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# **THE RIGHTS OF UNDERTRIAL PRISONERS IN INDIA: LEGAL RIGHTS AND THE CRISIS OF DELAYED JUSTICE**

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## **Abstract**

The phenomenon of undertrial prisoners in India highlights one of the most persistent failures of the criminal justice system. As reported by the National Crime Records Bureau (NCRB), nearly seventy-seven percent of prisoners in India are undertrials individuals incarcerated without conviction, often for longer periods than the maximum sentence prescribed for their alleged offences. This study identifies the research problem as the systemic violation of constitutional and human rights of undertrial prisoners due to prolonged detention and judicial delay. The objectives of this research are fourfold: first, to examine constitutional and statutory provisions safeguarding undertrial prisoners in India; second, to analyse India's compliance with international human rights obligations; third, to evaluate landmark judicial precedents shaping the rights of undertrials; and finally, to identify challenges and recommend reforms. The research adopts a doctrinal methodology, relying on constitutional provisions (Articles 21<sup>2</sup> and 22), statutes such as the *Bhartiya Nagarik Suraksha Sanhita* (BNSS), 2023 (especially S. 479<sup>3</sup>, corresponding to S. 436A of the CrPC), the *Legal Services Authorities Act, 1987*<sup>4</sup>, and the *Prisons Act, 1894*<sup>5</sup>. It further draws on leading judgments such as *Hussainara Khatoon v. State of Bihar*<sup>6</sup> and *Supreme Court Legal Aid Committee v. Union of India*,<sup>7</sup> and international instruments including the *International Covenant on Civil and Political Rights (ICCPR)*<sup>8</sup> and the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*<sup>9</sup>. Scholarly commentaries and Law Commission Reports supplement the primary sources. The tentative conclusion is that while India has a strong legal framework protecting undertrial prisoners, the actual implementation of these safeguards remains weak.

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<sup>2</sup> INDIA CONST. art. 21

<sup>3</sup> *Bhartiya Nagarik Suraksha Sanhita*, No. 45 of 2023, s. 479

<sup>4</sup> *Legal Services Authorities Act*, No. 39 of 1987

<sup>5</sup> *The Prisons Act*, No. 9 of 1894

<sup>6</sup> *Hussainara Khatoon & Ors. v. State of Bihar*, AIR 1979 SC 1369, 1979 SCR (3) 532

<sup>7</sup> *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731

<sup>8</sup> *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>9</sup> G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

Overcrowded prisons, inadequate legal aid, systemic judicial delays, and socio-economic inequalities perpetuate the cycle of injustice. The study recommends structural reforms including the establishment of fast-track courts, strengthening of legal aid services, wider application of bail and probation, and adoption of technology driven prison management. The overarching argument is that legal reform alone is insufficient systemic change in judicial administration and governance is essential for realizing the constitutional mandate of liberty and dignity.

**Keywords:** Undertrial Prisoners, Article 21, BNSS 2023, ICCPR, Speedy Trial

## Introduction

India's criminal justice system is at a crossroads, faced with the challenge of balancing the constitutional guarantee of liberty with the practical realities of judicial delay and prison overcrowding. Among the most vulnerable groups within this system are undertrial prisoner's individuals who, though accused of offences, have not yet been convicted. According to the NCRB's Prison Statistics India 2023<sup>10</sup>, In India, inmates are undertrials, accounting to nearly 77 percent of the total prison population in India. This appalling number does not only show the lack of efficiency within the judicial system, but also highlights a general breach to the constitutional and international commitment to human rights in the system. The case of under trial inmates is a paradox to the Indian legal system. On the one hand, the Constitution of India especially Article 21 provides the right to life and personal liberty, which the Supreme Court has broadly construed to provide the right to a speedy trial. The courts have always upheld the fact that no one can be detained to a manner that is unreasonable or unnecessary. Conversely, under the heading of strong statutory provisions, even though the undertrials are guaranteed under section 479 BNSS, 2023 (previously S.436A CrPC) to be released after serving half of the maximum sentence they have been charged with, thousands of prisoners remain in jail. It is not only a matter of law and legalities, but the problem lies in the fact that there are serious social, economic, and political consequences. Families of the undertrial prisoners, who are usually members of the marginalized or economically disadvantaged groups, end up suffering disproportionately. Excessive prisons impose burdens to the state budget, and they are the causes of the worsening prison environment, such as violence and the absence of medical services. On the international front, India is being criticized on its incapability to honor its

