
PRISON OVERCROWDING AND UNDERTRIAL DETENTION IN INDIA: CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS

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ABSTRACT

India's prisons present a paradox at the heart of its criminal justice system: institutions meant to hold those convicted of crime are dominated by persons who have been convicted of nothing at all. Undertrial prisoners consistently constitute more than three-fourths of the country's prison population, and chronic overcrowding — the national occupancy rate has fluctuated between roughly 118 and 131 per cent in recent years — is substantially a function of this reliance on pre-trial incarceration. This paper examines the constitutional and human rights dimensions of prison overcrowding and undertrial detention in India. It traces the doctrinal foundations laid by the Supreme Court's expansive reading of Article 21 in *Hussainara Khatoon v. State of Bihar* and its progeny, situates these developments within the procedural safeguards of Article 22 and the equality guarantee of Article 14, and evaluates the statutory response embodied first in Section 436A of the Code of Criminal Procedure, 1973 and now in Section 479 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023. The paper further locates the Indian experience within international human rights standards, including the International Covenant on Civil and Political Rights and the Nelson Mandela Rules, before examining the structural, socio-economic, and institutional causes that sustain prolonged undertrial detention despite four decades of judicial intervention. It concludes that the persistence of the problem reflects not an absence of legal principle but a failure of implementation, and proposes reforms centred on effective legal aid, functional undertrial review committees, and a shift from a bail-is-favour to a bail-is-right paradigm.

Keywords: undertrial prisoners; prison overcrowding; Article 21; speedy trial; bail reform; human rights; *Bharatiya Nagarik Suraksha Sanhita*.

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I. INTRODUCTION

The prison occupies a paradoxical place in the architecture of India's criminal justice system. It is constitutionally sanctioned as an instrument for the execution of sentences imposed after due process, yet the empirical reality is that a substantial majority of persons confined within Indian jails have never been convicted of any offence.² As on 31 December 2022, undertrial prisoners constituted 75.8 per cent of the total prison population of the country, numbering 4,34,302 out of 5,73,220 inmates.³ The following year's data confirmed the trend, recording 76.2 per cent of all inmates as undertrials.⁴ This is not a transient anomaly but an entrenched structural feature of the Indian penal system, one that has attracted judicial censure for over four decades without a commensurate change in practice.

Prison overcrowding and undertrial detention are, in the Indian context, two faces of a single phenomenon. The national occupancy rate — the ratio of the actual prison population to the sanctioned capacity — has fluctuated between approximately 118 and 131 per cent over the last several years, with individual States such as Delhi recording rates approaching 200 per cent.⁵ Because more than three in four inmates are undertrials, it follows that the crisis of overcrowding is substantially, though not exclusively, a crisis of pre-trial detention: persons who are presumed innocent in law are, in practice, absorbing the greater share of the punitive burden of incarceration.

This paper examines the constitutional and human rights dimensions of this phenomenon. Part II sets out the statistical dimensions of the problem. Part III examines the constitutional foundations — Articles 14, 21, 22 and 39A of the Constitution of India — that bear upon the liberty of the undertrial prisoner. Part IV traces the judicial elaboration of these guarantees through a body of case law beginning with *Hussainara Khatoon v. State of Bihar*.⁶ Part V considers the statutory safeguard against prolonged detention, from Section 436A of the Code of Criminal Procedure, 1973 to its successor, Section 479 of the Bharatiya Nagarik Suraksha

²National Crime Records Bureau, Prison Statistics India 2022, ch. 4 (Ministry of Home Affairs, Govt. of India, 2023) (undertrial prisoners are, by definition, persons not yet convicted and presumed innocent in law).

³National Crime Records Bureau, Prison Statistics India 2022, ch. 4 (Ministry of Home Affairs, Govt. of India, 2023).

⁴National Crime Records Bureau, Prison Statistics India 2023, ch. 4 (Ministry of Home Affairs, Govt. of India, 2024).

⁵Supreme Court of India, Centre for Research and Planning, Prison Statistics Report (2023); The Policy Edge, NCRB's Prison Statistics India 2023: Overcrowding, Undertrials, and Mental Health (Dec. 19, 2025).

