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JUSTICE CRYING BEHIND CLOSED DOORS: UNDERTRIAL PRISONERS, BAIL JURISPRUDENCE AND CONSTITUTIONAL RIGHTS IN INDIA.

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Abstract:

The large and growing population of undertrial prisoners in India poses a serious challenge to the constitutional promises of liberty, equality, and fair procedure. Despite the well-established principle that an accused person is presumed innocent until proven guilty, lakhs of undertrial prisoners continue to remain in custody for prolonged periods without the conclusion of their trials. This article critically examines the condition of undertrial prisoners through the lens of Articles 14 and 21 of the Constitution of India. It examines the disconnect between the judicially recognized principle that **bail is the rule and jail the exception**, and its deficient implementation in practice." and its implementation in practice. The article explores how poverty, ineffective legal aid, judicial delays, and restrictive bail practices disproportionately affect marginalized communities, leading to prolonged incarceration and the erosion of fundamental rights. Special attention is given to the experiences of women undertrial prisoners, the constitutional concerns arising from the denial of voting rights to undertrials, and the implications of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Continued detention of undertrial prisoners undermines the presumption of innocence, weakens confidence in the rule of law, and diminishes the guarantee of a fair trial. The article also analyses comparative international practices and highlights how several countries protect the voting rights of undertrial prisoners while ensuring the integrity of the electoral process. It calls for reforms in bail, legal aid, prison conditions, and democratic participation. Only then can the rights and dignity of undertrial prisoners be upheld.

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Keywords: Undertrial Prisoners, Bail Jurisprudence, Article 21, Rule of Law, Presumption of Innocence, Voting Rights, Section 479 BNSS, Criminal Justice Reform.

Introduction

Rabindranath Tagore, the first Nobel Laureate from India, once observed that **justice cries behind closed doors**. This phrase received renewed attention when former Chief Minister of West Bengal, Mamata Banerjee, personally appeared in relation to the SIR process in supreme court India. But this quote is most suitable to describe the present condition of India in relation to undertrial prisoners in the world's largest democracy.

The growing population of undertrial prisoners creates serious doubts about the functioning of the criminal justice system in India. In fact, it raises questions as to whether the doctrine that "bail is the rule and jail is the exception" is truly being implemented in practice. Further, if an accused person is presumed innocent until proven guilty in a court of law, then why does the criminal justice system confine such individuals behind iron bars for years without establishing their guilt?

Furthermore, a fundamental question arises as to whether the rule of law is functioning properly in India. Such concerns become more significant when a few individuals obtain bail within days, while a large section of the population, particularly the poor, remains deprived of the same relief. Indeed, Article 21 of the Constitution of India guarantees the protection of life and personal liberty, and the principle of innocence is recognized in criminal justice systems throughout the world. If this principle is genuinely respected, then an important question arises: "why does India deny voting rights to undertrial prisoners when their guilt has not yet been proved? Denying this right merely because they are confined in prisons amounts to a violation of the constitutional and fundamental principle of innocence". The continued confinement of accused persons as undertrial prisoners for years in jails across the country undermines the constitutional spirit of the presumption of innocence.

Moreover, such prolonged detention affects not only the individual who remains incarcerated but also the entire family. The social, economic, and psychological consequences of undertrial detention often extend beyond the prisoner and adversely impact family members who depend upon them. Therefore, the issue of undertrial prisoners demands urgent attention in order to uphold the principles of justice, liberty, and the rule of law in India.

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Undertrial Detention and the Erosion of Personal Liberty

For the first time in India, the phrase "bail is the rule and jail is the exception" was coined by the great jurist and former Supreme Court Judge, Justice V.R. Krishna Iyer, in Balchand alias Baliya case[5]. This case significantly shaped Indian bail jurisprudence and continues to serve as the foundation of the country's criminal justice system regarding bail. While pronouncing the judgment, Justice Krishna Iyer categorically held that personal liberty emanates from Article 21 of the Constitution of India. [6]

However, an important question remains: why is the prison population increasing year after year? As of January 2025, India had a total prison population of 5,06,660 prisoners. Of these, nearly 3.75 lakh were undertrial prisoners, constituting 74.2% of the total prison population. A particularly high proportion of undertrial prisoners was reported in the States of Bihar (87%) and Uttar Pradesh (77%), and in the Union Territories of Dadra and Nagar Haveli (100%), Jammu and Kashmir (96.6%), and Delhi (88.3%).[7]

Several factors contribute to the increasing undertrial prison population in India, including the rejection of bail applications by courts, inadequate legal aid for prisoners, and poverty, which remains one of the most significant causes. In this context, Justice Krishna Iyer believed that "poverty is society's malady and sympathy is the judicial response." Unfortunately, Indian courts appear to have forgotten this fundamental principle while rejecting bail applications of undertrial prisoners.[8]

Furthermore, courts have increasingly forgotten the important rule laid down in ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh,***[9] a judgment in which Justice Krishna Iyer also played a significant role. The Court held that, while granting or refusing bail, courts must consider the period already spent in custody and the expected delay in the disposal of the case. The **former Chief Justice of India, B. R. Gava**i, has acknowledged that this fundamental principle is increasingly being forgotten in contemporary bail

[5] *State of Rajasthan, Jaipur v. Balchand alias Baliay*, AIR 1977 SC 2447.
[6] State of Rajasthan v. Balchand – Bail", *Law Code Hub*, available at: https://www.lawcodehub.com/cases/state-of-rajasthan-vs-balchand-bail (last visited June 17, 2026).
[7] National Legal Services Authority (NALSA), *Functioning of the Under Trial Review Committees: January to March 2025* (2025), available at: https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/05/20250529160883100 8.pdf (last visited June 17, 2026)
[8] Our Bureau, "Chief Justice of India B.R. Gavai Rues Shift from 'Bail is Rule' Doctrine Amid Concerns Over Prolonged Undertrial Detention", *The Telegraph*, July 8, 2025, available at: https://www.telegraphindia.com/india/chief-justice-of-india-b-r-gavai-rues-shift-from-bail-is-rule-doctrine-amid-concerns-over-prolonged-undertrial-detention-prnt/cid/2111934 (last visited June 18, 2026).
[9] *Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh*, AIR 1978 SC 429.

