
UNDERTRIAL DETENTION AND PRISON OVERCROWDING IN INDIA: AN ANALYTICAL STUDY OF CHALLENGES AND REFORM IMPERATIVES

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ABSTRACT

Undertrial detention has emerged as one of the most persistent and pressing challenges within India's criminal justice system, contributing significantly to the chronic problem of prison overcrowding. A substantial proportion of the country's prison population consists of individuals awaiting trial, often for extended periods, owing to systemic delays, procedural inefficiencies, inadequate legal aid, and socio-economic vulnerabilities. This prolonged pre-trial incarceration not only infringes upon the constitutional guarantee of personal liberty under Article 21 but also raises serious concerns regarding the presumption of innocence and the right to a fair and speedy trial. Overcrowding exacerbates inhumane living conditions, heightens health risks, and undermines rehabilitation efforts, thereby perpetuating cycles of marginalisation and recidivism. The problem is further aggravated by inadequate infrastructure, insufficient staffing, and the lack of effective implementation of alternatives to detention, such as bail reforms, plea bargaining, and community-based sanctions. This analytical study examines the structural and procedural factors driving excessive undertrial detention and their implications for human rights, judicial efficiency, and prison administration in India. It also explores comparative international best practices, highlighting lessons from jurisdictions that have successfully reduced pre-trial incarceration rates without compromising public safety. The study argues that meaningful reform must be multi-pronged—strengthening legal aid services, enhancing judicial capacity, streamlining investigation and trial procedures, adopting technology-driven case management systems, and expanding non-custodial measures. Furthermore, there is an urgent need for robust oversight mechanisms and coordination

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among the judiciary, police, prison authorities, and civil society to ensure that detention is used strictly as a measure of last resort. By addressing these challenges through targeted legal, administrative, and infrastructural reforms, India can move towards a more equitable, efficient, and rights-compliant criminal justice framework, ultimately alleviating prison overcrowding and upholding the dignity of all individuals within its custody.

Keywords: Undertrial Detention, Prison Overcrowding, Criminal Justice Reform, Human Rights, Legal Aid

Introduction

The prison system is one of the most crucial indicators of how a society approaches questions of justice, liberty, and human dignity. In modern democracies, prisons are not meant to be merely punitive institutions but also spaces where reformation and rehabilitation are emphasized so that offenders can eventually reintegrate into society.³ However, the reality of Indian prisons presents a starkly different picture. Overcrowding, poor infrastructure, and inhumane living conditions continue to characterize the prison landscape, and at the heart of this problem lies the crisis of undertrial detention.⁴ The Indian criminal justice system relies heavily on pre-trial incarceration, a practice that results in a vast number of individuals being confined to prisons even though they have not been convicted of any offence. These undertrials, who are legally presumed innocent until proven guilty, constitute nearly three-fourths of the total prison population.⁵ According to the National Crime Records Bureau⁶, the percentage of undertrials has steadily remained high, crossing seventy-seven percent of the total inmates in recent years.⁷ This proportion is not only alarming from the perspective of justice but also among the highest in the world. Prolonged detention of undertrials without conclusion of their cases raises serious constitutional concerns. It directly undermines the right to life and personal liberty guaranteed under Article 21 of the Constitution, weakens the presumption of innocence which is a cornerstone of criminal jurisprudence, and erodes the constitutional promise of

³ National Judicial Data Grid, *Statistics on Case Pendency in Indian Courts*, available at: <https://njdg.ecourts.gov.in> (visited on 15/08/2025).

⁴ Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, (2018), p. 47.

⁵ National Crime Records Bureau, *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India (2023), p. 15.

⁶ *ibid*

⁷ Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, (2018), p. 47.

equality before law enshrined in Article 14.⁸ Beyond constitutional violations, the practice contributes significantly to prison overcrowding, thereby exacerbating inhumane living conditions, spreading health risks, and frustrating rehabilitation efforts. The result is a cycle of marginalization and recidivism, where individuals, especially those from vulnerable backgrounds, remain trapped in poverty, stigma, and criminalization.⁹

The issue is not simply the result of judicial backlog but is deeply embedded in India's criminal justice architecture. Systemic delays, procedural inefficiencies, inadequate legal aid, and socio-economic vulnerabilities combine to produce a system where detention becomes the norm rather than the exception.¹⁰ Despite progressive judicial pronouncements emphasizing the principle of "bail, not jail" and recognizing the right to a speedy trial, implementation has remained weak. As a result, the prison system continues to serve less as a space of justice and more as a repository of the marginalized.¹¹

This paper seeks to examine the issue of undertrial detention in depth, linking it with the problem of prison overcrowding in India. It explores the historical background of India's prison system, analyzes statistical trends, discusses the constitutional and legal framework, considers the socio-economic dimensions of the problem, and evaluates its impact on human rights. It further engages with comparative international practices and identifies reform imperatives that can transform the system into one that is efficient, equitable, and compliant with both constitutional and international human rights standards.

