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BEYOND THE BAIL ORDER: ADMINISTRATIVE DELAY IN THE ACTUAL RELEASE OF BAIL-GRANTED PRISONERS AND ITS CONSTITUTIONAL IMPLICATIONS UNDER ARTICLE 21

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Abstract

A bail order declares that the State no longer has a lawful reason to hold a person, yet in India the order and the opening of the jail gate are often separated by days, weeks and, in extreme cases, years. This paper examines that "release gap", the interval between a bail or release order and actual release, and its constitutional implications under Article 21. Using doctrinal analysis of the Constitution, the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 (especially sections 479, 484, 485 and 487), together with Supreme Court jurisprudence up to November 2026 and official data from the National Crime Records Bureau, NALSA and Undertrial Review Committees, it argues that custody continuing after the bond is executed has no legal foundation and, beyond a brief ministerial period, amounts to detention without the authority of law. The paper develops a six-part typology of causes: communicative delay, technical refusal, financial and surety barriers, absence of counsel, institutional deliberation and verification friction. It then evaluates the remedies devised since 2021, including the FASTER system, the directions in In Re Policy Strategy for Grant of Bail (2023), the Support to Poor Prisoners scheme, the retrospective application of section 479 BNSS, and the compensation awarded in Aftab (2025), Daudayal (2026) and Devilal Gond (2026). Official data show that only about 28 to 47 per cent of identified cohorts were released, and comparison with the European Court of Human Rights shows that India tolerates delays measured in days where Strasbourg counts hours. The paper concludes that current remedies assign tasks without enforceable duties and recommends a 24-hour statutory release limit, a deemed-receipt rule for electronic orders, a statutory compensation scheme and a published "release clock".

Keywords: *Article 21; personal liberty; bail execution; release delay; undertrial prisoners; Bharatiya Nagarik Suraksha Sanhita, 2023; section 487 BNSS; FASTER; constitutional tort; compensation for illegal detention; legal aid.*

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1. INTRODUCTION[1]

1.1 Background

A bail order is a judicial declaration that the State no longer has a lawful reason to keep a person in custody. Indian constitutional law has long treated bail as the rule and jail as the exception.[2] Yet the order is only the first step towards freedom. Between the pronouncement of the order and the opening of the jail gate lies a chain of ministerial acts: uploading and certifying the order, executing a bond, verifying sureties, issuing a release warrant, transmitting it to the prison and verifying it there. Each step is performed by an official who is not a judge, under rules that are rarely written down, and with almost no consequence for delay. When that chain breaks, a person whom a court has already freed stays in a cell. This paper calls that gap the *release gap* and the people inside it *bailed-but-not-released* prisoners.

The scale of the problem is no longer anecdotal. In January 2023 the National Legal Services Authority (NALSA) told the Supreme Court that about 5,000 undertrial prisoners were still in jail despite bail orders in their favour.[3] Prison Statistics India shows that undertrials made up 75.8 per cent of all prisoners in 2022 and 73.5 per cent in 2023.[4] In 2024 more than 15.9 lakh undertrials left prison during the year, about 95 per cent of them on bail.[5] At that volume, an average delay of even one day between order and release would add up to more than 4,000 person-years of detention without legal authority every year. The release gap is therefore not a marginal irregularity. It is a structural feature of Indian criminal justice that touches hundreds of thousands of people.

Recent rulings show the gap in its starkest form. In *Aftab* v. *State of Uttar Pradesh* (2025) a man granted bail by the Supreme Court stayed in Ghaziabad District Jail for 28 days because the release order omitted a sub-section of the statute under which he was charged; the Court awarded ₹5 lakh as interim compensation.[6] In *Daudayal* v. *State of Rajasthan* (2026) a prisoner was held for 24 days after a High Court release order while officials considered whether to

[1]Author, Amity University, Manesar (Haryana), India. E-mail: simranmoun242@gmail.com. The author declares no conflict of interest. All figures are compiled by the author from the public sources stated beneath each figure.
[2]*State of Rajasthan* v. *Balchand*, (1977) 4 SCC 308; *Gudikanti Narasimhulu* v. *Public Prosecutor*, (1978) 1 SCC 240.
[3]*In Re Policy Strategy for Grant of Bail*, SMWP (Crl.) No. 4 of 2021, order dated Jan. 31, 2023, 2023 LiveLaw (SC) 76; see also "SC Asks Courts to Modify Bail Conditions Imposed on Undertrial Prisoners if Bonds Not Furnished Within a Month", *Verdictum*, Feb. 1, 2023.
[4]National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, New Delhi, 2023); National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs, New Delhi, 2025).
[5]Analysis of *Prison Statistics India 2024* in "National Prison Indicators, 2022–2024", Research Square Preprint rs-10743922, available at: https://www.researchsquare.com/article/rs-10743922 (last visited on Nov. 20, 2026).
[6]*Aftab* v. *State of Uttar Pradesh*, M.A. (Diary No. 31175 of 2025) in Crl. A. No. 2295 of 2025, order dated June 25, 2025 (Supreme Court of India); "Supreme Court Asks UP Govt to Pay Rs 5 Lakh Interim Compensation to Prisoner Not Released over Clerical Omission in Bail Order", *LiveLaw*, June 25, 2025.

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appeal; the Court awarded ₹11 lakh.[7] In November 2026 the Court called a 36-day post-bail detention in *Saddam* v. *State of Uttar Pradesh* "very disturbing" and asked the State to show cause why compensation should not be paid,[8] and in *Devilal Gond* v. *State of Chhattisgarh* it awarded ₹30 lakh to a man who remained in prison for more than seven years after his acquittal because the order never reached the jail.[9]

1.2 Research Problem

Scholarship and policy on bail in India have focused on the *grant* of bail: the standards for granting it, the length of pre-trial detention and the conditions imposed. Far less attention has gone to the *execution* of bail, the interval during which the judicial decision has been made but the person is still in custody. This interval sits in a doctrinal blind spot. It is not a question of judicial discretion, because the court has already decided. It is not clearly a question of prison administration, because the prison says it is waiting for the court. The result is that no one is clearly responsible for it, and the person in custody bears the cost.

1.3 Research Questions

The paper asks four questions. First, what is the legal status of custody that continues after a bail or release order has been made and the bond executed? Second, what are the institutional causes of the release gap in India? Third, how adequate are the judicial and executive responses developed between 2021 and 2026? Fourth, what legal design would make the right to be released enforceable rather than aspirational?

1.4 Objectives and Hypothesis

The objectives are to map the statutory duty to release under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); to classify the causes of delayed release; to evaluate the Supreme Court's remedial jurisprudence; and to propose statutory and administrative reforms. The working hypothesis is that post-order detention beyond a short ministerial period is detention without the authority of law and therefore violates Article 21, and that the remedies devised so far fail mainly because they assign tasks without assigning enforceable duties and

[7] *Daudayal* v. *State of Rajasthan*, 2026 LiveLaw (SC) 567 (decided on May 29, 2026).
[8] *Saddam* v. *State of Uttar Pradesh*, M.A. No. 3205 of 2026 in Crl. A. No. 4621 of 2026, order dated Nov. 3, 2026 (Supreme Court of India); "Illegal Detention after Bail: Supreme Court Asks UP Why Compensation Should Not Be Paid", *LawChakra*, Nov. 4, 2026.
[9] *Devilal Gond* v. *State of Chhattisgarh* (Supreme Court of India, Nov. 2026); "Supreme Court Orders ₹30 Lakh Compensation to Man Kept in Jail for over 7 Years despite Acquittal", *Bar & Bench*, Nov. 17, 2026.