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jurisprudence.[10]

Furthermore, the Supreme Court in ***Sanjay Chandra v. CBI*** [11]dealt with significant questions relating to the refusal of bail and its impact on personal liberty. "The Supreme Court has rightly affirmed that detention prior to conviction must not be permitted to assume the character of punishment, for such a practice is incompatible with the constitutional guarantee of personal liberty. Ironically, however, the situation has not changed substantially even today. The case of Umar Khalid is a notable example. Umar Khalid remained detained for more than five and a half years without the commencement of trial in a case registered under the Unlawful Activities (Prevention) Act (UAPA)[12]. In such circumstances, it becomes difficult to justify the principle of presumption of innocence. Although bail provisions under the UAPA are undeniably stringent, such rigidity cannot override the fundamental right to life and personal liberty enshrined in Article 21 of the Constitution.

Over a period of five years, Umar Khalid's bail applications were repeatedly rejected by the trial and appellate courts. More significantly, the Supreme Court itself adjourned his bail matter at least fourteen times over a period of eleven months, ultimately compelling him to withdraw his petition[13]. This raises an important concern regarding institutional accountability. The failure to commence or conclude a trial within a reasonable time is not attributable to the accused; rather, it is the consequence of delays by investigating agencies and institutional shortcomings within the justice delivery system. If such delays are caused by systemic failures, an important question arises: why should an accused person be forced to pay the price with his liberty?

Another concern is the failure of courts to adequately apply the principles laid down by the Supreme Court in ***Union of India v. K.A. Najeeb***[14]. In this landmark judgment, the Court held that notwithstanding the statutory restrictions contained in Section 43D (5) of the UAPA[15], bail may still be granted in exceptional circumstances, particularly when:

1. The accused has remained an undertrial prisoner for a prolonged period;

[10] Our Bureau, "Chief Justice of India B.R. Gavai Rues Shift from 'Bail is Rule' Doctrine Amid Concerns Over Prolonged Undertrial Detention", *The Telegraph*, July 8, 2025, available at: https://www.telegraphindia.com/india/chief-justice-of-india-b-r-gavai-rues-shift-from-bail-is-rule-doctrine-amid-concerns-over-prolonged-undertrial-detention-prnt/cid/2111934 (last visited June 17, 2026).
[11] *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.
[12] "2020 Delhi Riots Larger Conspiracy Case: Umar Khalid, Sharjeel Imam Move Fresh Bail Pleas", *MSN News*, available at: https://www.msn.com/en-in/news/india/2020-delhi-riots-larger-conspiracy-case-umar-khalid-sharjeel-imam-move-fresh-bail-pleas/ar-AA25zewa (last visited June 17, 2026).
[13] Krishnadas Rajagopal, "Umar Khalid's Bail Plea: A Timeline of Court Hearings and Adjournments", *The Hindu*, October 13, 2023, available at: https://www.thehindu.com/news/national/umar-khalids-bail-plea-a-timeline-of-court-hearings-and-adjournments/article67411771.ece (last visited June 17, 2026).
[14] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
[15] The Unlawful Activities (Prevention) Act, No. 37 of 1967, s. 43D (5) (India).

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2. The trial is unlikely to conclude within a reasonable time.
3. Continued detention results in a violation of Article 21 of the Constitution.

It may be argued that all three circumstances were present in the case of Umar Khalid. Nevertheless, the courts did not grant relief despite the existence of conditions that arguably attracted the principles laid down in *K.A. Najeeb*. This raises serious concerns regarding the practical enforcement of constitutional safeguards in bail jurisprudence.

However, the Supreme Court has, in certain cases, reaffirmed the primacy of personal liberty even in prosecutions under the UAPA[16]. A notable example is the grant of bail to five accused persons in the Delhi riots cases, where the Court recognized that the constitutional commitment to liberty cannot be completely displaced by statutory restrictions[17] but no bail to khalid. Such decisions reaffirm the enduring relevance of the principle that bail is the rule and jail is the exception, even in cases involving stringent anti-terror legislation.

Prof. G.N. Saibaba Case: A Failure of Justice and Liberty.

Chief Justice of India, Justice Surya Kant, rightly observed that justice delayed is not only justice denied, but justice destroyed. This observation finds particular resonance in the ordeal of Professor G.N. Saibaba, a person who, after spending nearly ten years in prison, was ultimately found not guilty. Professor Saibaba was arrested under the UAPA, and the trial court subsequently convicted him and sentenced him to life imprisonment. The case was then taken on appeal before a Division Bench of the Bombay High Court, which held that Professor Saibaba was not guilty. However, the Supreme Court stayed the acquittal and sent the matter to the Nagpur Bench of the Bombay High Court for reconsideration. Upon reconsideration, the High Court once again acquitted Professor Saibaba.[18]

The question that arises is where the courts failed in relation to the grant of bail. Why did the trial court and subsequent higher courts deny bail to Professor Saibaba when every stage of the investigation, including the arrest and search procedures, was conducted contrary to law? This was later highlighted by the Bombay High Court in its detailed 293-page judgment[19]. Despite

