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UNDERTRIAL DETENTION AND THE CRISIS OF BAIL JUSTICE IN INDIA: A CRITICAL AND CONSTITUTIONAL EVALUATION OF SECTION 479 OF THE BNSS, 2023

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ABSTRACT

The ongoing detention of undertrial prisoners poses a significant concern to the constitutional underpinnings of criminal justice. There is a presumption of innocence and the right to personal liberty guaranteed in Article 21 of the Constitution but long pre-trial detention often leads to punishment of the accused prior to conviction. The passage of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is a significant step towards this by enacting statutory limits on release of eligible undertrial prisoners.

The paper traces the evolution of Section 479 and critically analyzes the scope, quality and constitutional issues involved in its various provisions, including the release of first offenders, limits on detention and statutory restrictions. It discusses whether the provision effectively balances individual liberty, speedy trail and reduction of pre-trial detention and defrays the gains achieved in this respect. It further discusses the relevant judicial pronouncement and analyses the practical limitations through institutional shortcomings, lack of legal aid and arbitrary access to bail. A comparative analysis of select foreign jurisdictions illustrates our alternatives towards pre-trial release. Concluding, the paper suggests the legal and institutional reforms necessary to enhance implementation of Section 479 and the overall finalization of the Bail structure towards a liberalized India.

Keywords: Undertrial Prisoners, Section 479 BNSS, Bail Justice, Article 21, Personal Liberty, Pre-trial Detention, Speedy Trial, Criminal Justice Reform.

ISSN: 2582-6433

1. INTRODUCTION AND BACKGROUND

The criminal justice system is based upon the premise that the person accused is presumed innocent until proved guilty according to law. But the extended detention of the accused persons before the end of their trial is a grave contradiction of the presumption of innocence. In India, undertrial detention has grown into a serious problem relating to personal liberty, criminal administration of justice, overcrowding of prisons, and delay in criminal trials. Many accused persons, especially those from weaker sections of society, remain in custody for long periods awaiting trial, for want of bail even before conviction.

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Landmark judgments have held that the State is to regulate procedures fairly, reasonably, and prevent arbitrary detention. The Supreme Court in the decision of Hussainara Khatoon v. State of Bihar (1979) has observed that a speedy trial was a fundamental right within the ambit of Article 21 and lamented on the conditions of undertrial prisoners who had to languish in jail for long periods longer than the maximum imprisonment for the offence they were charged with. The decision laid down an important constitutional foundation for the eradication of such undue incarceration. Bail is used to balance the interests of liberty and the interests of the proper investigation and trial of crime. Bail is not to be used to punish the accused but rather to ensure his appearance before the Court and the course of justice. Unfortunately, financial circumstances and procedural delays combined with various adjournments and inadequate access to legal advice frequently prevent the accused who are eligible for bail from being released.

Section 479 (1) of the new BNSS, 2023 (BNSS) is an evidentiary provision introduced to facilitate releasing undertrial prisoners kept in prison for a long period of time. This provision was inserted by the BNSS that came into operation on 1 July 2024. It replaced existing section 436A of the Code of Criminal Procedure, 1973 with more liberal provisions for first-time offenders. Accordingly, after undergoing detention for a period not exceeding one-half of the maximum limit prescribed for the offence, and subject to satisfying certain other conditions, an undertrial offender shall be released on bail, and after one-third of such period in the case of a first-time offender. The Jail Superintendent is required to make a written application to the competent court once the period prescribed has been undergone.

However, while Section 479 offers some relief to prisoners serving sentences of death or life imprisonment and persons with multiple pending cases, it raises fundamental questions as to its implementation and constitutionality. Limitations on those with offences punishable by death or life imprisonment and those with multiple pending cases may curtail the number of

ISSN: 2582-6433

prisoners who are covered by the section. The application of the section is also complicated by the need for judicial intervention and effective communication between and collaboration of prison authorities, courts and legal aid institutions.

The Supreme Court, in In Re: Inhuman Conditions in 1382 Prisons, considered the implementation of Section 479 and the functions of Undertrial Review Committees to locate the prisoners entitled to the benefit. The Court also explained that the salutary provision is applicable to cases filed before or after 1 July 2024.

In this context, the study in hand explores the extent to which the promise of personal liberty under the constitution is translated into realities by Section 479. It intends to explore the nature of the interplay between the statutory bail law, judicial discretion and institutional accountability. Will it help to restrict pre-trial detention from functioning as an 'accessory punishment' or to maintain the criminal procedure compliant with the constitutional goals of equality, fairness and justice?