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consequences.

1.5 Methodology

The study is doctrinal and analytical, supplemented by secondary empirical data. Primary sources include the Constitution of India, the Code of Criminal Procedure, 1973 (CrPC), the BNSS, the Legal Services Authorities Act, 1987, the Model Prisons and Correctional Services Act, 2023, and Supreme Court judgments and orders up to November 2026. Secondary sources include NCRB prison statistics, NALSA and Undertrial Review Committee (UTRC) data, the India Justice Report 2025, Law Commission reports, books and journal articles. Comparative material is drawn from the European Court of Human Rights, the United Kingdom and the United States. Figures 1 to 6 present the data visually; all figures are compiled by the author from the sources stated beneath each figure.

1.6 Scope and Limitations

The paper concerns persons who have been granted bail, interim bail, parole or acquittal and whose release is delayed after that order. It does not examine the merits of bail decisions. Reliable national data on the length of release delays is not published, so the analysis relies on reported cases, official snapshots and campaign data. That absence of data is itself one of the findings.

2. REVIEW OF LITERATURE

2.1 Constitutional Jurisprudence on Bail and Liberty

The modern Indian law of bail grew out of the Supreme Court's engagement with undertrial detention in the late 1970s. In *Hussainara Khatoon* the Court found thousands of undertrials in Bihar held for periods longer than the maximum sentence for their alleged offences and declared speedy trial a part of Article 21.[10] In *Moti Ram* Krishna Iyer J. criticised the insistence on sureties from the same district and excessive monetary conditions as discriminatory against the poor.[11] *Maneka Gandhi* required any procedure depriving a person of liberty to be just, fair and reasonable,[12] and *Sunil Batra* held that prisoners retain fundamental rights subject only to the limits that lawful custody necessarily imposes.[13]

[10] *Hussainara Khatoon* v. *Home Secretary, State of Bihar*, (1980) 1 SCC 81.
[11] *Moti Ram* v. *State of Madhya Pradesh*, (1978) 4 SCC 47.
[12] *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248.
[13] *Sunil Batra* v. *Delhi Administration*, (1978) 4 SCC 494.

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Later decisions built on this base. *Sanjay Chandra* reaffirmed that the object of bail is to secure the accused's appearance, not to punish.[14] *Arnab Manoranjan Goswami* stressed that even a single day's deprivation of liberty is a day too many,[15] and *K.A. Najeeb* held that constitutional courts may grant bail even under restrictive statutes when trial is delayed.[16] *Satender Kumar Antil* then issued comprehensive guidelines on bail, including compliance with the time limits for undertrial detention and the use of section 440 CrPC to avoid unaffordable conditions.[17] Commentators such as Seervai and Jain treat these cases as the expansion of Article 21 from a guarantee against executive action without law into a guarantee of fair process.[18] What this body of law does not address directly is the person whose bail has already been granted.

2.2 Empirical Literature on Undertrial Detention

The Law Commission flagged undertrial congestion as early as its 78th Report and returned to bail in its 268th Report, which recommended a presumption of release and limits on monetary conditions.[19] Amnesty International India's study of pre-trial detention documented the role of poverty and the absence of counsel in prolonging custody.[20] The India Justice Report 2025 records that undertrials rose from 66 per cent of prisoners in 2012 to 76 per cent by December 2022, and that per-capita legal aid spending remains about ₹6.46 a year.[21] The NALSAR Fair Trial Programme report on Pune and Nagpur prisons shows how delayed bail applications, missing sureties and broken communication with families keep people in jail; it handled 5,783 cases of 4,649 undertrials between 2019 and 2024.[22] Muralidhar's earlier work on legal aid and criminal justice made a similar point: rights on paper fail where the poor cannot reach the machinery that delivers them.[23]

[14] *Sanjay Chandra* v. *Central Bureau of Investigation*, (2012) 1 SCC 40.
[15] *Arnab Manoranjan Goswami* v. *State of Maharashtra*, (2021) 2 SCC 427.
[16] *Union of India* v. *K.A. Najeeb*, (2021) 3 SCC 713.
[17] *Satender Kumar Antil* v. *Central Bureau of Investigation*, (2022) 10 SCC 51.
[18] H.M. Seervai, *Constitutional Law of India*, vol. 2, 1050–1080 (Universal Law Publishing, Delhi, 4th edn., 1993); M.P. Jain, *Indian Constitutional Law* 1260–1290 (LexisNexis, Gurgaon, 8th edn., 2018).
[19] Law Commission of India, "78th Report on Congestion of Under-Trial Prisoners in Jails" (1979); Law Commission of India, "268th Report on Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail" (May, 2017).
[20] Amnesty International India, *Justice under Trial: A Study of Pre-trial Detention in India* (Amnesty International India, Bengaluru, 2017).
[21] Tata Trusts, *India Justice Report 2025: Ranking States on Police, Judiciary, Prisons and Legal Aid* (Tata Trusts, Mumbai, 2025).
[22] Monica Sakhrani, *Legal Aid on the Ground: Report of the Fair Trial Programme* (The Square Circle Clinic, NALSAR University of Law, Hyderabad, 2025).
[23] S. Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice* (LexisNexis Butterworths, New Delhi, 2004).

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2.3 Administrative and Socio-Legal Theory

Three strands of theory help explain why release is delayed. Feeley's study of a lower criminal court showed that in practice the costs of the process, including waiting, bond and repeated appearances, often outweigh any formal sentence; the process itself becomes the punishment.[24] Lipsky's account of street-level bureaucracy explains how front-line officials ration time and attention under heavy caseloads, often by insisting on formalities that shift risk away from themselves.[25] A jail clerk who refuses a release order because a sub-section is missing is acting exactly as that theory predicts: the clerk bears the risk of a wrongful release but not the cost of a wrongful detention. Galanter's analysis of repeat players adds that the State, as a repeat litigant, can absorb delay at little cost while the one-shot prisoner cannot.[26] Baxi's description of a legal system in crisis, in which law on the books is routinely defeated by institutional practice, remains apt.[27]

2.4 Comparative and Empirical Literature on Pre-trial Detention

Foote's classic study argued that money bail produces unequal liberty for rich and poor.[28] More recent empirical work shows that even short detention has measurable effects: it raises the probability of conviction, often through guilty pleas, and reduces later employment.[29] Simonson has examined community bail funds as a response to unaffordable bail, a model that resembles India's Support to Poor Prisoners scheme.[30] Krishnan and his co-authors documented, for India's lower courts, how access to justice depends on intermediaries such as lawyers, clerks and touts.[31] Chandra and Satish have shown how Indian criminal procedure has been reshaped by constitutional adjudication but remains uneven at the level of practice.[32]

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[24]Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (Russell Sage Foundation, New York, 1979).
[25]Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russell Sage Foundation, New York, 1980).
[26]Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" 9 *Law & Society Review* 95 (1974).
[27]Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House, New Delhi, 1982); Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" 4 *Third World Legal Studies* 107 (1985).
[28]Caleb Foote, "The Coming Constitutional Crisis in Bail: I" 113 *University of Pennsylvania Law Review* 959 (1965).
[29]Paul Heaton, Sandra Mayson and Megan Stevenson, "The Downstream Consequences of Misdemeanor Pretrial Detention" 69 *Stanford Law Review* 711 (2017); Will Dobbie, Jacob Goldin and Crystal S. Yang, "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges" 108 *American Economic Review* 201 (2018).
[30]Jocelyn Simonson, "Bail Nullification" 115 *Michigan Law Review* 585 (2017).
[31]Jayanth K. Krishnan, Shirish N. Kavadi, et al., "Grappling at the Grassroots: Access to Justice in India's Lower Tier" 27 *Harvard Human Rights Journal* 151 (2014).
[32]Aparna Chandra and Mrinal Satish, "Criminal Law and the Constitution" in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford University Press,

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2.5 Research Gap

The literature explains why people are detained before trial and why bail is unaffordable. It says little about the period after bail has been granted and the conditions met. Recent commentary has begun to name the issue: Khaitan describes "administrative inertia" that defeated the Supreme Court's 2023 directions and points to RTI data showing at least 236 bailed prisoners still in custody across Uttar Pradesh in October 2026.[33] No sustained study yet links the doctrine of Article 21, the BNSS release provisions, the compensation jurisprudence and comparative standards into a single account. This paper attempts that synthesis.