[16] Gulfisha Fatima v. State (NCT of Delhi), 2026 SCC Online SC 10.
[17] Srishti Ojha, "No Bail for Umar Khalid, Sharjeel Imam in Delhi Riots Case; 5 Others Get Relief", *India Today*, January 5, 2026, available at: https://www.indiatoday.in/india/law-news/story/umar-khalid-and-sharjeel-imam-to-stay-in-jail-as-supreme-court-rejects-bail-in-delhi-riots-case-2846667-2026-01-05 (last visited June 17, 2026).
[18] Sushovan Patnaik, "A Decade in Incarceration: How Justice Failed Professor G.N. Saibaba", *Supreme Court Observer*, March 14, 2024, available at: https://www.scobserver.in/journal/a-decade-in-incarceration-how-justice-failed-professor-gn-saibaba/ (last visited June 18, 2026).
[19] Aastha Uprety, "Acquittal of Prof G.N. Saibaba & 5 Others Is a Lesson in the Importance of Criminal Procedure in Securing Personal Liberty", *Article 14*, March 12, 2024, available at: https://article-14.com/post/acquittal-of-

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in these serious circumstances, the courts did not grant him bail. In fact, he was reportedly denied even temporary release or parole to see his mother before her death, underscoring the harshness of continued detention.[20] This raises serious concerns regarding the commitment of the justice system to protect the rights of prisoners in India. Ironically, the Bombay High Court also ordered the registration of criminal contempt proceedings against author Arundhati Roy for criticizing the denial of bail to Professor Saibaba.[21]

A further question arises as to why the courts did not give greater consideration to Professor Saibaba's physical condition, considering that he was more than 90 per cent disabled. In a constitutional democracy, courts must carefully scrutinize the reasons underlying every governmental action, particularly arrests made under stringent anti-terror laws. Following his release, Professor Saibaba stated in an interview that "prisons reflect how timely justice is often absent from the criminal justice system and that, as a consequence, fundamental rights, including the right to a fair and speedy trial, are frequently violated."[22]

As A.V Vasantha Kumari, wife of Sai Baba, observed, "the State has its hands everywhere; that is why we have been constantly betrayed by every institution." [23]This sentiment reflects the concerns of many individuals who feel aggrieved by the functioning of democratic institutions. Similarly, Medha Deo, Director of the Fair Trial Fellowship at Project 39A, observed that Professor Saibaba's trial revealed a significant gap between the manner in which the criminal justice system operates in practice and the manner in which it ought to function under the constitutional framework in practice and the manner in which it ought to function under the constitutional framework. He further argued that Saibaba's ordeal reflected the Supreme Court's complicated approach to bail, despite its repeated emphasis on the principle of "bail, not jail."[24]

However, Kumari further stated that "we live in a democratic country and believe that justice will prevail at some point." This belief highlights the immense responsibility placed upon the judiciary. The Indian judiciary has a constitutional duty to maintain public confidence in the

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[20] Ibid.

[21] Sucheta, "Court Denies Bail to Prof. Saibaba, Issues Contempt Notice to Arundhati Roy for Criticizing Denial of Bail", *SCC Times*, December 28, 2015, available at: https://www.scconline.com/blog/post/2015/12/28/court-denies-bail-to-prof-saibaba-issues-contempt-notice-to-arundhati-roy-for-criticizing-denial-of-bail/ (last visited June 18, 2026).

[22] Sushovan Patnaik, "A Decade in Incarceration: How Justice Failed Professor G.N. Saibaba", *Supreme Court Observer*, March 14, 2024, available at: https://www.scobserver.in/journal/a-decade-in-incarceration-how-justice-failed-professor-gn-saibaba/ (last visited June 18, 2026).

[23] Ibid.

[24] Ibid.

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administration of justice. In many situations, the institution has proved its commitment to protecting and upholding fundamental rights. The continued faith of citizens in the judicial system depends upon its ability to ensure that justice is not only delivered, but delivered in a timely and meaningful manner.[25]

Undertrial detention reflects a failure of the rule of law and the constitutional guarantee of a fair and speedy trial.

The renowned jurist A.V. Dicey rightly observed that equality before the law is an integral component of the rule of law. The Constitution of India incorporates the same principle under Article 14, which guarantees equality before the law and equal protection of the laws. However, a serious question arises as to whether this constitutional promise is genuinely reflected in practice. This concern becomes particularly evident in matters relating to the grant of bail.

Political leaders and wealthy individuals often secure bail within a short period, even in cases involving serious offences. In contrast, ordinary citizens frequently remain in custody for prolonged periods despite being accused of comparatively minor offences. For instance, the present Chief Minister of Andhra Pradesh, N. Chandrababu Naidu, obtained bail within fifty-two days in the alleged liquor scam case, sand and skill development cases[26]. Similarly, former Chief Minister of Bihar, Lalu Prasad Yadav, secured bail within a relatively short period in corruption-related cases. Likewise, A. Raja and other high-profile accused in the 2G Spectrum case were granted bail despite being implicated in one of the largest financial scandals in India's history. Numerous similar examples may be cited.[27]

On the other hand, members of marginalized and economically weaker sections often remain in prison for years due to their inability to satisfy bail conditions. In ***Moti Ram v. State of Madhya Pradesh***,[28] **Justice V.R. Krishna Iyer** strongly criticized the imposition of excessive bail amounts and categorically held that bail conditions must take into account the financial capacity of the accused. However, the ground reality appears considerably different. This is evident from the case of a nineteen-year-old migrant worker who reportedly spent eighteen

[25] Ibid.
[26] "Chandrababu Naidu Released from Jail After 52 Days", *Reporter Post*, October 31, 2023, available at: https://reporterpost.in/article/top-stories/30982/chandrababu-naidu-released-from-jail-after-52-days (last visited June 19, 2026).
[27] Bibek Krishnan, 'A Legal Question' (*Fact News*) https://www.fact.net.in/opinion/a-legal-question accessed 19 June 2026.
[28] *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47.

