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# **UNVEILING THE COMPREHENSIVE IMPACT OF REMAND IN CUSTODY: ASSESSING ITS SOCIETAL, ECONOMIC, AND JUDICIAL IMPLICATIONS**

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## **ABSTRACT**

Ordering the detention of an individual in custody is a matter of great significance. When individuals are remanded while awaiting trial, they are presumed innocent, yet they are subjected to confinement, sometimes for extended periods of several months. It is based on the 'Principle of Innocent until proven guilty.'

This research paper provides a comprehensive analysis of the classification of the Power of Remand, with a particular focus on the magistrate's role as outlined in Section 167(2) of the Code of Criminal Procedure (CrPC). It delves into the various stages of Remand in Custody, examining the legal implications and procedures involved.

Moreover, the paper extensively explores the social, economic, and judicial impact on the society associated with remand in custody. It critically examines the impact of prolonged pre-trial detention on individuals and society as a whole. The research paper draws upon insights from Law Commission Reports and findings from other relevant committees to shed light on the multifaceted aspects of this issue.

In addition, the research paper assesses the recommendations put forth by the aforementioned reports and committees. It evaluates the proposed reforms, including potential alternatives to remand in custody, and weighs their effectiveness in addressing the challenges and concerns surrounding this practice.

Overall, this research paper provides a comprehensive analysis of the classification of the Power of Remand under Section 167(2) of the CrPC. It delves into the stages of Remand in Custody, analyses the social, economic, and judicial implications, and examines the recommendations presented by various authoritative bodies, thereby offering valuable insights into this complex and significant subject matter.

## INTRODUCTION

Our justice system is built upon two fundamental principles: ‘the presumption of innocence until proven guilty’ and ‘the prohibition of imposing punishment without a proper sentence’. These principles underline the importance of fair and just treatment for all individuals. In light of these principles, the practice of remand imprisonment for individuals who have not yet been convicted gives rise to significant concerns.

When dealing with defendants who have not been convicted, it is crucial that imprisonment be a carefully considered and sparingly used option within the purview of the Magistrates Court. The right to liberty is one of the most fundamental human rights, and when coupled with the presumption of innocence, it serves as the cornerstone of our justice system. Consequently, when offenders are placed in pre-trial or pre-sentence remand custody prior to receiving a non-custodial sentence, it is vital to thoroughly assess whether the widely accepted philosophical and legislative principle of imprisonment as a last resort is being undermined.

Preserving the integrity of our justice system requires ensuring that the use of remand in custody aligns with established principles and safeguards. It is essential to carefully weigh the necessity and proportionality of imprisonment, particularly when individuals are in a pre-trial or pre-sentence remand status. By doing so, we uphold the principles of innocence and protect the fundamental right to liberty.

Expanding upon these ideas, it is crucial to consider alternatives to remand in custody, such as non-custodial measures, whenever possible. These alternatives should be explored to mitigate the potential erosion of the principle that imprisonment should be a last resort. Additionally, the comprehensive evaluations should be conducted to identify any systemic issues or flaws that may contribute to the overuse of remand custody.

By expanding on these points, we emphasize the importance of upholding the presumption of innocence and safeguarding the right to liberty by using remand custody judiciously and as a measure of last resort, particularly during the pre-trial or pre-sentence phase.

**Hall** suggests that the prevailing consensus is that “*imprisonment primarily entails the deprivation of liberty, which is seen as the sole form of punishment it provides.*” **Hall** further asserts that “*To administer punishment, the mere loss of liberty is indispensable.*” Given this perspective, in order to prevent the punishment of individuals who have not yet been tried, the use of remand imprisonment should be employed only as a last resort, following thorough

considerations that all alternative options present a genuine risk to the community or the integrity of the justice process.<sup>1</sup>

The issue of pre-trial imprisonment often receives inadequate attention and lacks sufficient public awareness. As noted by Clifford, the rights of individuals prior to conviction are frequently overshadowed. While discussions in the media and public sphere consistently revolve around sentencing matters after a trial, with ongoing debates about the appropriate balance between harshness and leniency, those held in remand custody are often overlooked and referred to as the "forgotten prisoners".<sup>2</sup>

The dictionary meaning of 'Remand' is *to return* or *send back*. According to the **Merriam Webster**, the term 'Remand' is to order back: such as

- to send back (a case) to another court or agency for further action.
- to return to custody pending trial or for further detention.<sup>3</sup>

Under Section 167(2) of the Code of Criminal Procedure (CrPC), the judicial magistrate is empowered to order remand when the investigation cannot be completed within 24 hours. This form of remand involves sending the accused back into the custody of the police or the magistrate to facilitate the collection of evidence and the completion of the investigation. The primary purpose of remand is to enable the successful conclusion of the investigation.