Historical Background

The problem of undertrial detention in India is not a contemporary aberration but has roots in the colonial period. During British rule, prisons were used primarily as instruments of political control, with detention serving as a mechanism for suppressing dissent.¹² The Prison Enquiry Committee of 1836, set up under the Governor-General Lord William Bentinck, was one of the earliest systematic studies of Indian prisons. It recommended classification of prisoners and

⁸ National Crime Records Bureau, *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India (2023), p. 15.

⁹ Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, (2018), p. 47.

¹⁰ *ibid*

¹¹ National Judicial Data Grid, *Statistics on Case Pendency in Indian Courts*, available at: <https://njdg.ecourts.gov.in> (visited on 15/08/2025).

¹² Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, (2018), p. 47.

proposed the abolition of forced labor outside prison premises, but its emphasis remained administrative and disciplinary, paying little attention to the rights of individuals awaiting trial.¹³

The Indian Prisons Act of 1894¹⁴, enacted by the British, continues to govern much of the prison administration in India even today. The Act reflects colonial priorities of order, discipline, and surveillance rather than rehabilitation or rights.¹⁵ Undertrial detention was normalized as a bureaucratic practice, a legacy that independent India has struggled to reform. Post-independence, several committees such as the All-India Jail Reforms Committee (1980–83) headed by Justice Mulla and the Justice Krishna Iyer Committee on Women Prisoners (1987) highlighted the plight of undertrials and suggested measures including speedy trials, bail reforms, and legal aid services. Unfortunately, most recommendations have been only partially implemented, allowing systemic problems to persist.¹⁶

Thus, the structural reliance on undertrial detention is historically embedded, making it one of the most persistent challenges of India's justice system.

Statistical Dimensions and Constitutional Framework

The scale of the problem is clearly reflected in official statistics. According to Prison Statistics India 2022, out of a total prison population of approximately 5.54 lakh, nearly 4.27 lakh were undertrials. This means that over seventy-seven percent of inmates are individuals who have not been convicted of any offence.¹⁷ The overall occupancy rate of Indian prisons was recorded at 130 percent of sanctioned capacity, with states like Uttar Pradesh reporting overcrowding levels exceeding 180 percent. A significant number of undertrials have been detained for more than one year, and thousands remain incarcerated for over five years.¹⁸ The socio-economic profile of undertrials further highlights the structural inequalities of the system. The majority belong to marginalized communities, including Scheduled Castes, Scheduled Tribes, and Other Backward Classes, or come from poor backgrounds where the inability to furnish bail bonds

¹³ National Crime Records Bureau, *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India (2023), p. 15.

¹⁴ The Indian Prison Act, 1894

¹⁵ Justice A.N. Mulla Committee, *Report of the All-India Committee on Prison Reforms 1980–83*, Government of India, New Delhi.

¹⁶ *ibid*

¹⁷ National Crime Records Bureau, *Prison Statistics India 2022*, Ministry of Home Affairs, Government of India (2023), p. 15.

¹⁸ *ibid*

or secure quality legal representation leads to prolonged incarceration.¹⁹ Thus, undertrial detention is not merely a reflection of systemic delay but also of social and economic exclusion.

The constitutional architecture of India is firmly committed to protecting personal liberty and ensuring fair procedures.²⁰ Article 21 guarantees the right to life and personal liberty, which the Supreme Court in *Maneka Gandhi v. Union of India* (1978)²¹ interpreted broadly to require that all procedures restricting liberty must be fair, just, and reasonable. This interpretation expanded the scope of Article 21 beyond mere physical survival, embracing dignity, due process, and protection against arbitrary state action. Complementing this, Article 22 provides specific safeguards against arbitrary arrest and detention, including the right to be informed of the reasons for arrest, the right to consult legal counsel, and the right to be produced before a magistrate within twenty-four hours.²² These safeguards are crucial in preventing abuse of executive power and ensuring that detention is not prolonged without judicial oversight.²³ Article 39A further mandates the state to provide free legal aid to ensure that justice is not denied due to economic or social disabilities, thus recognizing that meaningful access to justice is inseparable from the right to liberty. In addition to constitutional guarantees, the judiciary has played a pivotal role in shaping the contours of legal protections for undertrials.²⁴ In the landmark *Hussainara Khatoon v. State of Bihar* (1979), the Supreme Court exposed the plight of thousands of undertrial prisoners languishing in jails for years without trial, holding that speedy trial is an integral part of Article 21. Similarly, in *Sheela Barse v. State of Maharashtra* (1983), the Court emphasised the need for legal aid and humane treatment of prisoners, particularly women and juveniles. The *Sunil Batra* cases further underlined that the rights of prisoners do not end at the prison gates, reaffirming the principle that incarceration cannot strip individuals of their fundamental rights, except to the extent curtailed by the sentence itself.

