
INTERPRETATION OF MODEL PRISONS AND CORRECTIONAL SERVICES ACT, 2023 AND LEGAL RESEARCH: A CRITICAL ANALYSIS OF THE RIGHT TO PAROLE FOR UNDER TRIAL PRISONERS WITH SPECIAL REFERENCE TO INDIAN JUDICIAL SYSTEM

Saffa Khatun, Ph.D. Research Scholar, University of Calcutta, Department of Law, West Bengal

ABSTRACT

India's prison system is grappling with a serious overcrowding crisis, where more than 75% of inmates are undertrial prisoners, people who are presumed innocent but find themselves stuck in detention for long stretches due to systemic delays, poverty, and a lack of legal support. This paper takes a hard look at the Model Prisons and Correctional Services Act, 2023, especially Section 51, which only offers parole to convicted prisoners, completely overlooking the large number of undertrials. It raises a crucial question: if those who have been found guilty can get parole, why are those still waiting for their trial left out? By applying the Golden Rule of Interpretation, the research advocates for a more purposeful understanding of parole laws to avoid ridiculous outcomes that compromise human dignity and the constitutional rights guaranteed under Article 21. The study references significant Indian court rulings like Hussainara Khatoon, Sunil Batra, and Satender Kumar Antil, and contrasts India's legal setup with that of the USA and UK. In those countries, undertrials benefit from bail and swift trials, while India lacks effective bail options and doesn't provide any temporary release provisions when bail isn't possible. The findings reveal that not allowing parole for undertrials exacerbates inequality, undermines the presumption of innocence, and significantly contributes to prison overcrowding. The paper suggests legal reforms, such as revising Section 51 to permit conditional parole in humanitarian cases or when delays are excessive, particularly for undertrials who can't meet bail requirements. It also recommends empowering prison authorities to propose such parole and utilizing technology to keep track of released undertrials. Ultimately, this study highlights that incorporating parole-like options for undertrials would uphold constitutional principles, ease the strain on prisons, and bring India's criminal justice system in line with international human rights standards.

Keywords: Parole, Undertrial Prisoners, Prison Overcrowding, Article 21, Criminal Justice Reform

Introduction:

Every prison system reflects the values of its society. In India, prisons have evolved into overcrowded facilities where countless undertrial prisoners await justice, often for extended periods. These individuals, both men and women, are legally presumed innocent until proven guilty, yet they find themselves confined not due to a sentence, but because of the sluggishness of our judicial system and the ineffective regulations that should guarantee their freedom. This research paper poses a straightforward yet frequently neglected question: when the law permits parole—a temporary reprieve and a chance to maintain family connections—for convicts who have been adjudicated guilty, why is this opportunity denied to undertrials, who are considered innocent? Parole is intended to facilitate the rehabilitation of prisoners and their reintegration into society. However, under India's Model Prisons and Correctional Services Act, 2023 (Section 51), parole is exclusively a privilege for convicts demonstrating good behavior. For undertrials, there exists a void of provisions. Even now, the antiquated Prisons Act of 1894 continues to influence our correctional facilities, while the Model Prison Manual, 2016, and the newly introduced Model Prisons Act purport to bring modernization. Nevertheless, none of these frameworks address the situation of an undertrial who remains incarcerated beyond the maximum penalty for their alleged crime. Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, attempts to curtail such prolonged detention by establishing a time limit, yet it fails to provide parole as a remedy when bail is unattainable due to financial constraints or inadequate legal assistance. Research conducted by Singh (2019) indicates that prolonged detention devastates families, careers, and futures. Data from the NCRB demonstrates that undertrials constitute a larger portion of our prison population than any other demographic. Landmark judgments such as *Hussainara Khatoon*, *Sunil Batra*, and *Satender Kumar Antil* highlight that the right to a speedy trial is encompassed within the right to life as stated in Article 21; however, obtaining bail remains a significant challenge in practice. In contrast to the USA and UK, where efficient trial processes and strong bail systems maintain low levels of pre-trial detention, India leaves its most disadvantaged citizens ensnared within the prison system. This research is essential as the existing legal gaps contribute to overcrowded jails and fractured families. By applying the Golden Rule of Interpretation, this study illustrates that a strict interpretation of the parole law is unjust and contradicts the principles of reformation and human dignity. This paper posits that granting parole to undertrials in exceptional

circumstances could alleviate overcrowding, safeguard rights, and align our correctional facilities more closely with the values enshrined in the Constitution. Consequently, the objective of this research is to thoroughly examine India's prison laws and recent reforms, identify the deficiencies through judicial cases and international comparisons, and propose equitable solutions to facilitate conditional parole for undertrials in instances where bail is unattainable, ensuring that our prisons serve the purpose of rehabilitation rather than mere confinement.

Interpret the Legislation:

The way courts try to figure out what legislation really means, using the official wording it's presented in, is called interpretation, as noted by Salmond.¹ In other words, Legislative interpretation refers to the process by which courts analyze and interpret the term of a legislative enactment. It is a backbone and essential function of the judiciary, especially in a democratic framework like India where laws must evolve with society. In India, there is not always a new legislation made directly by judicial interpretation, because only the legislature formally makes laws. But courts have interpreted old laws and related rights in ways that have led to new rules, guidelines or even prompted fresh new legislation.