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months in detention in a theft case solely because he was unable to furnish a surety of ₹10,000.[29] Former Chief Justice of India, B. R. Gavai, has acknowledged that the principle of "bail is the rule and jail is the exception" is increasingly being forgotten by courts. While his commitment to this doctrine was reflected in decisions granting bail to figures such as Manish Sisodia and K. Kavitha[30], an important question remains whether the benefits of this doctrine are equally extended to marginalized communities. The answer may be traced to the disproportionately high number of undertrial prisoners in India [31].

In this context, the distinguished legal scholar **Upendra Baxi** has written extensively on the discretionary powers exercised by judges in matters of bail. He argues that such discretion is particularly visible in cases involving politicians and other influential individuals. According to Baxi, political pressures and public sentiment often influence judicial decision-making in certain cases[32]. While this observation may not apply universally, it highlights the need for courts to exercise their discretion in a manner that protects the liberty of all individuals without discrimination.

The inability of poor and marginalized communities to secure timely bail may be attributed primarily to two factors. The **first is poverty**[33]. Economically disadvantaged accused persons often lack the resources to engage senior advocates such as Kapil Sibal, Harish Salve, or Niranjan Reddy, and are frequently unable to furnish sureties required by courts.

The **second factor is the ineffective functioning of legal aid institutions**. Justice Vikram Nath of the Supreme Court has rightly observed that "**free legal aid cannot mean poor legal aid.**"[34] Furthermore, **In *M.H. Hoskot v. State of Maharashtra*[35],** the Supreme Court held that where an accused is unable to afford legal representation, the Court must ensure competent

[29] Rachita Saini, "Bail System in India: Structural Discrimination Against the Poor", *Legal Service India*, available at: https://www.legalserviceindia.com/Legal-Articles/bail-system-in-india-structural-discrimination-against-the-poor/ (last visited June 19, 2026).

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[31] National Legal Services Authority (NALSA), *Functioning of the Under Trial Review Committees: January to March 2025* (New Delhi: NALSA, 2025), available at: https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/05/2025052916088310 08.pdf (last visited June 19, 2026)

[32] Bibek Krishnan, 'A Legal Question' (*Fact News*) https://www.fact.net.in/opinion/a-legal-question accessed 19 June 2026.

[33] "Undertrial Prisoners' Dilemma in India", *The Law Institute*, available at: https://thelaw.institute/criminal-justice-research-and-advocacy/undertrial-prisoners-dilemma-india/ (last visited June 19, 2026).

[34] Sahil Hussain Choudhury, "India's Legal Aid Crisis: What the Data Really Shows", *Bar & Bench*, December 4, 2025, available at: https://www.barandbench.com/columns/indias-legal-aid-crisis-what-the-data-really-shows (last visited June 19, 2026).

[35] *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

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legal assistance to safeguard fair procedure under Article 21 of the Constitution**. Yet, the reality remains deeply concerning.** However, the reality remains concerning. The report ***Legal Aid for Undertrial Prisoners: Fair Trial Programme in Pune and Nagpur (2019–2024)*** revealed that access to free legal aid remains limited among undertrial prisoners[36]. Similarly, a study based on National Crime Records Bureau data found that only 7.91 per cent of undertrial prisoners had utilized legal aid services[37]. One of the principal causes of this situation is the inadequate allocation of resources to legal aid programmes.[38] Consequently, institutions entrusted with the protection of justice and liberty must strengthen their commitment to ensuring effective legal representation for vulnerable sections of society.

Another important issue is the persistent gap between the constitutional promise of a fair and speedy trial and its implementation in practice. The experience of Professor G.N. Saibaba serves as a significant example of this failure. In the case of ***Hussainara Khatoon v. State of Bihar,***[39] the Supreme Court unequivocally held that the right to a speedy trial is an integral part of Article 21 of the Constitution. However, the implementation of this principle at the ground level remains inadequate.

More recently, in ***Arvind Dham v. Directorate of Enforcement***[40], the Supreme Court made two significant observations. ***First,*** it held that the right to a speedy trial is not extinguished by the nature of the offence alleged. ***Second***, the Court observed that continued detention of an undertrial prisoner without the commencement of trial or without reasonable progress in the proceedings effectively becomes a form of punishment, which is neither legally nor constitutionally permissible in a democratic society.[41]

Ultimately, it must be remembered that the rights to life and personal liberty are not privileges reserved for a select few. They are constitutional guarantees available to every individual. When even a single person is denied the effective enjoyment of these rights, it reflects a failure of the democratic institutions entrusted with their protection. The true test of constitutional governance lies not merely in the existence of rights on paper, but in their equal and meaningful realization for all citizens.

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[36] Sahil Hussain Choudhury, "India's Legal Aid Crisis: What the Data Really Shows", *Bar & Bench*, December 4, 2025, available at: https://www.barandbench.com/columns/indias-legal-aid-crisis-what-the-data-really-shows (last visited June 19, 2026).
[37] Ibid.
[38] Ibid.
[39] *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1979) 3 SCC 532.
[40] *Arvind Dham v. Directorate of Enforcement*, 2026 INSC 12.
[41] "Right to Speedy Trial a Fundamental Right Under Article 21; Bail Granted After Six Years of Incarceration: Supreme Court in *Arvind Dham v. Directorate of Enforcement*", *Verdictum*, January 10, 2026, available at: https://www.verdictum.in/court-updates/supreme-court/arvind-dham-v-directorate-of-enforcement-2026-insc-12-right-to-speedy-trial-1603661 (last visited June 19, 2026).

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Women under-trail prisons: their problems.