Statutory law also reinforces these constitutional protections. The Code of Criminal Procedure, 1973, lays down detailed procedures governing arrest, bail, and remand, providing that detention during investigation and trial must be subject to strict judicial scrutiny. Sections 436 and 436A of the Code are particularly significant: while Section 436 entitles indigent accused

¹⁹ *ibid*

²⁰ Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, (2018), p. 47.

²¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²² Constituent Assembly Debates, Vol. VII, (1949), p. 781 (discussion on Article 22 safeguards).

²³ *ibid*

²⁴ Law Commission of India, *Report No. 268: Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail*, (2017).

persons to bail in bailable offences, Section 436A directs that undertrials who have spent half of the maximum prescribed sentence in detention should be released on bail. Despite such provisions, their ineffective implementation continues to undermine the rights of undertrials. Furthermore, the Legal Services Authorities Act, 1987²⁵, operationalises Article 39A by establishing national and state legal services authorities tasked with providing free legal aid, organising Lok Adalats, and spreading legal awareness, thereby seeking to bridge the gap between law in books and law in practice.²⁶

The Indian constitutional and legal framework, when read in harmony with international human rights obligations under instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), reflects a deep commitment to upholding due process, presumption of innocence, and humane treatment of detainees.²⁷ However, the persistent crisis of undertrial detention and overcrowding highlights the gap between constitutional promises and lived realities, pointing to the urgent need for effective enforcement, judicial monitoring, and administrative accountability to transform these rights into meaningful protections.²⁸

Judicial interventions have repeatedly emphasized the rights of undertrials. In *Hussainara Khatoon v. State of Bihar* (1979), the Court exposed the plight of thousands of undertrials languishing in jails for years and declared that the right to a speedy trial is a fundamental right under Article 21.²⁹ In *State of Rajasthan v. Balchand* (1978), the Court reiterated the principle that “bail is the rule and jail is the exception.”³⁰ Similarly, in *Sheela Barse v. State of Maharashtra* (1983), the Court emphasized the rights of women undertrials and called for legal aid and separate detention facilities.³¹ Later, in *Supreme Court Legal Aid Committee v. Union of India* (1994)³², the Court directed the release of undertrials who had served half the maximum punishment prescribed for the offences charged against them. In *DK Basu v. State of West Bengal* (1997), the Court laid down detailed guidelines to prevent custodial torture and

²⁵ The Legal Service Authorities Act, 1987

²⁶ National Human Rights Commission, *Annual Report 2021–22*, New Delhi, p. 156 (on overcrowding and rights violations).

²⁷ International Covenant on Civil and Political Rights, 1966, art. 14(2).

²⁸ National Human Rights Commission, *Annual Report 2021–22*, New Delhi, p. 156 (on overcrowding and rights violations).

²⁹ *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532

³⁰ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (“Bail not jail” principle)

³¹ *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

³² *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*, (1994) 6 SCC 731.

arbitrary arrests. Despite these progressive pronouncements, undertrial detention continues unabated, exposing the gap between constitutional ideals and ground realities.³³

Socio-Economic Dimensions

The crisis of undertrial detention cannot be understood without reference to socio-economic vulnerabilities. Individuals from poor backgrounds often lack the financial resources to post bail or arrange sureties, leading to extended detention even for bailable offences. Many undertrials are daily wage laborers, agricultural workers, or unemployed youth for whom even small amounts of bail are unaffordable.³⁴ The lack of awareness about legal rights further compounds their vulnerability. Caste-based marginalization also plays a significant role. A large proportion of undertrials belong to Scheduled Castes, Scheduled Tribes, and minority communities, reflecting structural discrimination in the criminal justice system. Women undertrials face unique challenges such as lack of maternal care facilities, inadequate sanitary provisions, and severe stigmatization after release.³⁵ Migrants and linguistic minorities often remain incarcerated longer due to communication barriers and the absence of local support networks. Young undertrials and juveniles face disruption of education and skill development, which severely affects their rehabilitation prospects. Thus, undertrial detention disproportionately impacts the most vulnerable sections of society, reinforcing cycles of poverty, marginalization, and criminalization.³⁶