Section 57 of the CrPC stipulates that if a person is arrested without a warrant, the investigation must be concluded within 24 hours. If the investigation cannot be completed within this timeframe and the police require the accused to remain in custody for further investigation, they cannot detain the person without a remand order from the court, as per Section 167(2) of the CrPC.

#### **(A) THE IDEA OF MAGISTRATE U/S 167(2) OF CrPC**

The term "magistrate" u/s 2 of the CrPC refers specifically to the judicial magistrate and does not include the executive magistrate. This is evident from Section 167(1) of the CrPC, which clearly states that the police officer must transmit the material to the nearest judicial magistrate.

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<sup>1</sup> Hall, G, 'Corrections' in K M Hazlehurst (ed), Crime and Justice (LBC Information Services, 1996) 397-416.

<sup>2</sup> Armstrong, S, Mossman, MJ, and Sackville, R, Australian Government Commission of Inquiry into Poverty (Australian Government Publishing Service, 1977).

<sup>3</sup>Merriam-Webster, 'Remand' (Merriam-Webster, 20 June 2023) <https://www.merriam-webster.com/dictionary/remand> [accessed 20 June 2023].

The special power granted to the executive magistrate was introduced in 1978 through the Code of Criminal Procedure (Amendment) Act, 1978, under Section 167(2A) of the CrPC, which can only be exercised when a judicial magistrate is not available.<sup>4</sup>

Furthermore, the provision uses the term "magistrate" without specifying whether it refers to a judicial magistrate of the first class, second class, or chief judicial magistrate. This implies that all three categories of judicial magistrates have the authority to order remand under Section 167(2) of the CrPC. However, there is a limitation on the power of the judicial magistrate of the second class, as stated in proviso (c) of Section 167(2) of the CrPC, which prohibits them from authorizing detention in police custody unless specifically empowered by the High Court.

The provision also uses the term "nearest judicial magistrate" rather than referring to the magistrate who has the authority to take cognizance of the matter. Additionally, Section 167(2) of the CrPC explicitly states that the magistrate to whom the accused is forwarded and the materials are transmitted may or may not have jurisdiction to try the case. Therefore, it is not necessary for the nearest judicial magistrate to have jurisdiction to try the case. However, in the case of **Bal Krishna v. Emperor**, it was held that *unless there are difficulties such as a long distance, the police should approach a magistrate who has jurisdiction to try the case for the purpose of remand.*<sup>5</sup>

## **(B) CLASSIFICATION OF POWER OF REMAND**

The power of remand under Section 167 of the CrPC can be categorized into two types based on the authority responsible for ordering it.

One is granted to the judicial magistrate under Section 167(2) of the CrPC, while the other is granted to the executive magistrate under Section 167(2A) of the CrPC. The executive magistrate can exercise this power only in the absence of a judicial magistrate.

## **(C) STAGES OF REMAND IN CUSTODY UNDER THE CrPC**

The three provisions of the Code of Criminal Procedure (CrPC) give the power to detain the accused and send them into the custody of the competent authority under Section 167(2),

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<sup>4</sup> Legal Service India, 'Remand by a Judicial Magistrate if Investigation is not Completed within 24 Hrs' (Legal Service India, 20 June 2023) <https://www.legalserviceindia.com/legal/article-573-remand-by-a-judicial-magistrate-if-investigation-is-not-completed-within-24-hrs.html> [accessed 20 June 2023].

<sup>5</sup> AIR 1932 All 125.

Section 209(b), and Section 309(2).

The distinction between these provisions lies in the stage at which the remand is ordered. Remand under Section 167(2) of the CrPC occurs during the investigation stage and is ordered to facilitate further investigation. It can be either in judicial custody or police custody.

On the other hand, remand under Section 209(b) of the CrPC takes place when the magistrate commits the case for trial. At this stage, the magistrate can remand the accused to custody during and until the conclusion of the trial, in accordance with the provisions of bail under the CrPC.