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<sup>10</sup> NAT'L CRIME RECORDS BUREAU, Prison Statistics India 2023 (2024).

commitments in the various treaties such as ICCPR, which requires protection against arbitrary arrest and guarantees the right to fair trial. The research problem is therefore the systematic abuse of the rights of undertrial prisoners because of justice delays and lack of effective enforcement of the protection measures. This paper aims to discuss this issue based on the analysis of the constitutional and statutory provisions, case law, and global standards, placing the problem in the context of the theoretical frameworks, including the Doctrine of Proportionality and the Human Rights Theory. This research is doctrinally as well as evaluative in nature. It studies how successful or unsuccessful the municipal and international law provisions have been in upholding the undertrial rights. It also establishes structural issues such as: judicial backlog, social-economic inequality and administrative inertia which are barriers to effective implementation.

**The research questions that will direct this study involve:**

1. How do the long-term detention of the under-trial prisoners breach Article 21 of the Constitution and international commitments of India?
2. What have been the practical implications of such statutory provisions as SS 479 BNSS and the Legal Services Authorities Act?
3. How has the judiciary been involved in the development of the rights of the undertrial prisoners?
4. Which are the reforms that need to be made to ensure that the criminal justice system in India is on track with constitutional guarantees and international norms?

The paper seeks to answer these questions by giving an in-depth discussion of the rights of undertrial prisoners in India, the loopholes between the law and the practice and provide reforms to the existing injustice system.

### **Conceptual and Historical Background.**

**Prisoners and Undertrial Prisoners Concept.** Undertrial prisoners are those people who have been charged with committing an offence but their guilt has not been determined by court of law. Their innocent status is a principle of the law of the criminal justice system both in local and international law, which presumes them innocent until proven guilty. This presumption of innocence does not mean that undertrials in India are not in fact subjected to conditions similar to, or worse than, those experienced by convicted prisoners. The fact that undertrials make up majority of the two-thirds of the prison population is not only the result of inefficiencies in the criminal justice process but also a systematic human rights violation. The situation of undertrial

prisoners is more severe when it comes to marginalized groups of people such as Dalits, Adivasis, and economically disadvantaged individuals who in most cases are not able to procure effective legal services. Their imprisonment underscores the disproportionate burden of the criminal justice system on vulnerable populations, which continues to set in place poverty and marginalization cycles.

### **Historical Development of Prison Laws in India**

The history of prison administration in India can be traced back to the colonial period. The Prisons Act, 1894<sup>11</sup>, one of the earliest legislations on prison management, primarily aimed at maintaining discipline and order rather than safeguarding the rights of prisoners. The Act reflects a punitive rather than reformatory philosophy, treating prisoners as subjects of control rather than as individuals entitled to basic dignity and rights. Importantly, the Act makes no special provisions for undertrial prisoners, thereby failing to recognize their unique legal status as unconvicted individuals. Post-independence, India's constitutional framework sought to transform this punitive approach into a rights-based model. The adoption of the Constitution of India in 1950 introduced a strong emphasis on liberty, dignity, and equality. The judiciary, particularly through Article 21, played a critical role in reorienting the philosophy of criminal justice toward protecting individual rights. However, despite constitutional mandates, colonial-era prison laws continue to shape the conditions of incarceration, reflecting the persistence of outdated administrative practices.

### **The Presumption of Innocence and Article 21**

The presumption of innocence is enshrined in Indian criminal law and reinforced through the Constitution. Article 21, which guarantees the right to life and personal liberty, has been judicially expanded to encompass the right to a speedy trial. The Supreme Court in *Hussainara Khatoon v. State of Bihar* (1979)<sup>12</sup> held that delays in trials and prolonged pre-trial detention constitute a violation of Article 21. This ruling set the precedent that undertrial detention is not just a procedural anomaly but a substantive deprivation of some of the fundamental rights. In spite of this acknowledgement, practical considerations are a violation of the presumption of innocence. Often undetected subordinates are jailed longer than prescribed jail term to their alleged crimes. This discrepancy in law and practice highlights the systematic inability to put

<sup>11</sup> The Prisons Act, No. 9 of 1894 (India).