⁶*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (India).

Sanhita, 2023. Part VI situates the Indian position within international human rights law. Part VII analyses the structural causes that sustain the crisis despite the doctrinal clarity of the case law, Part VIII surveys institutional responses, Part IX offers recommendations, and Part X concludes.

II. MAGNITUDE OF THE PROBLEM: OVERCROWDING AND UNDERTRIAL DETENTION IN NUMBERS

The National Crime Records Bureau's annual *Prison Statistics India* reports are the principal official source of data on the Indian prison system.⁷ The 2022 report recorded a total prison population of 5,73,220 against a sanctioned capacity of 4,36,266, yielding an all-India occupancy rate of approximately 131 per cent.⁸ The 2023 report recorded a marginal decline in the occupancy rate to 120.1 per cent, even as the absolute prison population continued to rise to 5,54,034, a 4.1 per cent increase over the previous year.⁹ This masks considerable inter-State variation: Delhi's prisons have operated at close to double their sanctioned capacity, while other States such as Telangana report occupancy well below capacity, illustrating that the crisis is not merely a function of aggregate demand for prison space but of the distribution and efficiency of the criminal justice apparatus across jurisdictions.¹⁰

Undertrial prisoners are not a demographically neutral category. A disproportionate share belongs to socially and economically marginalised communities: undertrials from Scheduled Castes, Scheduled Tribes, and Other Backward Classes together account for roughly two-thirds of the undertrial population, a proportion that has remained broadly stable over several years.¹¹ Among women prisoners, the undertrial ratio is higher than the general average, at approximately 76 per cent, and a meaningful proportion of undertrial women are in custody together with their infant children.¹² Duration of detention compounds the injustice: NCRB data indicates that a significant proportion of undertrials have already spent more than a year

⁷National Crime Records Bureau, About Prison Statistics India, <https://www.ncrb.gov.in> (last visited July 18, 2026).

⁸National Crime Records Bureau, Prison Statistics India 2022, ch. 2 (Ministry of Home Affairs, Govt. of India, 2023).

⁹The Policy Edge, NCRB's Prison Statistics India 2023: Overcrowding, Undertrials, and Mental Health (Dec. 19, 2025).

¹⁰Id.

¹¹IndiaSpend, #DataViz: Prison Occupancy Rose in 2022, Despite Campaign to Release Undertrials (2023) (citing Commonwealth Human Rights Initiative analysis of caste-wise undertrial data).

¹²National Crime Records Bureau, Prison Statistics India 2022, ch. 7 (Ministry of Home Affairs, Govt. of India, 2023).

in custody without a determination of guilt, and roughly 8.6 per cent have been detained for more than three years.¹³ These figures must be read against India's stark shortage of prison mental-health infrastructure, estimated at roughly one mental-health professional for every 23,000 inmates, which compounds the harm of prolonged, overcrowded confinement.¹⁴

The consequence of this pattern is that the burden of India's underdeveloped trial infrastructure — itself a product of judicial vacancies, investigative delay, and an overburdened lower judiciary — is displaced onto the liberty of the poorest and most vulnerable litigants, who lack the resources to secure bail or retain effective counsel. It is this displacement that gives the problem of undertrial detention its distinctly constitutional character, for it implicates not merely questions of prison administration but the core guarantees of personal liberty, equality, and due process enshrined in Part III of the Constitution.

III. CONSTITUTIONAL FOUNDATIONS

The Constitution of India does not use the term “undertrial,” but its guarantees of personal liberty furnish the doctrinal architecture within which the rights of undertrial prisoners have been developed. Article 21 provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁵ Prior to 1978, this guarantee was read narrowly, as requiring only that a procedure be prescribed by a validly enacted law, without inquiry into its fairness.¹⁶ The Supreme Court's decision in *Maneka Gandhi v. Union of India* transformed this position, holding that the “procedure established by law” must itself be fair, just and reasonable, and not arbitrary, fanciful or oppressive, thereby infusing Article 21 with substantive due process and linking it inextricably to Articles 14 and 19.¹⁷ This reorientation proved foundational for the undertrial's claim to liberty, because it permitted courts to scrutinise not merely whether detention was authorised by some law, but whether the process by which that detention was prolonged met a standard of fairness.