The great jurist and former Supreme Court judge, **Justice V.R. Krishna Iyer, once observed that "women undertrials, especially those from marginalized backgrounds, suffer prolonged detention not because they are guilty, but since they are poor.**" The view expressed by Justice Krishna Iyer accurately reflects the present situation of women undertrial prisoners and the challenges they face beyond iron bars, many of which are additional to those experienced by their male counterparts in India. According to the National Crime Records Bureau (NCRB), the number of women undertrial prisoners exceeded one lakh as of 31 December 2022.[42]

One of the major problems faced by women undertrial prisoners is overcrowding and poor living conditions. As of 2022, only 34 exclusive jails were available for women across the country. It is a matter of grave concern that twenty States and Union Territories lack separate prisons for women.[43]. This raises an important question regarding the dignity and treatment afforded to women prisoners in India. The right to live with dignity is an integral part of Article 21 of the Constitution, and prison conditions must reflect this constitutional commitment.

Another significant concern is the inadequate medical facilities available to women undertrial prisoners, particularly pregnant women. The Parliamentary Standing Committee on Women in Detention acknowledged the shortage of doctors, medical staff, and healthcare facilities in prisons[44]. It is also noteworthy that the Model Prisons Act, 2023, requires prison authorities to make necessary arrangements for the medical care, nutrition, and welfare of pregnant women in custody[45]. However, the effective implementation of these provisions remains a challenge at the ground level, largely due to inadequate infrastructure and insufficient training of prison staff.

Furthermore, an important challenge faced by women undertrial prisoners is harassment and abuse. The Supreme Court of India addressed this issue in **Sheela Barse v. State of Maharashtra.**[46] In this case, the Court examined allegations of torture and ill-treatment of women in police lock-ups and prisons. Furthermore, The Supreme Court took cognizance of

[42] National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Government of India, 2024), available at: https://www.data.gov.in/catalog/prison-statistics-india-psi-2022 (last visited June 19, 2026)
[43] Arushi Bajpai and Vaidehi Sharma, "Unmasking Hardship of Women Undertrials in India", *Live Law*, March 28, 2025, available at: https://www.livelaw.in/articles/unmasking-hardship-women-undertrials-india-287823 (last visited June 19, 2026).
[44] Ministry of Home Affairs, Government of India, *Advisory on Mandatory Action by Police in Cases of Crime against Women* (2022), available at: https://www.mha.gov.in/sites/default/files/2022-12/22WomensDiv_Advisory_CommitteeAdvisory_15112022%5B1%5D.pdf (last visited June 19, 2026).
[45] Ministry of Home Affairs, Government of India, *Model Prisons and Correctional Services Act, 2023*, s. 31
[46] *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

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allegations made by Tapas Kumar Bhanja that women prisoners were being subjected to sexual exploitation and abuse within the prison system[47]. To prevent such incidents, the authorities must not only provide separate facilities for women prisoners but also ensure greater accountability, proper supervision, staff training, and gender sensitization within prison administration.[48]

Role of Section 479 BNSS, 2023 in Safeguarding the Rights of Undertrial Prisoners.

For the first time in India, this issue was addressed through Section 436A of the Code of Criminal Procedure, 1973[49], which deals with the maximum period for which an undertrial prisoner may be detained during investigation, inquiry, or trial. This provision was largely a response to the landmark judgment of the Supreme Court in ***Hussainara Khatoon v. State of Bihar***[50]. In this case, the Court strongly criticized the criminal justice system for the prolonged detention of accused persons without trial and clarified that the right to a speedy trial is an integral component of the fundamental right guaranteed under Article 21 of the Constitution.[51] However, the ground-level implementation of Section 436A did not produce satisfactory results. According to **NCRB data for 2016**, only 0.07 per cent of undertrial prisoners were released under this provision.[52] The Bharatiya Nagarik Suraksha Sanhita, 2023, was introduced as a significant legislative response to address this problem. Section 479 of the BNSS[53] clearly provides that upon the completion of one-third of the maximum period of imprisonment in the case of first-time offenders, or one-half of such period in the case of other offenders, the Superintendent of Jail shall forthwith make a written application before the court seeking the release of the undertrial prisoner on bail.[54] Such a mandatory obligation upon jail authorities did not exist under the colonial criminal procedure framework. This requirement reflects a

[47] Arushi Bajpai and Vaidehi Sharma, "Unmasking Hardship of Women Undertrials in India", *Live Law*, March 28, 2025, available at: https://www.livelaw.in/articles/unmasking-hardship-women-undertrials-india-287823 (last visited June 19, 2026).
[48] Ibid.
[49] The Code of Criminal Procedure, No. 2 of 1974, s. 436A (India).
[50] *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1369.
[51] Deepti Yadav, "When Exceptions Swallow the Rule: Problem with Section 479 BNSS", *Live Law*, October 17, 2025, available at: https://www.livelaw.in/articles/when-exceptions-swallow-rule-problem-section-479-bnss-307288 (last visited June 20, 2026).
[52] Criminal Justice Research and Advocacy, "Undertrial Prisoners' Dilemma in India", *The Law Institute*, available at: https://thelaw.institute/criminal-justice-research-and-advocacy/undertrial-prisoners-dilemma-india/ (last visited June 20, 2026).
[53] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, s. 479 (India).
[54] Anantam Legal, "Section 479 BNSS: Relief for Undertrials", *Anantam Legal*, September 4, 2024, available at: https://anantamias.com/section-479-bnss-relief-for-undertrials/ (last visited June 20, 2026).

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legislative commitment towards promoting equality, justice, and the protection of personal liberty.

