

## UNDERTRIAL PRISONERS IN INDIA: LEGAL FRAMEWORK, CHALLENGES AND REFORMS

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Undertrial prisoners are the persons who are in the prison while awaiting the trial or conclusion of legal proceedings against them. It also include those who have not yet been convicted of a crime and are held in judicial custody during the legal process. The Model Prison Manual 2016 defined undertrial Prisoner as a person who has been committed to judicial custody pending investigation or trial by a competent authority. India claims to be the Worlds' largest democracy but large number of prisoners in India are undertrials. Around 2/3rd of prisoners languishing in Indian jails are undertrials.<sup>1</sup> These undertrials are presumed to be innocent in law and majority of them remain incarcerated due to their inability to pay the bail amount. They are kept in custody to ensure fair hearing so that they are not in a position to influence the witnesses.

National Crime Records Bureau compiles prison statistics reported to it by the States and Union Territories (UTs) and publishes the same in its annual publication "Prison Statistics India". According to latest published report as on 31/12/2022, of the 5, 73,220 people incarnated in the Indian Prisons, 4, 34,302 that is 75.8% are undertrials against whom cases are still pending.<sup>2</sup> Several human right issues arise in respect of this large number of community.

Delay in conduct of trials is the major cause of concern about these prisoners. Many undertrial prisoners remain in jail for periods exceeding the maximum sentence for their alleged offences. It is often due to delays in the judicial process, lack of legal representation, and administrative inefficiencies. Recently the Union Minister emphasized the need for expediting the release of undertrial prisoners who have served more than one- third of their maximum sentence before Constitution Day.<sup>3</sup> Overcrowding is yet another big issue faced by the undertrials. According to a report by the Supreme Court's Centre for Research and Planning, Indian prisons operate at 131% occupancy, housing 573,220 inmates against a capacity of 436,266. Notably, 75.7% of these inmates are undertrials, reflecting a substantial judicial backlog.<sup>4</sup> Despite Article 39A guaranteeing free legal aid, many undertrial prisoners lack access to legal representation due to an insufficient lawyer-to-prisoner ratio, hindering their ability to defend themselves effectively.

Human rights can be defined simply as those basic rights to which every man and woman, no matter where they reside in the world, are entitled by virtue of being born as human

<sup>1</sup> NLIU Review, Vol VI, Issue II, page 281

<sup>2</sup> Indianepress.com/article/exp, accessed on dated 7<sup>th</sup> February 2025

<sup>3</sup> Drshtiiias.com/daily-up, accessed on 28<sup>th</sup> Feb 2025

<sup>4</sup> <https://www.drshtiiias.com/daily-updates/daily-news-analysis/state-of-undertrial-prisoners-in-india>, accessed on dated 1<sup>st</sup> March 2025



beings. Human rights are those freedoms that all people have, regardless of their caste, religion, sex, race, or country of birth. Anyone who is under investigation, suspected, under trial prisoner, or convicted also has rights. These rights are meant to protect them from unfair and humiliating treatment.

**Article 3-11 of the Universal Declaration of Human Rights** guarantees liberty and life, no inhuman or cruel treatment, arbitrary detention, effective judicial remedy, the presumption of innocence, and other rights, which were adopted in 1948. As a signatory to the UDHR, India is required to uphold these rights.

**UN Standard Minimum Rules for the Treatment of Prisoners** came into force in 1955. It sets out standards for those in custody which covers registration, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and punishment, instruments of restraint, information to and complaints by prisoners, contact with the outside world, books, religion, retentions of prisoners' property, notification of death, illness, transfer, removal of prisoners, institutional personnel and inspection of facilities. There are also special provisions for insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners and persons arrested or detained without charge.

**The International Covenant on Civil and Political Rights, 1966** which was ratified by India in 1979 include some core provisions about the protection of rights of prisoners.

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Art.7)
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. (Art.9)
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Art.10)
- No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. . (Art.11)

**The Anti-torture campaign** led by Amnesty International in 1980s advocated set of binding international prohibition on torture.

**The Convention against torture and other Cruel, Inhuman or degrading Treatment or Punishment, 184** criminalised torture and prescribed individual criminal responsibility for a single act of torture.

In 1988 United Nations adopted **Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment**.

The United Nations further adopted and proclaimed the basic principles for the treatment of prisoners in 1990.

The Indian legal system recognizes the human rights of those awaiting trial. By interpreting Article 21 the Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of undertrial prisoners' right to maintain human dignity In

the case of the *State of Andhra Pradesh vs Challa Ramkrishna Reddy*<sup>5</sup>, the Supreme Court held that the prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed.