3. ANALYSIS AND DISCUSSION

3.1 The Statutory Architecture of Release

The BNSS came into force on July 1, 2024 and re-enacted the bail chapter of the CrPC with some changes.[34] Three provisions matter most for release. Section 484, like section 440 CrPC, requires the amount of every bond to be fixed with due regard to the circumstances of the case and not to be excessive, and empowers the High Court or Sessions Court to reduce it.[35] Section 485 governs the bond of the accused and sureties. Section 487, reproducing section 442 CrPC, provides that as soon as the bond or bail bond has been executed the person *shall* be released, and that when the person is in jail the court shall issue an order of release to the officer in charge, who *on receipt of the orders shall release him*.[36] Sub-section (2) allows continued detention only where the person is liable to be detained for some other matter.

Section 487 is drafted as a mandatory duty in two stages: the court must issue the release order and the jail officer must act upon it. Neither stage carries a time limit, and neither stage carries a sanction. The provision assumes that once the order is received, release follows as a matter of course. Practice shows that the assumption fails in at least six ways, set out in section 3.2. Section 479 BNSS, which replaced section 436A CrPC, adds a separate entitlement: an undertrial who has served half the maximum sentence must be released on bail, and a first-time offender who has served one-third must be released on bond, with a specific duty on the jail superintendent to apply to the court.[37] In August 2024 the Supreme Court held that section 479 applies to undertrials in cases registered before July 1, 2024 and directed superintendents to

Oxford, 2016).
[33]Akshat Khaitan, "In Jail Despite Bail: Administrative Inertia and the Unenforced Right to Personal Liberty", *The Leaflet*, Oct. 21, 2026.
[34]The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ch. XXXV, ss. 478–496.
[35]*Id.*, s. 484; The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 440.
[36]BNSS, s. 487(1); CrPC, s. 442(1).
[37]BNSS, s. 479(1)–(3).

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process such applications.[38] Section 479 therefore creates a second route to a release order, which is subject to the same execution gap.

Around these provisions sit administrative instruments. The Model Prison Manual, 2016 and the Model Prisons and Correctional Services Act, 2023 deal with admission, classification and release, and prompt prisons to adopt electronic records.[39] Because "prisons" is a State subject under Entry 4 of List II of the Seventh Schedule, these are models only; each State retains its own jail manual, many of them old and requiring "complete particulars" before a release.[40] The Information Technology Act, 2000 gives legal recognition to electronic records and signatures, which removes any legal objection to acting on an e-authenticated order.[41] The Legal Services Authorities Act, 1987 entitles every person in custody to free legal services, which places District Legal Services Authorities (DLSAs) at the centre of any effort to help prisoners who cannot meet bail conditions.[42]

[38]*In Re: Inhuman Conditions in 1382 Prisons*, W.P. (C) No. 406 of 2013, orders dated Aug. 13 and Aug. 23, 2024 (Supreme Court of India); Abhinav Sekhri, "Retrospective Application of BNSS and the Supreme Court Order in 1382 Prisons", *The Proof of Guilt*, Aug. 28, 2024.
[39]Ministry of Home Affairs, *Model Prison Manual* (2016); Ministry of Home Affairs, *Model Prisons and Correctional Services Act* (2023).
[40]The Constitution of India, sch. VII, list II, entry 4; for the reliance on a jail manual's requirement of complete particulars, see "Supreme Court Grants ₹5 Lakhs Compensation for Delay in Prisoner's Release after Bail", *Supreme Court Observer*, June 2025.
[41]The Information Technology Act, 2000 (Act 21 of 2000), ss. 4, 5.
[42]The Legal Services Authorities Act, 1987 (Act 39 of 1987), ss. 12(g), 13; The Constitution of India, art. 39A.

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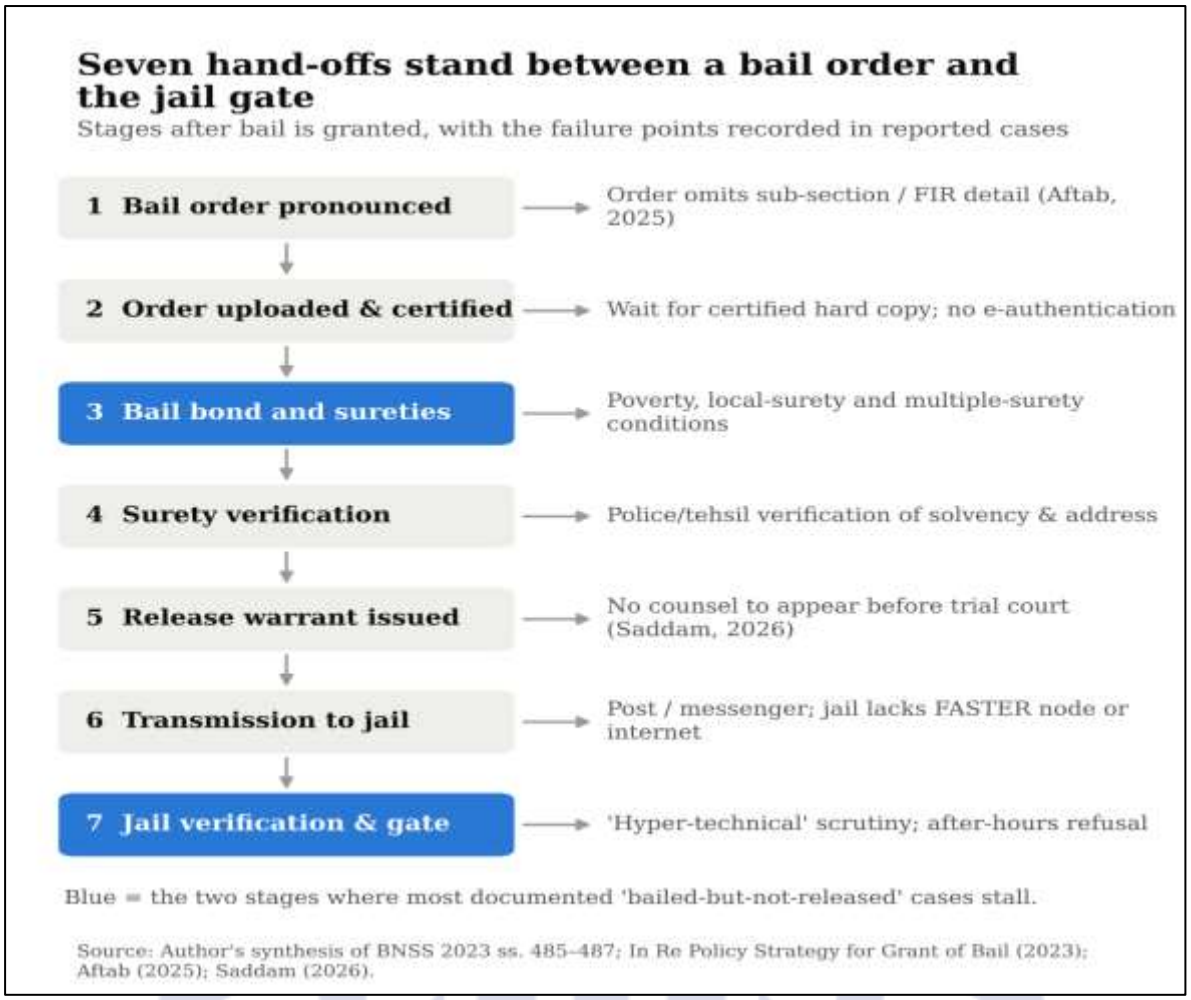