Article 22 supplies the specific procedural safeguards attending arrest and detention: the right to be informed of the grounds of arrest, the right to consult and be defended by a legal

¹³National Crime Records Bureau, Prison Statistics India 2022, ch. 4 (Ministry of Home Affairs, Govt. of India, 2023).

¹⁴The Policy Edge, *supra* note 8.

¹⁵India Const. art. 21.

¹⁶See *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India).

¹⁷*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

practitioner of choice, and the requirement that a person arrested be produced before a magistrate within twenty-four hours of arrest, excluding the time necessary for the journey.¹⁸ These safeguards, though textually confined to the moment of arrest, have been read by the courts as part of a continuum of protection against arbitrary and prolonged custody, reinforcing the Article 21 requirement that any continued deprivation of liberty be justified by a fair procedure at each stage of the criminal process.

Article 14, guaranteeing equality before the law and the equal protection of the laws, bears on undertrial detention in a distinctive way: because access to bail in India has historically depended on the ability to furnish a surety or monetary bond, the practical effect of a facially neutral bail law has often been to keep the indigent accused in custody while a similarly situated but wealthier accused secures release.¹⁹ The Supreme Court has recognised that such wealth-based discrimination in the administration of bail offends the equality guarantee, and has repeatedly urged magistrates to release indigent undertrials on personal bond rather than insisting on sureties they cannot furnish.²⁰

Underlying these specific guarantees is the broader principle that an accused person is presumed innocent until proven guilty, a principle the Supreme Court has repeatedly invoked, most memorably in Krishna Iyer, J.'s formulation that “the basic rule is bail, not jail,” a rule from which departure is permissible only where there exist circumstances suggesting the likelihood of the accused fleeing from justice, tampering with evidence, or committing further offences.²¹ Although the presumption of innocence is not separately enumerated in the constitutional text, Indian courts have treated it as an essential attribute of a fair trial and hence embedded within Article 21, so that any regime of pre-trial detention that treats custody as the default rather than the exception sits uneasily with this constitutional value.

Article 39A, inserted by the Forty-Second Amendment in 1976 as a Directive Principle of State Policy, obliges the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and in particular to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.²²

¹⁸India Const. art. 22, cls. 1–2.

¹⁹See *Moti Ram v. State of M.P.*, (1978) 4 SCC 47 (India).

²⁰*Id.*; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98 (India) (fourth in the series, addressing release of undertrials on personal bond).

²¹*State of Rajasthan v. Balchand*, (1977) 4 SCC 308, 309 (India) (Krishna Iyer, J.).

²²India Const. art. 39A.

Although directive principles are not directly enforceable, the Supreme Court has read Article 39A into the guarantee of a fair trial under Article 21, holding that free legal aid at State expense is a fundamental right of every accused person who is unable, on account of indigence, to engage a lawyer.²³ Taken together, Articles 14, 21, 22 and 39A supply a constitutional scaffolding under which prolonged, unexplained, and wealth-contingent pre-trial detention is rendered constitutionally suspect.

IV. JUDICIAL RESPONSE: LANDMARK CASE LAW

It fell to the Supreme Court, beginning in the late 1970s, to translate these constitutional provisions into operative doctrine for undertrial prisoners. The starting point is *Hussainara Khatoon v. State of Bihar*, a series of cases arising out of a habeas corpus petition that revealed thousands of undertrials in Bihar's jails who had been in custody for periods longer than the maximum sentence prescribed for the offences with which they were charged.²⁴ The Court held that the right to a speedy trial is implicit in the guarantee of Article 21, observing that a procedure which does not ensure a reasonably expeditious trial cannot be regarded as “reasonable, fair or just,” and directed the release of undertrials whose continued detention could no longer be justified.²⁵ The decision also affirmed that the right to free legal services is an essential ingredient of a reasonable, fair and just procedure for a person accused of an offence, and that this right attaches irrespective of the person's ability to invoke it, casting on the State a duty to provide a lawyer even where the accused does not ask for one.²⁶

The Court's engagement with prison conditions deepened in *Sunil Batra v. Delhi Administration*, where it held that a person in prison does not become a non-person and continues to enjoy the fundamental rights guaranteed under the Constitution, subject only to such restrictions as are necessary for incarceration.²⁷ *Rudul Sah v. State of Bihar* extended this reasoning to remedy, holding that a person illegally detained beyond the term of his sentence was entitled to monetary compensation from the State as a public law remedy under Article 21, thereby recognising that the mere award of release was insufficient redress for years of unlawful confinement.²⁸ In *R.D. Upadhyay v. State of A.P.*, the Court turned to the position of

²³Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81, 88 (India).