<sup>12</sup> *Hussainara Khatoon & Ors. v. State of Bihar*, AIR 1979 SC 1369, 1979 SCR (3) 532

constitutional protections into practice.

### **Overcrowding and Systemic Delays.**

Indian courts have a large number of pending cases, which form one of the most urgent problems marring the undertrial crisis. National Judicial Data Grid reported that there are millions of cases pending trial and appellate courts. In the case of the undertrial prisoners, this equates to the long detention period of their cases being not decided. Statistics released by NCRB 2023 affirm that there is close to 77 percent overpopulation in prison comprised of under trial prisoners as a result of the chronic overcrowding in prisons. Overcrowding does not only amount to infringing the dignity of the detainees but also increases the danger of health, violence, and custodial deaths. The reasons behind systemic delays are various: insufficient judicial infrastructure, lack of judges, complication of the process, and deficiency in investigation and prosecution. The bail processes which are supposed to serve as a deterrent to extended custody are usually unreachable because of social-economic factors. The poor inmates cannot afford to post bonds and hire quality lawyers and as a result, the disadvantaged are overrepresented in prisons.

### **International Recognition of Undertrial Rights**

The plight of undertrial prisoners has also been recognized internationally. Instruments like the International Covenant on Civil and Political Rights (ICCPR)<sup>13</sup>, particularly Articles 9 and 14, explicitly prohibit arbitrary detention and guarantee the right to a fair and speedy trial. The Nelson Mandela Rules<sup>14</sup> emphasize that undertrials must be treated in accordance with the presumption of innocence and must not be subjected to conditions harsher than convicted prisoners. India, as a signatory to these instruments, has an obligation to align its domestic practices with international standards. However, repeated reports from international human rights organizations highlight the gap between India's commitments and its ground realities.

### **Theoretical Context: Human Rights and Proportionality**

The situation of undertrial prisoners can be examined through the Human Rights Theory and the Doctrine of Proportionality. Human Rights Theory emphasizes the inherent dignity of individuals, arguing that detention without timely adjudication undermines fundamental

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<sup>13</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

<sup>14</sup> G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

freedoms. The Doctrine of Proportionality, on the other hand, requires that state action restricting liberty must be proportionate to the legitimate aim pursued. Prolonged detention without trial fails this test, as it disproportionately infringes upon liberty without serving the purpose of justice.

### **Significance of Historical Context**

The historical trajectory of prison laws, combined with constitutional developments and international obligations, provides a crucial foundation for this research. It demonstrates that while legal principles supporting undertrial rights are firmly established, the practical enforcement of these rights remains grossly inadequate. This gap between normative frameworks and lived realities forms the crux of the undertrial crisis in India, underscoring the need for systemic reforms.

### **Statutory Framework**

#### **Constitutional Provisions**

The foundation of protections for undertrial prisoners in India lies in the Constitution of India. Article 21 guarantees that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” The Supreme Court has expansively interpreted this article to include the right to a speedy trial (*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369). This interpretation ensures that prolonged detention without trial amounts to a violation of fundamental rights. Additionally, Article 22<sup>15</sup> lays down safeguards relating to preventive detention and arrest, including the right to be informed of the reasons for arrest and the right to consult a legal practitioner of one’s choice. Although Article 22 primarily addresses preventive detention, its principles underscore the importance of balancing state power with individual liberty. Together, Articles 21 and 22 create a constitutional framework that demands fairness and due process in criminal proceedings. However, the consistent violation of these provisions in practice reveals the inadequacy of institutional enforcement mechanisms.

#### **Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)**

The BNSS, 2023, which replaced the Criminal Procedure Code (CrPC), contains significant provisions aimed at reducing undertrial detention. The most relevant provision is Section 479 BNSS<sup>16</sup> (corresponding to Section 436A CrPC). This section provides that an undertrial who

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<sup>15</sup> INDIA CONST. art. 22.