Lastly, remand under Section 309(2) of the CrPC applies to a stage after cognizance has been taken. At this point, the accused can only be sent to judicial custody. The purpose of remand under Section 209(b) of the CrPC and Section 309(2) of the CrPC is to ensure the presence of the accused during the trial.<sup>6</sup>

#### **(D) ECONOMIC IMPACT OF REMAND IN CUSTODY**

The growing population of prisons brings to the forefront an important economic issue. When individuals who have been remanded in custody ultimately receive a non-custodial sentence, it poses an unnecessary burden on taxpayers.

As prison populations increase, the associated costs also escalate. Maintaining correctional facilities, providing essential services, and ensuring the welfare of inmates require significant financial resources. However, when remandees who were held in custody throughout the legal process ultimately receive a non-custodial sentence, it becomes apparent that the expenses incurred during their confinement were avoidable.

From an economic standpoint, it is imperative to evaluate the efficiency and cost-effectiveness of the justice system. Identifying ways to reduce unnecessary pre-trial detention and ensuring that non-custodial alternatives are explored and implemented can help alleviate the financial strain on taxpayers. This entails carefully assessing the risk factors, individual circumstances, and available alternatives for each case.

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<sup>6</sup> Legal Service India, 'Remand by a Judicial Magistrate if Investigation is not Completed within 24 Hrs' (20 June 2023) <https://www.legalserviceindia.com/legal/article-573-remand-by-a-judicial-magistrate-if-investigation-is-not-completed-within-24-hrs.html> accessed 20 June 2023.

Implementing evidence-based practices and interventions that prioritize rehabilitation and community-based solutions can contribute to the reduction of unnecessary custodial sentences. This approach not only aligns with the principles of justice but also offers potential economic benefits by minimizing the costs associated with unnecessary confinement.

Addressing the economic issue associated with remandees who ultimately receive non-custodial sentences requires a multifaceted approach. It involves promoting the use of alternative measures when appropriate, such as supervised release, probation, or community-based programs. By investing in prevention, diversion, and rehabilitation initiatives, resources can be channelled towards more effective and cost-efficient strategies, benefiting both the justice system and taxpayers.

Expanding upon these ideas, it is important to foster collaboration between justice stakeholders, policymakers, and community organizations to develop comprehensive solutions that balance public safety, cost-effectiveness, and the principles of justice. By addressing the economic implications of unnecessary custodial sentences for remandees who ultimately receive non-custodial outcomes, we can strive for a justice system that is both equitable and financially responsible.<sup>7</sup>

## **1) PRISONS – TYPES & OCCUPANCY IN INDIA**

In 2021, the total number of prisons in India increased by 1.0% from the previous year, reaching a total of 1,319 prisons nationwide. These prisons are categorized as follows: 564 Sub Jails, 424 District Jails, 148 Central Jails, 88 Open Jails, 41 Special Jails, 32 Women Jails, 19 Borstal Schools, and 3 Other Jails.

Among the states, Rajasthan reported the highest number of jails (144), followed by Tamil Nadu (142), Madhya Pradesh (131), Andhra Pradesh (106), Odisha (92), and Uttar Pradesh (75). Together, these six states account for 52.3% of the total jails in the country as of December 31, 2021.

Delhi reported the highest number of Central jails in the country, with 14 in total. On the other hand, states and union territories such as Arunachal Pradesh, Meghalaya, Andaman and

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<sup>7</sup> Barry, MB, 'A descriptive analysis of magisterial remand custody orders for offenders who receive a non-custodial sentence outcome' (Honours Theses, Edith Cowan University, 1997).

Nicobar Islands, Dadra and Nagar Haveli and Daman and Diu, Ladakh, and Lakshadweep do not have any central jails.

Uttar Pradesh recorded the highest number of District jails, with 62 in total. Meanwhile, states and union territories such as Goa, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Delhi, Lakshadweep, and Puducherry do not have any District jails.

Tamil Nadu reported the highest number of Sub-jails, with 96 in total. States and union territories such as Arunachal Pradesh, Goa, Haryana, Meghalaya, Mizoram, Nagaland, Sikkim, Chandigarh, Delhi, and Ladakh do not have any sub-jails as of December 31, 2021.<sup>8</sup>

As of December 31, 2021, India had a total of 1,319 prisons, which increased by 1.0% compared to the previous year. These prisons comprised 564 Sub Jails, 424 District Jails, 148 Central Jails, 88 Open Jails, 41 Special Jails, 32 Women Jails, 19 Borstal Schools, and 3 Other Jails. Rajasthan reported the highest number of jails, followed by Tamil Nadu, Madhya Pradesh, Andhra Pradesh, Odisha, and Uttar Pradesh, which together accounted for 52.3% of the total jails in the country.