²⁴Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (India).

²⁵Id.

²⁶Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98, 104 (India).

²⁷Sunil Batra v. Delhi Admin., (1978) 4 SCC 494 (India).

²⁸Rudul Sah v. State of Bihar, (1983) 4 SCC 141 (India).

children living in prison with undertrial or convicted mothers, laying down comprehensive guidelines on food, education, and medical care for such children, on the footing that the liberty deficit of the mother could not be visited upon the child.²⁹

The Court has also developed a distinct line of authority addressing the manner of arrest itself, recognising that the conditions of undertrial detention are frequently a function of how and when arrest is effected. In *Joginder Kumar v. State of Uttar Pradesh*, the Court held that arrest cannot be justified merely because it is lawful to do so, and that the police officer must be satisfied that arrest is necessary to the investigation, drawing a link between unnecessary arrest and the subsequent swelling of the undertrial population.³⁰ *D.K. Basu v. State of West Bengal* built upon this reasoning by prescribing specific safeguards to be followed at the time of arrest and detention, including the maintenance of arrest memos and communication of the arrest to a friend or relative of the arrestee, safeguards later given statutory recognition.³¹ In *Bhim Singh v. State of Jammu and Kashmir*, the Court awarded exemplary compensation for the illegal arrest and detention of a sitting legislator, reaffirming the *Rudul Sah* principle that violation of Article 21 through unlawful detention sounds in monetary compensation as a public law remedy distinct from ordinary tortious liability.³²

The Court's bail jurisprudence has consistently cautioned against the reflexive use of pre-trial custody. In *Gudikanti Narasimhulu v. Public Prosecutor* and *Moti Ram v. State of Madhya Pradesh*, the Court emphasised that bail, not jail, ought to be the norm, and criticised the practice of demanding sureties from the same locality or of a value disproportionate to the accused's means, describing such practices as effectively punishing poverty.³³ More recently, in *Arnesh Kumar v. State of Bihar*, the Court issued binding directions restricting routine arrests in offences punishable with imprisonment of up to seven years, in an effort to check the mechanical use of arrest as a first resort that swells the undertrial population.³⁴

The most significant recent intervention is *Satender Kumar Antil v. Central Bureau of Investigation*, in which the Supreme Court, noting that jails were “flooded” with undertrial prisoners, classified offences into categories for the purpose of bail and directed trial courts to

²⁹R.D. Upadhyay v. State of A.P., (2006) 8 SCC 613 (India).

³⁰Joginder Kumar v. State of U.P., (1994) 4 SCC 260 (India).

³¹D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India).

³²Bhim Singh v. State of J. & K., (1985) 4 SCC 677 (India).

³³Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 (India); Moti Ram v. State of M.P., (1978) 4 SCC 47 (India).

³⁴Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 (India).

dispose of bail applications expeditiously and without insisting on the physical presence of the accused where unnecessary.³⁵ This decision built upon the Court's continuing supervisory jurisdiction exercised in *In re Inhuman Conditions in 1382 Prisons*, a suo motu proceeding initiated on a letter from a former Chief Justice of India highlighting systemic failures of prison administration, in which the Court directed the constitution of Undertrial Review Committees in every district to periodically examine the cases of undertrial prisoners eligible for release.³⁶ Most recently, on 23 August 2024, the Supreme Court held that Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 — the successor to Section 436A of the Code of Criminal Procedure — would apply retrospectively to undertrials whose cases were pending when the new provision came into force, extending its protective reach to prisoners already in custody.³⁷

Read together, these decisions demonstrate a sustained, if uneven, judicial commitment to curbing prolonged undertrial detention. Yet, as the persistence of the underlying statistics suggests, the translation of this jurisprudence into administrative practice at the level of the individual undertrial has remained markedly incomplete.