2. LITERATURE REVIEW AND RESEARCH GAPS

The subject of the undertrial justice and bail injustice in India has been critically analysed by constitutional writers, legal scientists and the judiciary. The current literature discusses the needs of personal liberty, speedy trial, legal aid and the presumption of innocence. With the newly insert entry of the Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 under the new criminal procedure, justice needs to be thought through in the context of the new law.

In Hussainara Khatoon v. State of Bihar (1979), the Supreme Court made one of its most influential pronouncements on undertrial justice. By acknowledging a right to a speedy trial guaranteed by Article 21, the Court highlighted the perils of excessive detention, and held delay in procedure to be unconstitutional.

Moti Ram v. State of Madhya Pradesh (1978) The Supreme Court condemned the imposition of strict and exorbitant bail conditions. The Court observed that economic disparity would bar poor accused from obtaining bail even in cases where one was available in law. Gudikanti Narasimhulu v. Public Prosecutor (1978) reiterated the relevant principles of judicial exercise of discretion over bail.

Chandra v. CBI (2012), this principle was reiterated stating that "however, it has been consistently held that detention of an accused, even pending trial, cannot be taken as a penalty. The detention during trial is permissible only for the purpose of securing the presence of the accused person in Court during the trial of the case." In Satender Kumar Antil v. CBI (2022), directions were issued to cure the inconvenience caused by frivolous arrests and slow processes

ISSN: 2582-6433

of bail.

Empirical research further affirms the persistence of the problem. Prison Statistics India 2022 published by the National Crime Records Bureau has pointed out that 4,34,302 prisoners were under trial, accounting for about 75.8% of the total prison population. Pre-trial detention is not only a legal issue but a matter of prison administration and access to justice. The India Justice Report 2025 also discusses the rise in undertrial detention and its impact on overcrowding in prisons.

Research Gap

While bail law and undertrial rights have attracted much judicial and legal scholarly discussion, many concerns remain. Existing discourse predominantly addresses Section 436A of the CrPC, constitutional protections and broad bail principles. Concerns regarding the legal architecture established by Section 479 of the BNSS have received relatively less focus, especially regarding its three-year detention limit for first-time offenders, restrictions against the multiple case framework and practical implementation considerations.

In addition, it is necessary to engage in a more specific constitutional analysis to determine if Section 479 remedies economic inequality, procedural inaction and the failure of institutions. The link between statutory eligibility, judicial discretion and actual release of eligible prisoners needs to be explored further.

In this light, this research endeavours to fill these voids through a doctrinal critical appraisal of Section 479 with judicial decisions, the text of the statute and relevant prison statistics as a case study. The research aims to determine whether the provision provides real protection of personal liberty and suggest possible reform.

3. BAIL AND PERSONAL LIBERTY: CONSTITUTIONAL PERSPECTIVE

Personal liberty is recognised in the constitutional scheme of India as a human right and there are immense restrictions imposed for arbitrary deprivation of individual freedom. Bail jurisprudence is also inextricably linked with this constitutional ethos as it provides the basis as to how long an accused can be kept in custody while the criminal prosecution against him is underway. The primary concern with regards to bail is the right of an individual to liberty balancing with that of the interest of the society, like keeping in check the phenomenon of absconding, protection of witnesses and proper administration of justice. Thus, pre-trial

ISSN: 2582-6433

detention should only be in cases of legal necessity and should not be the impelling cause of retaining an accused in custody on receipt of the criminal information.

3.1 Article 21: Protection of Life and Personal Liberty

(3) Article 21 of the Constitution states that no individual shall be deprived of his life or personal liberty except according to a procedure prescribed by law. The procedure under which a person's liberty is to be dealt with should be "just, fair and reasonable", without being arbitrary or oppressive – Supreme Court, in Maneka Gandhi v. Union of India, (1978).

The right to personal liberty is a fundamental right that is invoked seriously in the case of undertrial prisoners. An accused, and not convicted, has a right to the presumption of innocence. If prisoners are being detained for an unnecessarily long time, it defeats the very purpose of criminal justice. In the matter of Hussainara Khatoon v. State of Bihar (1979), Supreme Court identified speedy trial as an integral part of Article 21. There, the Court expressed concern over undertrial prisoners who were kept in jail for decades longer than the maximum punishment for their crimes.