### **Fundamental Rights of Undertrial Prisoners :**

Fundamental rights which are provided part III of the Constitution are the most important rights which are enjoyed the undertrial prisoners during the trial. The most significant right is Article 14, which states that “the state shall not deny to any person within the territory of India, equality before the law or the equal protection of the laws.” Article 21 of the Indian Constitution guarantees the right to life and personal liberty and states that no one shall be deprived of these rights unless doing so in accordance with legal procedures. The phrase “right to live” now includes the right to live with dignity as part of its scope, expanding upon the original meaning of Article 21. They have also protection under Article 20. According to Clause (1) of Article 20 of the Indian Constitution, “No person shall be convicted of any offense except for violation of a law in force at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that which may have been imposed under the law in force at the time of the commission of the offense.” And No person accused of a crime may be forced to testify against themselves, according to Article 20’s clause (3). Moreover, their friend or family members should be made aware of their arrest, and they should be given the option to visit the prisoner.

### **Right to a speedy trial :**

Delay in justice is justice denied. This is especially true in criminal cases where the accused is not released on bail while the case is pending and the trial is excessively delayed. Article 21 of the Constitution implicitly recognizes the right to a speedy trial as a fundamental right for prisoners. It guarantees a just, equitable, and reasonable process. If a trial is deemed unfair, it will typically be restarted or the ruling will be overruled.

The Supreme Court of India in *A.R.Antulay vs. R.S.Nayak*,<sup>6</sup> held that the right to speed trial flowing from Article 21 is available to the accused at all stages like investigation, inquiry, trial, appeal, revision and retrial.

### **Right to Consult and to be Defended by a Legal Practitioner :**

It is one of the basic rights protected by our Constitution. No person who is arrested shall be denied the right to consult with and be represented by counsel of his choice, according to Article 22(1) of the Constitution. The right of the accused to choose his own lawyer is fundamental and necessary for a fair trial. This also applies to the right to free legal assistance guaranteed by Article 39A of the Indian Constitution.

### **Right to Free Legal Aid :**

Legal aid is the practice of providing free legal representation to those in society who are less fortunate and cannot afford to hire an attorney to represent them in court or other legal proceedings before judicial authorities or tribunals. Equal Justice and Free Legal Aid are

<sup>5</sup> (2000) 5 SCC 712

<sup>6</sup> (1988)2 SCC602

provided by Article 39A. In order to ensure that no citizen is denied the opportunity to pursue justice due to financial or other limitations, the State must ensure that the functioning of the legal system promotes justice based on equal opportunity. In particular, the State must provide free legal aid through appropriate legislation or programs or in any other manner.

### **Right to Know the Grounds of Arrest :**

According to Article 22 (1) of the Constitution, a person arrested for an offense under ordinary law must be informed of the reason for their arrest as soon as possible. The same is also covered by Section 50 of the Criminal Procedure Code, in addition to the constitutional provision.

### **Protection against inhuman treatment :**

It is one the essential right of the prisoners awaiting the trial. It include the safeguard against torture and other cruel, inhuman, or humiliating treatment. They are not permitted to be handcuffed while being transported from prison to court. Handcuffing is unjust, excessively harsh, and arbitrary unless there is legal justification behind it. Detention facilities must meet minimum standards of hygiene and safety to preserve the dignity of individuals in custody.

### **Right to Bail :**

Section 436A of the Code of Criminal Procedure, 1973, which provided for the right to bail; a significant privilege enjoyed by the undertrial. As per the CrPC, if an undertrial has served half the maximum imprisonment for an offence, he must be released on a personal bond. This provision does not apply to offences punishable by death. Recently the Code of Criminal code is replaced by Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023. The BNSS retains this provision and it introduces provisions for relaxed bail for first time offenders. It adds that first-time offenders get bail after serving one-third of the maximum sentence.

In *Re Inhuman Conditions in 1382 Prisons*,<sup>7</sup> the Court highlighted issues like overcrowding, delayed trials, and prolonged detention of undertrials. It directed state governments to ensure timely identification and release of eligible undertrials under Section 436A CrPC.

Recently the Supreme Court ruled that the relaxed bail provisions under BNSS would apply retrospectively to cases filed before its enactment.

### **Right to meet family :**

The family member or friend of an undertrial prisoner should be informed of their arrest, and must have the option to visit the prisoner subject to certain security criterion.

### **Other Legislative Initiatives :**

Prisons Act of 1894 is India's first piece of legislation governing prisons. This Act primarily focuses on prisoner reformation in relation to prisoner rights.