Further, the Central Government clarified before the Supreme Court that Section 479 would operate retrospectively. Consequently, the obligations imposed upon jail authorities under this provision also extend to eligible undertrial prisoners already in custody.[55]

Despite its progressive nature, Section 479 appears to contain certain limitations that may undermine its effectiveness. The first concern relates to the exclusion of persons accused of offences punishable with death or life imprisonment[56]. This issue must be examined in light of Article 21 of the Constitution. While the right to life and personal liberty is not an absolute right and may be restricted through a procedure established by law, the Supreme Court in ***Maneka Gandhi v. Union of India*** [57]clarified that such procedure must be fair, just, reasonable, and non-arbitrary. Viewed from this perspective, the complete exclusion of persons accused of offences punishable with death or life imprisonment raises important constitutional concerns. The legislature has not prescribed any maximum detention period for such undertrial prisoners despite the fact that they continue to enjoy the presumption of innocence until proven guilty. The right to a speedy trial is available to all accused persons irrespective of the nature of the offence. Therefore, where the State is unable to ensure a speedy trial, it may be argued that an alternative remedy should be available under Section 479.

The second concern relates to the exclusion of persons against whom investigation, inquiry, or trial is pending in multiple cases. The provision effectively denies its benefit merely because more than one criminal case is registered against an accused person. This exclusion also raises concerns under Article 21[58], particularly when the mere existence of multiple pending cases becomes sufficient to deny the statutory benefit of release. It is difficult to identify a convincing justification for this exclusion, especially when the accused continues to enjoy the presumption of innocence in all pending matters.

These two exceptions substantially reduce the scope and effectiveness of Section 479. While the provision represents an important step towards protecting the rights of undertrial prisoners, its full potential may remain unrealized unless these exclusions are reconsidered in light of

[55] ET Bureau, "BNSS Sec 479 to Apply with Retrospective Effect: Govt to Supreme Court", *The Economic Times*, August 23, 2024, available at: https://economictimes.indiatimes.com/news/india/bnss-sec-479-to-apply-with-retrospective-effect-govt-to-supreme-court/articleshow/112748243.cms (last visited June 20, 2026).
[56] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, s. 479(1) (India)
[57] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[58] Deepti Yadav, "When Exceptions Swallow the Rule: Problem with Section 479 BNSS", *Live Law*, October 17, 2025, available at: https://www.livelaw.in/articles/when-exceptions-swallow-rule-problem-section-479-bnss-307288 (last visited June 20, 2026).

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constitutional principles of liberty, fairness, and equality.

Denial of Voting Rights to Undertrial Prisoners: Undermining Constitutional Values and the Presumption of Innocence.

Dr. B.R. Ambedkar famously observed that in a democracy every adult citizen has one vote and each vote carries equal value. There is no doubt that the right to vote occupies a central place in India's democratic framework. However, an important question arises: why is there no value attached to the votes of undertrial prisoners in India, even though their guilt has not been proved in a court of law? This question must be examined from both a constitutional perspective and the standpoint of international human rights law.

In India, a blanket restriction on the voting rights of undertrial prisoners exists under Section 62(5) of the Representation of the People Act, 1951[59]. This provision clarified that no person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or otherwise, or is in the lawful custody of the police. This restriction derives its constitutional basis from Article 326 of the Constitution[60], which provides that elections to the House of the People and the Legislative Assemblies of States shall be based on adult suffrage and that every citizen who is eighteen years of age or above and is not otherwise disqualified under law shall be entitled to vote.

The constitutional validity of Section 62(5) must therefore be examined in light of Article 14 and the principle of presumption of innocence flowing from Article 21 of the Constitution. It is declared under Article 14 that all persons shall enjoy equality before the law and equal protection of the laws.". Although the Constitution permits reasonable classification, such classification must satisfy established constitutional requirements. In ***State of West Bengal v. Anwar Ali Sarkar***[61], the Supreme Court laid down two essential tests for determining the validity of a classification.

The foremost requirement is the establishment of an intelligible differentia. The classification must be clear and non-arbitrary. Seen from this standpoint, the current legal framework fails to provide a legitimate rationale for denying undertrial prisoners the right to vote[62]. The provision groups together convicted prisoners and undertrial prisoners despite the fundamental

[59] The Representation of the People Act, No. 43 of 1951, s. 62(5) (India).
[60] Constitution of India, art. 326.
[61] *State of West Bengal v. Anwar Ali Sarkar*, 1952 SCR 284.
[62] Chintan Shah, "SC Reopens Debate on Voting Rights for Undertrial Prisoners, Challenges Blanket Ban", *Bharat Law AI*, October 14, 2025, available at: https://www.bharatlaw.ai/post/sc-reopens-debate-on-voting-rights-for-undertrial-prisoners-challenges-blanket-ban (last visited June 20, 2026).

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distinction that undertrial prisoners continue to enjoy the presumption of innocence.

The second requirement is the existence of a rational nexus between the classification and the legislative objective sought to be achieved. The justification commonly advanced for Section 62(5) is the maintenance of electoral purity and the prevention of the criminalization of politics[63]. However, from both domestic and international legal perspectives, an accused person remains innocent until proven guilty by a competent court of law. If undertrial prisoners are legally presumed innocent, it is difficult to understand how permitting them to exercise their franchise would undermine the purity of the electoral process. Undertrial prisoners are not convicted criminals, and therefore the objective of preventing criminalization of politics appears only weakly connected with their disenfranchisement.

The Supreme Court further expanded the scope of Article 14 in ***E.P. Royappa v. State of Tamil Nadu***[64], where **Justice Bhagwati** emphasized that equality is opposed to arbitrariness and that State action must be fair, reasonable, and non-discriminatory. On the application of this principle, the denial of voting rights to undertrial prisoners becomes a matter of profound concern. If an undertrial prisoner is ultimately acquitted, no mechanism exists to compensate for the loss of participation in the democratic process during the period of detention.