3.2 Article 14: Equality Before Law

All persons are to be treated fairly and not arbitrarily in any legal proceedings. In bail proceedings, this means that accused persons should be treated fairly and not arbitrarily, though the advantages of wealth can operate to some degree in the accused person's favour. Accused persons who are arbitrarily poor are disadvantaged.

In Moti Ram v. State of Madhya Pradesh, 1978 the Supreme Court pointed out the gratuitous nature of exorbitant bail money, and said that access to liberty should not be determined by the financial status of the accused persons. The judgement drew an essential linkage between economic justice and equal access to bail.

3.3 Article 22: Constitutional Safeguards Against Arbitrary Arrest and Detention

Article 22. Article 22 states that 'any person who is arrested shall be informed of the reasons for his arrest and shall have the right to consult and be defended by a legal practitioner of his choice'. It provides the right for an arrested person to be produced before the nearest Magistrate within twenty-four hours of arrest (excluding the time necessary for the journey). Article 39A also advocates the right to legal aid by requiring the State to secure a equal justice and free legal aid for persons who are unable to get legal services due to poverty. In the case of Hussainara Khatoon v. State of Bihar, the Court laid down that the interdependence between

ISSN: 2582-6433

legal aid and speedy trial is of fundamental importance for undertrial prisoners.

3.4 Judicial Principles Governing Bail

The Supreme Court itself has laid down various principles of law on which the Court exercises discretion in bail. State of Rajasthan v. Balchand (1977), the Court said that, "normally a man who is a non-penal, innocent or guilty person should not be kept in jail but in most cases, unless the circumstances of a particular case would render it inappropriate, preference should be given to bail". And in Gudikanti Narasimhulu v. Public Prosecutor (1978), the Court elucidated that bail involves an assessment of the competing interests of the individual's freedom and of justice. Appropriately, the Court indicated that one must consider the nature and seriousness of the accusation, the possibility of the accused's absconding, the risk of influencing the witnesses and the possible intimidation of the witnesses.

Referring to Sanjay Chandra v. CBI (2012), the Supreme Court held that the detention of a person in custody in the course of a trial should not be used as a form of punishment prior to conviction. The Court observed that the most common reason for judicial custody was for ensuring the presence of the accused during the trial, and not for inflicting punishment.

3.5 Constitutional significance of Section 479 of BNSS, 2023

Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, statutorily embodies the constitutional issue of inordinate delay in undertrial detention. It decrees that the Court shall order the release of accused after undertrials are lodged for half of the prescribed period of detention or imprisonment of the offence, except for the first-timer, in whose case it is only one-third. It is also incumbent upon the Jail Superintendent to bring it to the notice of the competent Court.

Section 479 is a statutorily created provision for safeguarding individual freedom by avoiding detention. However, this could be only implemented if the concerned prisoners are timely identified, heard and provided legal help by the courts. The provision's restrictions, especially for cases of 'being involved in several cases and punishable by death or life imprisonment' need to be reviewed constitutionally.

4. CRITICAL ANALYSIS OF SECTION 479 OF THE BNSS, 2023

Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 represents a timely legislative intervention to curb the existing problem of long and continued undertrial detention in the country. It aims at curbing the practice of accused persons languishing in prison for

ISSN: 2582-6433

indefinite periods without conviction by imposing statutory limits on pre-trial detention. The provision embodies the constitutional values of personal liberty, right to speedy trial and presumption of innocence. Yet, certain statutory limitations and implementation issues cast doubt on its potential of attaining substantive bail justice.

4.1 Legal Provisions and Extent

Section 479 prescribes the maximum period for which an undertrial prisoner can be ordinarily detained during the investigation, inquiry or trial. If a person has been detained up to a period which is one-half of the maximum period for imprisonment prescribed for the offence, the court shall release such person on bail, in accordance with the prescribed requirements. The provision is more favourable when the accused is a first time offender as the period of detention is one-third of the maximum period of imprisonment.

The provision further makes it incumbent upon Jail Superintendent to file an application before the Court the moment the jailer completes the prescribed detention period. This instrumentality is crucial because it inverts the onus on the jail authorities to detect the prisoners fitting the bill.

4.2 Early Discharge for First Offender

Some of the most progressive aspects of Section 479 are the special status afforded to first-time offenders. The section provides that "any person who has never been previously convicted of an offence shall be released on bond on undergoing detention for one-third of the maximum imprisonment prescribed for the offence." This threshold had previously been set at one-half in Section 436A of the Code of Criminal Procedure, 1973.