Similarly, The Prison Act of 1894, which dates back to before India gained independence, still shows the lingering influence of colonialism on the country's penal system. The primary emphasis of this Act is on the detention of offenders and the maintenance of discipline and order within correctional facilities. Currently, the Act lacks any provisions for the reform and rehabilitation of incarcerated individuals. But in recent decades, a fundamentally new paradigm has emerged regarding correctional institutions and their inhabitants on a global scale. Contemporary perspectives no longer regard prisons merely as sites of punitive deterrence; rather, they are increasingly perceived as reformatory and rehabilitative establishments where inmates undergo transformation and are reintegrated into society as law-abiding citizens. In this context, we're talking about the landmark case of *Sunil Batra v. Delhi Administration*², which had a major impact on how Article 21 of the Indian Constitution is interpreted and applied. It says that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Whether the convicted person enjoyed their fundamental

¹ D.N. Mathur, *Interpretation of Statutes* 25 (Central Law Publications, New Delhi, 6th edn., 2021).

² 1978 AIR 1975.

right under Article 21 was the topic on the Supreme Court's agenda. The judiciary has interpreted that despite the conviction and the imposition of the death penalty; individuals must be recognized as human beings endowed with rights protected under Article 21 of the Constitution guarantees every person's right to life and personal freedom. They do not exist under the caprice of the State and ought not to be deprived of their inherent fundamental rights. In this case, the Supreme Court expanded the meaning of 'life or personal liberty' to encompass the right to live with human dignity even when incarcerated, interpreting Article 21. Similarly, several judicial pronouncements, guidelines to improve prison conditions, criticism of outdated laws like the **Prison Act 1894**, a new legislation come in the recent year that is **Model Prisons and Correctional Services Act, 2023**. The main goal of the legislatures is to ensure the all-around development of prisoners, improve how prisons are managed, and help inmates become law-abiding citizens. This includes focusing on their rehabilitation and reintegration into society. In this rehabilitation and reintegration process the concept of '**Parole**' is very important aspect in this legislation. This type of release is usually granted for a specific time frame and often depends on the inmate showing good behavior while serving their sentence. In order to help the inmates reintegrate into society, this idea is presented.³ Parole is the ideal choice for therapy that involves support, supervision, and monitoring.

Parole is a powerful tool for rehabilitation, providing a solid support system along with supervision and guidance. The word itself comes from the French expression 'je donne ma parole,' which translates to 'I give my word.' Parole was established by the positive school which believes that when someone commits a crime because of specific circumstances, they should be given the opportunity to change and better themselves.⁴

No Regular Parole for Undertrial Prisoners

However, chapter XVIII, Section 51(1) of the Model Prisons and Correctional Services Act, 2023 provide that eligible convicted inmates may be granted prison leave as a reward for good behavior and responsiveness to correctional treatment with the goal of this rehabilitation, as may be prescribed under the rules.⁵ So, according to this legislation in the context of India, individuals classified as undertrial prisoners (UTPs) typically lack a legal entitlement to parole,

³ Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail System* 169 (Gian Publishing House, Delhi, 1989).

⁴ Bruce Vichert and Walter Zahnd, "Parole: Low and High Risk Parolees" 7(1) *Canadian Journal of Corrections* 39 (1965).

⁵ Model Prisons and Correctional Services Act, 2023.

which is primarily designed for inmates who have been convicted and satisfy specific criteria for temporary release. Parole constitutes a conditional liberation extended to incarcerated individuals subsequent to conviction, intended to incentivize exemplary conduct and facilitate their gradual reintegration into the societal framework. In contrast, UTPs rely upon the judicial system's discretion concerning bail, which is influenced by various considerations including the gravity of the alleged offense, the duration of detention, and the potential risk of flight. In rare instances, judicial authorities may grant undertrial prisoners limited leave on humanitarian grounds; however, such instances are not officially recognized as parole within the regulatory framework of the prison system. This form of temporary release may be authorized for pressing circumstances, such as medical treatment or the need to attend the funeral of an immediate family member. The provision of this type of relief is executed through judicial directives rather than adhering to the formal parole procedures delineated in prison regulations. On the other side the researcher highlights that approximately 75-80% of Indian prisoners are Under Trial who are faces prolonged periods of detention which creates huge overcrowding.⁶ They frequently remain in jail for months or even years without receiving a verdict due to slow court processes, stringent bail requirements⁷, and a lack of judges in many places.