Figure 2: *The bail-to-release pipeline: seven hand-offs between the order and the jail gate, with the failure points recorded in reported cases*

3.2 Anatomy of the Release Gap: A Typology

Reported cases and official data suggest six distinct causes of delayed release. They differ in who is at fault and in which remedy fits, so it is useful to separate them.

(a) Communicative delay. The order exists but does not reach the jail in a form the jail will accept. This was the trigger for the Supreme Court's 2021 suo motu case, after 13 convicts in Agra jail who were granted bail on July 8, 2021 were released only about four days later because prison officials waited for certified hard copies.[43] Chief Justice Ramana asked why courts were "still looking at the skies for pigeons" to deliver their orders.[44] At the extreme, communication failure becomes catastrophic:

[43]*In Re: Delay in Release of Convicts after Grant of Bail* (Suo Motu), orders dated July 16, 2021 and Sept. 23, 2021 (Supreme Court of India); "SC Directs States to Implement FASTER System to Enable Electronic Transmission of its Orders to Jail Authorities", *The Leaflet*, Sept. 24, 2021.
[44]Krishnadas Rajagopal, "SC Introduces Fast and Secured Transmission of Electronic Records System", *The Hindu*, Sept. 2021.

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in *Devilal Gond* an acquittal order apparently never reached the jail at all.[45]

(b) Documentary or technical refusal. The order arrives but the jail declines to act because of a perceived defect. In *Aftab* the jail superintendent relied on the jail manual to refuse release because a sub-section was not mentioned, a reading the Supreme Court rejected; the Court described such conduct as nitpicking that keeps a person behind bars.[46] The Court's order of June 25, 2025 records that it had earlier expressed anguish about prisons refusing bail bonds on the pretext of minor mismatches in offences, crime numbers or sections.[47]

(c) Financial and surety barriers. The prisoner cannot furnish the bond or find sureties. This is the most common cause in volume. *Moti Ram* condemned local-surety conditions nearly fifty years ago,[48] yet in *Girish Gandhi* (2024) a petitioner with bail in 13 FIRs across six States could not find separate sureties for each; the Court allowed one set of sureties per State and held that conditions which cannot be met render bail ineffective and must be balanced against Article 21.[49]

(d) Representational gaps. The prisoner has no lawyer to appear before the trial court to have the bond accepted. In *Saddam* the Supreme Court granted bail on September 28, 2026 but left the terms to the trial court; no lawyer was available to appear there, and the man remained in jail until the Court intervened on November 3, 2026.[50] The Court has since held that bailed undertrials who cannot meet conditions are entitled to DLSA assistance even if they earlier engaged private counsel.[51]

(e) Institutional deliberation. The State delays compliance while it decides whether to challenge the order. In *Daudayal* the State attributed 24 days of detention to its internal process of deciding whether to appeal. The Court held that an order must be obeyed unless it is stayed, modified or set aside, and that contemplating an appeal does not suspend it.[52] This "obey first, appeal later" principle is an important clarification because the practice it condemns is common and rarely visible.

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[45] *Supra* note 9.
[46] *Supra* note 6.
[47] *Aftab* v. *State of Uttar Pradesh*, order dated June 25, 2025, paras 1–4, available at: https://api.sci.gov.in/supremecourt/2025/31175/31175_2025_11_25_62217_Order_25-Jun-2025.pdf (last visited on Nov. 20, 2026).
[48] *Supra* note 11.
[49] *Girish Gandhi* v. *State of Uttar Pradesh*, 2024 INSC 617; [2024] 8 SCR 561.
[50] *Supra* note 8.
[51] "Undertrials Unable to Comply with Bail Conditions Entitled to Legal Services Assistance Even if Represented by Private Lawyers: Supreme Court", *Verdictum*, 2025 (reporting an order in *In Re Policy Strategy for Grant of Bail*).
[52] *Supra* note 7.

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(f) Verification and timing friction. Surety verification by police or revenue officials, the closing of jail gates after a certain hour, and the absence of duty officers on holidays add hours or days. These frictions are rarely litigated because each is short, but at the scale of more than 15 lakh bail releases a year their aggregate cost in liberty is very large.[53]

The typology shows that the release gap is not one problem but six, with different owners: the court registry for (a), the prison for (b) and (f), the legal aid system and the court for (c) and (d), and the State's law department for (e). A single remedy, such as faster electronic transmission, addresses only one of them.

3.3 Article 21 and the Legal Status of Post-Order Custody

Article 21 permits deprivation of personal liberty only according to procedure established by law. The question is what law authorises custody after a court has ordered release and the bond has been executed. Before bail, custody rests on a remand order. When bail is granted and the bond executed, section 487 BNSS directs that the person "shall be released". The remand authority is therefore spent, and no other provision authorises continued detention except section 487(2), which covers detention in another matter. From that point, custody has no legal foundation; it continues only as a matter of fact.

This analysis is supported by the habeas corpus cases. *Kanu Sanyal* held that the court examines the legality of detention at the time of the return, and *Poonam Lata* confirmed that detention must be justified by valid legal authority throughout its duration.[54] *Daudayal* relied on both cases and held that continued detention after a release order not stayed by a superior court is illegal detention under Article 21.[55] *Joginder Kumar* and *D.K. Basu* show that the Court treats procedural safeguards around custody as part of the content of Article 21, not as mere administrative rules.[56]

Three conclusions follow. First, there is no general "grace period" in Indian law within which an executed bail order may be ignored. Any delay must be justified as the minimum time reasonably needed for ministerial acts. Second, the burden of justifying delay should lie on the State, because only the State knows why the order was not acted upon. Third, the right engaged

[53] *Supra* note 5.
[54] *Kanu Sanyal* v. *District Magistrate, Darjeeling*, (1973) 2 SCC 674; *Poonam Lata* v. *M.L. Wadhawan*, (1987) 3 SCC 347.
[55] *Supra* note 7.
[56] *Joginder Kumar* v. *State of Uttar Pradesh*, (1994) 4 SCC 260; *D.K. Basu* v. *State of West Bengal*, (1997) 1 SCC 416.

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is not only liberty but dignity, which the Court has recognised as integral to Article 21; a person who knows that a court has freed them but who remains in a cell suffers a distinct harm.[57] The same reasoning applies under Article 22 and to persons released on parole or acquitted, as *Daudayal* and *Devilal Gond* show.

Equality is also engaged. When release depends on the ability to pay for a bond, find local sureties or engage a lawyer, the poor stay longer in custody for the same judicial outcome. That is the classification *Moti Ram* condemned, and it engages Articles 14 and 39A.[58] NCRB data show that undertrials are disproportionately young and poorly educated, and that Scheduled Castes are over-represented among them in several States.[59] The release gap therefore compounds existing social disadvantage.