The restriction also appears discriminatory in another respect. A person accused of the same offence who secures bail retains the right to vote, whereas an undertrial prisoner who remains in custody due to poverty or inability to satisfy bail conditions loses that right. If the true objective of the law is to prevent criminalization of politics, then the distinction between an accused person on bail and an accused person in custody becomes difficult to justify[65]. The practical implication is that persons from economically weaker sections are disproportionately deprived of the right to vote.

In this context, the Supreme Court's decision in ***Anukul Chandra Pradhan v. Union of India*** [66]assumes significance. The Court held that the right to vote is a statutory right and not a fundamental right. While this proposition is legally correct, it may be argued that the Court did not sufficiently engage with the implications of the presumption of innocence while upholding Section 62(5). The Court further justified the provision on administrative grounds, observing that permitting prisoners to vote would require extensive security arrangements and

[63] Ibid.
[64] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3
[65] Dhruti Kapadia, "Voting Rights Behind Bars: Addressing the Disenfranchisement of Undertrial Prisoners in India", *Juris Centre*, July 20, 2024, available at: https://juriscentre.com/2024/07/20/voting-rights-behind-bars-addressing-the-disenfranchisement-of-undertrial-prisoners-in-india/ (last visited June 20, 2026).
[66] *Anukul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814.

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deployment of additional police personnel. Although such reasoning may have been persuasive at the time, its continuing relevance is open to debate in an era characterized by technological advancements and alternative voting mechanisms adopted in several jurisdictions.

The Court also observed that the object of the provision was to exclude persons with criminal backgrounds from participating in the electoral process. An important question remains: does the mere registration of a criminal case and subsequent detention suffice to establish a criminal background? Such an assumption appears inconsistent with the presumption of innocence that lies at the heart of criminal jurisprudence.[67]

Moreover, the electoral framework itself reveals an apparent inconsistency. Under the Representation of the People Act, a person facing criminal charges may, in certain circumstances, contest elections unless disqualified by law[68]. This raises a significant constitutional question. If an accused person may contest an election, why should an undertrial prisoner be denied the comparatively limited right to cast a vote? Such inconsistencies create an impression that the existing legal framework disproportionately affects those who lack political influence or financial resources and are therefore unable to secure bail.

In ***N.P. Ponnuswami v. Returning Officer***[69], the Supreme Court observed that the right to vote and the right to contest elections are creations of statute and are therefore subject to statutory limitations. Nevertheless, an important constitutional question arises when such limitations disproportionately affect individuals who continue to enjoy the presumption of innocence. If a statutory restriction operates in a manner that appears unfair, unreasonable, or arbitrary, particularly in relation to undertrial prisoners, its compatibility with constitutional values deserves closer scrutiny.

Furthermore, the blanket denial of voting rights to undertrial prisoners undermines the presumption of innocence, which forms an integral part of Article 21 of the Constitution. International human rights bodies have also expressed concern regarding such restrictions. The United Nations Human Rights Committee has observed that the denial of voting rights solely on the basis of custodial status may be inconsistent with the principle of presumption of innocence. Consequently, the continued disenfranchisement of undertrial prisoners raises serious questions regarding the commitment of the Indian legal system to equality, liberty, and democratic participation.

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[67] Ibid.

[68] Chintan Shah, "SC Reopens Debate on Voting Rights for Undertrial Prisoners, Challenges Blanket Ban", *Bharat Law AI*, October 14, 2025, available at: https://www.bharatlaw.ai/post/sc-reopens-debate-on-voting-rights-for-undertrial-prisoners-challenges-blanket-ban (last visited June 20, 2026).

[69] *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64

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International Practices on Voting Rights of Undertrial Prisoners.

In the matter of voting rights for undertrial prisoners, India should learn from and adopt certain practices followed by foreign jurisdictions in order to protect democratic participation and provide undertrial prisoners with an opportunity to exercise their franchise.

The experience of the United Kingdom stands out as particularly instructive for the present issue. The country was compelled to re-examine its approach following the landmark judgment in ***Hirst v. United Kingdom (2005)***[70], wherein the European Court of Human Rights held that a blanket ban on prisoner voting violated the European Convention on Human Rights. The judgment demonstrated that indiscriminate restrictions on voting rights are incompatible with democratic values and human rights principles.[71]

Italy follows one of the most practical approaches towards prisoner voting. By virtue of Italian law, individuals in pre-trial detention continue to enjoy voting rights, which they may exercise in the locality of their detention. The votes cast by prisoners are transmitted to the mayor of the relevant municipality through the prison administration. This mechanism ensures that detention does not result in disenfranchisement.[72]

France has also adopted a progressive approach. Prisoners may exercise their voting rights through postal ballots, proxy voting, or by attending polling stations where permitted. One feature of the French system that India may particularly consider adopting is the obligation imposed upon prison authorities to facilitate electoral participation. Prison governors are required to inform eligible prisoners of election dates and voting procedures and to assist them in registration and documentation[73]. Such measures are especially relevant in the Indian context, where a significant proportion of undertrial prisoners belong to economically weaker sections and may lack awareness of their legal rights.

Australia likewise permits voting by prisoners on remand, recognizing that such individuals are not serving a sentence of imprisonment and continue to enjoy the presumption of innocence. Australian law provides mechanisms such as postal voting and mobile polling booths

[70] *Hirst v. United Kingdom (No. 2)*, Application No. 74025/01, Judgment dated 6 October 2005, European Court of Human Rights (Grand Chamber).

[71] Advocate (Dr.) Abhishek Gandhi, "Are Undertrial Prisoners Allowed to Vote in India? A Comprehensive Legal Explanation for Citizens, Rights, Exceptions, and Supreme Court Insights", *Advocate Gandhi*, November 18, 2025, available at: https://advocategandhi.com/are-undertrial-prisoners-allowed-to-vote-in-india-a-comprehensive-legal-explanation-for-citizens-rights-exceptions-and-supreme-court-insights/ (last visited June 20, 2026).