Among the prisons, there were 32 Women Jails across 15 states and union territories, with a total capacity of 6,767 inmates. The highest number of women jails was reported in Rajasthan and Tamil Nadu. However, several states and union territories did not have separate women jails.<sup>9</sup>

The overall capacity of prisons increased from 414,033 in 2020 to 425,609 in 2021, a growth of 2.8%. The number of prisoners also increased from 488,511 in 2020 to 554,034 in 2021, indicating a 13.4% increase. The highest capacity was in Central Jails, followed by District Jails and Sub Jails. District Jails had the highest number of inmates, followed by Central Jails and Sub Jails. The number of inmates in Women Jails was 3,808.

Uttar Pradesh had the highest capacity and the highest number of prisoners in its jails, followed by Bihar and Madhya Pradesh. The occupancy rate of prisons increased from 118.0% in 2020 to 130.2% in 2021, with District Jails having the highest occupancy rate. Uttar Pradesh reported the highest occupancy rate among states and union territories.<sup>10</sup>

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<sup>8</sup> National Crime Records Bureau, 'Prisons Statistics India-2021, Executive NCRB Summary-2021' (NCRB, 2021).

<sup>9</sup> *ibid.*

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## 2) UNDERTRIAL PRISONERS

The number of undertrial prisoners in India increased from 371,848 in 2020 to 427,165 in 2021, representing a 14.9% rise during this period. District Jails housed the highest number of undertrial prisoners, accounting for 51.4% (219,529 undertrials), followed by Central Jails with 36.2% (154,447 undertrials), and Sub Jails with 10.4% (44,228 undertrials) as of December 31, 2021.<sup>11</sup>

Uttar Pradesh reported the highest number of undertrial prisoners, with 21.2% (90,606 undertrials) of the total, followed by Bihar at 13.9% (59,577 undertrials), and Maharashtra at 7.4% (31,752 undertrials) by the end of 2021.

It is worth noting that among the 427,165 undertrial prisoners, only 53 were classified as civil inmates, indicating that the overwhelming majority were involved in criminal cases.

Overall, the data reflects a significant increase in the number of undertrial prisoners in India, with District Jails housing the largest share. Uttar Pradesh emerged as the state with the highest number of undertrials, underscoring the need for effective management and speedy justice delivery to address this issue.

In conclusion, the prison system in India witnessed an increase in the number of prisons and prisoners, leading to overcrowding and high occupancy rates. Certain states lacked separate women jails, and the burden on the prison system highlighted the need for efficient management and alternative measures to address the increasing prison populations. Consequently, it becomes an unnecessary burden on the tax-payers. And ultimately, the economy of the country has to suffer.

### (E) SOCIAL IMPACT OF REMAND IN CUSTODY

According to the **Queensland Productivity Commission (2019)**, imprisonment imposes a wide range of costs that extend beyond the direct confinement of individuals. These indirect costs affect not only prisoners but also their families and the broader community. One significant area of concern is the impact on prisoners' physical health. Studies have indicated that imprisonment can worsen existing health conditions and lead to new health issues due to

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<sup>11</sup> Ibid.



factors such as inadequate healthcare, unhealthy living conditions, and increased exposure to infectious diseases.<sup>12</sup>

### **1) MENTAL ILLNESS**

Furthermore, remand in custody has been shown to exacerbate mental illness among remandees. The restrictive and often stressful prison environment can contribute to the deterioration of remandees' mental well-being, making it more challenging for them to reintegrate into society successfully. This, in turn, can hinder their prospects of finding employment, maintaining stable relationships, and leading fulfilling lives post-release.

### **2) DECLINE OF PRISONER'S SKILLS, EDUCATION AND WORK EXPERIENCE**

Another important aspect to consider is the decline in human capital among inmates. Lengthy periods of remand can erode remandees' skills, education, and work experience, diminishing their employability upon release. The longer individuals are incarcerated, the greater the cost to their future prospects, as they may struggle to acquire or update skills that are relevant in the evolving job market. This, in turn, perpetuates a cycle of unemployment or underemployment, making it more likely for former remandees to face financial difficulties and rely on social assistance programs.