State/UT-Wise Data on Undertrial Prisoners Confined for Over a Year in Indian Jails as of 31st December 2022:

	State/UT	More Than 5 Years	3 to 5 Years	2 to 3 Years	1 to 2 Years
1.	Andhra Pradesh	1	53	58	280
2.	Arunachal Pradesh	4	10	9	14
3.	Assam	45	137	128	1209
4.	Bihar	402	1481	2818	6393
5.	Chhattisgarh	66	406	1137	2196
6.	Goa	16	0	71	194
7.	Gujarat	447	822	1032	1885
8.	Haryana	53	786	1543	3700
9.	Himachal Pradesh	48	243	261	444
10.	Jharkhand	315	845	1044	2181
11.	Karnataka	225	677	863	2194
12.	Kerala	7	38	92	391
13.	Madhya Pradesh	211	1675	2105	4274

⁶ P. Agrawal, "Overcrowding in Prisons and the Role of UTPs" 32(4) *Indian Law Journal* 118 (2022).

⁷ S. Mehra, "Bail Reforms in India: A Case for Liberalisation" 28(3) *Indian Journal of Criminology* 220–240 (2021).

14.	Maharashtra	1850	2261	2822	5759
15.	Manipur	22	26	14	48
16.	Meghalaya	19	77	66	152
17.	Mizoram	1	3	22	42
18.	Nagaland	15	17	25	28
19.	Odisha	480	1167	1166	2200
20.	Punjab	119	716	1967	4398
21.	Rajasthan	453	1621	1974	3005
22.	Sikkim	2	18	31	56
23.	Tamil Nadu	27	81	264	613
24.	Telangana	9	24	44	272
25.	Tripura	0	7	13	39
26.	Uttar Pradesh	4540	8760	9819	13891
27.	Uttarakhand	28	185	383	748
28.	West Bengal	1379	2187	2305	3464
29.	Andaman & Nicobar Islands	1	17	1	13
30.	Chandigarh	0	46	54	98
31.	DNH & Daman & Diu	2	17	19	45
32.	Delhi	407	982	1284	2426
33.	Jammu & Kashmir	253	480	543	823
34.	Ladakh	1	4	1	3
35.	Lakshadweep	0	0	0	0
36.	Puducherry	0	0	2	24
	Total	11,448	25,869	33,980	63,502

Table: (Source of above Data: Undertrial Prisoners, Ministry of Home Affairs, Posted on 06 February, 2024 by PIB Delhi,

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003162>)

The above statistics on India's undertrial inmates reveals significant issues with the criminal justice system and pronounced geographical variations. Those incarcerated for extended periods of time without trial are most prevalent in states like Uttar Pradesh, Maharashtra, and Bihar. In Uttar Pradesh alone, for instance, there are over 13,891 undertrial prisoners for one to two years, nearly twice as many as in Maharashtra (5,759) and Bihar (6,393). To make matters worse, hundreds of people are still incarcerated for more than five years, Maharashtra (1,850) and Uttar Pradesh (4,540) continue to lead the list.

Role of Judiciary on Parole and Under Trial Prisoners:

International Perspectives

When examining the rulings of international courts regarding individuals awaiting trial,

significant cases such as *Prosecutor v. Milošević*⁸, *Prosecutor v. Delalić et al.*⁹, and *Prosecutor v. Blaškić*¹⁰ illustrate that detaining individuals prior to a guilty verdict poses a considerable issue globally. The International Criminal Tribunal for the former Yugoslavia (ICTY) has asserted that pre-trial detention should be a measure of last resort and should only be implemented for the minimum duration necessary, in accordance with international human rights standards, including Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that pre-trial detention must be exceptional and for the shortest time feasible.

The European Court of Human Rights (ECtHR) has made it clear that keeping someone in pre-trial detention for an extended period violates Article 5 of the European Convention on Human Rights is all about protecting individuals' rights to freedom and ensuring a fair legal process. In the case of *Kalashnikov v. Russia*¹¹, the Court determined that keeping a person in inadequate prison conditions for an excessive duration before trial was not only unjust but also constituted inhuman treatment.

Courts worldwide have emphasized that incarcerating individuals without fair and prompt trials constitutes a grave infringement of human rights. The International Court of Justice (ICJ) was tasked with ruling on the case brought by Ahmadou Sadio Diallo against the Democratic Republic of the Congo¹², the International Court of Justice took a strong stance against arbitrary detention, highlighting how crucial it is to adhere to due process standards set by international law. Additionally, the African Court on Human and Peoples' Rights has determined that the prolonged detention of individuals, particularly political prisoners, without trial contravenes the African Charter on Human and Peoples' Rights, which safeguards personal liberty and guarantees fair trial rights. In a similar vein, the Inter-American Court of Human Rights ruled in *Loayza Tamayo v. Peru*¹³ that detention without trial infringes upon the right to freedom and legal protection as outlined in the American Convention on Human Rights. In its decision regarding *Kalashnikov v. Russia*, *Kalashnikov v. Russia*¹⁴ the European Court tackled the issue at hand, affirmed that extended pre-trial detention under substandard conditions constitutes

⁸ (ICTY, IT-02-54).

⁹ (ICTY, IT-96-21-A).

¹⁰ (ICTY, IT-95-14-A).

¹¹ App. No. 47095/99, ECHR 2002-VI (15 July 2002).

¹² I.C.J. Reports 2010, p. 639 (30 November 2010).

¹³ Inter-Am. Ct. H.R. (Ser. C) No. 33 (Merits) (17 September 1997).