<sup>16</sup> Bhartiya Nagarik Suraksha Sanhita, No. 45 of 2023, § 479

has spent one-half of the maximum punishment prescribed for the alleged offence should be released on personal bond, with or without sureties. The legislative intent behind Section 479 is to prevent indefinite incarceration of individuals awaiting trial, thereby recognizing the presumption of innocence and reducing overcrowding in prisons. The provision reflects an attempt to harmonize constitutional mandates with statutory safeguards. However, reports show that many undertrials remain ignorant of this right, and prison authorities often fail to process their release. The gap between statutory promise and practical implementation remains one of the most critical challenges in India's criminal justice system.

### **The Legal Services Authorities Act, 1987**

Recognizing that access to justice is often impeded by poverty, the Legal Services Authorities Act, 1987<sup>17</sup> provides free legal aid to persons unable to afford legal representation. Section 12 of the Act specifically entitles individuals in custody to free legal aid, making undertrials direct beneficiaries of this statutory guarantee. The National Legal Services Authority (NALSA) and State Legal Services Authorities (SLSAs) have established legal aid clinics in prisons to ensure representation for undertrial prisoners. Despite this, the quality and reach of legal aid remain uneven across states, and many undertrials still appear before courts without effective counsel. This highlights the structural weakness of legal aid systems in ensuring meaningful access to justice.

### **The Prisons Act, 1894**

The Prisons Act, 1894, a colonial-era legislation, continues to govern prison administration in India. Its focus is primarily on discipline, management, and punishment of prisoners rather than safeguarding their rights. The Act does not distinguish between convicted prisoners and undertrials in terms of treatment, thereby ignoring the presumption of innocence afforded to undertrials. While the Act has been supplemented by state-specific prison manuals and later reforms, it remains outdated in addressing the contemporary human rights discourse. The absence of explicit provisions protecting undertrial rights under the Act reflects a glaring gap in statutory design.

### **Law Commission Reports**

The Law Commission of India has repeatedly highlighted the need for reforms concerning

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<sup>17</sup> Legal Services Authorities Act, No. 39 of 1987

undertrial prisoners. The 268th Report (2017)<sup>18</sup> recommended rationalizing bail provisions, ensuring effective implementation of Section 436A CrPC (now Section 479 BNSS), and adopting non-custodial alternatives for minor offences. The 78th Report (1979)<sup>19</sup> earlier emphasized the need for speedy trial as an integral part of Article 21. Despite these recommendations, legislative reforms have been piecemeal, and implementation remains inconsistent. The persistence of high numbers of undertrials indicates limited impact of these reports on ground realities.

### **Standpoint of Law and Purpose of Enactment**

The statutory provisions discussed above were enacted with the dual purpose of protecting individual rights and maintaining the integrity of the justice system. Article 21 ensures fundamental fairness; Section 479 BNSS prevents indefinite pre-trial detention; the Legal Services Authorities Act guarantees representation for the marginalized; and the Prisons Act seeks orderly administration of prisons. Collectively, these provisions aim to balance the interests of justice with the rights of the accused. The standpoint of law is clear: undertrial prisoners, being unconvicted, deserve protection against arbitrary and prolonged incarceration. However, the purpose of these enactments has been undermined by weak enforcement, bureaucratic inertia, and socio-economic disparities.

### **Contribution to Research**

The statutory framework contributes significantly to this research by highlighting the discrepancy between law in books and law in action. While the provisions are robust on paper, their ineffective implementation demonstrates how systemic failures perpetuate injustice. This analysis underscores the research thesis: legal reform alone is insufficient unless accompanied by systemic change in judicial efficiency, prison management, and legal aid delivery.

### **Judicial Approach and Case Law**

The Indian judiciary has played a pivotal role in recognizing and protecting the rights of undertrial prisoners. Through its expansive interpretation of constitutional provisions, particularly Article 21, the judiciary has consistently emphasized the need to prevent arbitrary

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<sup>18</sup> Law Commission of India, 268th Report: Amendments to Criminal Procedure Code, 1973 Provisions Relating to Bail (2017).

<sup>19</sup> Law Commission of India, 268th Report: Amendments to Criminal Procedure Code, 1973 Provisions Relating to Bail (2017).

and prolonged detention. The following five landmark cases form the backbone of judicial intervention in this field.

