System* (1982).

N.R. Madhava Menon & C.S. Thomas Eds., *Access To Justice* (2000).

V.R. Krishna Iyer, *Law And Life* (1979).

Julian Roberts & Mike Hough, *Understanding Public Attitudes To Criminal Justice* (2005).

Journal Articles

Varun Bhatt, *Undertrial Detention and the Rule of Law in India*, 12 NUJS L. REV. 89 (2019).

Priya S. Gupta, *Bail Law in India: A Critical Analysis*, 8 INDIAN J. L. & SOC. EQ. 45 (2017).

Anup Surendranath, *Prison Conditions and Human Rights in India*, 9 SOCIO-LEGAL REV. 21 (2013).

Reports and Policy Documents

Law Commission Of India, *Report No. 78: Congestion In Jails* (1979).

Law Commission Of India, *Report No. 268: Amendments To Criminal Procedure Code 1973 - Bail* (2017).

National Crime Records Bureau, *Prison Statistics India 2022* (2023).

Commonwealth Human Rights Initiative, *Rights In The Lockup: An India Primer On Police Custody* (2015).

Ministry Of Home Affairs, *Model Prison Manual* (2016).

United Nations, *Standard Minimum Rules For The Treatment Of Prisoners (Nelson Mandela Rules)* (2015).

Un Human Rights Committee, *General Comment No. 35: Article 9 (Liberty And Security Of Person)*, Un Doc. Ccpr/C/Gc/35 (2014).

Bureau Of Police Research And Development, *Data On Police Organizations In India 2023* (2023).