Administrative and Infrastructural Challenges

The persistence of undertrial detention is also the result of deep-rooted administrative deficiencies. India's judiciary is heavily overburdened, with over forty million cases pending across courts. The country has fewer than twenty judges per million population, far below international standards, leading to chronic delays in trial processes.³⁷ Police practices aggravate the problem, with officers frequently resorting to unnecessary arrests under Section 41 of the Code of Criminal Procedure. Instead of exercising discretion judiciously, arrest becomes a

³³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

³⁴ Law Commission of India, *Report No. 268: Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail*, (2017).

³⁵ Commonwealth Human Rights Initiative (CHRI), *Looking into the Haze: A Study on Undertrial Prisoners in India* (2021).

³⁶ *Ibid*

³⁷ Commonwealth Human Rights Initiative, *Barred from Justice: Pre-trial Detention of the Poor in India*, (2018)

routine response, thereby swelling the number of undertrials. Prison infrastructure itself is outdated and inadequate.³⁸ Many prisons were constructed during the colonial period and are ill-equipped to handle present-day inmate populations. Overcrowding makes it impossible to maintain hygiene, provide medical care, or undertake rehabilitation programs.³⁹ Staffing shortages are acute, with prison staff often working under extreme stress and without adequate training. Coordination gaps between police, prosecution, judiciary, and prison authorities further contribute to delays, as undertrials are not produced before courts in time or necessary documentation is not completed efficiently.⁴⁰

Human Rights Concerns

Prolonged undertrial detention raises serious human rights concerns, as it undermines some of the most fundamental principles of justice and human dignity. At the core of these concerns lies the presumption of innocence, a cornerstone of criminal jurisprudence, which holds that no individual should be treated as guilty until their guilt is established beyond reasonable doubt by a competent court.⁴¹ Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, expressly safeguards this principle, yet in practice, prolonged pre-trial incarceration effectively punishes individuals even before a verdict is reached. This premature and unjust punishment blurs the line between the accused and the convicted, reducing constitutional guarantees to mere rhetoric.⁴²

Equally troubling is the denial of the right to a speedy trial, which the Supreme Court of India has consistently recognised as an essential component of Article 21 of the Constitution. In cases such as *Hussainara Khatoon v. State of Bihar* (1979), the Court categorically held that speedy justice is a fundamental right, and yet decades later, systemic delays and inefficiencies continue to deprive undertrials of this guarantee.⁴³ A delayed trial not only prolongs incarceration but also erodes public trust in the justice system, transforming prisons into sites of indefinite waiting rather than temporary custody.⁴⁴ The consequences of such prolonged detention are exacerbated by the problem of overcrowding in Indian prisons, which frequently operate at

³⁸ *In Re-Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

³⁹ Amnesty International India, *Justice Under Trial: A Study of Pre-trial Detention in India*, (2017).

⁴⁰ *ibid*

⁴¹ Law Commission of India, *Report No. 239: Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities*, (2012).

⁴² International Covenant on Civil and Political Rights, 1966, art. 14(2).

⁴³ *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532.

⁴⁴ *ibid*

over 120 percent of their official capacity.⁴⁵ In these congested facilities, prisoners are often deprived of even the most basic standards of humane treatment, in direct violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules. Overcrowding leads to unhygienic living conditions, insufficient medical care, and limited access to food, water, and sanitation. It creates a fertile ground for violence, exploitation, and abuse within prisons, undermining any possibility of rehabilitation.⁴⁶ Health risks in such environments are particularly alarming. Communicable diseases such as tuberculosis, skin infections, and respiratory illnesses spread rapidly when prisoners are confined in cramped barracks with inadequate ventilation.⁴⁷ The COVID-19 pandemic starkly exposed these vulnerabilities, as prisons became hotspots for infection due to the impossibility of physical distancing and the inadequacy of sanitation facilities. The absence of proper healthcare infrastructure within prisons further compounded the crisis, placing inmates' lives at disproportionate risk and highlighting the state's failure to meet even minimum obligations toward their wellbeing.⁴⁸