V. STATUTORY SAFEGUARDS: FROM SECTION 436A CrPC TO SECTION 479 BNSS

Judicial pronouncements found partial statutory expression in Section 436A of the Code of Criminal Procedure, 1973, inserted by the Code of Criminal Procedure (Amendment) Act, 2005 with effect from 2006.³⁸ The provision mandated that where a person had undergone detention during investigation, inquiry or trial for a period extending up to one-half of the maximum period of imprisonment prescribed for the offence, the court was obliged to release such a person on personal bond, with or without sureties, unless the court, for reasons recorded in writing, directed continued detention or release on more onerous conditions.³⁹ The section further provided that no person could, in any case, be detained during investigation, inquiry, or trial for a period exceeding the maximum term of imprisonment provided for the offence; offences punishable with death were excluded from the provision.⁴⁰

³⁵Satender Kumar Antil v. CBI, (2022) 10 SCC 51 (India).

³⁶*In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700 (India).

³⁷See *Analysing the Remedy of Bail under Section 479 of BNSS*, Bar & Bench (Oct. 2, 2024) (discussing the Supreme Court's ruling on retrospective application of Section 479, BNSS).

³⁸Code of Criminal Procedure (Amendment) Act, No. 25 of 2005, § 436A (India).

³⁹Code of Criminal Procedure, 1973, § 436A (India) (since repealed).

⁴⁰*Id.*

Notwithstanding its mandatory language, Section 436A suffered from significant implementation deficits: jail superintendents were not always diligent in identifying eligible undertrials, courts were not uniformly proactive in monitoring detention periods, and the absence of a robust case-tracking infrastructure meant that many undertrials entitled to release under the provision continued to languish in custody.⁴¹ This administrative failure was one of the principal findings underlying the Court's directions in *In re Inhuman Conditions in 1382 Prisons* for the establishment of Undertrial Review Committees.⁴²

With effect from 1 July 2024, Section 436A was replaced by Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023.⁴³ Section 479 retains the basic one-half threshold for undertrials generally, but introduces a more favourable one-third threshold for first-time offenders who have no prior conviction, and casts an affirmative statutory duty on the jail superintendent to move an application for release once the threshold period is completed.⁴⁴ At the same time, the new provision has attracted criticism for excluding from its protection any offence in which life imprisonment, and not merely the death penalty, is a possible punishment — a considerably wider exclusion than existed under Section 436A, which excluded only offences punishable with death.⁴⁵ Commentators have observed that this expanded exclusion risks denying the benefit of the provision to undertrials facing some of the most serious charges, precisely the category in which trials tend to be the longest and pre-trial detention the most protracted, thereby narrowing the very safeguard the provision was designed to strengthen.⁴⁶ The Supreme Court's clarification that Section 479 applies retrospectively to pending cases has mitigated, but not resolved, these concerns.⁴⁷

VI. INTERNATIONAL HUMAN RIGHTS DIMENSIONS

India's domestic constitutional jurisprudence on undertrial detention finds a close parallel in international human rights instruments, several of which have directly informed the reasoning of Indian courts. Article 9 of the Universal Declaration of Human Rights provides that no one shall be subjected to arbitrary arrest, detention or exile, while Article 9(3) of the International

⁴¹Law Commission of India, Report No. 268, Amendments to Criminal Procedure Code, 1973 — Provisions Relating to Bail, ¶¶ 2.5–2.9 (2017).

⁴²*In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700 (India).

⁴³Bharatiya Nagarik Suraksha Sanhita, 2023, § 479 (India), effective July 1, 2024.

⁴⁴Id. § 479(1) & proviso, (3).

⁴⁵Id. § 479(1).

⁴⁶See *When Exceptions Swallow the Rule: Problem with Section 479 BNSS*, LiveLaw (Oct. 17, 2025).

⁴⁷*Analysing the Remedy of Bail under Section 479 of BNSS*, Bar & Bench (Oct. 2, 2024).