### **3) ECONOMIC HARDSHIPS TO THE PRISONER'S FAMILY**

The consequences of remand extend beyond the individual remandees themselves. Families of remandees often experience economic hardships due to the loss of income caused by a family member's incarceration. This financial strain can result in reduced resources available for essential needs such as housing, education, and healthcare, impacting the overall well-being of the family unit.

### **4) DISRUPTION OF PARENT-CHILD RELATIONSHIP**

Remand also disrupts the parent-child relationships of incarcerated individuals, especially when they are parents of young children. The separation and physical distance between Remand and their children can have profound emotional and psychological effects on both parties. The absence of a parent due to Remand can lead to feelings of abandonment, confusion, and distress in children. It also places additional burdens on governmental services, such as

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<sup>12</sup> Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism (Final Report, August 2019)* 89-90 (citations omitted).

schools, foster care, and adoption agencies, as they must address the needs of these children in the absence of their incarcerated parents.

According to the **Victorian Equal Opportunity and Human Right Commission (2013)**, the incarceration of Koori women has a profound influence on community ties and kinship obligations. Within the Koori community, women often bear the primary responsibility for child rearing and fulfilling family obligations. Consequently, the imprisonment of Koori women has a more significant impact on their families, the community, and society as a whole, in comparison to the incarceration of Koori men.<sup>13</sup>

The **Victorian Parliament's Inquiry into Victoria's Criminal Justice System (2022)**, acknowledged that people on remand often experience high levels of frustration and stress due to sudden separation from family, uncertainty about their future, as well as facing substance withdrawal or a sudden loss of existing mental health support. Furthermore, they may lose their employment and housing.<sup>14</sup>

## **5) NEGATIVE PUBLIC OPINION ABOUT THE REMANDEE**

The potential for society to develop negative perceptions of individuals in pretrial detention is a significant harm caused by remand in custody. This arises from the violation of the fundamental principle of "innocent until proven guilty," as individuals are often presumed guilty by the public while awaiting trial.

The principle of "innocent until proven guilty" is a fundamental pillar of justice systems worldwide, emphasizing that those accused of a crime should be considered innocent until a court of law establishes their guilt beyond a reasonable doubt. However, when individuals are in remand, their freedom is curtailed, and society may stigmatize them, irrespective of their actual guilt or innocence.

The formation of negative societal opinions towards remandees can have severe consequences. It can lead to damage to their reputation, strained personal relationships, and difficulties in reintegrating into the community, even if they are ultimately acquitted or have their charges dismissed. The presumption of guilt creates a long-lasting social stigma, resulting in social

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<sup>13</sup> Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business: Koori Women and the Justice System* (August 2013) 91.

<sup>14</sup> Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 586.

exclusion, limited employment opportunities, and various challenges in different aspects of their lives.

Furthermore, this erosion of the principle of "innocent until proven guilty" not only affects the individuals in remand but also undermines public trust in the justice system. When society perceives that individuals are treated as guilty before their trial, it undermines confidence in the fairness and impartiality of the legal process. This loss of trust can have far-reaching consequences, affecting the willingness of individuals to cooperate with law enforcement, participate in jury service, or uphold the legitimacy of the justice system as a whole.

Overall, the indirect costs of imprisonment encompass a broad spectrum of negative outcomes for prisoners, their families, and society as a whole. It is crucial to consider these repercussions when evaluating the effectiveness and societal implications of incarceration as a criminal justice approach.

## **6) REMEDY**

To mitigate these negative impacts, it is crucial for legal systems to uphold the principle of "innocent until proven guilty" and ensure that individuals in remand are not subject to unfair prejudice or discriminatory treatment. Public education and awareness campaigns play a vital role in fostering a better understanding of the significance of this principle and the potential consequences of prematurely judging individuals who have not yet had their day in court.

Moreover, efforts should be made to provide support and resources for remandees and their families, helping them navigate the challenges they face during the pretrial phase. This can include access to legal representation, counselling services, and community-based programs that facilitate reintegration and counteract the negative impacts of societal stigma.

By acknowledging the adverse consequences of undermining the principle of "innocent until proven guilty" during the remand process and taking proactive measures to address them, society can ensure fairer and more equitable treatment of individuals awaiting trial. Upholding the integrity of the justice system and safeguarding the rights and well-being of all individuals involved in the legal process become imperative objectives.