¹⁴ App. No. 005/2014, African Court on Human and Peoples' Rights (28 September 2016).

inhuman treatment in violation of Article 3 and breaches Article 5 concerning the right to liberty. These rulings reflect a robust global consensus on the necessity of safeguarding fair trial rights and the principle that states should resort to pre-trial detention solely as a last option. Numerous courts and human rights organizations now advocate for alternatives such as bail, electronic monitoring, and other measures to ensure that detention remains brief and equitable, thereby balancing the rights of the accused with public safety.¹⁵

Indian Perspectives

The Supreme Court of India has consistently ruled that the extended detention of undertrial prisoners without trial constitutes a clear infringement of Article 21 of the Constitution, which ensures the right to life and personal liberty. The landmark ruling in *Hussainara Khatoon v. State of Bihar* made it clear that the right to a speedy trial is a crucial part of Article 21. This decision led to the release of many undertrial detainees who had been stuck in prison for long stretches without facing trial.¹⁶

In a similar vein, in *Sunil Batra v. Delhi Administration*, the Court determined that prisoners, regardless of their status as convicted or undertrial, cannot be stripped of their fundamental rights and must be treated with dignity. The ruling underscored that undertrials should not face excessive or arbitrary restrictions, solitary confinement, or prolonged detention beyond what is legally permissible.¹⁷

In *Asfaq v. State of Rajasthan*, the Court emphasized that parole and similar forms of relief should be fairly evaluated for undertrial prisoners as well, recognizing their entitlement to temporary release under suitable conditions to protect personal liberty.¹⁸

In *Babulal Das v. State of West Bengal*, the Court addressed the matter of unreasonable pre-trial detention and emphasized that bail should not be denied in a mechanical manner when the delay is unwarranted.¹⁹

Recent rulings have further reinforced this principle. In *Hussain and Anr. v. Union of India*

¹⁵ M. Ali, "Pre-Trial Detention in Global Contexts" 45(3) *Criminal Justice Review* 273–290 (2020).

¹⁶ AIR 1979 SC 1360.

¹⁷ 1978 AIR 1675; 1979 SCR (1) 392.

¹⁸ (2017) 15 SCC 55.

¹⁹ AIR 1975 SC 606.

(2017),²⁰ the Court instructed High Courts to oversee undertrial detention to ensure that individuals do not remain incarcerated longer than the maximum penalty for their offense. In *Supreme Court Legal Aid Committee v. Union of India* (2021),²¹ the Court reiterated that prolonged undertrial detention infringes upon the right to liberty and mandated States to adhere to Section 436A CrPC to facilitate the release of such prisoners on bail. A major milestone took place in the 2022 case of *Satender Kumar Antil v. CBI*,²² where the Supreme Court established comprehensive bail guidelines to ensure the practical application of the ‘bail, not jail’ principle, thereby preventing unnecessary detention of undertrials. Moreover, In *Re: Policy Strategy for Grant of Bail* (2023),²³ the Court, exercising suo motu cognizance, tackled systemic issues leading to overcrowding and undertrial detention, further emphasizing the necessity for prompt bail and alternatives to incarceration. Together, these rulings illustrate that Indian courts acknowledge that prolonged detention without trial violates the fundamental human right to personal liberty, and that parole or bail should be readily available to undertrials to avert injustice.

Comparative study with foreign legislations:

The notion of parole is acknowledged globally as a means for the conditional release of convicted individuals, aimed at aiding their rehabilitation and reintegration into society. Nevertheless, a comparative analysis between the United States and the United Kingdom reveals that although parole is deeply ingrained in the correctional policies for convicts, it is not applicable to undertrial prisoners. The liberty interests of these individuals are instead safeguarded through comprehensive bail and pretrial release systems.

Parole in the United States

In the United States, the historical governance of parole was outlined in Chapter 224 of Title 18, U.S. Code, Crimes and Criminal Procedure, 1948, which established various forms of post-conviction release.²⁴ Parole permitted inmates to complete the remainder of their sentence under community supervision, contingent upon their good behavior and adherence to specified

²⁰ (2017) 5 SCC 702.

²¹ (2021) 5 SCC 1.

²² (2022) 10 SCC 51.

²³ In *Re: Policy Strategy for Grant of Bail*, Suo Motu Writ Petition (Criminal) No. 4 of 2021, Supreme Court of India (2023).

²⁴ *18 U.S. Code Chapter 224 — Crimes and Criminal Procedure (1948)*, available at: <https://www.law.cornell.edu/uscode/text/18/part-II/chapter-224> (last visited on July 4, 2025).

conditions. The Parole Commission and Reorganization Act of 1976 reformed the federal parole framework.²⁵ The Sentencing Reform Act of 1984 marked a significant change by eliminating parole for federal offenses committed after November 1, 1987. Instead, it introduced a system of fixed-term sentencing along with supervised release.²⁶ Nonetheless, numerous individual states continue to maintain parole boards in accordance with state legislation.