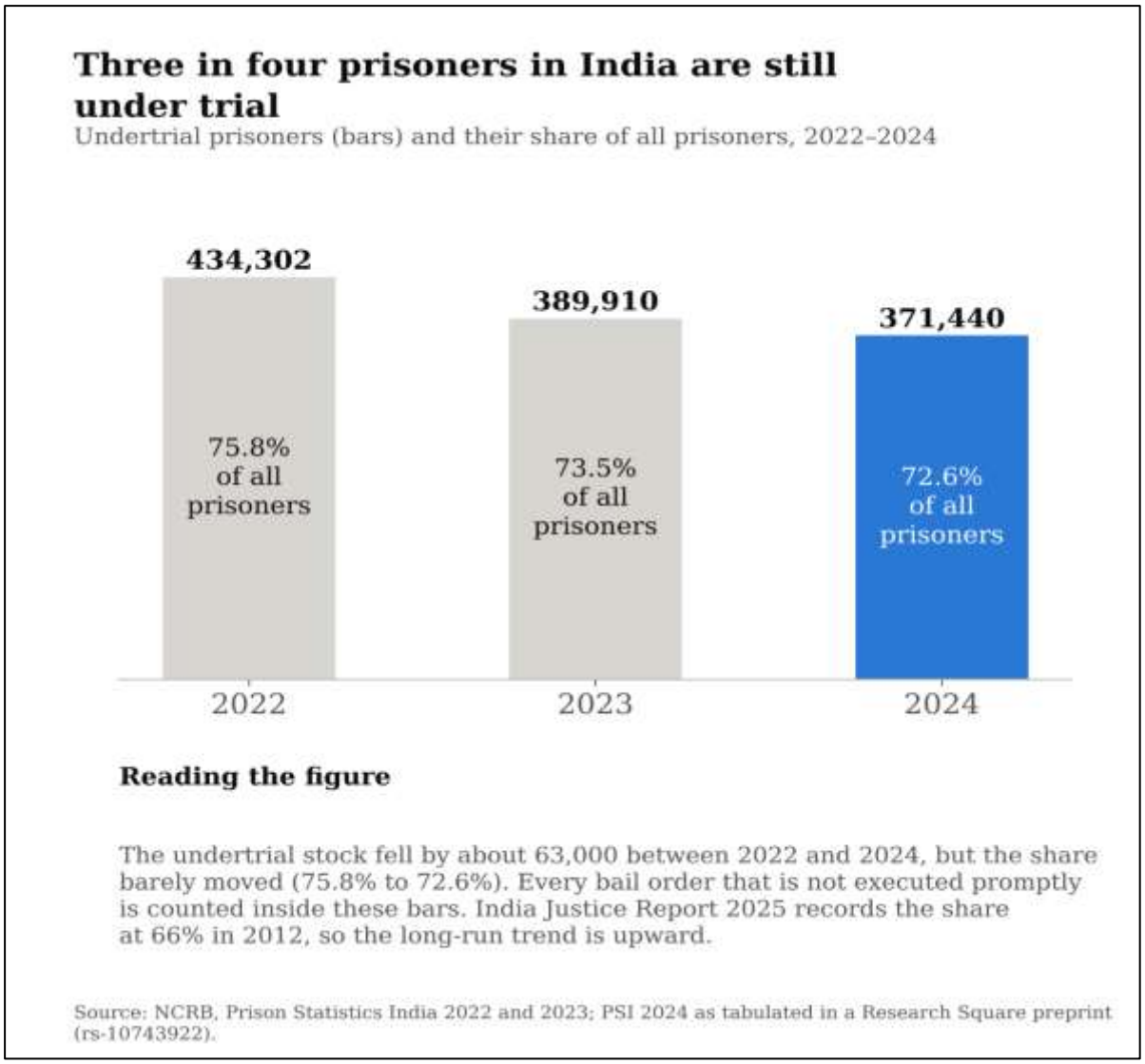

Figure 1: Undertrial prisoners and their share of the prison population in India, 2022–2024

[57] *K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1; *Sunil Batra*, *Supra* note 13.
[58] *Supra* note 11.
[59] *Supra* note 4.

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3.4 The Judicial and Executive Response, 2021–2026

Since 2021 the Supreme Court has built a set of remedies through continuing mandamus. Figure 3 sets out the sequence.

FASTER. In 2021 the Court approved the Fast and Secured Transmission of Electronic Records (FASTER) system, directed all States to accept e-authenticated copies of its orders and asked Chief Secretaries to ensure internet connectivity in every jail.[60] The system was launched on March 31, 2022 with 1,887 e-mail addresses for nodal officers and duty holders,[61] and FASTER 2.0 went live on Constitution Day 2023 to transmit release orders to jails, trial courts and High Courts.[62] FASTER addresses communicative delay. It does not address technical refusal, inability to furnish bonds or the absence of counsel.

In Re Policy Strategy for Grant of Bail. On January 31, 2023, acting on NALSA's report, the Court issued seven directions. The court granting bail must send a soft copy of the order to the prisoner through the jail superintendent the same day or the next day; the superintendent must enter the date of bail in the e-prisons software; if the prisoner is not released within seven days, the superintendent must inform the Secretary of the DLSA, who may depute a paralegal or jail-visiting advocate; the DLSA may prepare a report on the prisoner's economic condition for the court to consider relaxing conditions; courts may grant temporary bail so that the prisoner can arrange bonds; if bonds are not furnished within one month, the court may suo motu consider modifying the conditions; and courts should avoid insisting on local sureties where it causes delay.[63] By July 2023 the National Informatics Centre reported that automatic emails were being sent to DLSA secretaries when a prisoner remained in jail seven days after bail.[64]

Support to Poor Prisoners. In May 2023 the Ministry of Home Affairs launched a scheme to pay bail amounts and fines for poor prisoners through district Empowered Committees.[65] The Court recorded a standard operating procedure in February 2024 and modified it in October 2025: a District Level Empowered Committee must release funds within five days of a DLSA recommendation, must meet on the first and third Monday of each month,

[60] *Supra* note 43.
[61] "CJI Launched Software 'FASTER' to Transmit Court Orders Swiftly", *ThePrint*, Mar. 31, 2022.
[62] "Supreme Court Launches FASTER 2.0 and Hindi Version of e-SCR", *India Legal*, Nov. 26, 2023.
[63] *Supra* note 3.
[64] In Re Policy Strategy for Grant of Bail, SMWP (Crl.) No. 4 of 2021, order dated July 25, 2023, 2023 LiveLaw (SC) 610.
[65] Ministry of Home Affairs, "Implementation of the Support to Poor Prisoners Scheme", Advisory dated June 3, 2025; Ministry of Home Affairs, "Revised Guidelines and SOP for Implementation of Support to Poor Prisoners Scheme" (Dec. 2, 2025).

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and the jail must inform the DLSA on the sixth day if the prisoner is still not released.[66] Assistance is ordinarily capped at ₹50,000 per case, extendable to ₹1 lakh, and persons accused of certain heinous offences are excluded.[67] Uptake has been slow: in the scheme's first two years only eight States sought financial assistance.[68] In 2026 the Court again recorded non-compliance and directed States to ensure that the committees actually meet.[69]

Doctrinal reinforcement. *Satender Kumar Antil* required courts to use section 440 CrPC (now section 484 BNSS) to avoid unaffordable bonds,[70] *Girish Gandhi* allowed consolidated sureties,[71] and the August 2024 orders applied section 479 BNSS retrospectively.[72] Together these measures form the most sustained judicial attempt anywhere in the common law world to manage the execution of bail orders through supervision.