## **(F) JUDICIAL IMPACT OF REMAND IN CUSTODY**

Remand in custody, which refers to the detention of individuals awaiting trial or pending the resolution of their legal case, has significant judicial impacts. These impacts can be observed

in various aspects of the judicial process and the overall functioning of the justice system:

### **1) INCREASE IN BACKLOG OF CASES**

Remanding individuals in custody can have a significant impact on the backlog of cases within the judicial system, exacerbating an already burdened system and potentially leading to delays in the administration of justice. Several factors contribute to this backlog:

**a) Lengthy Pretrial Periods:** When individuals are held in custody, the pretrial period tends to be longer compared to cases where defendants are released on bail. This extended period is primarily due to the logistical challenges associated with gathering evidence, arranging hearings, and scheduling court dates while the defendant is in custody. The limited availability of resources, including courtrooms, judges, and legal personnel, can further contribute to the lengthening of the pretrial period.

**b) Increased Caseload:** Remanding individuals in custody adds to the overall caseload of the judicial system. With more defendants requiring court appearances while in custody, the courts face additional demands on their resources, including judges, court staff, and facilities. The sheer volume of cases can strain the capacity of the justice system, leading to delays in processing and resolving cases.

**c) Complexity of Cases:** Cases involving individuals in custody often involve serious or complex criminal charges. These cases typically require more time for investigations, gathering evidence, and conducting legal proceedings. The complexity of the cases, coupled with limited resources and time constraints, can contribute to delays in resolving them.

**d) Limited Access to Legal Representation:** Individuals in custody may face challenges in accessing legal representation, particularly if they are unable to afford private counsel. This can result in delays in legal proceedings, as the courts may need to appoint legal aid lawyers or public defenders, who may have limited availability due to their caseloads. The need to ensure adequate legal representation for defendants further contributes to the strain on the judicial system.

**e) Impact on Victims:** Delays caused by remand in custody not only affect the accused but also impact victims of crimes. Victims may experience prolonged periods of uncertainty and delayed resolution of their cases, which can lead to emotional distress and hinder their ability to move forward. In cases where victims are required to testify, prolonged pretrial periods can

also result in witness fatigue or difficulties in recalling details, potentially affecting the overall integrity of the trial.

**To address the backlog of cases caused by remand in custody, several strategies can be implemented:**

**a) Case Prioritization:** Courts can prioritize cases involving individuals in custody to ensure their timely resolution. This involves allocating resources, such as judges, courtrooms, and support staff, specifically for these cases to expedite the legal process.

**b) Efficient Case Management:** Implementing efficient case management practices, such as streamlining administrative procedures, setting realistic timelines, and utilizing technology for document management and scheduling, can help reduce delays and expedite the resolution of cases.

**c) Increased Resources:** Allocating additional resources to the judicial system, including hiring more judges, prosecutors, and support staff, can help alleviate the strain caused by the backlog. Adequate funding for legal aid services can also ensure that individuals in custody have access to competent legal representation.

**d) Alternatives to Custody:** Exploring alternatives to custody, such as supervised release, electronic monitoring, or diversion programs for non-violent offenders, can help reduce the number of individuals held in custody, thereby relieving the burden on the judicial system.

**e) Collaboration and Information Sharing:** Enhancing collaboration and information sharing among relevant stakeholders, including law enforcement agencies, prosecutors, defence attorneys, and court officials, can facilitate more efficient case processing and resolution.

By addressing the backlog of cases caused by remand in custody through these strategies, the judicial system can work towards delivering justice in a timely manner, ensuring the rights of the accused and the needs of victims are met.

## **2) AFFECTS THE OPERATIONS OF COURTS**

The remand in custody has implications for the operational aspects of courts. When individuals are held in custody, it necessitates the implementation of additional security measures, transportation arrangements, and logistical considerations to ensure their presence during court

proceedings. These requirements impose additional demands on court resources, potentially impacting the smooth and efficient functioning of the judicial process.

The presence of individuals in custody requires heightened security measures within court premises to ensure the safety of all involved parties. This includes maintaining a secure environment, conducting thorough security screenings, and deploying trained personnel to manage the custody and transportation of the defendants. These security measures are essential to prevent any potential disruptions, protect the integrity of court proceedings, and ensure the safety of everyone present.