Beyond the inmates themselves, the adverse effects of prolonged undertrial detention ripple outward to families and communities. Many undertrials are primary breadwinners, and their extended absence inflicts severe economic hardship on their dependents.⁴⁹ Women, children, and elderly family members are often forced into cycles of poverty and social marginalisation, with children being compelled to leave school and enter child labour to sustain households.⁵⁰ The emotional toll of separation, uncertainty, and social stigma is equally profound, eroding family stability and leaving long-term scars on dependents. In this sense, the injustice of undertrial detention is not confined to prison walls but extends to entire households and, by extension, to the social fabric itself.⁵¹ The human rights implications of prolonged undertrial detention therefore go far beyond legal technicalities. They strike at the heart of constitutional morality, international human rights commitments, and the ethical obligation of the state to treat every individual with dignity. Unless addressed through systemic reforms, these violations perpetuate cycles of marginalisation, reinforce structural inequalities, and weaken

⁴⁵ *ibid*

⁴⁶ United Nations, *Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, UN Doc. A/RES/70/175 (2015).

⁴⁷ *In Re-Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

⁴⁸ Commonwealth Human Rights Initiative (CHRI), *Looking into the Haze: A Study on Undertrial Prisoners in India* (2021).

⁴⁹ *ibid*

⁵⁰ *R.D. Upadhyay v. State of A.P.*, (2006) 3 SCC 1 (special directions for women and children in prisons).

⁵¹ *ibid*

the credibility of India's justice system in the eyes of both its citizens and the global community.⁵²

Comparative International Practices and Reform Imperatives

Examining international practices provides useful lessons. The United States has introduced bail reforms in several states, such as New Jersey, replacing cash bail with risk assessment tools that evaluate whether an individual poses a flight risk or threat to public safety.⁵³ The United Kingdom relies extensively on non-custodial measures such as probation and community service, reserving detention for serious offences. Canada emphasizes the principle of pre-trial liberty, supported by robust legal aid systems. South Africa has strengthened legal aid and expedited trial processes for undertrials. These jurisdictions demonstrate that prison overcrowding can be addressed without compromising public safety by prioritizing alternatives to detention, ensuring speedy trials, and strengthening legal aid.⁵⁴

The solution to undertrial detention and prison overcrowding must be multi-dimensional. Legal reforms are urgently needed to simplify bail procedures, reduce dependence on monetary sureties, and implement Section 436A of the CrPC which mandates release of undertrials who have served half of the maximum punishment prescribed.⁵⁵ Judicial reforms should focus on increasing the number of judges, setting up fast-track courts, and using technology such as e-filing, digital case management, and video conferencing to expedite trials. Police reforms must prioritize accountability for unnecessary arrests and promote alternatives to custodial measures.⁵⁶ Prison reforms must modernize infrastructure, improve medical and sanitation facilities, and introduce educational and vocational training programs to support rehabilitation. Legal aid services must be expanded to ensure that every undertrial has access to competent representation. Community-based alternatives such as probation, parole, and restorative justice should be promoted to reduce reliance on incarceration. Finally, independent oversight

⁵² Commonwealth Human Rights Initiative (CHRI), *Looking into the Haze: A Study on Undertrial Prisoners in India* (2021).

⁵³ National Human Rights Commission, *Annual Report 2021–22*, New Delhi, p. 156 (on overcrowding and rights violations).

⁵⁴ Law Commission of India, *Report No. 239: Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities*, (2012).

⁵⁵ National Human Rights Commission, *Annual Report 2021–22*, New Delhi, p. 156 (on overcrowding and rights violations).

⁵⁶ National Crime Records Bureau, *Prison Statistics India 2021*, Ministry of Home Affairs, Government of India (2022), p. 28.

mechanisms and stronger coordination between judiciary, police, prison authorities, and civil society are essential for accountability and transparency.⁵⁷

Conclusion

The problem of undertrial detention and prison overcrowding in India represents a serious challenge to constitutional democracy and human rights. By allowing millions of individuals to languish in jails without trial, the system undermines the principles of liberty, equality, and justice. Although progressive judicial pronouncements and numerous reform recommendations exist, weak implementation and systemic inertia have allowed the crisis to persist. Reforms are not only necessary but urgent. Strengthening legal aid, liberalizing bail, enhancing judicial capacity, modernizing infrastructure, and expanding non-custodial alternatives can significantly reduce prison overcrowding. Beyond technical reforms, there must be a cultural shift in the criminal justice system, moving away from a punitive reliance on incarceration towards a more restorative and rehabilitative approach. Only then can India build a justice system that truly reflects the constitutional promise of dignity, liberty, and fairness for all.

⁵⁷ Commonwealth Human Rights Initiative, *Barred from Justice: Pre-trial Detention of the Poor in India*, (2018).