Covenant on Civil and Political Rights — to which India is a party — specifically provides that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release, and that it shall not be the general rule that persons awaiting trial shall be detained in custody.⁴⁸ The Covenant thus articulates, in near identical terms, the presumption against pre-trial detention that the Indian Supreme Court has derived independently from Article 21.

The UN Human Rights Committee, in its General Comment No. 35 on Article 9 of the ICCPR, has clarified that pre-trial detention must be based on an individualised determination of necessity and reasonableness, reviewed periodically, and may not be automatic or based on a fixed catalogue of offences — an interpretive standard that resonates closely with the Indian Supreme Court's insistence, in *Satender Kumar Antil*, that bail decisions be individualised rather than mechanical.⁴⁹ Although India's engagement with the Committee's periodic review process under the ICCPR's reporting mechanism has been episodic, the substantive convergence between international standards and domestic constitutional doctrine on this issue is a notable, if underutilised, resource for advocacy and judicial reasoning within the domestic system.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, revised and adopted by the General Assembly in 2015 as the Nelson Mandela Rules, similarly emphasise that untried prisoners are presumed innocent and must be treated accordingly, and lay down detailed standards concerning accommodation, healthcare, and the avoidance of conditions amounting to cruel, inhuman or degrading treatment — standards with which chronically overcrowded Indian prisons are frequently unable to comply.⁵⁰ The Rules specifically address the vulnerabilities of women prisoners and prisoners with children, echoing the concerns addressed by the Indian Supreme Court in *R.D. Upadhyay*.⁵¹ India, as a party to the ICCPR and a member of the United Nations, has accepted these standards as benchmarks against which its own prison administration may be measured, even though the Covenant has not been directly incorporated into domestic law by legislation and is enforceable, if at all, only through its

⁴⁸Universal Declaration of Human Rights art. 9, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 9(3), Dec. 16, 1966, 999 U.N.T.S. 171.

⁴⁹U.N. Human Rights Comm., General Comment No. 35, Article 9 (Liberty and Security of Person), U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

⁵⁰U.N. Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, rr. 111–112 (Dec. 17, 2015).

⁵¹Id. rr. 28–29.

influence on the interpretation of Part III of the Constitution.⁵²

VII. STRUCTURAL CAUSES OF PROLONGED UNDERTRIAL DETENTION

The persistence of high undertrial numbers despite four decades of Supreme Court jurisprudence points to causes that lie substantially outside the domain of constitutional doctrine. First, India's bail system, notwithstanding judicial exhortations that bail is the rule and jail the exception, continues in practice to operate as a system in which the ability to furnish sureties determines liberty.⁵³ The Law Commission of India's 268th Report, examining amendments to the bail provisions of the Code of Criminal Procedure, found that a substantial proportion of arrests — estimated at around 60 per cent — were unnecessary or avoidable, and recommended structural reform of the arrest and bail process to reduce the inflow of undertrials into the prison system.⁵⁴

Second, delay in investigation and trial remains endemic. India's police-to-population ratio, at roughly 137 personnel per lakh population, falls well below the ratio of 222 recommended by the United Nations, contributing to slow investigation and a consequent backlog of pending trials in which the accused remains in custody.⁵⁵ Vacancies in the subordinate judiciary compound this delay, as does the practice of routine adjournments, so that the constitutional guarantee of a speedy trial affirmed in *Hussainara Khatoon* remains, for many undertrials, aspirational rather than realised.⁵⁶

Third, access to legal aid remains uneven notwithstanding the constitutional and statutory guarantee of free legal services. Legal aid lawyers are frequently overburdened, inadequately remunerated, and in some jurisdictions insufficiently trained in criminal defence practice, with the consequence that the formal right to counsel recognised in *Hussainara Khatoon* does not always translate into effective representation at the bail stage, where the most consequential decisions for an undertrial's liberty are made.⁵⁷

⁵²See *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India) (on the use of unincorporated international conventions to interpret fundamental rights in the absence of domestic legislation).

⁵³*State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (India).

⁵⁴Law Commission of India, Report No. 268, Amendments to Criminal Procedure Code, 1973 — Provisions Relating to Bail, ¶ 3.2 (2017).