Transportation arrangements for individuals in custody also pose challenges for courts. Coordinating and scheduling transportation to and from correctional facilities or detention centres requires careful planning and allocation of resources. Factors such as the distance between the court and the detention facility, availability of vehicles, and the number of individuals in custody can influence the logistical arrangements. Delays or complications in transportation can result in disruptions to court schedules and potentially contribute to case backlogs.

Furthermore, the presence of individuals in custody affects the allocation of court resources. Judges, court staff, and courtrooms need to be appropriately assigned to accommodate the specific requirements of cases involving individuals in custody. This allocation of resources must consider the additional time needed for security procedures, in-custody defendant management, and any logistical challenges associated with their appearance in court. These considerations may impact the availability of courtrooms for other cases and the efficient utilization of judicial resources.

**To address the operational impact of remand in custody on courts, several measures can be taken:**

**a) Efficient Case Scheduling:** Courts can implement efficient case scheduling practices to account for the specific requirements of cases involving individuals in custody. This includes allocating dedicated time slots for these cases, considering the additional time needed for security procedures and transportation arrangements.

**b) Collaboration with Law Enforcement:** Establishing effective collaboration and communication channels with law enforcement agencies can facilitate the smooth coordination of transportation and security arrangements for individuals in custody. Timely and accurate

information sharing can help optimize resource allocation and minimize disruptions to court proceedings.

**c) Technology Integration:** Leveraging technology solutions, such as video conferencing facilities for remote appearances or electronic document management systems, can streamline processes and reduce the need for physical transportation of individuals in custody to court. This can contribute to more efficient court operations and alleviate some of the logistical challenges.

**d) Adequate Resources:** Courts should be adequately staffed and resourced to handle the demands associated with cases involving individuals in custody. Sufficient security personnel, transportation resources, and support staff can help ensure the smooth functioning of court operations while managing the unique requirements of these cases.

By implementing these measures, courts can better manage the operational challenges posed by remand in custody, ensuring the effective and efficient delivery of justice while maintaining the security and integrity of court proceedings.

### **3) AFFECT THE BAIL DETERMINATION**

Remand in custody involves decisions related to bail. During bail hearings, the court must assess whether the accused poses a flight risk or a threat to public safety. These determinations require a careful consideration of relevant factors, such as the severity of the charges, the accused's criminal history, ties to the community, and the likelihood of appearing for future court dates. The decision to grant or deny bail has significant implications for the individual's liberty, access to legal representation, and ability to adequately prepare for their case.

### **4) AFFECT THE PRINCIPLE OF 'PRESUMPTION OF INNOCENCE'**

Remand in custody can impact the presumption of innocence, a fundamental principle in the justice system. While individuals are legally presumed innocent until proven guilty, the fact that they are held in custody may lead to public perception of guilt, potentially undermining the fair administration of justice. It is essential for the court and legal professionals to emphasize and protect the presumption of innocence to ensure a fair trial.

Remand in custody can influence case outcomes. Individuals held in custody may face challenges in preparing their defence due to limited access to legal resources, restricted communication, and the psychological stress of confinement. These factors can impact their

ability to present an effective defence, potentially leading to unfavourable outcomes. Additionally, the experience of being in custody itself can affect an individual's mental and emotional well-being, which may also impact their engagement in the legal process.

## 5) REMEDY

To mitigate these judicial impacts, various measures can be taken. These may include prioritizing cases involving individuals in custody, providing adequate resources for legal representation, facilitating efficient bail processes, and exploring alternatives to custody, such as supervised release or community-based programs. Additionally, ongoing efforts to improve the efficiency of the justice system, including case management strategies and technology integration, can help reduce delays and alleviate the strain on judicial resources caused by remand in custody.

## (G) PROTECTION GRANTED TO THE REMANDEES

### UNDER THE CONSTITUTION OF INDIA

**Article 32** under the **Part III of the Constitution** which deals with fundamental rights and this right exists to protect and safeguard the other fundamental rights guaranteed by Part III of the Constitution.