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<sup>7</sup> (2017)10 SCC 658

This contains provision of safe shelter and custody, their treatment, the provision related to parole or short-term release, and most important division of Prison for male and female, civil and criminal, and convicted and under-trial prisoners. In Indian prisons, those who are awaiting trial are housed in the same facility as those who have been convicted. However, the prison guards are required to provide separate accommodation for the under-trials. According to the Model Prison Manual, no convicted inmate should be housed in the same facility as inmates awaiting trial or be permitted to interact with them.

However, in practice, under-trial inmates in Indian jails are treated like convicts and housed in the same prison, constituting a grave violation of their human rights. Therefore, the Prisoners Act 1984 specifically addressed prisoners' cruelty. Prison staff members are held accountable if any abuses are done to a prisoner.

Recently, the Supreme Court directed jail authorities to identify and release eligible undertrials who have served a significant portion of their maximum sentence under Section 479 of the BNSS. The court has mandated special drives to identify eligible undertrials, including women and those with young children, to expedite their release. It aims to ensure that no eligible prisoner remains incarcerated due to administrative delays.<sup>8</sup>

To address the backlog of cases, the government has proposed the establishment of fast-track courts. These courts will focus on expediting trials for petty offences and cases pending for extended periods. It is expected to reduce the number of undertrials and alleviate prison overcrowding.

The government is considering broader policy reforms to address the root causes of prolonged detention that includes revising bail laws, improving prison management, and ensuring better coordination between the judiciary and prison authorities.

The Model Prison Manual, 2016 which is circulated to all the States and Union Territories has specific chapters on 'Legal Aid' and 'Undertrial Prisoners' etc. which provide detail guidelines on the facilities detailed guidelines on the facilities which may be provided to undertrial inmates like legal defence, interview with lawyers, application to Courts for legal aid at Government cost etc.<sup>9</sup>

The National Legal Services Authority had prepared a Standard Operating Procedure for Undertrial Review Committees which has been circulated by MHA to all States and Union Territories for making best use of the same and provide relief to the prisoners.

The State Legal Services Authorities have established Legal Service Clinics in jails which provide free legal assistance to persons in need. These clinics have been established to ensure that no prisoner should remain unrepresented and legal aid and advice is provided to camps in jails to generate awareness about availability of free legal aid, plea-bargaining, Lok-Adalats and legal rights of inmates including their right to bail.

<sup>8</sup><https://www.nextias.com/ca/current-affairs/21-11-2024/indias-undertrial-prisoners>, accessed on dated 27<sup>th</sup> February 2025

<sup>9</sup> Referred from <https://pib.gov.in/PressReleasePage.aspx?PRID=2077949>, accessed on 25<sup>th</sup> February 2025



E-Prison Software which is a Prison Management Application integrated with Interoperable Criminal Justice System provides facility to State Jail authorities to access the data of inmates in a quick and efficient manner and helps them in identifying the inmates whose cases are due for consideration by the Undertrial Review Committee.<sup>10</sup>

The National Prisons Information Portal Covers 36 states. It keeps the record of in all 20725787 prisoners from all over India.<sup>11</sup>

However, effective implementation requires a deeper understanding of the socio-economic barriers that prevent undertrials from securing bail.

### **Conclusion :**

The state of undertrial prisoners in India highlights significant flaws in the criminal justice system. The paramount constitutional concern with undertrial detention is that it violates the principle that there should be no punishment before the establishment of guilt by procedure of law. Whenever there is a question of justice, the only thing that must be taken into account is the establishment of the act committed by the accused beyond a reasonable doubt. Invariably, it is always the poor who gets entrenched in the 'justice system' available for undertrial prisoners. There is a definite violation of the undertrial's right to equality and right to life. Before conviction, pre-trial detention must be minimal and situationally justifiable to each individual case otherwise the authorities stand in breach of their duties, violating the fundamental rights of the undertrial prisoner. The familiar dicta "justice delayed is justice denied" and "bail not jail" are often held out as the bulwarks of fair trial, but the profile analysis of the prison population makes it a farce.

However, recent initiatives and directives from the Supreme Court offer hope for meaningful change. By implementing these measures, India can ensure that justice is not delayed and that the rights of undertrial prisoners are upheld

<sup>10</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=2003162>, accessed on dated 25<sup>th</sup> February 2025

<sup>11</sup> <https://eprisons.nic.in/NPIP/public/Home>, accessed on dated 26<sup>th</sup> February 2025