⁵⁵Undertrial Prisoners in India: NCRB Data, Challenges, Reforms & Legal Rights, Tarun IAS (2025) (citing India's police-population ratio against the UN-recommended benchmark).

⁵⁶*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (India).

⁵⁷Law Commission of India, Report No. 268, *supra*, at ¶¶ 4.1–4.4.

Fourth, the undertrial population is not representative of Indian society at large but is skewed toward socially and economically disadvantaged groups. Approximately two-thirds of undertrials belong to Scheduled Caste, Scheduled Tribe, or Other Backward Class communities, a pattern that has been read by commentators as evidence that caste and class continue to structure encounters with the criminal justice system, notwithstanding the formal equality guaranteed by Article 14.⁵⁸ Persons from these communities are less likely to have the financial resources to furnish bail bonds, the social capital to identify sureties, or ready access to competent counsel, so that structural disadvantage outside the courtroom translates directly into prolonged detention within it.

A further, often underappreciated, structural cause is the limited availability of granular, real-time data on individual undertrials' detention periods, case status, and eligibility for statutory release. NCRB reports, however valuable as an annual aggregate snapshot, are published with a considerable time lag and do not permit prison or judicial authorities to identify, in real time, which undertrials have crossed the statutory threshold under Section 479 of the BNSS. The absence of interoperability between the judiciary's case-management systems and prison administration databases means that the identification of eligible undertrials often depends on manual scrutiny by an already overburdened jail administration, rather than on system-generated alerts — a gap that recent e-prison initiatives aim to close but have not yet closed uniformly across all States and Union Territories.⁵⁹

Finally, administrative failures within the prison system itself — poor coordination between jails and courts and inconsistent implementation of Undertrial Review Committees across districts — mean that even undertrials who meet statutory criteria for release under Section 479 of the BNSS often remain in custody for want of an application being moved on their behalf.⁶⁰

VIII. INSTITUTIONAL MECHANISMS AND POLICY RESPONSES

In response to these structural deficits, several institutional mechanisms have been developed, with mixed success. The Supreme Court's directions in *In re Inhuman Conditions in 1382 Prisons* resulted in the constitution of Undertrial Review Committees, chaired by the District and Sessions Judge, in every district, with a mandate to meet periodically and identify

⁵⁸IndiaSpend, #DataViz: Prison Occupancy Rose in 2022, Despite Campaign to Release Undertrials (2023).

⁵⁹The Policy Edge, NCRB's Prison Statistics India 2023: Overcrowding, Undertrials, and Mental Health (Dec. 19, 2025).

⁶⁰*In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700 (India).

undertrials eligible for release under Section 479 of the BNSS (formerly Section 436A CrPC) as well as other categories of prisoners eligible for release on humanitarian or procedural grounds.⁶¹ The effectiveness of these committees, however, has varied considerably across States, with some jurisdictions holding meetings irregularly or without adequate coordination between the judiciary, prosecution, and prison administration.⁶²

The National Legal Services Authority, established under the Legal Services Authorities Act, 1987 to give effect to Article 39A, has undertaken periodic campaigns to identify and secure the release of undertrials entitled to statutory bail, and operates a network of legal services clinics within prisons.⁶³ In 2022, a nationwide campaign was launched, in coordination with State Legal Services Authorities and prison administrations, specifically to identify undertrials eligible for release under Section 436A, though subsequent NCRB data suggests that the campaign's effect on the overall undertrial ratio was modest, as new admissions continued to outpace releases.⁶⁴

At the executive level, the Ministry of Home Affairs has periodically revised the Model Prison Manual — most recently in 2016, with a further Model Prisons and Correctional Services Act circulated to States in 2023 — to provide States with a template for prison administration consistent with constitutional standards, including provisions on overcrowding, undertrial review, and legal aid access, though prisons remain a State subject under Entry 4 of List II of the Seventh Schedule, meaning implementation ultimately depends on individual State governments.⁶⁵ Several States have also begun to invest in e-prison systems intended to digitise case records and flag undertrials approaching their statutory release threshold automatically, a technological intervention aimed directly at the administrative failures identified above, though coverage and reliability remain uneven across the country.⁶⁶

IX. CRITICAL ASSESSMENT AND THE WAY FORWARD

The preceding analysis suggests that the crisis of undertrial detention in India is not attributable to any deficiency in constitutional principle. The doctrine is, in most material respects, well

⁶¹In *re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700 (India).