***Hussainara Khatoon & Ors v. State of Bihar (1979 AIR 1369, 1979 SCR (3) 532)*<sup>20</sup>**

The landmark judgment in *Hussainara Khatoon & Ors v. State of Bihar* was delivered by a three-judge bench of the Supreme Court led by Justice P.N. Bhagwati. As a Supreme Court ruling interpreting Article 21 of the Constitution, it holds binding authority on all lower courts under Article 141. The petitioners, represented by advocate Kapila Hingorani, brought to light the plight of thousands of undertrial prisoners in Bihar who had been languishing in jails for years without trial, many of them accused of petty offences with short maximum sentences. They argued that such prolonged detentions violated the prisoners' fundamental rights under Articles 21 and 39A of the Constitution. In response, the State of Bihar acknowledged the issue but attributed it to overburdened courts, procedural delays, limited resources, and investigative backlogs. The Court, however, unanimously held that the right to a speedy trial is an essential component of the right to life and personal liberty under Article 21. It ordered the release of undertrial prisoners who had already been detained for periods longer than the maximum punishment prescribed for their alleged offences. This judgment marked a turning point in Indian criminal jurisprudence by establishing that prolonged undertrial detention is unconstitutional. It reinforced the judiciary's commitment to upholding human dignity and ensuring timely justice, laying the foundation for broader legal reforms in the criminal justice system.

***Kadra Pahadiya & Ors v. State of Bihar (1981 AIR 939, 1981 SCR (2) 933)*<sup>21</sup>**

In *Kadra Pahadiya & Ors v. State of Bihar*, a two-judge bench of the Supreme Court delivered a significant judgment that reinforced the principles laid down in *Hussainara Khatoon*. While delivered by a smaller bench, the ruling holds both persuasive and binding value as it further elaborated on the scope of the right to a speedy trial under Article 21 of the Constitution. The petitioners argued that, despite earlier Supreme Court directions, undertrial prisoners in Bihar continued to suffer prolonged incarceration without trial, amounting to a violation of their fundamental rights. The State of Bihar defended its position by citing administrative delays, a shortage of judges, and inadequate resources, claiming these systemic inefficiencies were not intentional violations of constitutional rights. However, the Court strongly criticized the State's

<sup>20</sup> *Hussainara Khatoon & Ors. v. State of Bihar*, AIR 1979 SC 1369, 1979 SCR (3) 532

<sup>21</sup> *Kadra Pahadiya & Ors. v. State of Bihar*, AIR 1981 SC 939, 1981 SCR (2) 933

continued inaction and held that judicial delays cannot be an excuse to deprive individuals of their liberty. It ordered the creation of mechanisms to monitor trial progress and emphasized that constitutional guarantees must be effectively implemented and not remain mere promises. This judgment underscored that Article 21 imposes real and enforceable obligations on the State, reflecting the judiciary's growing impatience with executive inertia and its firm stance on ensuring accountability and timely justice.

**Supreme Court Legal Aid Committee v. Union of India (1994) 6 SCC 731<sup>22</sup>**

In *Supreme Court Legal Aid Committee v. Union of India* [(1994) 6 SCC 731], a two-judge bench of the Supreme Court addressed the prolonged detention of undertrial prisoners charged under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). The judgment holds binding value as it interprets constitutional rights and lays down operational guidelines for the release of undertrials in specific categories. The Legal Aid Committee, appearing as the petitioner, argued that the stringent bail provisions of the NDPS Act led to years of incarceration without trial, disproportionately impacting undertrial prisoners and violating their fundamental rights under Article 21. In response, the Union of India defended the strict bail norms as essential for combating the serious threat posed by narcotics offences and attributed trial delays to the complexity of such cases and the need for thorough investigation. The Court, however, held that constitutional rights, including the right to a speedy trial, cannot be sacrificed even under special legislation. It directed that undertrial prisoners who had already served more than half of the maximum sentence prescribed for the offence should be released on bail. This judgment significantly advanced the cause of undertrial justice by affirming that constitutional protections of liberty and speedy trial apply universally, including in cases involving serious and special laws like the NDPS Act.