[66]Supreme Court of India, order dated Oct. 8, 2025 modifying the SOP recorded on Feb. 13, 2024; "SC Issues Modified SOP on Payment of Bail Amount of Poor Undertrial Prisoners", *The Pioneer*, Oct. 20, 2025.
[67]"Justice behind Bars: Lifeline for India's Poorest Prisoners", *LiveLaw*, 2025; "Heinous Crime Accused Kept out of Financial Aid for Poor Prisoners", *The Pioneer*, 2023.
[68]"Centre's Scheme for Poor Prisoners Has Few Takers, Only 8 States Sought Financial Aid in Past 2 Yrs", *ThePrint*, 2025.
[69]"Undertrial Prisoner Release: Supreme Court Directs States to Ensure Effective Functioning of District Committees", *LiveLaw*, 2026.
[70]*Supra* note 17.
[71]*Supra* note 49.
[72]*Supra* note 38.

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Figure 3: *Timeline of judicial and executive interventions on the execution of bail and release orders, 2021–2026*

3.5 Measuring Effectiveness

The available data show that these measures help but do not close the gap. Of the roughly 5,000 bailed-but-not-released prisoners identified by NALSA in 2022–23, 2,357 received legal assistance and 1,417, about 28 per cent, had been released when the report was filed.[73] Undertrial Review Committees recommended more than 42,000 prisoners for release between January and July 2024, but only 19,911, about 47 per cent, were released.[74] NALSA's special

[73] *Supra* note 3.
[74] "In India, Less than Half of Undertrial Prisoners Identified for Release are Actually Released", *Newslaundry*

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campaign in late 2023 led to the release of 21,304 prisoners, while UTRC releases in mid-2024 were only about 1.5 per cent of the prison population of 5,00,221.[75] Figure 5 shows this attrition.

Three weaknesses explain the gap. First, the directions assign functions but not consequences. The jail superintendent must inform the DLSA after seven days, but nothing happens to a superintendent who does not; the DLSA may depute a paralegal, but need not.[76] Second, the thresholds are long. A seven-day alert and a one-month review mean that the system treats a week of unauthorised custody as normal. Third, compliance is not measured. No public dataset reports, court by court or jail by jail, how long it takes between a bail order and release. The October 2026 application before the Supreme Court, built from RTI replies covering 18 districts in Uttar Pradesh, shows that the information exists inside the system but is not published.[77]

IJLRA

(IndiaSpend), Dec. 30, 2024.

[75]National Legal Services Authority, *Report on Undertrial Review Committee Special Campaign 2023* (NALSA, New Delhi, 2025); National Legal Services Authority, *Report on Functioning of Undertrial Review Committees* (July 2024).

[76]*Supra* note 33.

[77]*Supra* note 33.

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Figure 5: *Attrition between identification for release and actual release: NALSA's bailed-but-not-released cohort (2022–23) and UTRC recommendations (2024)*

3.6 Constitutional Tort: Compensation for Over-Detention

Indian law has recognised monetary compensation for violations of Article 21 since *Rudul Sah*, in which the petitioner was detained for 14 years after his acquittal.[78] *Bhim Singh* awarded compensation for illegal detention of a legislator,[79] and *Nilabati Behera* explained that the remedy lies in public law, based on strict liability of the State, and is distinct from private-law damages.[80] *D.K. Basu* confirmed that compensation is an appropriate remedy for custodial violations.[81] *Veena Sethi* had earlier exposed prisoners held for decades without legal authority

[78] *Rudul Sah* v. *State of Bihar*, (1983) 4 SCC 141.
[79] *Bhim Singh* v. *State of Jammu & Kashmir*, (1985) 4 SCC 677.
[80] *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746.
[81] *Supra* note 56.

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after being declared insane.[82]

The cases of 2025 and 2026 apply this doctrine to the release gap. Figure 4 sets out the amounts. *Aftab* awarded ₹5 lakh for 28 days, with a direction that any portion attributable to individual officers could be recovered from them after a judicial inquiry by the Principal District and Sessions Judge.[83] *Daudayal* awarded ₹11 lakh for 24 days, more than the ₹8 lakh the petitioner had sought.[84] *Devilal Gond* raised a High Court award of ₹2 lakh to ₹30 lakh for more than seven years of detention after acquittal, and observed that there is currently no legislative mechanism for determining such compensation.[85]

This jurisprudence is valuable but has limits. Awards are discretionary and inconsistent: per day of unlawful custody, *Daudayal* yields more than ₹45,000 and *Aftab* under ₹18,000, while *Devilal Gond* yields under ₹1,200. Compensation is available only to those who reach a constitutional court. Personal accountability of officials is ordered rarely, and when it is, the outcome depends on a separate inquiry. Finally, India's reservation to Article 9(5) of the International Covenant on Civil and Political Rights, which states that Indian law provides no enforceable right to compensation for unlawful arrest or detention, sits uneasily with the constitutional jurisprudence the Court has developed since 1983.[86]

[82] *Veena Sethi* v. *State of Bihar*, (1982) 2 SCC 583.
[83] *Supra* note 6.
[84] *Supra* note 7.
[85] *Supra* note 9.
[86] International Covenant on Civil and Political Rights, 1966, 999 UNTS 171, arts. 9(3)–9(5); Declarations and Reservations of India upon accession (Apr. 10, 1979).

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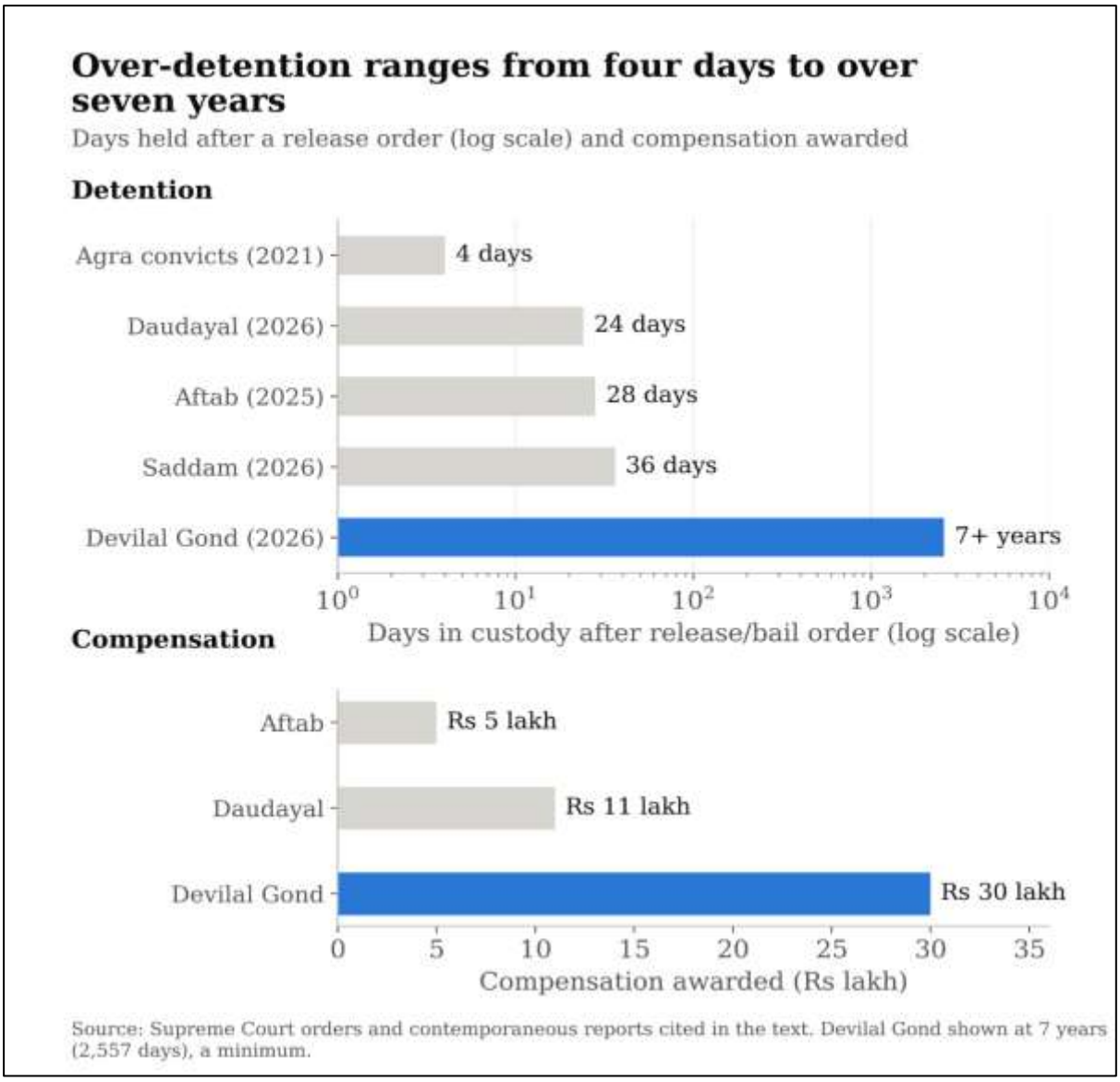