It acknowledges that a first offender will have better rehabilitation chances and the risk of keeping him in prison for longer is unjustified. It also encompasses the reformatory purpose of the administration of the criminal law. It does not, however, entitle all first offenders to release because the second proviso to Section 479(1) allows the court to refuse when the latter considers it fit.

4.3 Judicial Discretion and the Boundaries thereof

The second proviso enables the court after hearing the Public Prosecutor and recording reasons in writing, to direct the detention for a longer period than one-half of the period specified in sub-section (1) or to accept bail bond instead of personal bonds. This condition acts as a safeguard to prevent any misuse of the provision.

However, too much practice of discretion in the court will undermine the certainty of statute.

ISSN: 2582-6433

If cases that are similar in nature are treated dissimilarly in practice without justifiable and significant grounds, the ideal of equality before law may be impaired. Thus, court must exercise the discretion on this section on constitutional basis with circumstances and reasons written.

4.4 Exclusion of Serious Offences

Section 479(1) is problematic in that it disallows offences that prescribe death or life imprisonment. It is evident that the purpose of the section is to preserve the public interest in relation to the most severe crimes, though one wonders about the implications of the proposal in terms of personal freedom.

The gravity of a charge does not necessarily prove the innocence of a person accused of a crime. A person can be held for a very long period of time if he or she is not on trial in a reasonable amount of time. It would be more reasonable for the courts to scrutinise the real situation - what kind of evidence is in place, how long has the person been detained, whether he or she can or has disturbed the case and so on.

4.5 Multiple Pending Cases Prohibition

Section 479(2) states that where investigation, enquiry or trial in relation to more than one offence or in more than one case is pending against a person, such person shall not be eligible for the grant of a release under this section, though with a maximum limit of the maximum-detention safeguard.

This restriction is one of the most contentious provisions. A detained individual with multiple cases pending could be ineligible for statutory relief even after the person has served the mandated detention time in any single case. Just because someone has multiple cases pending does not mean that they were necessarily guilty or that they need to continue to be detained to be safe.

An approach more balanced towards the rights at stake would avoid a blanket deprivation based on the number of proceedings pending, but rather would entrust the individual assessment of the case to the judge.

4.6 Maximum Period of Detention and Exclusion of Delay

Section 479(1), third proviso is as follows: Undertrial not to be detained for more than maximum imprisonment prescribed for offence during investigation, inquiry or trial. Undertrial shall not, during investigation, inquiry or trial, be detained in custody for more than the maximum period for which he might be sentenced to such imprisonment.

ISSN: 2582-6433

But the explanation to the section states that the period of delay attributable to the accused in delay while computing the detention period to get statutory release. This precludes an accused person from benefiting for the delay caused by his own act or omission. But the courts should treat proper exercise of rights as exercise of procedural rights.

4.7 Prison Administration's Responsibility

Section 479 (3) demands that, when the prisoner undergoes the one-half or one-third period of detention, the Superintendent of the jail in which he is confined shall, in writing, make an application to the court in case of. This is a major administrative safeguard as a large number of undertrial prisoners may not be aware of legal procedures, may not have funds or access to a good lawyer.

But the real impact of this provision will be contingent upon accurate recording in the prisons, timeous calculation of detention periods, and co-ordination with the courts and legal services. Administrative failure may mean prisoners entitled to the statutory benefit are left out. The Court set timelines for compliance - directed implementation of Section 479 in pending cases, including cases filed before 1 July 2024. The Court also called for coordination of all Undertrial Review Committees and Jail Superintendents and legal services authorities.

4.8 Critical Analysis and Recommendations for Changes

Despite being a forward-looking piece of legislation, the impact of Section 479 will be limited due to a number of structural and procedural issues. These include the fact that most serious offences are not covered, multiple pending cases are not included and individuals may still be detained for further hearings at the court's discretion. The Section also does not mitigate other issues related to delay and access to justice.

The following reforms may strengthen its implementation:

1. Periodic Review: Undertrial Review Committees to regularly identify cases where the determinant of itce will touch the statutory minimum limit.
2. Monitoring of information; automatic calculation of detention period and alerting of the courts and prison authorities to the period of detention of eligible prisoners.
3. Individual merits: Instead of rigidly dismissing statutory relief, courts must consider the facts of several standing cases.
4. Good legal aid: The District Legal Services Authorities (DLSA) should see that every eligible prisoner gets legal aid at an appropriate time.