**Sheela Barse v. State of Maharashtra (1983) 2 SCC 96<sup>23</sup>**

In *Sheela Barse v. State of Maharashtra*, a two-judge bench of the Supreme Court delivered a significant judgment that expanded the scope of Article 21, particularly concerning the rights of women and child prisoners. The petitioner, journalist and activist Sheela Barse, highlighted the plight of women prisoners in Maharashtra who were subjected to custodial violence, prolonged detention, and denied access to legal aid violations she argued were contrary to Articles 21 and 39A of the Constitution. In response, the State defended its prison

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<sup>22</sup> *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731

<sup>23</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96

administration but acknowledged deficiencies in infrastructure and resources, promising that ongoing reforms would address some of the issues raised. The Court, however, emphasized that even prisoners, including undertrials, are entitled to humane treatment and access to legal representation. It issued directives to the State to improve prison conditions, ensure legal aid is provided, and safeguard inmates from custodial violence. This judgment made a significant contribution by extending the concept of undertrial rights to include dignity, gender justice, and humane treatment, thereby shifting the focus from mere procedural fairness to a more holistic view of human rights within the criminal justice system.

### **Bhim Singh v. State of J&K (AIR 1986 SC 494)<sup>24</sup>**

In *Bhim Singh v. State of J&K*, a two-judge bench of the Supreme Court delivered a landmark judgment that remains binding for its articulation of the legal consequences of unlawful detention. The petitioner, Bhim Singh, a sitting Member of the Legislative Assembly, was illegally detained by the police to prevent him from attending a crucial legislative session. He contended that this arbitrary act violated his fundamental rights under Articles 21 and 22 of the Constitution. The State attempted to justify the detention as preventive custody, claiming it was necessary to maintain law and order. However, the Court rejected this argument and held the detention to be unconstitutional, emphasizing that even brief unlawful detention amounts to a grave violation of personal liberty. Significantly, the Court awarded monetary compensation to Bhim Singh for the breach of his fundamental rights, thereby establishing a precedent for compensatory relief in cases of custodial abuse. Although not directly related to undertrials, this judgment laid down a vital principle of accountability by recognizing compensation as a remedy for unlawful detention, which has since influenced jurisprudence on the rights of undertrial prisoners and victims of custodial excesses.

## **Comparative Perspective and Critical Analysis**

### **International Human Rights Standards**

The plight of undertrial prisoners in India must be evaluated not only against constitutional promises but also against international human rights standards. India is a signatory to the International Covenant on Civil and Political Rights (ICCPR), 1966, which explicitly guarantees the right to liberty, security of person, and freedom from arbitrary detention (Article 9). Article 14 further assures the right to a fair and speedy trial. These provisions are universal

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<sup>24</sup> *Bhim Singh v. State of J&K*, AIR 1986 SC 494

and binding upon signatory states, including India. Complementing the ICCPR are the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015), which emphasize the presumption of innocence for undertrials. Rule 111 states that unconvinced prisoners shall be kept separate from convicted persons and treated in accordance with their legal status. The Rules mandate humane conditions, regular judicial review of detention, and access to legal aid. India's practices, however, stand in stark contrast to these obligations. Persistent overcrowding, custodial violence, and prolonged detention without trial violate both the spirit and letter of international commitments. Reports by organizations such as Amnesty International and Human Rights Watch consistently highlight the failure of Indian prisons to meet minimum international standards.

### **Comparative Perspective: United Kingdom**

The United Kingdom provides a useful comparative model in balancing pre-trial detention with human rights protections. The Bail Act, 1976<sup>25</sup> establishes a presumption in favor of bail, requiring courts to justify any decision to deny bail. Detention before trial is considered an exception rather than the rule, particularly for minor offences. Further, Article 5 of the European Convention on Human Rights (ECHR)<sup>26</sup> guarantees the right to liberty and security, permitting detention only under strict circumstances and subject to periodic judicial review. The European Court of Human Rights has consistently enforced speedy trial rights, holding states accountable for unjustified delays. The UK model underscores that strong legal safeguards combined with consistent judicial oversight can significantly reduce the number of undertrials, a lesson India has yet to internalize.

### **Comparative Perspective: United States**

The United States, under the Sixth Amendment to the Constitution, guarantees the right to a speedy and public trial. In *Barker v. Wingo* (407 U.S. 514, 1972)<sup>27</sup>, the U.S. Supreme Court laid down a balancing test to determine violations of the speedy trial guarantee, considering factors such as the length of delay, reasons for delay, assertion of the right by the defendant, and prejudice suffered. The Speedy Trial Act, 1974<sup>28</sup>, further prescribes time limits for completing criminal trials, with provisions for dismissal of charges if deadlines are violated.