[72] Martina Prpic, *Prisoners' Voting Rights in European Parliament Elections* (European Parliamentary Research Service, PE 751.459, September 2023), available at: European Parliament Briefing PDF (last visited June 20, 2026).

[73] Ibid.

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established by the Australian Electoral Commission. These arrangements facilitate electoral participation without compromising security or administrative efficiency.[74]

Canada provides another noteworthy example. Section 3 of the Canadian Charter of Rights and Freedoms guarantees [75]the right to vote, and prisoners are permitted to exercise this right through a special ballot system. The Canadian model demonstrates a robust commitment to democratic inclusion and the equal citizenship of all persons.[76]

The United States also offers important lessons regarding the voting rights of pre-trial detainees. Constitutional protections rooted in the section 1of Equal Protection Clause of the Fourteenth Amendment[77], read alongside judicial authority such as ***O'Brien v. Skinner,***[78] in this case court underscore the impermissibility of arbitrary exclusion from the electoral process. have established that under-trial detainees cannot be denied the right to vote merely because of their detention. The rationale underlying this position is that detention prior to conviction does not extinguish an individual's political rights.

Furthermore, several European nations have adopted even broader approaches. Approximately eighteen European countries permit all prisoners to vote regardless of their custodial status. Countries such as Iran, Israel, and India's neighbouring country Pakistan also provide voting rights to prisoners in varying forms.[79]

These international practices demonstrate that the protection of electoral rights and the maintenance of prison security are not mutually exclusive objectives. Through postal ballots, proxy voting, special ballot mechanisms, and institutional assistance provided by prison authorities, numerous democratic nations have successfully ensured that detention does not automatically result in political exclusion. India may therefore draw valuable lessons from these jurisdictions while reconsidering the disenfranchisement of undertrial prisoners under its existing legal framework.

[74] Amity Mara and Monique Hurley, "Voting", in *The Law Handbook* (Fitzroy Legal Service, 2024), available at: https://www.thelawhandbook.org.au/38-imprisonment-and-the-rights-of-people-in-prison/voting (last visited June 20, 2026).
[75] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, s. 3 (Canada).
[76] Department of Justice Canada, *Charterpedia – Section 3: Democratic Rights*, available at: https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art3.html (last visited June 20, 2026).
[77] Constitution of the United States of America, Amendment XIV, § 1.
[78] *O'Brien v. Skinner*, 414 U.S. 524 (1974).
[79] Prashant Kumar, "Prisoners' Right to Vote: Citizen Without a Vote?", *Economic and Political Weekly (EPW) Engage*, October 13, 2022, available at: https://www.epw.in/engage/article/prisoners-right-vote-citizen-without-vote3 (last visited June 20, 2026).

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Conclusion.

India must undertake substantial criminal justice reforms to protect the rights of undertrial prisoners. The foremost priority should be ensuring the effective realization of the constitutional guarantee of a fair and speedy trial. At the same time, courts should adopt a more liberal approach in bail matters, particularly in cases involving young persons, economically disadvantaged individuals, and members of marginalized communities. The State must also increase the number of exclusive prisons and detention facilities for women undertrial prisoners in order to ensure their dignity, safety, and welfare.

The nation must reaffirm its commitment to the rule of law, especially in matters relating to bail. It has a constitutional obligation to ensure that incidents such as the ordeal faced by Professor G.N. Saibaba are not repeated. Such cases create a perception among ordinary citizens that constitutional rights are more accessible to politically influential and financially privileged individuals than to the poor and vulnerable. A democratic society governed by the rule of law cannot permit such perceptions to persist.

Furthermore, India should take concrete steps to facilitate the voting rights of undertrial prisoners based on the principle of presumption of innocence. Comparative practices adopted by several democratic nations demonstrate that electoral participation can be ensured through mechanisms such as postal ballots, proxy voting, and other institutional arrangements without compromising security or administrative efficiency.

"Rabindranath Tagore's observation that 'justice cries behind closed doors' continues to resonate in the context of undertrial detention." The issues of poverty and inequality are most visibly reflected in the administration of bail. In many cases, undertrial prisoners remain incarcerated not because they have been found guilty, but because they lack the financial means necessary to secure their release. In such circumstances, the State has a constitutional responsibility to provide effective legal assistance and institutional support.

Although Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 represents a significant step towards protecting the rights of undertrial prisoners, the broad exceptions contained within the provision substantially limit its effectiveness. Consequently, the legislature's pledge of liberty and justice stands fulfilled only in part.

Ultimately, constitutional courts are the guardians of the Constitution and the primary protectors of fundamental rights. However, in many instances, the foundational principle that "bail is the rule and jail is the exception" appears to have been overlooked in practice. Justice **S. Oka rightly observed that courts have, at times, failed to fulfil the expectations of the**

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people[80]. Today, the Indian judiciary bears a profound responsibility to strengthen public confidence in the administration of justice. Citizens continue to place their faith in the courts as institutions capable of safeguarding liberty and constitutional values. It is therefore incumbent upon the judiciary to see that justice is not confined to principle but translated into practice. Failure to do so may erode public trust not only in the judicial system but also in the democratic institutions that derive their legitimacy from the Constitution itself.

[80] Judiciary Has Failed to Live Up to People's Expectations: Former Supreme Court Justice A.S. Oka", *Bar & Bench*, March 31, 2026, available at: https://www.barandbench.com/news/judiciary-has-failed-to-live-up-to-peoples-expectations-former-supreme-court-justice-as-oka (last visited June 20, 2026).