ISSN: 2582-6433

5. Judicial responsibility: courts need to give well- reasoned decisions as to when they'll go ahead and keep on with indefinite detention under this particular process.

5. JUDICIAL INTERPRETATION AND ENFORCEMENT PROBLEMS

How well Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 works, however, depends on the interpretative role of courts and application by the administration. It is the responsibility of the courts to ensure that the statutory right to release of undertrial prisoners who meet the criteria laid down is consistent with the constitutional rights of equality and personal liberty. While the Supreme Court has noted that in many cases, it is important to avoid unnecessary detention of undertrials, structural and procedural problems continue to impede the realisation of bail rights in India.

5.1 Judicial Interpretation of Undertrial Rights

The Supreme Court has held that pre-trial detention over a period of time violates Article 21 of the Constitution. The Court held in Hussainara Khatoon v. State of Bihar (1979) that excess detention results in significant harm and thus a speedy trial becomes a fundamental right. The Court decided that criminal trials had to be conducted in a reasonable period of time and an indigent accused could not be detained solely because he was unable to secure legal aid or bail. In Moti Ram v. State of Madhya Pradesh (1978), the Supreme Court pointed out that the terms of bail should not be oppressive or arbitrary. It also noted that it is possible that economic constraints may deprive some persons of their right to personal liberty and bail, by making it impossible for the accused to meet the financial demands. This has implications for Section 479, as its advantages will be limited if the applicants for bail are unable to meet the conditions set down by the courts.

The sanctity of personal liberty, even during trial, can be ascertained from the Supreme Court's decision in Sanjay Chandra v. CBI (2012). The Court held that, "even during the trial, such detention should not result in punishment and the object of the custody was to secure the presence of the accused before the court to which the person belonged and to prevent him from flying from justice." These rulings uphold the constitutional stand of liberal interpretation of S. 479 to promote individual liberty while safeguarding the operation of due process of law.

ISSN: 2582-6433

6. JUDICIAL INTERPRETATION AND ENFORCEMENT DIFFICULTIES

Section 479 of the BNSS, 2023 has to be understood not merely by the language of the statute but also through judicial interpretation and implementation. Judiciary has an important role of ensuring that undertrial prisoners do not see a deprivation of their personal liberty for the benefit of statutory release and as an important arm of balancing their personal liberty with the constitutionally vested interest of criminal justice. The Supreme Court has shown understanding of the need for avoiding undue detention, but procedural bottlenecks and institutional inefficiency have put bail out of reach.

6.1 Judicial Interpretation of Undertrial Rights

The courts have formulated a few vital constitutional principles on undertrial detention. In Hussainara Khatoon v. State of Bihar (1979), the Supreme Court enumerated speedy trial as a part of the fundamental right under Article 21 and observed that if a person languished in prison without a trial for considerable time, that was a state of injustice.

This was also upheld by the courts in Moti Ram v. State of Madhya Pradesh (1978), which held that bail conditions cannot be unduly harsh or discriminatory. It also ruled that the financial conditions must not be such as to preclude the bail application of poor accused persons. Apart from this, in the case of Sanjay Chandra v. CBI (2012), the Supreme Court held that the detention before trial should not be tantamount to a punishment to be sure of conviction.

6.2 Interpretation of Section 479 by the Supreme Court

One notable decision is in In Re: Inhuman Conditions in 1382 Prisons, Writ Petition (Civil) No. 406 of 2013. On 23 August 2024, the Supreme Court clarified that Section 479 afforded more relief for the first time offenders than the previous Section 436A of the Code of Criminal Procedure, 1973. The Court ordered authorities to activate the provision and facilitate the filing of applications for release for those prisoners who have served the prescribed period- one-half or one-third.

Significantly, the Court also held that the beneficial provision would apply to undertrial prisoners in pending cases, even if the case was registered before 1 July 2024. This reads in favour of prisoners in older pending cases, because undertrial prisoners in the corresponding category should not be denied the benefit only because the new legislation came into effect later.

ISSN: 2582-6433

In its further order of 19 November 2024, the Court highlighted the role of Undertrial Review Committees, Jail Superintendents, and legal services authorities in deciding on suitable cases. The Court stated that the assessment should be accurate and applications promptly sent to the appropriate courts.