The following observations made by a Constitution Bench of this Court in the case of **K.S. Puttaswamy & Anr. vs. Union of India & Ors.** are of significant relevance,

*“A constitutional democracy can survive when citizens have an undiluted assurance that the Rule of Law will protect their rights and liberties against any invasion by the State and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these, most precious rights.”<sup>15</sup>*

**K.K Kochunni, Moopil Nayar vs. State of Madras & Ors.**, the court has observed that “the Court must exercise its jurisdiction in matters where there is an abuse of fundamental rights.”<sup>16</sup>

In **Ritu Chhabaria vs. Union of India & Ors.** the court held that it is also pertinent to note that the relief of statutory bail under Section 167(2) of the CrPC, in our opinion, is a fundamental right directly flowing from Article 21 of the Constitution of India, and the

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<sup>15</sup> (2017) 10 SCC 1

<sup>16</sup> 1959 Supp (2) SCR 316.



violation of such a right, as mentioned above, directly attracts consideration under Article 32 of the Constitution.<sup>17</sup>

**Law Commission in its Report No. 41**, wherein it was explicitly stated that there was an urgent need to protect the civil liberties of accused persons against the misuse of Section 344 of the 1898 Act, wherein the accused persons, on grounds of a preliminary report and pending investigation, were remanded to custody indefinitely. The relevant paragraphs from the said report are being reproduced hereunder: -

*“Section 167 provides for remands. The total period for which an arrested person may be remanded to custody-police or judicial-is 15 days. The assumption is that the investigation must be completed within 15 days and the final report under section 173 sent to court by then. In actual practice, however, this has frequently been found unworkable. Quite often, a complicated investigation cannot be completed within 15 days, and if the offence is serious, the police naturally insist that the accused be kept in custody. A practice of doubtful legal validity has therefore grown up. The police file before a magistrate a preliminary or "incomplete" report, and the magistrate, purporting to act under section 344, adjourns the proceedings and remands the accused to custody. In the Fourteenth Report, the Law Commission doubted if such an order could be made under section 344, as that section is intended to operate only after a magistrate has taken cognizance of an offence, which can be properly done only after a final report under section 173 has been received, and not while the investigation is still proceeding. We are of the same view, and to us also it appears proper that the law should be clarified in this respect. The use of section 344 for a remand beyond the statutory period fixed under section 167 can lead to serious abuse, as an arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner. It is, therefore, desirable, as was observed in the Fourteenth Report that some time limit should be placed on the power of the police to obtain a remand, while the investigation is still going on: and if the present time limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safe-guard. Like the earlier Law Commission, we feel that 15 days is perhaps too short and we propose therefore to follow the recommendation in the Fourteenth Report that the*

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<sup>17</sup> 2023 LiveLaw (SC) 352.

*maximum period under section 167 should be fixed at 60 days. We are aware of the danger that such an extension may result in the maximum period becoming the rule in every case as a matter of routine: but we trust that proper supervision by the superior courts will prevent that.*"<sup>18</sup>

## CONCLUSION

This paper extensively examines the profound effects of remand in custody on both the State and its citizens, encompassing social, economic, and judicial implications. It highlights the significant concerns arising from the practice of remand in custody, not only for society at large but also for the individuals subjected to it. Moreover, the paper sheds light on the constitutional dimension of remand in custody, particularly focusing on the rights of the individuals who are remanded.

The analysis delves into the multifaceted impact of remand in custody, considering its consequences on the social fabric of society. It explores how the practice can disrupt families, communities, and social cohesion, often leading to stigmatization and marginalization of the remandees. Furthermore, it evaluates the economic ramifications of remand in custody, including the financial burden placed on the State in terms of the cost of housing, feeding, and providing healthcare to remandees.

From a judicial perspective, the paper examines the implications of remand in custody on the justice system. It addresses concerns such as the potential for wrongful imprisonment, the impact on the presumption of innocence, and the potential for lengthy pre-trial detention. The paper also examines the fairness and effectiveness of remand as a preventive measure in ensuring public safety and minimizing flight risks.

A significant portion of the analysis focuses on the constitutional aspects surrounding remand in custody. It explores the rights of the individuals who are remanded, including their right to a fair and speedy trial, the prohibition of cruel and inhuman treatment, and the protection against arbitrary detention. The paper scrutinizes how these rights are upheld or compromised within the context of remand in custody, emphasizing the need for adequate safeguards and procedural guarantees.

The paper presents a comprehensive examination of the social, economic, and judicial impact

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<sup>18</sup> Law Commission, Reforms on Judicial Administration, Law Commission No. 41 (1969) paras 14-19.

of remand in custody. It draws from various sources, including law commission reports and judicial precedents, to provide a well-rounded analysis. Additionally, the paper puts forth a range of recommendations aimed at addressing the concerns associated with remand in custody, ensuring the protection of both the rights of the individuals affected and the interests of the State and its citizens.