⁶²The Policy Edge, *supra* note 8.

⁶³Legal Services Authorities Act, No. 39 of 1987, § 4 (India).

⁶⁴IndiaSpend, *supra* note 24.

⁶⁵Ministry of Home Affairs, Model Prison Manual for the Superintendence and Management of Prisons in India (2016); Model Prisons and Correctional Services Act, 2023 (circulated to States).

⁶⁶The Policy Edge, *supra* note 8.

settled: personal liberty may not be curtailed except by a fair, just and reasonable procedure; bail rather than jail is to be the norm; indigence must not determine the length of pre-trial custody; and free legal aid is a facet of the right to a fair trial. The persistent gap between this doctrine and the lived experience of the undertrial prisoner is, instead, substantially a problem of implementation, resourcing, and institutional design.

Several reforms follow directly from this diagnosis. First, the exclusion of life-imprisonment offences from the benefit of Section 479 of the BNSS merits legislative reconsideration, since it is precisely in serious and complex cases that trials are most prolonged and the risk of pre-trial detention exceeding any eventual sentence is highest.⁶⁷ Second, Undertrial Review Committees require statutory backing, standardised procedures, and integration with digital case-management systems to ensure uniform functioning across districts, rather than continued reliance on judicial exhortation alone. Third, the quality and remuneration of legal aid counsel require sustained investment, since the formal right to counsel recognised since *Hussainara Khatoon* is of limited value without competent representation at the bail stage. Fourth, magistrates and sessions courts should be encouraged, through judicial training and monitoring, to exercise the discretion already available to them to release indigent accused persons on personal bond rather than defaulting to monetary sureties. Finally, sustained investment in police strength and fast-track adjudication of long-pending trials, particularly those involving undertrials from marginalised communities, would address the problem closer to its source rather than through periodic, ex post facto release campaigns.

These reforms are more likely to succeed if pursued in a phased and coordinated manner rather than as isolated interventions. In the immediate term, digitisation of undertrial records and mandatory, time-bound sittings of Undertrial Review Committees would address the most direct administrative causes of continued, unlawful detention. In the medium term, legislative reconsideration of the life-imprisonment exclusion under Section 479 and enhanced funding for legal aid infrastructure would address gaps in the statutory and representational framework. In the longer term, structural investment in police strength, judicial vacancies, and forensic infrastructure is necessary to address the delay in investigation and trial that lies at the root of prolonged pre-trial custody. Absent such a coordinated, multi-institutional response, the constitutional guarantees explored in this paper will continue to exist in a form largely

⁶⁷See *When Exceptions Swallow the Rule: Problem with Section 479 BNSS*, LiveLaw (Oct. 17, 2025).

disconnected from the everyday experience of the undertrial prisoner.

X. CONCLUSION

Forty-five years after the Supreme Court, in *Hussainara Khatoon v. State of Bihar*, declared that no procedure which fails to ensure a reasonably speedy trial can be regarded as fair, just, or reasonable within the meaning of Article 21, more than three-fourths of India's prison population continues to consist of persons awaiting the determination of their guilt.⁶⁸ This is not a failure of constitutional text or judicial articulation; both remain, on the whole, protective of the undertrial's liberty. It is a failure of the institutional machinery required to give that protection operative effect at the level of the individual prisoner — the jail superintendent who does not move an application, the review committee that does not meet, the bail order that is granted but never executed for want of a surety the accused cannot furnish. The constitutional and human rights dimensions of undertrial detention explored in this paper converge on a single proposition: that the presumption of innocence, to be meaningful, must be matched by an administrative and institutional commitment as sustained as the doctrinal commitment already articulated by the courts. Until that convergence is achieved, the Indian prison will remain what it has been for much of the post-Independence period — an institution disproportionately populated not by the convicted, but by those the law still presumes innocent.

⁶⁸*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (India).