6.3 Judicial Directions for Proper Execution

In the SC order dated 19 November 2024 in In Re: Inhuman Conditions in 1382 Prisons, the Court reiterated that implementation had to be ongoing. Undertrial Review Committees were to work with the Jail Superintendents in raising access to their concerned undertrial prisoners. The Court also directed that District Legal Services Authorities and State Legal Services Authorities were to help in updating of details of prisoners and assisting in their legal needs. The Court added that mere identification was not enough unless applications were filed before the courts and were diligently pursued.

Additionally, on 1 January 2025, the Ministry of Home Affairs, in its communication, reiterated that "it is the responsibility of the State prison authorities to identify eligible prisoners and send application under section 479". This makes it evident that in-prison implementation would need cooperation from the judiciary, prison administration and government officials.

6.4 Significant Challenges for Implementation

Although the sub is given specific directions by the court, there are many hurdles to implementing Section 479:

1. Prison authorities may struggle with calculating detention periods, identifying first time offenders, and checking pending cases from different jurisdictions.
2. The papers may not reach the competent courts in good time because of the lack of coordination between the prisons, police authorities and the judicial system.
3. Case delay: Section 479(2) limits release where a person is under investigation, inquiry, or trial for more than one offence or more than one case, for example, an untimely dismissal of charges in one case against them, may preclude otherwise eligible inmates from benefit.
4. A lot of undertrial prisoners have no knowledge of their statutory rights and poor legal aid may also delay their release.
5. Judicial and institutional workload: Longcase pendency, massive shortage of judges and adjournments all lead to delay in disposal of cases and higher detention.

ISSN: 2582-6433

6. Once a concession has been granted, some prisoners will have to struggle to meet the conditions of bail and/or secure sureties.

6.5 Recent Judicial Development

At stake were issues concerning prolonged detention, limits on bail by law and Article 21's promise of personal freedom. In Central Bureau of Investigation v. Dayamoy Mahato (2025 INSC 1418) (judgment dated 11 December 2025), the Supreme Court discussed the earlier provision, Section 436A of the CrPC, when examining Section 479. It reiterated that "there cannot be any doubt" that prolonged imprisonment and unreasonably lengthy delays in trials pose serious Article 21 violations, but that the severity of the offence and other circumstances are factors to be taken into account. The Court directed steps on trials at fast-track courts, free counsel, judicial oversight, and adequate institutional capacity.

6.6 Recommendations to enhance implementation

The following measures can improve the effectiveness of Section 479:

- Implement a single online system to keep track of duration of undertrials' detention.
- Prisoners who are eligible for review should be reviewed on a monthly basis by the Undertrial Review Committees.
- Offer free legal aid to inmates near the prescribed limit.
- Set time limits to forward and decide applications.
- Enhance the coordination of prison authorities, courts and legal services agencies.
- Require that reasoned decisions are taken by the court where statutory release is refused or continued detention ordered.

7. COMPARATIVE LEGAL STUDIES: INDIA, ENGLAND AND GERMANY

An issue of concern The condition of the accused person, public safety and the efficiency of the justice system are three important factors in pre-trial detention. Three distinct models are followed by India, England, and Germany regarding arrest, remand and bail. A comparative analysis of these legal regimes yields important lessons for protecting the accused person and proposes reforms that India could adopt for enhancing the release of undertrials on bail in the light of section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

ISSN: 2582-6433

7.1 India: Statutory Release under Section 479 of BNSS

CrPC discusses the subsisting criminal justice system of India which is an adversarial one, where the case is fought by the accused and the state before the courts which are independent. Bail comes within the statute and the discretion of the Court, but has constitutional backing under articles 14 and 21.

Section 479 of the BNSS provides for a special provision for releasing of eligible undertrial prisoners after the period of detention of one-half of the maximum imprisonment prescribed for the offence shall have been undergone. For those not previously convicted, it shall be one-third of the same. It further requires the Jail Superintendent to approach the Court. Compared to the former Section 436A of the Code of Criminal Procedure, 1973, this provision is more viable as it lowers the limit of detention for first offenders. But limitations regarding offences requiring death penalty or life term imprisonment and other courts matters hinder the application of this provision. Its success further relies on the accuracy of prison records and coordination.

7.2 England: Bail Act 1976 and Limits to Custody Time

England and Wales employ an adversarial system of criminal justice and bail. The general rule is that bail should be granted subject to statutory exceptions. The dominant piece of legislation on bail is the Bail Act 1976. In broad terms, the default position is that a defendant is entitled to bail unless there are grounds for refusal articulated in the legislation. These grounds are: the risk of the defendant absconding, committing other offences whilst on bail or interfering with the witnesses or witness statements.