For undertrial prisoners, referred to as pretrial detainees, the American legal framework does not offer parole. Instead, the Eighth Amendment of the U.S. Constitution prohibits excessive bail, ensuring that pretrial detention is not punitive in nature.²⁷ In the case of *Stack v. Boyle*, the U.S. Supreme Court determined that bail should not be set at an amount exceeding what is reasonably necessary to guarantee the accused's presence at trial.²⁸ Additionally, in *United States v. Salerno*, the Court upheld narrowly defined preventive detention while reaffirming the essential right to reasonable bail.²⁹

Parole in the United Kingdom

In the United Kingdom, the parole system has undergone significant changes due to the Criminal Justice Act 2003, which replaced the traditional discretionary parole with a structured automatic release framework.³⁰ Convicted individuals serving determinate sentences are typically released halfway through their sentence 'on licence'.³¹ The operation of release on licence is akin to that of parole - prisoners are required to adhere to specific conditions, and any breach may result in their recall to custody.

For individuals awaiting trial, the UK legal framework does not accommodate parole. Instead, the Bail Act 1976 regulates pretrial release, bolstered by Article 5 of the European Convention on Human Rights (ECHR).³² The default position favors bail unless compelling reasons exist to refuse it, such as the risk of absconding or threats to public safety. In the case of *R (on the application of O) v Crown Court at Harrow*, the court emphasized that pretrial detention should

²⁵ *Parole Commission and Reorganization Act, 1976*, Pub. L. No. 94-233, 90 Stat. 219.

²⁶ *Sentencing Reform Act of 1984*, Pub. L. No. 98-473, 98 Stat. 1987.

²⁷ U.S. Constitution, Amendment VIII.

²⁸ *Stack v. Boyle*, 342 U.S. 1 (1951).

²⁹ *United States v. Salerno*, 481 U.S. 739 (1987).

³⁰ *Criminal Justice Act 2003*, c. 44 (UK).

³¹ Ministry of Justice, *Prison Service Instruction PSI 12/2015: Release on Licence*, available at: <https://www.justice.gov.uk> (last visited on July 4, 2025).

³² *Bail Act 1976* (UK); European Convention on Human Rights, Article 5.

only be employed in exceptional circumstances and must align with the right to liberty as stipulated in Article 5.³³

Comparative Perspective

A comparative analysis distinctly illustrates that both the USA and the UK differentiate between parole as a post-conviction measure and bail as a pretrial protection. Parole serves as a tool for managing sentences and facilitating the reintegration of convicts, whereas undertrials are presumed innocent and should be safeguarded through bail and the assurance of a prompt trial.³⁴ Importantly, no foreign court has equated the right to parole for convicts with a right to parole for undertrials. The legal focus instead emphasizes the importance of ensuring pretrial liberty through liberal bail conditions and an efficient judicial process.

This comparative viewpoint highlights that the primary challenge in India is not the lack of parole for undertrials but rather the inadequacy of effective bail mechanisms and the timely resolution of cases. Landmark rulings such as *Hussainara Khatoon v. State of Bihar* have acknowledged that prolonged detention of undertrials infringes upon Article 21 of the Constitution of India.³⁵ By adopting best practices from the US and UK, India must enhance its bail system and procedural protections.

Consequences of Not Releasing Under Trial Prisoners on Parole:

- i. **Effect on the Main Aim of Reformation** - The primary objective of the criminal justice system is not solely to impose punishment but also to rehabilitate and correct the behavior of offenders, enabling them to reintegrate as responsible citizens. However, when individuals awaiting trial are incarcerated for extended periods without the possibility of parole, this rehabilitative aim is severely compromised. These individuals have not yet been proven guilty, yet they are confined alongside hardened criminals, where they may adopt detrimental behaviors, encounter violence, and lose all hope. Rather than being afforded the opportunity to transform and better themselves, they frequently deteriorate due to the adverse conditions of the prison environment.

³³ *R (O) v Crown Court at Harrow* [2006] 1 WLR 1771 (UK).