Figure 4: *Days of detention after a release or bail order in selected Supreme Court cases, and compensation awarded*

3.7 Comparative Perspectives

The European Court of Human Rights treats delay in implementing a release order as a breach of Article 5(1) of the European Convention unless it is kept to a minimum. In *Quinn* v. *France* an 11-hour delay in releasing a person after a court ordered release was held unlawful.[87] In *Labita* v. *Italy* the Grand Chamber found a violation where a man acquitted in the evening was held until the next morning because the registry official was absent.[88] In *Giulia Manzoni* v. *Italy* a seven-hour delay was held acceptable because it was spent on necessary formalities.[89]

[87] *Quinn* v. *France*, (1996) 21 EHRR 529 (ECtHR, Mar. 22, 1995).
[88] *Labita* v. *Italy* [GC], App. No. 26772/95, ECHR 2000-IV (Apr. 6, 2000).
[89] *Giulia Manzoni* v. *Italy*, App. No. 19218/91 (ECtHR, July 1, 1997).

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The standard is measured in hours, and some delay is tolerated only to complete necessary formalities.

English law treats over-detention as false imprisonment regardless of fault. In *R* v. *Governor of Brockhill Prison, ex parte Evans (No. 2)* the House of Lords held a governor liable for detaining a prisoner beyond her lawful release date, even though the governor had calculated the date in good faith on the law as then understood.[90] In the United States, federal courts have held that detaining a person after a release order without legal justification violates due process: in *Davis* v. *Hall* the Eighth Circuit found a violation where a prisoner was held for 57 days after a court ordered his release,[91] and in *Berry* v. *Baca* the Ninth Circuit allowed a challenge to routine release delays of up to 29 hours to proceed.[92]

Figure 6 compares these benchmarks with India's administrative thresholds. The contrast is stark: Strasbourg finds a violation after 11 or 12 hours, while India's own SOPs first trigger an alert after five to seven days and a review of conditions after a month. The international soft-law standards point the same way. The Nelson Mandela Rules and the Tokyo Rules call for pre-trial detention as a last resort and for prompt, accurately recorded release.[93] India's thresholds were designed to rescue the poorest prisoners from long detention, which they partly do, but they risk normalising days of unauthorised custody for everyone else.

[90] *R* v. *Governor of Brockhill Prison, ex parte Evans (No. 2)*, [2001] 2 AC 19 (HL).
[91] *Davis* v. *Hall*, 375 F.3d 703 (8th Cir. 2004).
[92] *Berry* v. *Baca*, 379 F.3d 764 (9th Cir. 2004); see also *Stack* v. *Boyle*, 342 U.S. 1 (1951).
[93] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175 (Dec. 17, 2015); United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), G.A. Res. 45/110 (Dec. 14, 1990).

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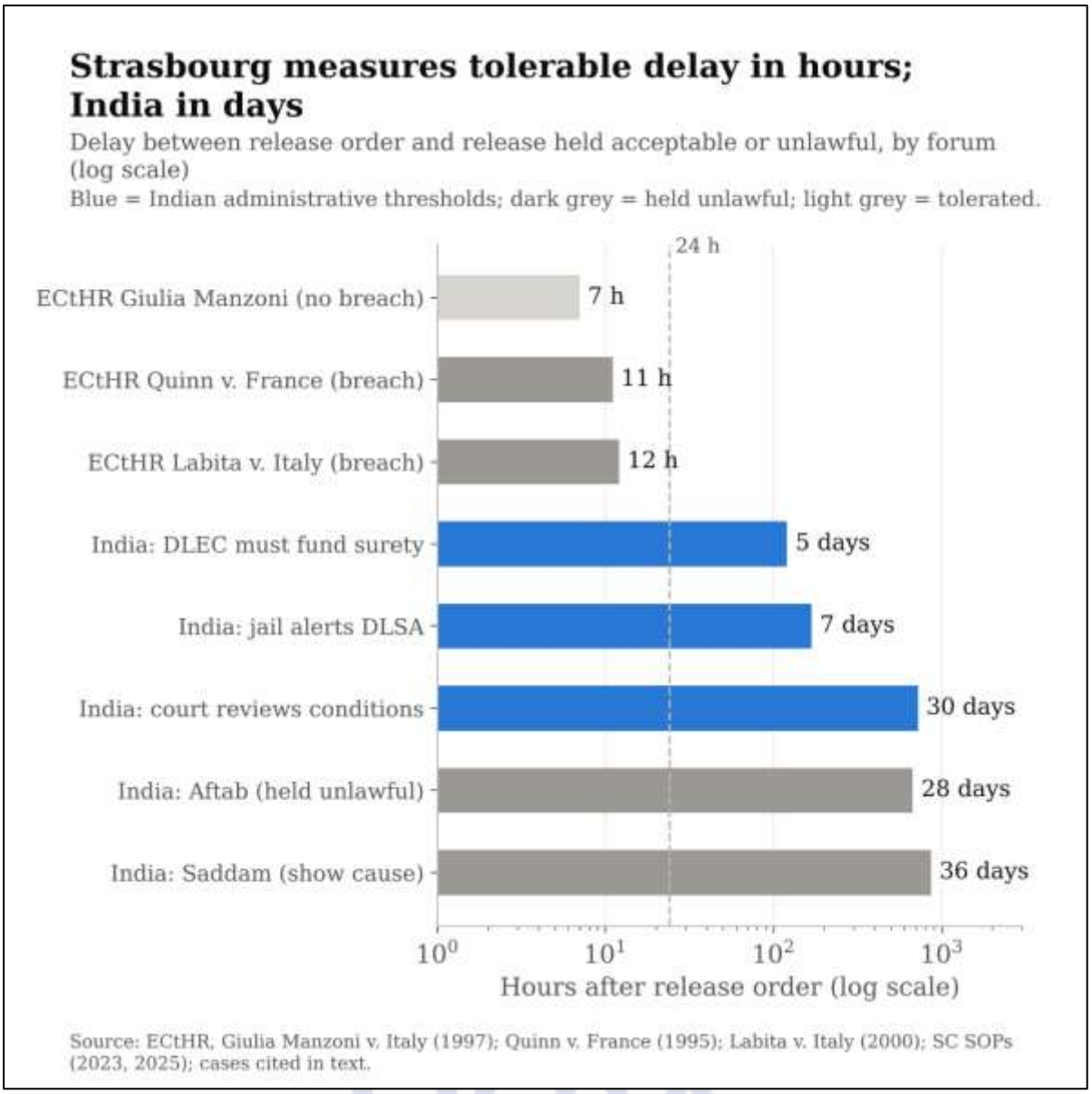