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<sup>25</sup> Bail Act, 1976, c. 63 (U.K.).

<sup>26</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 5, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>27</sup> *Barker v. Wingo*, 407 U.S. 514 (1972).

<sup>28</sup> Speedy Trial Act of 1974, Pub. L. No. 93-619, 88 Stat. 2076 (U.S.).

Although challenges such as overcrowding and inequality persist in the U.S., the statutory time limits act as a strong accountability mechanism. For India, which lacks statutory time frames for trial completion, the U.S. example highlights the importance of enforceable deadlines in protecting undertrial rights.

### **Critical Analysis of India's Position**

Despite constitutional guarantees, statutory provisions, and judicial pronouncements, India continues to rank poorly in protecting undertrial rights. The NCRB 2023 reveals that nearly 77% of the prison population are undertrials, reflecting systemic delays and ineffective application of safeguards such as Section 479 BNSS.

Several critical issues emerge:

- 1. Implementation Gap:** While the law on paper is robust, weak enforcement renders provisions ineffective. Prison authorities often fail to inform undertrials of their rights under Section 479 BNSS, and courts rarely review detentions *Suo motu*.
- 2. Socio-Economic Bias:** Undertrial detention disproportionately affects the poor, marginalized communities, and minorities. Wealthier accused often secure bail through effective legal representation, whereas indigent prisoners remain incarcerated.
- 3. Judicial Backlog:** With millions of cases pending, courts are unable to deliver speedy trials. The absence of statutory time limits exacerbates delays, leaving undertrials in a legal limbo.
- 4. Prison Administration:** The **Prisons Act, 1894**, with its colonial orientation, fails to address contemporary human rights concerns. Prison manuals vary across states, leading to inconsistent standards of treatment.
- 5. Weak Legal Aid:** Despite the Legal Services Authorities Act, 1987, access to effective legal counsel remains inadequate. Many undertrials either go unrepresented or receive perfunctory assistance, undermining the principle of equality before law.

### **Theoretical Critique**

From the lens of Critical Legal Studies (CLS), the undertrial crisis exposes the structural biases of the legal system. The law, while appearing neutral, systematically disadvantages marginalized groups. Procedural safeguards such as bail and legal aid remain accessible largely to those with resources, reinforcing cycles of inequality. Similarly, the Doctrine of Proportionality reveals that prolonged undertrial detention is grossly disproportionate to the legitimate aims of justice. Detaining an individual for years without conviction undermines

liberty and presumption of innocence, without serving the interests of deterrence or rehabilitation.

### **Lessons for India**

The comparative analysis demonstrates that legal reforms alone are insufficient without mechanisms for enforcement and accountability. The UK and U.S. models show that presumptions in Favor of bail, statutory deadlines for trials, and strong judicial oversight can significantly mitigate undertrial detention. India must adapt these lessons by:

- Incorporating time-bound trial provisions within the BNSS.
- Strengthening bail jurisprudence to ensure that pre-trial detention remains an exception.
- Enhancing judicial and prison accountability through independent monitoring mechanisms.

Ultimately, India's challenge lies not in the absence of legal protections but in transforming them into lived realities for its most vulnerable citizens.

## **Discussion and Synthesis**

### **Integrating Legal Theory with Practice**

The rights of undertrial prisoners in India must be understood within the framework of Human Rights Theory and the Doctrine of Proportionality. Human Rights Theory emphasizes that liberty and dignity are inherent rights, which cannot be arbitrarily restricted. Prolonged pre-trial detention undermines this principle by punishing individuals before guilt is established. The Doctrine of Proportionality further demands that any curtailment of liberty must be proportionate to the legitimate aims pursued by the State. Detention of undertrials for years without adjudication clearly fails this test. The statutory and constitutional framework Article 21, Article 22, Section 479 BNSS, and the Legal Services Authorities Act reflects an intent to align law with human rights principles. However, the gap between law in books and law in action persists. The judicial precedents, while progressive, have not been fully realized in practice due to systemic inefficiencies.<sup>29</sup>

### **Key Challenges Identified**

1. **Judicial Backlog:** With over 40 million cases pending across courts, the promise of a speedy trial remains largely illusory.