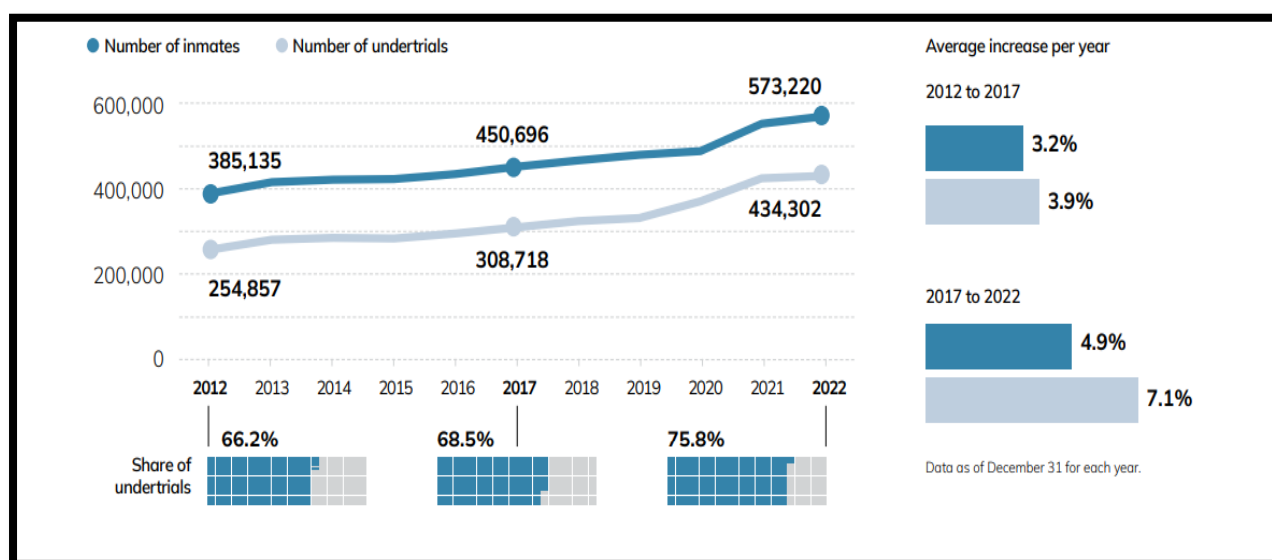
³⁴ Nicky Padfield, *Parole in England and Wales: Law and Practice*, 2nd ed., (Routledge, 2012).

³⁵ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

- ii. **Mental and Physical Health Issues** - Prolonged incarceration without any prospect of release leads to significant mental strain. Numerous individuals awaiting trial experience symptoms of depression and anxiety. The overcrowded correctional facilities lack adequate medical and psychological support. Deteriorating living conditions, substandard nutrition, and insufficient access to clean air and space contribute to the deterioration of prisoners' health. Illnesses such as tuberculosis and skin infections can easily proliferate in congested jails. Granting parole would provide inmates with some time outside of prison, which could be beneficial for their well-being.
- iii. **Problems for Family** - Numerous prisoners awaiting trial serve as the sole breadwinners for their families. If they are kept in jail without the possibility of parole, their families suffer a loss of income and encounter financial difficulties. Consequently, their children may be forced to discontinue their education due to insufficient funds. Additionally, families endure social stigma when a member is incarcerated for an extended period. The family often faces challenges in affording legal representation and may resort to bribery, yet delays can undermine all their efforts. Parole offers some respite to families, as it allows the individual to return home temporarily and provide support.
- iv. **Problems for Society** - Excessive incarceration of undertrial inmates leads to drug abuse, violence, and unsavory company. This hurts them and makes it difficult for them to lead regular lives after they are free.
- v. **Problem of Overcrowding** - Too many people awaiting trial are not released on parole or bail, which is a major contributing factor to India's overcrowded jails. The majority of prisons house far more inmates than they are designed to. They spend years behind bars. Occasionally, people are imprisoned for longer periods of time during trials than they would have if they had been found guilty earlier.
- vi. **Government Fiscal Burden** - The government spends a lot of money on each prisoner's meals, safety, and medical treatment. Retaining inmates awaiting trial for years puts further financial strain on the government. Schools, hospitals, and welfare programs might be funded with this money instead. A large number of people

undergoing trials are there for minor offences that may be resolved with community service or bail.

The graph below illustrates the increasing trend of the overall prison population and the number of undertrial prisoners from 2012 to 2022.



Source: Indian Justice Report, 2025, Available at:

https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf

The chart above provides a clear overview of the increasing prison population in India from 2012 to 2022. It emphasizes three critical elements: the overall number of inmates, the count of undertrial prisoners, and the evolving proportion of undertrials within the total prison population.

In 2012, Indian prisons accommodated 385,135 inmates, of which 254,857 were undertrials, constituting 66.2% of the total. By 2017, these numbers escalated to 450,696 inmates and 308,718 undertrials, raising the undertrial percentage to 68.5%. By 2022, the total prison population further increased to 573,220, with undertrials reaching 434,302 - an alarming 75.8% of all inmates.

This upward trajectory is mirrored in the average annual growth rates: from 2012 to 2017, the total inmate population expanded by 3.2% per year, while undertrials increased by 3.9%. Between 2017 and 2022, the annual growth rate surged to 4.9% for total inmates and an

impressive 7.1% for undertrials. These statistics underscore systemic challenges such as procedural delays, judicial backlog, and inadequate bail provisions, highlighting an urgent necessity for reforms to avert overcrowding and safeguard the fundamental right to a speedy trial.

Critical study:

One of the significant issues within India's prison and criminal justice system is the complete lack of a legal entitlement to parole for undertrial prisoners. This deficiency exacerbates the persistent issue of overcrowding in Indian jails and infringes upon fundamental constitutional principles that ensure personal freedom and the presumption of innocence.

According to official statistics, by the conclusion of 2022, more than 76% of all inmates in India were undertrials - individuals who have not yet received a conviction from any judicial authority.³⁶ The majority of these individuals hail from impoverished or marginalized communities, lack the financial means to pay for bail bonds, and do not have legal assistance to expedite their trial process. Consequently, they may spend years incarcerated while awaiting the commencement or resolution of their trial. During the same timeframe, India's correctional facilities operated at 131% of their authorized capacity, compelling inmates to endure inhumane living conditions.³⁷ This situation stands in stark contrast to the essence of Article 21 of the Constitution, which assures the right to life and personal liberty.