The English system also includes Custody Time Limits (CTLs). Under Section 22 of the Prosecution of Offences Act 1985 and regulations made under this Act there are designated time limits on how long a person is to be remanded in custody before the commencement of his trial. These vary depending on the offence and the court on which the case is being tried. They are officially overseen by the Crown Prosecution Service and courts by official processes and case-management systems. They establish institutional accountability for undue detention and for ensuring criminal cases move forward within fixed time scales.

Compared to others: The England model highlights the need for ongoing monitoring of detention periods with institutional accountability. India may further improve Section 479 by digital monitoring and tighter timeframes for the review of eligible prisoners.

ISSN: 2582-6433

7.3 Germany: Judicial Control and Proportionality

Introduction Germany adheres to an inquisitorial criminal procedure and the role of the court in overseeing the criminal proceeding is greater. Pre-trial detention is governed mainly under Sections 112-122 of the German Code of Criminal Procedure.

Section 112 places a restriction on the grant of bail by requiring the courts to exercise its discretion with the existence of strong suspicion of commission of offence by the accused and a legal ground for detention is established. The grounds of detention include the dangerous nature of the person, an offence has been committed, risk of absconding and destruction of evidence.

The element of less restrictive alternatives is also significant. Section 116 allows a court to stay an arrest warrant conditionally, for example, with periodic reporting, restrictions on movement or access to security. Sections 117-118 allow for judicial review of detention. And section 121 provides for special judicial scrutiny of pre-trial detention if it persists beyond 6 months, with the possibility of statutory exceptions.

What we can learn from Germany's experience of pre-trial detention Comparative importance: Germany shows the significance of proportionality, individual judicial discretion and alternatives to detention, principles that India can use to strike a more balanced approach to pre-trial release cases, where the continued detention is not needed for investigation or trial.

7.4 What India can learn

Through comparative analysis, three key lessons for reform of India's undertrial detention system emerge.

1. India should: From England: Employ greater digital monitoring and institutional accountability to ensure the statutory limits on detention are followed.
2. From Germany: Courts shall, prior to continuing deprivation of liberty, take more account of proportionality and less restrictive measures.
3. By both government jurisdictions: Continuing judicial oversight and a well-coordinated criminal justice system will also be necessary to safeguard personal liberty. Strengthening of legal aid. Assessment and management of prison records and timely consideration of eligible prisoners under Section 479.

8. FINDINGS AND PROPOSED LEGAL REFORMS

This paper evaluates the Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and assesses whether it aids in combating excessive undertrial detention and facilitates the

ISSN: 2582-6433

realization of the constitutional guarantee of personal liberty. The examination of the legal provisions, the courts and other legal systems suggests that while the scope of Section 479 is forward-looking, its potential achievement rests upon institutional efficiency, judicial oversight and the availability of legal aid.

8.1 The study's key results

1. Prolonged undertrial detention continues to be a constitutional issue

   The report concludes that upholding the presumption of innocence of persons languishing in jail for years without conviction violates their constitutional guarantee under Article 21. It is thus important to ensure that accused persons do not suffer before being proven guilty.
2. Section 479 is a progressive legislative measure

   The provision of the one-third detention threshold in case of a first offender is a step ahead of the erstwhile Section 436A of the CrPC. It takes the reformative ideology into account.
3. Statutory restrictions hamper its usefulness

   The refusals to grant relief to undertrial prisoners out of the other procedures/formula for granting it may result in some such prisoners being left out. The constitutional issues involved in the exclusion of offences punishable with death or life imprisonment and the limitation on multiplicity of cases, require attentive consideration.
4. Judicial discretion plays a decisive role

   Such a benefit must, therefore, be heavily dependent on judicial discretion. Given that some degree of discretion is necessary in the interests of justice, however, inconsistent use of the section and poor argument from judges may undermine the certainty of statutory protection.
5. Implementation is hindered by institutional inertia

   The requirement for the identification of eligible prisoners, determination of detention periods and the submission of applications necessitates co-operation between the prison administration, courts and institutions providing legal assistance. Administrative delays could lead to eligible prisoners not being released in time.
6. Economic inequality affects access to bail

   The report shows that accused persons from poorer backgrounds find it harder to make sureties and to fulfil the financial conditions for bail, perpetuating unequal access to their personal freedom and underscoring the need for inexpensive alternatives to

ISSN: 2582-6433

imprisonment.