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<sup>29</sup> UPENDRA BAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM (Vikas Publishing, 1982).

2. **Overcrowding in Prisons:** NCRB 2023 data shows that overcrowding is primarily driven by undertrials, who account for nearly 77% of inmates.
3. **Weak Legal Aid:** Despite statutory guarantees, legal aid remains inaccessible or inadequate, especially for marginalized communities.
4. **Socio-Economic Inequalities:** Bail and release provisions disproportionately favor the affluent, leaving the poor trapped in cycles of detention.
5. **Colonial-Era Legislation:** The continued reliance on the Prisons Act, 1894 reflects outdated philosophies of punishment over rehabilitation.

### Synthesis of Judicial and Legislative Responses

The judiciary, through cases such as *Hussainara Khatoon and Kadra Pahadiya*, has consistently affirmed that speedy trial is a fundamental right. Later cases like *Supreme Court Legal Aid Committee v. Union of India* and *Sheela Barse v. State of Maharashtra* extended protections by ensuring humane treatment and legal aid. Yet, the persistence of prolonged detention suggests that judicial activism has not been matched by administrative will. Legislative attempts, such as Section 479 BNSS and the Legal Services Authorities Act, reflect an acknowledgment of the problem. However, weak implementation reveals that statutory design is insufficient without robust enforcement mechanisms.<sup>30</sup>

### Implications for Human Rights and Justice

The crisis of undertrial prisoners is not merely a technical failure of criminal procedure it is a fundamental human rights crisis<sup>31</sup>. It undermines the credibility of India's constitutional democracy, damages public trust in the justice system, and perpetuates cycles of poverty and marginalization. Internationally, it erodes India's standing as a nation committed to human rights obligations under instruments such as the ICCPR and Mandela Rules.<sup>32</sup>

### Suggestions

1. **Fast-Track Courts:** Establish special courts for undertrial cases to ensure timely adjudication.
2. **Statutory Time Limits:** Introduce provisions in the BNSS mandating completion of trials within defined time frames, modelled after the U.S. Speedy Trial Act.

<sup>30</sup> D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA (9th ed. 2020).

<sup>31</sup> MAMTA RAO, LAW RELATING TO HUMAN RIGHTS (6th ed. 2021).

<sup>32</sup> Justice V.R. Krishna Iyer, *Human Rights and the Law* (1987).

3. **Strengthening Legal Aid:** Enhance the quality and outreach of legal services under the Legal Services Authorities Act, ensuring effective representation for undertrials.
4. **Bail Reform:** Expand presumptions in favor of bail, particularly for minor and non-violent offences, to reduce unnecessary incarceration.
5. **Prison Administration Reform:** Replace the Prisons Act, 1894 with modern legislation aligned to human rights principles and international standards.
6. **Use of Technology:** Implement digital tracking of cases and prison management systems to monitor undertrial detention.
7. **Community-Based Alternatives:** Encourage non-custodial measures such as probation, community service, and electronic monitoring for eligible accused.
8. **Awareness Programs:** Conduct legal literacy campaigns within prisons to ensure undertrials are aware of their rights under Section 479 BNS and other provisions.

### Conclusion

This research set out to examine whether prolonged detention of undertrial prisoners in India violates constitutional and international human rights obligations. The analysis demonstrates that despite robust constitutional guarantees under Article 21, statutory safeguards like Section 479 BNS, and progressive judicial pronouncements, the reality remains grim. Undertrial prisoners continue to constitute the majority of inmates, many detained for periods exceeding even the maximum punishment prescribed for their offences. The central thesis stands confirmed: legal reform alone is insufficient unless accompanied by systemic change in judicial efficiency, prison administration, and access to justice mechanisms. The undertrial crisis in India represents a structural failure of justice delivery. While laws and judicial pronouncements affirm the rights of undertrials, weak enforcement perpetuates injustice. Meaningful reform requires not only legislative and judicial interventions but also administrative and social change. Ensuring the rights of undertrial prisoners is not merely a matter of prison reform it is central to the promise of constitutional democracy, human dignity, and rule of law.