Parole is a conditional release mechanism that permits inmates to complete a portion of their sentence outside of prison while under supervision. The main values center around helping individuals transform, supporting their recovery journey, and reuniting them with their families. However, in India, parole is exclusively granted to convicted individuals - there exists no provision or policy to extend parole to undertrials, who may have been incarcerated for years, it's common for individuals to stay in custody longer than the actual sentence they received for their charges. This situation is both illogical and unjust for the following reasons: A convict has been adjudicated guilty following a trial - yet is deemed trustworthy enough to be granted parole. Conversely, an undertrial is presumed innocent - yet is compelled to remain

³⁶ Prison Statistics India Report 2022, NCRB, Ministry of Home Affairs, available at: <https://ncrb.gov.in> (last visited on July 4, 2025).

³⁷ *Ibid.*

incarcerated without access to the same relief.

None of the current legal frameworks—including the Prisons Act of 1894, the Model Prison Manual of 2016, the Model Prisons and Correctional Services Act of 2023, the Bharatiya Nyaya Sanhita 2023, and the various State Jail Manuals—clearly state that parole cannot be granted to undertrial prisoners, even if they deem it just. Indian courts assert that undertrials should seek bail rather than parole. In practice, however, obtaining bail is challenging: many undertrials are too impoverished to secure sureties. Numerous individuals lack legal assistance to approach the courts. Bail orders frequently face delays due to procedural obstacles or police opposition. Even when bail is granted, the conditions imposed are often excessively stringent. Consequently, these prisoners often remain incarcerated for years, which is precisely the issue that parole could alleviate.

In many developed jurisdictions, such as the USA and the UK, undertrials are also not granted parole; however, they possess efficient bail and pretrial release systems that prevent prolonged detention. Additionally, they rigorously uphold the right to a speedy trial. In India, both of these protections are inadequate: Bail is difficult to obtain for the economically disadvantaged. Trials progress at an exceedingly slow rate. Thus, unlike other nations, India's criminal justice system offers undertrials no viable means of release - they struggle to secure bail and are also denied parole.

This detention creates impact on human rights which contravenes Article 21 (Right to life and personal liberty), Contravenes Article 14 (Right to equality) as the impoverished endure greater hardships than the affluent, contravenes international commitments such as Article 9 of the ICCPR, which stipulates that pretrial detention should be an exception rather than a standard practice. This also leads to: Psychological trauma and stigma for undertrials and their families. Exposure to hardened criminals, complicating future rehabilitation efforts.

Overcrowding in prisons, resulting in poor living conditions, violence, and violations of rights. The Supreme Court has consistently stated that prolonged detention of undertrials is unconstitutional. In the case of *Hussainara Khatoon v. State of Bihar* (1979), the court made a significant decision to release a number of undertrial prisoners who had been stuck in jail for long periods, even though they were only charged with minor offenses. Similarly, the *Supreme Court Legal Aid Committee v. Union of India* (1994) advocated for bail for those who had already served half of their maximum sentence while awaiting trial. Nevertheless, these rulings

primarily address bail rather than parole - and do not instruct legislatures to establish any specific parole system for undertrials. Consequently, prison authorities lack the authority to take independent action.

Discussion on the Findings:

This study reveals that the existing legal framework, which encompasses the Prisons Act of 1894, the Model Prison Manual of 2016, and the Model Prisons and Correctional Services Act of 2023, does not adequately address the practical needs of undertrial prisoners concerning parole. The examination indicates that although bail is considered the primary solution, it is frequently unattainable for impoverished and marginalized prisoners, leading to extended detention and overcrowding. A comparative analysis and relevant case law support the notion that the implementation of conditional parole could mitigate these challenges and bring Indian practices in line with constitutional commitments and international benchmarks.

Limitations:

This research is doctrinal and primarily depends on pre-existing legal documents, judicial rulings, governmental reports, and secondary information. It does not encompass empirical fieldwork within correctional facilities or interviews with undertrial inmates or prison officials, which could provide more profound practical insights. Additionally, a limitation is that international comparisons are broad and may not adequately reflect India's distinct social and legal environment. Future studies could broaden their scope by collecting grassroots data and suggesting comprehensive administrative guidelines for execution.