Figure 6: *Delay between release order and release held acceptable or unlawful: European Court of Human Rights benchmarks compared with Indian administrative thresholds and cases*

3.8 Critical Appraisal: Why the Gap Persists

Four structural reasons emerge. The first is an *accountability vacuum*. Section 487 BNSS imposes a duty to release but no time limit, no record of when an order was received, and no consequence for delay. The Supreme Court's directions are binding under Article 141 but are framed as procedures rather than as duties enforceable by the individual prisoner.[94] The second is *asymmetric risk*: officials are blamed for wrongful release but rarely for wrongful detention, so they rationally prefer delay, as street-level bureaucracy theory predicts.[95] The third is *federal*

[94]The Constitution of India, arts. 32, 141, 142, 226.
[95]*Supra* note 25.

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fragmentation: prisons are a State subject, jail manuals differ, and central schemes depend on State uptake.[96] The fourth is *data opacity*: without published release-time data, neither courts nor the public can see the problem until an individual case reaches the Supreme Court.

Technology alone does not cure these problems. FASTER and the e-prisons alert were important steps, but a message that reaches a jail is useless if the officer who receives it has discretion to wait. The Interoperable Criminal Justice System (ICJS), which the October 2025 SOP anticipates integrating with the fund-release process,[97] could provide a time-stamped record of every stage from order to release. Such a record would make delay visible and attributable. It would turn the release gap from an invisible administrative habit into a measurable constitutional default.

4. FINDINGS

The analysis supports the following findings.

(i) Custody that continues after a bail or release order has been made and the bond executed has no legal basis under section 487 BNSS, unless section 487(2) applies. Beyond the minimum time needed for ministerial acts, it is detention without the authority of law and violates Article 21; *Daudayal* now confirms this expressly.

(ii) The release gap has at least six distinct causes: communicative delay, technical refusal, financial and surety barriers, absence of counsel, institutional deliberation and verification friction. Each has a different responsible institution.

(iii) The judicial response since 2021, through FASTER, the 2023 directions, the Support to Poor Prisoners SOP and section 479 BNSS, has reduced the gap but not closed it. Official data show release rates of roughly 28 to 47 per cent among identified cohorts.

(iv) The main reason for under-performance is that the remedies assign tasks without enforceable duties, time limits measured in hours, or consequences for non-compliance.

(v) Compensation for over-detention is now well established but inconsistent, discretionary and available only to the few who reach a constitutional court. There is no statutory scheme, as the Court itself noted in *Devilal Gond*.

(vi) India's administrative thresholds of five days, seven days and one month are far more tolerant of delay than the European standard of hours, and risk normalising unauthorised custody.

[96] *Supra* note 40.
[97] *Supra* note 66.

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(vii) The gap falls most heavily on poor, young and socially marginalised prisoners, which engages Articles 14 and 39A as well as Article 21.

(viii) No public data exists on the time between bail and release. This opacity is itself a barrier to accountability.

5. RECOMMENDATIONS

5.1 Legislative Reforms

Amend section 487 BNSS to add a time limit. A new sub-section should require the officer in charge of the jail to release the person within 24 hours of receiving the release order, or within a shorter period prescribed by rules, and to record the date and time of receipt and release. Any delay beyond that period should require written reasons sent at once to the court that issued the order.

Create a deemed-receipt rule. An order transmitted through FASTER, the e-prisons system or the ICJS should be deemed received when it is delivered electronically. No jail should be permitted to insist on a certified hard copy, as the Information Technology Act already allows.[98]

Limit technical refusals. Rules should provide that a jail may not refuse release because of a clerical mismatch in sections, FIR numbers or names where the identity of the prisoner and the case is otherwise clear. The officer should release the person and refer the discrepancy to the court the same day.

Enact a statutory compensation scheme. Parliament should enact a compensation law for unlawful detention, including over-detention, with a fixed minimum daily amount, recovery from responsible officials in cases of wilful or negligent default, and adjudication by the District Legal Services Authority or the trial court. This would answer the gap identified in *Devilal Gond* and allow India to reconsider its reservation to Article 9(5) ICCPR.

5.2 Judicial and Procedural Measures

Bail orders should be self-executing. Bail orders should be drafted in a standard format that sets out all particulars the jail needs and, where possible, fixes the bond amount and permits a personal bond at once. Where terms are left to the trial court, the order should name a date for furnishing them and direct the DLSA to assign counsel at once.

Shorten the thresholds. The seven-day DLSA alert should be reduced to 48 hours, and

[98] *Supra* note 41.

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the one-month suo motu review of unmet conditions should be reduced to seven days. Courts should routinely consider a personal bond under section 484 BNSS for indigent prisoners at the first sign that sureties cannot be found.

Monitor compliance. Every High Court should require its district judges to review a weekly list of bailed-but-not-released prisoners generated from the e-prisons software and to record reasons for each case still pending after 48 hours.

5.3 Administrative and Technological Measures

A release clock. The ICJS and e-prisons platforms should record a time stamp for every stage from pronouncement of the order to release, and publish monthly district-wise data on the median and maximum time to release. This single measure would make every other remedy enforceable.

Round-the-clock release desks. Every jail should have a designated officer authorised to release prisoners at any hour, including holidays, on receipt of a verified electronic order.

Strengthen the Support to Poor Prisoners scheme. Funding should be automatic where the DLSA certifies indigence, the exclusions should be reviewed, and the scheme should be linked to the release clock so that delay in funding is visible.

5.4 Legal Aid Measures

DLSAs should treat every bailed-but-not-released prisoner as an urgent case, assign counsel within 24 hours, and report outcomes to the court. Jail-visiting advocates and paralegals should have a checklist covering bonds, sureties, section 479 eligibility and section 484 reduction. Performance indicators for legal services institutions should include time to release after bail.

6. CONCLUSION

A bail order that is not executed is a promise of liberty that the State has not kept. Indian constitutional law already contains the principles needed to deal with that failure: liberty may be taken only by law, the law requires release once the bond is executed, and the State must compensate those it detains unlawfully. What has been missing is a mechanism that converts those principles into a duty owed to each prisoner, with a clock, a record and a consequence.

The Supreme Court has done much since 2021. FASTER, the 2023 directions, the poor-prisoner SOP and the compensation rulings of 2025 and 2026 show a court that recognises the problem and is willing to act. But continuing mandamus cannot supervise more than 1,300

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prisons indefinitely. The next step must come from Parliament and the executive: a statutory time limit for release, a deemed-receipt rule for electronic orders, a statutory compensation scheme and published release-time data. Until then, the distance between a bail order and the jail gate will continue to be measured in days, weeks and sometimes years, and the protection of Article 21 will stop at the courtroom door.

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