7. Lessons from comparative systems

   The enforcement of custody time limits, the regular judicial review of detention and the principles of proportionality and alternatives to detention, as illustrated by England and Germany, are instructive for India's statutory and institutional framework.

8.2 Suggested Legal Changes

The following are suggestions for reform of Section 479 to enhance its efficacy and level it on equal footing with the Constitution:

1. Introduce an automatic undertrial monitoring system

   A proper centralised digital monitoring system should be put in place to determine the detention period of each undertrial prisoner. The system should be programmed to automatically notify the Jail Superintendent, the competent court, and the District Legal Services Authority the moment an under-trial prisoner is close to reaching the onethird or one-half mark. This would eliminate administrative delays and ensure that eligible prisoners are not missed.

2. Think about removing this limitation on pending cases

   Section 479(2) may be revisited so that the grant of statutory relief is not denied solely on the ground that a number of cases are pending. The Court should be permitted to look into the facts and circumstances of a particular case, the length of the detention, the allegations made and likelihood of interference with the trial. The pendency of other cases should not be an infallible reason to keep a person in jail.

3. Strengthen legal aid services

   District Legal Services Authorities. Regular visits by legal aid advocates, file inspections and awareness programmes within prisons should be conducted on a regular basis. Legal aid can be availed before the completion of the statutory period of detention so that applications are ready to be filled in.

4. Establish mandatory periodic judicial review

   Courts should have a system of periodic review of undertrial detention in cases of long duration. There should be a fixed period review to the effect that undertrial detention is required in connection with progress of investigation/trial, the conduct of the accused and less restrictive measures are not available.

5. Reform bail conditions

   Conditions of bail should be fair, proportionate and take into account the financial

ISSN: 2582-6433

circumstances of the accused. The courts should not set excessive surety conditions which make bail an impossibility. Personal bonds and other suitable non-financial conditions should be used where legally permissible.

6. Enhance Undertrial Review Committees

   Undertrial Review Committees should record prisoners due for statutory release with the help of trained officials, digital tracking, and cooperation with police, courts, and prison authorities. Such Committees should submit periodic compliance reports to the relevant courts.

7. Introduce institutional accountability

   State government should put in place monitoring to avoid administrative failure in the implementation of section 479. State governments should monitor the delays in identifying eligible prisoners and forwarding applications, and take remedial action. These should be published annually as to the number of eligible prisoners, applications made and released, and reasons for delays.

8.3 Overall Recommendation

India could also create a National Undertrial Release and Monitoring Framework which brings together various elements of prison authorities, judiciary and legal services authorities. It would make automatic calculation of detention period, timely legal aid, regular judicial review and institutional accountability part of the framework, to make Section 479 a right to be enjoyed, rather than an entitlement to be invoked.

9. CONCLUSION

The problem of undertrial prisoners' detention is one of the gravest problems in the Indian criminal justice system. It concerns the basic principle of human liberty, equality before law, speedy trial and presumption of innocence. Even though the guilt of the accused has to be proved, and he must be proven innocent till then, there is no reason to keep him in jail without trial resulting in adverse social, economic and psychological impacts.

Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 can be seen as a forward-looking legislative step towards remedying this situation. It envisions release after the completion of one-half of the maximum prescribed imprisonment and reduces this to one-third for first-time offenders. Since the provision also prescribes the duty of Jail Superintendents to file applications on behalf of eligible inmates, this too can be seen as a positive move.

This research has shown, however, that reforms in the law cannot undo the crisis of undertrial

ISSN: 2582-6433

detention. Some limitations of bail rights, such as those on grave offences and multiple cases, administrative wastage, judicial backlog, lack of legal aid and poverty are still prevalent. The comparative analysis of England and Germany, also highlights the significance of time limits on detention, proportionality, judicial review and other detention alternatives.

Therefore, Section 479, would, to be effective, need to be implemented in conjunction with judicial supervision, digital monitoring, access to legal aid, and accountability of institutions. The proposed National Undertrial Release and Monitoring Framework can potentially be an effective way to identify eligible prisoners and release them on time.

The legitimacy of a criminal justice system is ultimately determined not just by its capacity to punish a wrongdoer, but by how well it respects the individual rights of every person. It would be indefensible to impose captivity on an individual simply because the state is unable to serve justice in a timely manner. Section 479 must be implemented as an effective constitutional safeguard against the abuse of personal liberty.

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ISSN: 2582-6433

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