Conclusion:

This research paper has conducted a thorough and critical analysis of the gap present in the Model Prisons and Correctional Services Act, 2023, with a particular emphasis on Section 51, which limits parole solely to convicted prisoners and does not address undertrial prisoners (UTPs). By highlighting this legislative deficiency, the researcher illustrates how the lack of parole options for UTPs exacerbates severe prison overcrowding and violates the fundamental right to life and liberty. Discover how to ensure personal liberty with the protection offered by Article 21 of the Constitution of India. In order to tackle this issue, the researcher employs the Golden Rule of Interpretation, a well-established principle in statutory interpretation that permits courts

and scholars to move beyond the literal interpretation of a statute when a straightforward reading leads to absurd outcomes or undermines the law's intended purpose. The rationale for utilizing this rule is to interpret the legislation in a way that furthers its genuine aim — which, in this instance, is the reformation and rehabilitation of prisoners, as well as their humane treatment. A rigid literal interpretation of Section 51 would result in the denial of temporary release to UTPs under any circumstances, even in cases where they have been held for excessively long periods without trial, leading to injustice and practical absurdity. Consequently, by invoking the Golden Rule, the researcher contends that the reformatory intent behind contemporary prison law should encompass UTPs in exceptional situations where bail is not feasible and prolonged detention contradicts the presumption of innocence principle. This interpretative strategy not only aligns the Act with the human rights obligations of the Constitution but also ensures that India's prison administration adheres to international standards, such as those outlined in Article 9 of the ICCPR.

In conclusion, this comprehensive analysis demonstrates that a contextual and purposive interpretation, bolstered by the Golden Rule, is crucial for addressing the legislative gap. By advocating for conditional parole for undertrial prisoners, this research offers a pragmatic legal reform that harmonizes individual rights, public safety, and the fundamental rehabilitative objectives of prison policy. It emphasizes the pressing necessity to update India's prison system to safeguard human dignity, alleviate overcrowding, and maintain the rule of law.

Suggestions:

The comparative analysis indicates that while nations such as the USA and the UK do not provide parole for undertrial prisoners, they possess efficient and equitable bail and pretrial release mechanisms. Furthermore, they guarantee that the right to a speedy trial is not merely a theoretical concept but a tangible reality. This framework prevents innocent individuals from languishing in jail for extended periods while awaiting their trial. Conversely, the scenario in India is markedly different. Despite the legal stipulation that bail is a right and that trials should be conducted without undue delay, in reality, impoverished undertrial prisoners face significant challenges in obtaining bail due to their inability to afford sureties, lack of adequate legal assistance, or simply their unfamiliarity with the intricate procedures of the judicial system. Consequently, they remain confined in overcrowded prisons for years without a viable opportunity for early release, as they are unable to secure bail and there exists no legal provision

for their parole either. In light of this critical disparity, India is in dire need of a definitive legal framework. The introduction of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is a positive development, as it establishes a maximum duration for which an undertrial prisoner may be held in custody and mandates that the jail superintendent notify the court when this threshold is exceeded, thereby facilitating the release of the prisoner on bail or bond. Nevertheless, this provision solely addresses bail and does not encompass parole. In practice, numerous impoverished undertrials are unable to arrange sureties or fulfill bail conditions even after they have become legally entitled. Therefore, it is recommended that Section 479 be complemented by a clear regulation permitting conditional parole for undertrials who exceed the detention limit but are unable to meet bail requirements. This would ensure that the legal right does not remain ineffective for the most disadvantaged prisoners and would genuinely assist in alleviating overcrowding while safeguarding the right to liberty as enshrined in Article 21.

Another discrepancy is evident in Section 51 of the Model Prisons and Correctional Services Act 2023, which pertains to the granting of parole but is applicable solely to convicted prisoners. This section fails to address any provisions for granting parole or similar temporary releases to undertrial prisoners, even if they have been incarcerated for years without the completion of their trials. It is advisable that this section be broadened through an amendment or new guidelines to explicitly permit conditional and supervised parole for undertrials who experience unreasonable delays or face genuine personal emergencies. Implementing such changes would enhance the fairness of the parole system, alleviate overcrowding, and ensure that undertrials are treated with dignity and humanity while their cases remain unresolved.

Furthermore, prison authorities ought to be empowered to recommend parole in exceptional circumstances. Currently, prison officers lack the authority to assist undertrials once they are incarcerated. If an undertrial is gravely ill, encounters a serious family crisis, or is evidently suffering due to delays beyond their control, the prison superintendent should have the ability to propose parole to the court for expedited approval under specific conditions. This would render the system more compassionate.

Moreover, it is imperative for India to modernize its legal framework by consolidating bail and parole under a singular, coherent policy for pretrial release. Under this framework, courts could possess the authority to determine whether bail or conditional parole is more suitable for each

individual case. This integrated approach would enable courts to identify the most appropriate solution for each undertrial prisoner, rather than leaving them with no viable option other than to languish indefinitely in custody.

To ensure that prisoners released on parole do not exploit the system, the government can implement modern technologies such as GPS tracking and biometric reporting. Additionally, stringent regulations and penalties for absconding should be established to prevent misuse.

Ultimately, India must honor its commitments under international law. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights stipulate that no individual should be detained unnecessarily and that everyone is entitled to a fair and prompt trial. By implementing a transparent policy that permits parole for deserving undertrials, India will meet its international responsibilities and enhance the fairness, humanity, and balance of its criminal justice system. If these reforms are enacted collectively, they will contribute to alleviating jail overcrowding, safeguarding the rights and dignity of undertrial prisoners, and reinforcing public confidence in the rule of law.